



3 February 2017

# Submission to the Australian Competition and Consumer Commission on the Draft Determination

In relation to the application for authorisation lodged by  
Queensland Canegrowers

—

on behalf of Wilmar Sugar

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# Submission to the ACCC

## In relation to the application for authorisation lodged by Queensland Canegrowers

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# Submission

## 1. Introduction

### 1.1 Application for Authorisation

On 23 September 2016, Queensland Canegrowers Organisation Ltd (**QCGO**) made an application for authorisation for the collective bargaining of cane supply and related contracts between sugar cane growers, processors and sugar marketers (**Application**). The Application is broad and seeks authorisation:

- (a) within each district, so that the relevant representative body can negotiate with the local mill owner and GEI sugar marketers on behalf of grower members;
- (b) across and between each district that has common mill ownership, so that each of the relevant representative bodies, as well as QCGO, can negotiate collectively with the common mill owner and GEI sugar marketers; and
- (c) across and between each district regardless of mill ownership, so that each of the relevant representative bodies, as well as QCGO, can negotiate collectively with all mill owners and GEI sugar marketers.

By letter dated 18 November 2016, QCGO responded to an information request from the ACCC dated 3 November 2016, clarifying the scope of the conduct proposed to be authorised (**QCGO Submission**). The ACCC has assessed the Application on the basis of those clarifications,<sup>1</sup> which include:

- (a) that QCGO does not seek authorisation for it to assume the direct principal bargaining role; and
- (b) that QCGO is not seeking authorisation to negotiate a single state-wide cane supply agreement and related agreements;

### 1.2 Draft Determination

The Draft Determination made on 15 December 2016 proposes to grant authorisation for a period of 10 years, on the basis that the application satisfies the net public benefit test in sections 90(5A), 90(5B), 90(6) and 90(7) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) (**Draft Determination**).

The Draft Determination proposes to authorise current and future members of QCGO and local QCGO companies:<sup>2</sup>

- (a) who supply cane to the same mill – to collectively bargain, and make and give effect to provisions of cane supply and related contracts, with that miller and with sugar marketers in relation to:
  - (i) the harvesting of cane;
  - (ii) the delivery of cane to the mill or delivery points;
  - (iii) the transport and handling of cane by the mill;
  - (iv) the acceptance and crushing of cane by the mill;

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<sup>1</sup> Draft Determination, page (i).

<sup>2</sup> Draft Determination, paragraph [218].

- (v) the payment to growers by the mill owner;
  - (vi) forward pricing terms;
  - (vii) the essential terms governing the supply of GEI sugar to the GEI sugar marketers, and
  - (viii) capturing the value of the by-products and related products from sugar cane (together, **Cane Supply Terms and Conditions**);
- (b) who supply cane to any mill that has the same owner – collectively bargain, and make and give effect to provisions of cane supply and related contracts, with that mill owner and with sugar marketers in relation to Cane Supply Terms and Conditions; and
  - (c) to share information across and within districts to facilitate the adoption of best practice in terms of contracts and related provisions where they choose to do so, including allowing QCGO (head office) to provide information and services to local Canegrowers companies to support their local collective negotiations, including drafting contracts and dispute resolution procedures.

The proposed authorisation is not intended to authorise:

- (a) QCGO collectively negotiating a single state-wide Cane Supply Agreement or related agreements with processors or sugar marketers; or
- (b) QCGO (head office) assuming the principal bargaining role in any collective negotiations.<sup>3</sup>

### 1.3 Submission on the Draft Determination

In response to the ACCC's invitation for submissions on the Draft Determination, Wilmar Sugar Australia Limited and its related mill owning entities (**Wilmar**) consider that the Draft Determination:

- (a) lacks clarity in the scope of the conduct authorised;
- (b) contains a number of factual inaccuracies which should be amended in the final determination; and
- (c) does not provide a sufficient explanation to support the public benefits identified as arising from the proposed authorisation.

## 2. Scope of authorisation

### 2.1 Lack of clarity in the scope of the authorisation

The scope of the conduct authorised in the Draft Determination is unclear in places. While the Application was assessed on the basis of the clarifications provided in the QCGO Submission, these clarifications have not been captured in the terms of the proposed authorisation.

