



24 February 2017

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

By e-mail: adjudication@accc.gov.au

Dear Mr Hatfield,

Re: A91558 – Queensland Cane Growers Organisation Ltd – submission on draft determination

We wish to thank you and Commissioner Featherston for facilitating the pre-determination conference held on 10 February 2017 in respect of the above matter (**Conference**).

Prior to the Commission issuing a final determination, we wish to make the following short submission with the aim of elucidating the key issues that arose at the Conference and to provide the Commission with MSF Sugar's views on those issues.

Key issues

The Conference served to draw out three key issues that, in our view, should prompt to the Commission to not finalise the authorisation as proposed in the Draft Determination. These issues were:

- 1 The observation from several Conference participants that the application for authorisation stems from an isolated dispute between growers and Wilmar Sugar rather than any objective need for collective bargaining across the industry, particularly not to the extent proposed in the Draft Determination.
- 2 Insufficient weight being given to the detriments of the proposed authorisation, in particular the chilling effect on innovative commercial arrangements that the proposed authorisation is likely to have.
- 3 A lack of clarity, and consequent lack of understanding among Conference participants, on precisely what conduct the Commission is proposing to authorise.

These key issues are set out in more detail below.

Should it assist the Commission, we have provided in **Annexure 1** a copy of our notes taken from the Conference which, while not a precise transcript, capture our contemporaneous understanding of the comments made by participants at the

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Conference (**Meeting Notes**). References in this submission to statements made at the Conference are references to Annexure 1.

1. Dispute between growers and Wilmar Sugar

- 1.1 Several statements by representatives of Canegrowers at the Conference revealed that the application for authorisation was a response to a dispute between a select number of growers in the Burdekin region, and Wilmar Sugar (**Wilmar**).
- 1.2 MSF Sugar does not wish to make any comment on that dispute *per se*, but does wish to press upon the Commission the importance of this fact and its relevance to the question of public benefits and detriments that are likely to flow from the conduct the Commission is proposing to authorise, compared to the counterfactual scenario of the Commission declining to authorise the conduct.
- 1.3 For participants at the Conference, the overwhelming direction of the conversation driven by growers was that the application for authorisation was a tool deployed in an effort to solve the isolated relationship problem between growers in the Burdekin region and Wilmar. For example, in response to Mr Mike Barry's open question to participants on what the benefit of the authorisation would be and what current failings it would address, a Canegrowers representative told the Conference that the "stimulus" for the application was the breakdown in negotiations between growers in the Burdekin region and Wilmar in relation to the value of molasses.¹
- 1.4 Later in the Conference, Mr Kevin Borg from Canegrowers Mackay told the Conference that the reason for the application in the first place is the "situation with Wilmar".² While Mr Dan Galligan of Canegrowers then said that the application is not about the Wilmar situation,³ in MSF Sugar's view, it was clear from the unscripted comments of members of Canegrowers that the specific and isolated relationship difficulties between Wilmar and growers in the region were impetus for the application for authorisation.
- 1.5 The relevance of this fact to the application is two-fold. First, it calls into question the true benefits of the authorisation sought, including the assertions made by the applicants that authorisation would provide for negotiations that better reflect the needs of growers than standard form contracts; improve growers' ability to choose the marketer of GEI sugar; and create transaction cost savings.⁴ The Commission largely adopted this view in the Draft Determination, concluding that the proposed authorisation would be "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" as well as "facilitating grower choice, and therefore competition, in the provision of GEI marketing services to growers."⁵
- 1.6 Secondly, it makes the detriments discussed in Section 2 below 'collateral' costs to this isolated difficulty. Even assuming that the authorisation addresses the relationship issue between growers in the Burdekin region and Wilmar, the authorisation also affects the entire, multi-billion dollar, sugar cane processing industry in Queensland. In that regard, MSF Sugar respectfully submits that the proposed authorisation does not give adequate weight to the detriments discussed below.

¹ References 23-24 in Meeting Notes.

² Reference 54 in Meeting Notes.

³ Reference 56 in Meeting Notes.

⁴ Application for authorisation (A91558): Draft Determination, Australian Competition and Consumer Commission, 15 December 2016, paragraphs 138-139.

⁵ Application for authorisation (A91558): Draft Determination, Australian Competition and Consumer Commission, 15 December 2016, paragraphs 196-197.

