

24 February 2017

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Dear Mr Hatfield

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

The Australian Sugar Milling Council (ASMC) made a submission to the ACCC relating to this matter on 21 October 2016, and 30 January 2017. Thank you for the opportunity to make a further short submission to the Commission following the pre-decision conference chaired by Commissioner Featherston in Brisbane on 10 February.

ASMC has previously submitted that the ACCC should refuse to grant the authorisation requested. ASMC retains this view.

ASMC has raised a range of concerns with respect to the Draft Determination, which we urge the ACCC to consider. In this brief follow-up submission we would like to highlight two points from the Pre-Decision Conference.

1. No justification for breadth of the third limb of the proposed Authorisation

A number of Canegrowers representatives at the conference plainly stated that the reason the application had been made was not for further authorisation for collective bargaining of cane supply contracts, but to seek the ACCC's assistance to break a negotiating impasse between one mill company (Wilmar) and Queensland Sugar Limited over an on-supply agreement for sugar sales.

This view expressed by more than one of the Canegrower representatives at the conference is supported by the applicant's letter of November 18 to the ACCC where it sought authorisation to "participate in negotiations directly relating to the establishment of the on supply agreement between the mill owner and the GEI marketer".

At least 3 different canegrowers at the conference stated the objective for the Application was to share information within mill areas sharing a common owner, and that they had no desire to know what was in cane supply agreements from other mill areas with different owners. The Applicant's representative, Mr Males, stated that the purpose of the Application was to allow the Canegrowers head office to provide services to local Canegrowers companies to support their collective negotiations, including drafting contracts and dispute resolution procedures.

While negotiation of a state wide arrangement is specifically not authorised (paragraph 222 of the Draft Determination), the practical effect of 'cherry picking' terms from across contracts in different mill areas will encourage the repetition of a single set of terms and conditions.



The Applicant argued that sharing, between regions, information relating to negotiations for cane supply contracts would not lead to a 'one size fits all' approach, observing that, even in the previous regulated era of the Queensland sugar industry, when contractual arrangements were published as Local Board Awards, there were differences between these agreements.

This argument is misconceived. Under the previous regime, cane supply contracts were not negotiated. They were subject to determination by Local Boards. The considerations that produce outcomes under a heavy handed regime are not the forces that will operate on commercial negotiations within and between regions. There can be no suggestion that publishing cane supply arrangements during the regulated era in any way encouraged new, innovative, and competitive approaches to offering of terms and conditions for the purchase of sugarcane from growers.

Importantly, the point made on behalf of mill owners is not that sharing information will inevitably result in a 'one size fits all' agreement across the State (although this is a risk), but rather that it will weaken incentives for mill owners to innovate and differentiate in the terms they offer growers - a proposition which is, we submit, self-evident. Weakening such incentives is clearly a public detriment, whether or not it goes so far as to result in complete uniformity in terms across the State.

In those circumstances, and consistent with the position of mill companies that do not have access to information from other mills companies for use in the negotiation of cane supply agreements, the ASMC urges the Commission not to authorise sharing of information across mill areas with different owners.

## 2. Authorisation should not provide a right to participate in negotiations

ASMC again urges the Commission to ensure that the Final Determination very clearly states that it does not grant a right of participation in, nor mandate access to, negotiations by third parties. Participation by a third-party in a negotiation is a decision for the parties to the agreement to determine.

From the submissions made following the Commission's draft determination and the concerns aired at the conference, clarification is warranted to ensure there can be no doubt as to what conduct is and isn't authorised in terms of the applicant's future role in collective bargaining alongside their members and sharing of information.

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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