While there are observations about the scope of the authorisation in the ACCC's reasons (pages i to 45 and Annexure A) these are not always reflected in the terms of the proposed authorisation itself (pages 46 to 49).

Importantly, at paragraph [184], the ACCC states that:

authorisation is not sought for a collective boycott, and as such, any authorisation granted by the ACCC would not provide immunity to local Canegrowers companies to collectively decide to not deal with or exclude particular GEI marketers.

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<sup>3</sup> Draft Determination, paragraph [222].

The threat of a boycott is obviously a matter of grave concern to Wilmar, as a firm which is endeavouring to compete with QSL for the right to market GEI sugar. This threat is not merely theoretical. Representatives of some canegrowers in the Burdekin district are already talking publicly about a possible boycott of Wilmar (see **Annexure A**) while at the same time the Applicant is citing the ACCC's draft determination in support of its stance (see **Annexure B**).

It is significant that the ACCC's reasons emphasise that collective negotiation is 'voluntary' for growers, millers and marketers (see for example, page ii and paragraphs [199] and [208]) and that the voluntary nature of collective negotiation means that the parties will not be expected to enter into arrangements that are not mutually beneficial (paragraphs [169] and [187]).

For the reasons outlined in Wilmar's earlier submission, substantial costs will be introduced into the sugar supply chain if, for example, mill owners will be forced to engage in negotiations around the terms governing the supply of on-supply sugar to the GEI sugar marketers, or to supply forward pricing and pooling services to growers, irrespective of whether the mill owner is nominated to market GEI sugar.

It is important the ACCC, in its reasons for decision, makes clear that the case for authorisation is critically dependent on the voluntary nature of the conduct which is to be authorised, and that this is reflected in the ACCC's determination, in order to ensure that growers cannot engage in a collective boycott against mill owners or GEI marketers.

In view of this, Wilmar submits that it is crucial that the ACCC:

- (a) clarify that there is no immunity given for a collective boycott by '*local Canegrower companies*' (ie. between multiple collectives) as well as by the members of those collectives;
- (b) clarify that the collective bargaining arrangements in the proposed authorisation are voluntary and that no party is required to enter into any agreement unless mutually beneficial; and
- (c) makes these points clear in the determination, as well as in the reasons.

Wilmar also notes that the Proposed Authorisation does not identify key terms such as:

- (a) 'related contracts' (paragraph 218(i) and (ii));
- (b) 'essential terms governing the supply of Grower Economic Interest (GEI) sugar to the GEI sugar marketers' (paragraph 218(i));
- (c) 'forward pricing terms' (paragraph 218(i)); and
- (d) 'information' and 'best practice' (paragraph 218(iii)).

The terms in paragraphs (a) to (c) above were the subject of the information request made by the ACCC on 3 November 2016, and clarified in the QCGO submission.<sup>4</sup>

While most of these terms are discussed in the reasons (eg. see paragraph 192 for 'related agreements',<sup>5</sup> paragraph 86 for 'essential terms' and paragraphs 91 and 92 for 'forward pricing terms') it is not clear whether the particularities of these terms outlined in the reasons will form part of the operative authorisation. For the terms in paragraph (d), these were taken directly from the QCGO Submission but there is no discussion of their meaning in the reasons.<sup>6</sup>

In order for the Proposed Authorisation to be sufficiently clear, Wilmar submits that further detail in relation to the scope of the conduct authorised should be included.

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<sup>4</sup> See question 2(a) regarding related contracts/agreements, question 3(a) regarding 'essential terms governing the supply of GEI interest sugar to the GEI sugar marketers' and question 3(b) regarding 'forward pricing terms'.

<sup>5</sup> Note that this paragraph refers to 'related agreements' rather than 'related contracts' which is the wording used in paragraph 218.

<sup>6</sup> QCGO Submission, page 4.

### 3. Factual inaccuracies

Wilmar has identified a number of factual inaccuracies in the Draft Determination.

#### 3.1 Payments made to mill owner

On page i of the Draft Determination it is stated that:

Under long standing industry arrangements, growers sell their sugar cane to a local mill, which processes it into raw sugar to sell to a sugar marketer. As payment, the grower receives a portion (typically around 60 per cent) of the revenue that the marketer makes on the sale of the raw sugar in the international market, less the marketer's fees. ***This has become known as the Grower's Economic Interest (GEI). The remainder is paid to the mill owner as payment for processing the cane.*** (emphasis added)

The proposition that a mill owner receives a share of the revenue from the sale of raw sugar as payment for 'processing cane' is incorrect. A mill owner acquires cane from a grower (for which it pays the grower) and produces raw sugar, which it then sells and for which it is paid the full price and receives 100% of the revenue from sugar sales.