- 1.7 Any benefits that might flow from the authorisation will be far outweighed by the detriments that will arise from the blunt instrument of authorisation and may very well materialise in the absence of authorisation now that the cane growers in the Burdekin region have made their grievances known to a large number of stakeholders, including the Commission, politicians and so on.

2. Detrimental effects of authorisation

- 2.1 MSF Sugar wishes to reiterate the fact that Cane Supply Agreements – including those with the same milling company – contain sensitive and important differences between regions (and within regions). This issue of regional differences was raised at the Conference,⁶ and while it appeared that participants recognised the importance of these differences, MSF Sugar implores the Commission to consider and weigh the detriment that opening up confidential and sensitive terms would have on industry participants.
- 2.2 Relatedly, a key concern that was raised at the Conference and which, in MSF Sugar's view, was not adequately addressed by Canegrowers at the Conference and is not adequately addressed in the Draft Determination, is the detrimental effect that authorisation to "share information across and within districts to facilitate the adoption of best practice in terms of contracts and related provisions" is highly likely to have.
- 2.3 As expressed by Mr Mike Barry and Mr Paul Heagney of MSF Sugar during the Conference, MSF Sugar prides itself on being a market leader in bringing competitive and innovative terms to its Cane Supply Agreements, consistent with the company's innovative outlook.⁷ As noted at the Conference by Mr Phil Marano of Canegrowers Burdekin, growers have a positive relationship with MSF Sugar.⁸
- 2.4 With appropriate modesty, we believe that it is likely that MSF Sugar's terms would be considered "best practice".
- 2.5 MSF Sugar has serious concerns about the authorisation allowing its terms to be shared in collective bargaining negotiations between different milling companies. MSF Sugar has worked hard to distinguish itself in the market, and, as expressed at the Conference, has terms in its Cane Supply Agreements that reflect the strategies and tactics that it uses to out-compete other mills in the acquisition of cane and in building its positive relationships with growers. MSF Sugar has a legitimate investment in those terms and is concerned that, with the stroke of a pen, the Commission is going to destroy its investment, damaging an important incentive to compete through innovation.
- 2.6 For growers to have collective access to these terms, and use them in collectively bargaining with MSF Sugar's competitors as proposed in paragraph 218 of the Draft Determination, eliminates advantages that MSF Sugar has worked to achieve and will have an inevitable chilling effect on any future innovative and unique commercial terms that MSF Sugar may wish to bring to the market.⁹
- 2.7 MSF Sugar submits that this detriment, which will be industry wide and go to the nature of competition between mills for the acquisition of cane, as well as for the supply of raw sugar, has not been given adequate weight by the Commission in the Draft Determination. It was not apparent to MSF Sugar at the Conference that Canegrowers addressed this concern. Several statements were made in relation to Canegrowers having no intention to implement a single state-wide Cane Supply Agreement,¹⁰ but that intention does not address the concern that MSF Sugar's unique, sensitive,

⁶ References 2.7, 39, 41, 42 in Meeting Notes.

⁷ References 2.7, 6.1, 38, 51 in Meeting Notes.

⁸ Reference 10 in Meeting Notes.

⁹ Reference 38 in Meeting Notes.

¹⁰ References 11.2, 39, 41 and 50.1 in Meeting Notes.

and differentiating terms will be “cherry-picked” into Cane Supply Agreements negotiated into with other milling companies, harmonising them in the sense that those unique terms become common.¹¹