The cane price formula provides that the payment to the grower for its cane is to be determined, in part, by reference to the price received by the mill for the sale of its sugar. Under forward pricing arrangements between growers and millers, cane payments are based on sugar prices resulting from individual grower price risk management decisions. Grower price risk management decisions may be determined independently from other growers and from the miller. Price outcomes can therefore be materially different for individual growers and millers. Nothing in the cane payment formula specifies cane payments as a percentage of revenue from miller sugar sales or means that a mill owner merely provides a crushing service to growers, or that it is paid for providing such a service.

#### 3.2 The ICE#11 contributes closer to 99% of the net sugar price

At paragraph 47 of the Draft Determination it is stated:

The raw sugar futures contract price is the globally traded 'Intercontinental Exchange No. 11 raw sugar futures contract price' (ICE11). ***The ICE11 price currently contributes to more than 95 per cent of the net sugar price.***

This assertion does not accurately reflect that the contribution of the ICE#11 price to the net sugar price has been closer to 99% in recent years.

The footnote to the statement in paragraph 47 cites the Queensland Productivity Commission, *Decision Regulatory Impact Statement, Sugar Industry (Real Choice in Marketing) Amendment Bill 2015*, November 2015 (**QPC Report**), pages 20 to 21. However, the relevant paragraph in the QPC Report, in full, states:

The raw sugar futures contract price refers to the globally traded 'Intercontinental Exchange No.11 raw sugar futures contract price' (ICE No. 11), converted to Australian dollars. ICE No. 11 sets the benchmark for world sugar prices and stakeholders consider that this contributes more than 95 per cent of the net sugar price, ***although recently this has been close to 99 per cent***, as discussed in section 3.3. (emphasis added and footnotes omitted)

QSL, in its Annual Reports for 2014-15 and 2015-16 have also published tables which show net premiums adding less than 1% to the ICE#11 pool price.<sup>7</sup>

The fact that the ICE#11 price has been closer to 99% as opposed to 95% is important, because it reduces the extent to which the net marketing premiums (marketing premiums less marketing costs) incurred by the marketing entity contribute to the revenue received by the miller for the sugar.

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<sup>7</sup> QSL, 2014/15 Annual Report, page 6; QSL, 2015/16 Annual Report, page 6.

At paragraph 52 of the Draft Determination it is stated that:

Canegrowers advises that growers are exposed to and share whatever costs are incurred by the GEI marketer in the marketing of the GEI sugar and whatever marketing charges are agreed or provided for in the GEI sugar On-Supply Agreement.

This statement should be read in the context that the net marketing premiums account for approximately less than 1% of the revenue received by growers for the GEI sugar. As a result, growers' interest in the terms of an on-supply agreement relating to the marketing costs incurred by their nominated GEI marketing entity is minor.

### 3.3 Forward pricing

At paragraphs 51 to 52 of the Draft Determination it is stated that:

The ACCC understands that in recent years most mill owners have offered cane growers the ability to 'forward price' their cane via a choice of pools or individual grower forward pricing arrangements. For example, Wilmar Sugar advises that growers are able to fix, for a proportion of the cane to be supplied in a future season, the sugar price on which the price of that cane is based up to three years in advance.

In this regard, Canegrowers advises that growers can manage the futures price risk up to a certain percentage of their production, usually no more than 65 per cent in the year of harvest.

These paragraphs should be clarified to note that forward pricing is offered by mill owners *at their discretion*. While historically Wilmar has offered forward pricing to growers, it is not required to do so, nor will the Wilmar mill owners be offering forward pricing to any growers for the 2017 season and beyond. However, the Wilmar GEI sugar marketing entity will offer forward pricing to those growers that nominate it under the new 'grower choice' legislation and compete with other GEI Marketing Entities for the right to market Grower Economic Interest Sugar.

Moreover, at paragraph 77 of the Draft Determination it is stated:

Regarding the 2017 season, Canegrowers advises that Cane Supply Agreements are settled for all mills except those mills owned by Wilmar Sugar and Tully Sugar. Without Cane Supply Agreements, growers supplying cane to mills owned by these companies are 'unable to manage their forward price exposure unless they accept the mills' standard form contract and accept the mill-nominated entity as their GEI marketer for the 2017 season'.

This is not correct. Forward pricing and other financial mechanisms used to maximise grower revenue against changing world sugar prices are incentives that can be offered by GEI marketing entities in competition for the right to market growers' GEI sugar.

As stated in Wilmar's First Submission:

As a consequence of the amendments to the SIA, each grower has the ability to nominate the GEIM that will market the GEI sugar attributable to that grower. This is a right conferred by a grower on a GEIM in trade or commerce. It is expected that marketers will compete for this right by offering the ability to achieve higher sugar prices (chiefly through offering professional forward pricing and pooling services to growers and higher net marketing premiums), thereby producing a higher sugar value, and better returns to growers. Marketers may also offer grower cash flow advances and other ancillary information and financial services. As noted above, there is competition in this market, both between marketers who are competing for the right to market GEI sugar, and between individual growers who exercise choice in relation to the GEIM.

Wilmar considers that GEI sugar marketing is a distinct market from sugar pricing. The right to market GEI sugar is a right conferred by growers only on GEIMs, who may (or may not) provide pooling and forward pricing services as part of their offering to growers. In contrast, there is a range of options open to growers who wish to manage their sugar price exposure. These may include, but are by no means limited to, pooling and forward pricing through their nominated GEIM.

In this context it is significant that, on the one hand, the ACCC proposes to authorise collective bargaining in relation to forward pricing terms but, on the other, the ACCC has stated that such a bargaining process would be 'voluntary'.

If growers and (their representatives) can collectively demand that a mill owner offer forward pricing, backed by the threat of a collective boycott should the mill owner refuse, growers would be in a position to compel a mill owner to provide a risk management service that a mill owner is not obligated to provide, and which a GEIM is supposed to be able to offer as part of a competitive package for the right to market GEI sugar. Whether a mill owner wishes to offer to market GEI sugar is a decision for the mill owner alone. There is nothing in the Sugar Industry Act which compels any person to offer or supply such services. Nor is there any public benefit in authorising growers, using the threat of a collective boycott, to force a mill owner to offer such services, or to do so on particular terms. As noted in section 2.1 above, certain grower representatives in the Burdekin region have already canvassed the possibility of a collective boycott. It is therefore crucial that the ACCC confirm, in its final determination, that such a boycott is not authorised.

Further, growers are able to forward price GEI sugar through a range of mechanisms, including financial institutions outside of the grower-miller-marketer contractual relationship. There are already growers, who supply cane to Wilmar, who have entered into such arrangements, with Wilmar agreeing to take a novation of the arrangement between the grower and the financial institution. Again, such arrangements are entirely voluntary.

### 3.4 Collective bargaining of 'essential GEI marketing provisions'

At paragraph 86 of the Draft Determination it is stated:

Following a request from the ACCC for further information, Canegrowers provided the following examples of 'other contracts or arrangements relating to the supply of or processing of sugar cane' for which it seeks authorisation:

- The supply of GEI sugar from the miller to the GEI marketing entity. While the parties to the On-Supply Agreement are the miller and the GEI marketer, Canegrowers submits that growers have a clear beneficial interest in the terms of that agreement as its terms directly influence the value to them for the sale of GEI sugar. ***It is open to the growers to collectively negotiate the essential GEI marketing provisions in a Cane Supply Agreement that the grower enters into with the mill owner and under which the mill owner will enter into an On-Supply Agreement with the GEI marketer.*** On-Supply Agreement essential terms include, among other things, those related to:
  - payment
  - GEI sugar quality
  - risk
  - liability
  - contract termination and
  - logistics.(emphasis added)

This statement appears to have been taken directly from page 4 of the QCGO Submission and is not correct. The statutory authorisation in the SIA is specific, and does refer to collective bargaining of 'essential GEI marketing provisions'. Rather, section 237 of the SIA specifically authorises:

- (a) the making of a collective contract;
- (b) the variation of a collective contract;
- (c) the acceptance and crushing of cane by a mill at a fixed time under the collective contract;
- (d) the payment of a price for cane by a mill owner to a grower under the collective contract;



- (e) the receipt of a price for cane by a grower from a mill owner under the collective contract;
- (f) a financial incentive scheme of premiums, discounts and allowances relating to cane and sugar quality or to anything that may affect cane and sugar quality having regard to best practice under the collective contract.