- 2.8 Nothing in the Draft Determination prevents this outcome from occurring, and indeed it seems inevitable that MSF Sugar’s terms will be brought to its competitors’ attention and used in bargaining negotiations as a result of sharing “best practice” contract terms. This will snuff out a legitimate competitive advantage that MSF Sugar has worked hard to achieve.
- 2.9 Mention was made by Canegrowers at the Conference that Canegrowers would be careful to comply with confidentiality clauses in Cane Supply Agreements, and it was suggested that this should provide comfort to millers concerned about commercially sensitive terms being brought to their competitors’ attention.¹² It is not clear to MSF Sugar how Canegrowers can “share information” and “provide information and services to local Canegrowers...to support their local collective negotiations”, as the proposed authorised conduct allows,¹³ while also keeping this information confidential within Canegrowers headquarters. Indeed, Mr Dan Galligan from Canegrowers told the Conference that it was “absolutely unambiguous” that Canegrowers would not benefit from the authorisation without the negotiation services authorised in paragraph 218 of the Draft Determination.¹⁴
- 2.10 On that basis, MSF Sugar respectfully asks the Commission to carefully consider and give appropriate weight to this element of the conduct proposed to be authorised. Cane Supply Agreements are not commodities with differences only due to regions (significant those they are). They are sensitive commercial arrangements which comprise a critical part of the competitive tension between millers, and their terms reflect each milling company’s capabilities and unique offerings to growers.
- 2.11 Further, even within milling companies, there are differences in Cane Supply Agreements that, if shared, would cause significant detriment. Please see Confidential Attachment A for a description of a specific matter to illustrate this issue.
- 2.12 In MSF Sugar’s view, the detrimental effect that eliminating this dynamic would have -impacting both the market for the supply of sugarcane and the market for the supply of raw sugar - vastly outweighs the asserted benefits described in paragraphs 197-198 of the Draft Determination, and the apparent benefit of assisting the resolution of Canegrowers’ relationship difficulties with Wilmar.
- 2.13 Finally, it is not clear that this particular element is actually necessary to achieve the public benefits described in paragraphs 197-198 of the Draft Determination. The benefits do not appear to require any information garnered from growers’ negotiations with other milling companies separate to the miller they wish to bargain with.
- 2.14 To this end, MSF Sugar submits that the Draft Determination’s consideration of benefits and detriments to the public of authorisation does not properly account for the substantial detrimental impact that harmonisation of key contractual terms would have on innovation and competition in the sugar processing industry.

¹¹ Reference 38 in Meeting Notes.

¹² Reference 37 in Meeting Notes.

¹³ Application for authorisation (A91558): Draft Determination, Australian Competition and Consumer Commission, 15 December 2016, paragraph 218.

¹⁴ Reference 31 in Meeting Notes.

3. Lack of clarity and understanding among industry participants

- 3.1 The final key issue that MSF Sugar wishes to highlight from the Conference is the ongoing uncertainty expressed by growers and millers on the exact conduct that is authorised, and whether there is an overlap between the conduct that would be authorised and conduct that would not be authorised.
- 3.2 In sections 1.1 to 1.13 of MSF Sugar's submission to the Commission, dated 30 January 2017, we described our concerns on this issue, arising from the proposed authorisation set out in paragraphs 218 and 222 of the Draft Determination. At the Conference, MSF Sugar reiterated this concern,¹⁵ which was echoed by the Australian Sugar Milling Council,¹⁶ and Canegrowers acknowledged that clarity on the precise conduct authorised remained an issue.¹⁷
- 3.3 We do not wish to repeat the points made in our submission dated 30 January 2017 or at the Conference, but we do wish to emphasise the fact that both millers and growers remain uncertain on what exactly is being authorised and to note that we find this concerning. The uncertainty will compound the likelihood of detrimental effects that may not have been adequately weighed by the Commission and unnecessarily increase transaction costs for all participants in the industry and may lead to litigation that would not otherwise have occurred. Various statements were made by Canegrowers in relation to what their "intention" is under the proposed authorisation.¹⁸ However, it is the wording of the authorisation, not the intention of the applicants, that matters.
- 3.4 Highlighting this uncertainty was the apparent confusion between Canegrowers and its members over what conduct was proposed to be authorised. For example, Mr Phil Marano of Canegrowers Burdekin stated that growers should be given the same visibility across regions that an individual milling company has.¹⁹ That would be achieved if the application was for the sharing of information in respect of growers negotiating with the same milling company across regions (which would also cause significant detriment), but the Draft Determination proposes to authorise sharing of information by growers across milling companies with whom growers would be separately negotiating.²⁰

4. Conclusion

- 4.1 Following the Conference, MSF Sugar remains concerned that:
- (a) The Draft Determination has been made on an acceptance that there are industry issues which can be addressed by the authorisation sought. This acceptance has been called into question by Canegrowers representatives' admissions that the application was made to address Burdekin growers' dispute with Wilmar, rather than any widespread impingement to efficiency or productivity.
 - (b) The Commission has not considered the industry-wide detrimental effect on innovation and competition that sharing "best practice" contract terms and other information between competitors is likely to have, and has not weighed this against the asserted benefits.

¹⁵ References 2.7 and 6.2 in Meeting Notes.

¹⁶ References 12.2 and 32 in Meeting Notes.

¹⁷ Reference 31 in Meeting Notes.