A collective contract is defined in section 33 to mean a 'supply contract made between two or more growers'. Section 237 does not authorise the collective bargaining of anything beyond those matters that can properly be the subject of a 'supply contract'.

A supply contract is defined in the Schedule to the SIA as:

- (a) meaning a written contract, complying with Chapter 2, Part 2, Division 1 of the SIA, made between a grower and a mill owner for the supply of cane by the grower to the mill; and
- (b) including a supply contract taken to have been made under section 33A(10) of the SIA.

The terms of a supply contract must therefore relate to the supply of cane to the mill.

Section 33B contains certain terms that must be contained in a supply contract about on-supply sugar in the absence of a contrary agreement, for example:

- (a) a term for working out the cane payment;
- (b) a related sugar pricing term; and
- (c) a GEI sugar price exposure term.

The agreement between a mill owner and the GEI sugar marketing entity is described in section 33B(2)(d) as a different agreement to a supply contract. A supply contract must have at least one grower as a party whereas an on-supply agreement does not require a grower to be a party.

The statutory authorisation in section 237 therefore does not extend to the collective negotiation of any matters contained in an on-supply agreement, including those matters described in section 33B.

### **3.5 On-supply terms affecting the value of the GEI sugar**

At paragraph 88 of the Draft Determination, it is stated that:

The essential terms of the On-Supply Agreement can affect the value of GEI sugar and include terms relating to:

- the duration of the contract and its termination provisions
- delivery and receipt terms of the sugar at the bulk storage facility
- the quantity of GEI sugar
- reporting
- transfer of title and risk of the sugar from the miller to the GEI marketers
- pricing provisions
- flow of moneys between the GEI marketers, millers and growers
- variations in tonnages and
- failure to deliver committed sugar.

Again, this paragraph is taken directly from the QCGO Submission<sup>8</sup> and appears to have been accepted in the Draft Determination without any further examination. The Draft Determination has not explained how these terms would affect the value of GEI sugar, or how this affects the interests of growers. The Draft Determination provides no justification for the assertion that, for example, the delivery, reporting or transfer of title terms contained in an on-supply contract affect the value of GEI sugar - Wilmar submits that they do not.

It is Wilmar's position that the price actually paid for raw sugar produced and sold by a mill to a GEI sugar marketing entity should be determined by reference to the applicable global market price, (i.e. the ICE#11 contract price), at the time the sugar is sold and that this objective market price determine the size of cane payments payable to the grower from the mill owner. The value of GEI sugar is determined primarily by the pricing and pooling and net premium outcomes for individual growers under agreements between growers and their chosen GEI sugar marketing entities. Under these agreements, the GEI sugar marketing entities and growers exchange payments between each other to ensure growers receive the full GEI sugar value as a combination of cane payments and GEI sugar marketer payments to growers.

### 3.6 Risk that millers would not reach on-supply agreements with GEI marketers without authorisation

At paragraph 134 of the Draft Decision it is stated that:

Therefore, the ACCC considers that without authorisation of the proposed collective bargaining conduct, current contracting processes would continue, which includes collective bargaining albeit on a narrower scale. The ACCC considers that this could **result in a higher risk that some millers would not reach On-Supply Agreements with GEI sugar marketers – currently QSL** – prior to a grower deciding whether or not to nominate an alternative GEI marketer. In circumstances where growers do not, or are unable to, nominate an alternative marketer, the right to market their GEI sugar defaults to the miller's nominated marketer. (emphasis added)

The Draft Determination provides no basis on which to conclude that there is a higher risk that mill owners would not reach agreements with GEI marketers without growers being capable of collectively bargaining the terms of an on-supply agreement.

Moreover, Wilmar, as an entity currently involved in and aware of the complexities of, negotiations with QSL rejects this assertion. Based on its experience, Wilmar considers that allowing growers scope to collectively bargain the terms of an on-supply agreement would only contribute to further delays and obstacles in the parties reaching an agreement, especially as numerous grower representatives have been open about their wish to promote QSL as a GEIM in preference to Wilmar. There is a fundamental conflict of interest because many of the terms of an on supply agreement (price, quality, liability, etc) have material financial consequences for a mill owner and risk seriously prejudicing a mill owner at the benefit of the grower and/or GEIM.