¹⁸ Or similar phrases: References 11.2 and 50.1 in Meeting Notes.

¹⁹ Reference 42 in Meeting Notes.

²⁰ Application for authorisation (A91558): Draft Determination, Australian Competition and Consumer Commission, 15 December 2016, paragraph 218.

- (c) There is ongoing confusion by all industry participants in what conduct is and should be authorised, which presents a likelihood of uncertainty and cost should the authorisation be made as proposed in the Draft Determination.
- 4.2 In our view, the sugar processing industry in Queensland is operating well and our relationship with growers is positive. Now that collective bargaining authorised under the *Sugar Industry Act* has been introduced and participants have adjusted to it, we are firmly of the view that it remains the extent of such authorised conduct.
- 4.3 We respectfully press upon the Commission the need to consider the public detriment of authorising the sharing of information and adoption of "best practice" terms between milling companies, which compete for the acquisition of cane through the terms of their Cane Supply Agreements.
- 4.4 In light of the public benefits described in the Draft Determination,²¹ we submit that making the unique terms of competitors' Cane Supply Agreements available for sharing would not only have detrimental effects that outweigh any benefits, but that it is unclear how this conduct would achieve these benefits in any meaningful way.

Under section 89(5) of the *Competition and Consumer Act 2010* (Cth) (**Act**), MSF Sugar requests that Confidential Attachment A be excluded from the public register for the reasons given in that attachment. If the Commission declines to exclude Confidential Attachment A from the public register, MSF Sugar withdraws Confidential Attachment A under section 89(5C) of the Act.

Finally, we wish to thank the Commission for the opportunity to make submissions and to call and participate in the Conference.

Yours sincerely



Mike Barry
Chief Executive Officer

²¹ Application for authorisation (A91558): Draft Determination, Australian Competition and Consumer Commission, 15 December 2016, paragraphs 197-198.

Annexure 1

Conference commenced at 1:00pm

Reference	Speaker	Comments made
1	Commissioner Featherston	[Introduced the conference and outlined procedures.]
2.1	Mike Barry, MSF Sugar	MSF's business includes growing cane, logistics, and marketing
2.2		MSF has called this conference primarily to draw out misunderstandings of the industry evident in the Draft Determination
2.3		The industry does not need further regulation. MSF Sugar dislikes the Sugar Industry Act, but has worked through it and has good relationships with growers. MSF Sugar understands that viability and profit of growers is fundamental to MSF Sugar's success.
2.4		MSF Sugar is diversifying, including investment in green energy power stations, fuelled by sugar cane fibre.
2.5		Growers need to receive more for their land, otherwise they will switch crops. For MSF, this would result in stranded assets.
2.6		New regulations are not needed to solve difficulties between some particular groups in the industry.
2.7		<p>The problems MSF Sugar has identified in the Draft Determination are:</p> <ul style="list-style-type: none"> ▪ Under the Draft Determination, Cane Growers are not authorised to negotiate state-wide Cane Supply Agreements, but are authorised for state-wide information sharing and contract negotiation services. MSF Sugar is unsure of how these elements work together. ▪ MSF Sugar has some unique terms in its Cane Supply Agreements. It does not want these to be shared. ▪ There are different climate, logistics, and transport considerations for different parts of the state, which lead to different contract terms. Harmonisation could affect the efficiencies realised through these bespoke terms. ▪ Since deregulation, MSF Sugar has taken the opportunity to customise Cane Supply Agreements for different regions and mills. A move back to harmonisation would not work and may lead to commercially prohibitive terms. ▪ In relation to value-add of by-products: MSF Sugar is investing in this area, but by-products were historically a cost to millers. The industry is not at a stage where this is could be mandated part of Cane Supply Agreements and the subject of collective bargaining. ▪ MSF Sugar was the first company to come to an On-Supply Agreement with QSL. MSF Sugar has navigated the marketer and grower relationship problems and does not want to see its pioneering work in this area impacted by collectivised bargaining.
3	Commissioner Featherston	When you say that MSF Sugar talks to growers, do you mean on a collective basis?