## 4. Insufficient explanation in support of public benefits identified

### 4.1 Public benefits identified in Draft Determination

The Draft Determination found that the Proposed Authorisation is likely to result in public benefits due to:<sup>9</sup>

- transaction cost savings;
- better input into contracts;
- reducing bargaining disadvantages;

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<sup>8</sup> QCGO Submission, page 6.

<sup>9</sup> Draft Determination, paragraphs 146 to 149 and 198 to 199.

- increasing growers' knowledge of market conditions;
- facilitation of competition in market for the marketing and sale of GEI sugar.

#### 4.2 Insufficient explanation to support public benefits identified

The Draft Determination does not provide a sufficient explanation as to how many of the identified public benefits would arise from the proposed authorisation.

(a) *Transaction cost savings, better input into contracts and increased knowledge of market conditions*

The Draft Determination does not explain how transaction cost savings would result from the collective bargaining of on-supply agreements and related contracts. Nor does the Draft Determination identify in what way such conduct would result in better input into negotiations or greater knowledge of market conditions.

As noted in Wilmar's First Submission, the Queensland Productivity Commission recently found that there is no lack of transparency on the part of mill owners during negotiations and that the information provided by mill owners is comprehensive:

The QPC Report found that there is no evidence of market failure in the sugar industry resulting from the provision of information to growers. Specifically in relation to Wilmar's 2013 negotiations, the Queensland Productivity Commission stated that it could not find any evidence of the growers' claim that there was a lack of transparency and conflicts of interest. Similarly, in relation to MSF Sugar, the Queensland Productivity Commission found that the growers' submission that MSF Sugar provided no visibility on its pricing model was not correct.

The QPC Report stated:

'the MSF Sugar Pricing model and the Wilmar Proposal 2015 seem to be a reasonable balance and, for example, seem to provide for almost complete transparency in respect of the premium'

The Queensland Productivity Commission also noted that the information which Wilmar and MSF had proposed to give growers, through comprehensive pricing mechanisms, monthly reporting requirements and independent audits of annual reporting, would have provided the information growers would need to make informed decisions on the risks, costs and premiums and to form a view on whether they are being paid premiums in accordance with the CSA. (footnotes omitted)

In Wilmar's submission, if the proposed authorisation is to be supported on the basis it would result in transaction cost savings, better input into contracts and increased knowledge of market conditions, the ACCC should properly explain how, in practice, the conduct authorised would result in these public benefits and why this is considered likely to occur.

(b) *Reducing bargaining disadvantages*

The Draft Determination identifies one of the benefits of the proposed authorisation as reducing growers' bargaining disadvantage.

The Draft Determination provides no basis on which to assert that growers experience a bargaining disadvantage in relation to mill owners, and any such conclusion would contradict express findings of multiple reviews into the Queensland sugar industry. In this regard, we refer to part 8.2 of Wilmar's First Submission.

In summary, independent third party reports<sup>10</sup> have found that the co-dependency of growers and mill owners results in an evenness of bargaining power. The possibility

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<sup>10</sup> Queensland Productivity Commission, *Decision – Regulatory Impact Statement on the Sugar Industry (Real Choice in Marketing) Amendment Bill 2015*, November 2015; Clive Hildebrand, *Independent Assessment of the Sugar Industry*, received by the Federal Minister for Agriculture in June 2002; Industry Commission, *The Australian Sugar Industry*, 6 March 1992, Report No. 19.

has even been raised that it is the growers as opposed mill owners who possess the greater market power.<sup>11</sup>

To the extent that the ACCC has assessed the public benefits resulting from the proposed authorisation on the basis that there is an imbalance of bargaining power between growers and mill owners, the reasons for this finding should be properly explained.

Further, the Draft Determination does not explain how the bargaining disadvantage, if any does exist, could be addressed by the proposed authorisation. If it is due to increased information sharing, further detail should be provided in relation to the nature of the information that would assist in alleviating any disadvantage experienced by growers, without producing, in effect, a single agreement covering the entire State.

(c) *Facilitation of competition in the market for the marketing and sale of raw sugar*

One of the major findings of the Draft Determination in support of the proposed authorisation is that allowing collective bargaining about on-supply terms and conditions contained in supply contracts would facilitate the introduction of competition in the provision of GEI sugar marketing services, with the ACCC stating, at paragraph [149]:

The ACCC considers that collective bargaining by growers about terms and conditions relating to terms of Cane Supply Agreements that relate to millers contracting with sugar marketers and any agreements growers may wish to enter into with sugar marketers may facilitate the introduction of competition in the provision of GEI sugar marketing services. To the extent this occurs, the ACCC considers this would be a public benefit.

There is no explanation of how this would eventuate or why the ACCC believes it is likely.

In reality, allowing the collective bargaining of on-supply terms is likely to hinder competition in the market for the marketing and sale of GEI sugar, as it would allow growers greater ability to, in effect, dictate the terms and conditions on which a GEI marketing entity must contract if it is to be given marketing rights to GEI sugar. This in turn creates the conditions in which growers could demand terms which favour some GEI marketers over others, or favour the interests of a GEI marketer over those of the mill owner.

As noted above, given that numerous grower representatives have been open about their preference for QSL as a GEIM, it is difficult to see how facilitating the involvement of those grower representatives in negotiations between Wilmar and QSL will encourage an agreement between these two competing GEIMs.

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<sup>11</sup> Industry Commission, *The Australian Sugar Industry*, 6 March 1992, Report No. 19, p. 42.

## Transcript

Station: **ABC NORTH QUEENSLAND** Date: **27/01/2017**

Program: **RURAL REPORT** Time: **06:15 AM**

Compere: **LARA WEBSTER** Summary ID: **X00069128236**

Item: **MARK JEFFERY INTERVIEW WITH PHIL MARANO, CHAIR, BURDEKIN CANEGROWERS, ON BURDEKIN CANEGROWERS CONSIDERING WITHHOLDING THEIR CROP THIS YEAR IF A MARKETING AGREEMENT WITH WILMAR IS NOT REACHED.**

**INTERVIEWEE: PHIL MARANO**

Audience:	Male 16+	Female 16+	All people
	N/A	N/A	N/A

LARA WEBSTER: But first this morning, Burdekin CANEGROWERS are considering withholding their crop this year, effectively going on strike if a marketing agreement with sugar miller Wilmar isn't reached.

Now their comments come ahead of One Nation's Senator Pauline Hanson meeting with Wilmar executives this afternoon in Brisbane. Senator Hanson says she's meeting with Wilmar to try and get a fair and equitable outcome as she defends farmers. But the chair of Burdekin CANEGROWERS, Phil Marano, says the move to withhold cane is being seriously considered.

[Excerpt]

PHIL MARANO: There's a lot of growers saying that it would appear that they have no option because they know if we lose this battle, we have lost for all time. It could be that growers don't supply cane this year to crush, the

feeling is that strong out there amongst growers. It's - I've never seen so much anger from growers towards the mill and it's never been this bad. The relationship between miller and grower is the worst it's ever been in my time.

REPORTER:

How likely is that and has that ever happened before?

PHIL MARANO:

Never happened before, talking to growers, their resolve is that strong that it is something that they have talked about and I've never heard growers talk about it in such numbers before.

REPORTER:

Pauline Hanson has said she'll fly to Singapore to defend Queensland farmers and try and knock out a deal between Wilmar sugar growers and QSL. She's not having to do that. She's going to Brisbane this afternoon instead. Do you think the meeting will have any effect and any impact?

PHIL MARANO:

We've had numerous politicians meet with Wilmar executives here in the past and so far there has been no change in Wilmar's unacceptable stance. Whilst I wish Pauline the best of luck, I think history will show that Wilmar is not willing to listen to anyone. Politicians and even growers have been trying to negotiate with Wilmar for a fair and reasonable outcome that benefits everyone but Wilmar don't want to listen. They just want to push their own agenda.

If Pauline can come up with any new ideas, we'd be happy to hear them but I think what's needed now is we need to strengthen the legislation that we have

currently in Queensland. It's not something I would like to see but I think we have no choice but to strengthen the legislation and to actually give growers title to their economic interest sugar so that they can, once and for all, decide what happens to it.

REPORTER:

She's described Barnaby Joyce, the Deputy Prime Minister, as being useless on this issue; I won't use her exact terminology. Do you think that Pauline Hanson can be any more effective than Barnaby Joyce or other politicians that have met with Wilmar?

PHIL MARANO:

My view would be that unless politicians are willing to act and act strongly to protect growers, just talking to Wilmar will not achieve anything.

REPORTER:

Has there been any movement on the front with the Burdekin CANEGROWERS in their negotiations with Wilmar?

PHIL MARANO:

Our negotiations on a cane supply agreement are completed as far as we're able to. What we're waiting for is a resolution on the marketing impasse and Wilmar is being completely unreasonable in our view and certainly do not seem to be willing to do a fair deal with QSL that will enable growers to have choice.

REPORTER:

Burdekin CANEGROWERS gave Wilmar notice last year that they may take this to arbitration. The time length is now up, that notice period has expired. Are Burdekin CANEGROWERS any closer or more likely to take the issue to arbitration?

PHIL MARANO: Arbitration is something that we want to try to avoid, still an option for us, but we are hoping that common sense prevails and Wilmar and QSL can do a deal that is good for QSL, good for Wilmar and good for farmers.

REPORTER: You're sitting on your tractor in the Burdekin, thanks for killing the motor and chatting to us this morning. How frustrating is it for you to see the sugar price go up and down but still not lock in a contract for this coming season?

PHIL MARANO: It's frustrating for me. I know it's frustrating for all of the members that I represent but the resolve of growers is strong and they will not accept what Wilmar's offering.

[End of excerpt]

LARA WEBSTER: Chair of Burdekin CANEGROWERS, Phil Marano, with Mark Jeffery there. And we did contact Wilmar Sugar but they declined to be interviewed, however a Wilmar Sugar spokesperson confirmed senior executives had accepted an invitation to meet with Senator Hanson today and they say they welcome the opportunity to discuss Queensland's new sugar marketing arrangements and the efforts to bring cane supply negotiations to a satisfactory conclusion. Now, we also contacted Pauline Hanson's office but were told she won't be making anymore comments before this afternoon's meeting and we will of course stay across that for you.

\* \* **END** \* \*



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## ACCC backs grower role in progressing sugar marketing talks

27 January 2017

### ACCC backs grower role in progressing sugar marketing talks

CANEGROWERS invites Wilmar Sugar and Qld Sugar Limited (QSL) to a three-way meeting in the first week of February to move sugar marketing negotiations past their current impasse

A Draft Determination from the Australian Competition and Consumer Commission (ACCC) concludes that CANEGROWERS can have a constructive role to play as the parties attempt to reach an On-Supply Agreement (OSA).

"This OSA is crucial to our growers' Cane Supply Agreements (CSA) with Wilmar for the 2017 season," CANEGROWERS CEO Dan Galligan said. "With harvesters set to fire up again within 20 weeks, it is time for us to step in and this Draft Determination from Australia's competition watchdog shows we have a legitimate role to play."

CANEGROWERS went to the ACCC after suggestions from milling companies that any proposed participation by the grower organisation in OSA discussions would contravene Australia's competition laws.

"We are pleased to say that the ACCC Draft Determination has clarified the situation around grower involvement in these discussions," Mr Galligan said. "We look forward to it being quickly finalised."

On page 42 of the Draft Determination A91558, the ACCC says:

*Given the voluntary nature of the proposed collective bargaining arrangements the ACCC considers that, to the extent parties within the sugar industry consider a tripartite approach to negotiating On-Supply Agreements could lead to mutually beneficial outcomes, any such negotiations are unlikely to result in public detriment.*

"CANEGROWERS is keen to progress round-table talks to try to resolve the remaining differences between Wilmar Sugar and QSL as quickly as possible," Mr Galligan said.

"The OSA is a key piece of the new, modern, competitive sugar marketing landscape in Queensland and it is important to growers that it is finalised soon so their CSAs can also be ready for the 2017 season.

"As we have twice already, we are inviting both parties to sit with grower leaders from the four Wilmar Sugar milling districts to work towards a negotiated, commercial, industry outcome."

The ACCC Draft Determination is available from the ACCC's Public Registers:

<http://registers.accc.gov.au/content/index.phtml/itemId/1198882/fromItemId/278039>