Reference	Speaker	Comments made
5	Mike Barry, MSF Sugar	MSF Sugar has some group contracts within regions. Overall, we have about 12 Cane Supply Agreements.
6.1	Paul Heagney, MSF Sugar	As MSF Sugar evolves and diversifies, there will be Cane Supply Agreements that are not necessarily for the production of raw sugar. An example is the use of fibre for MSF Sugar's green power plant.
6.2		To follow on from Mike's comments, MSF Sugar's concerns on the Draft Determination are around the language used about Canegrowers' "intention" and what Canegrowers "proposes". MSF Sugar would like to see clarity on exactly what is authorised and without qualifications based on Canegrowers' intentions. Further, MSF Sugar has concerns around the diligence of the Draft Determination process and the apparent acceptance of what is in Canegrowers' application.
6.3		<p>MSF Sugar's specific comments on the Draft Determination include:</p> <ul style="list-style-type: none"> ▪ The Draft Determination's premise that growers bear the financial responsibility of GEI sugar. It is millers that have this risk, as millers are the party to On-Supply Agreements. ▪ The Draft Determination's acceptance that growers have an equity interest in GEI sugar. GEI Sugar is a term of convenience, used to refer to the revenue split mechanism, rather than title or interest in cane, sugar, or by-products. In relation to by-products, it is up to the millers what they want to do with this, and if they can find a way to monetise it, then this is up to them. ▪ The key issue is that the authorisation as proposed in the Draft Determination will lead to a degree of harmonisation among Cane Supply Agreements. In this scenario, MSF Sugar cannot distinguish itself, and the effect is a reduction in competition between millers where the "best practice" terms that set millers apart become standardised.
7	Commissioner Featherston	It is important to indicate how the ACCC sees the question of authorising collective bargaining. It is not a question about the outcomes of bargaining. The reason the application was so that Canegrowers who negotiated together would not be in breach of the <i>Competition and Consumer Act</i> .
8	Mike Barry, MSF Sugar	To MSF Sugar, the authorisation seems like one step back from state-wide negotiations. It's all of the back-office stuff that really facilitates a state-wide negotiation.
9	Dominic Nolan, Australian Sugar Milling Council	Sharing information as proposed in the Draft Determination is across milling companies. Millers are concerned that a confidentiality clause in their Cane Supply Agreements will not be a mechanism that stops their confidential terms being shared with competitors.
10	Phil Marano, Canegrowers Burdekin	MSF Sugar works very well with growers. I supply Wilmar Sugar, and am a Canegrowers negotiator for supply of cane to Wilmar. I am interested in growers who supply a particular milling company being able to get together and get fair terms from that milling company.
11.1	Dan Galligan, Canegrowers	Canegrowers' motivation in this Conference is to listen to concerns and try to clear up any areas that need to be clarified. Canegrowers is comfortable that the ACCC has understood Canegrowers' point in the application.

Reference	Speaker	Comments made
11.2		<p>In response to the feedback on the issue of clarity, Canegrowers is clear that it does not want state-wide Cane Supply Agreements. Canegrowers just wants collective bargaining and is not driving any particular outcome from the collective bargaining. In particular:</p> <ul style="list-style-type: none"> ▪ Canegrowers wants to increase the opportunity for innovation at the local level ▪ The authorisation is for collective bargaining of negotiations to supply cane to a mill. ▪ Canegrowers is not trying to determine an outcome of those negotiations, or to force those negotiations.
12.1	Dominic Nolan, Australian Sugar Milling Council	<p>ASMC represents 6 of the 7 millers who produce 98% of total sugar production. ASMC approached Canegrowers' application with an open minded, but were also minded to identify risks and concerns in the application.</p>
12.2		<p>ASMC's outstanding concerns are:</p> <ul style="list-style-type: none"> ▪ Ambiguity and potential contradiction within the Draft Determination ▪ The ambiguity of the use of "no intention" and similar terms to address the issue of state-wide negotiations is concerning. The authorised conduct may naturally lead to state-wide negotiations. Assurances by Canegrowers that this is not the intention are good and well received, but what AMSC is concerned about is what the authorisation actually says. ▪ A lot of the Draft determination is predicated on the voluntary basis of collective bargaining. ASMC is concerned that in practice, it will not be voluntary. ▪ Ambiguous or incorrect statements in the Draft Determination have found their way into the media, which makes industry participation more difficult. ▪ The conception of a "tripartite" On-Supply Agreement in the Draft Determination is incorrect and needs to be clarified. ▪ The notion of an imbalance in bargaining power needs to be addressed. No miller approaches Cane Supply Agreements thinking they are going to get everything that they want. Often, millers are at a disadvantage. Millers have no option but to crush cane. In contrast, growers' greatest capital item is their land, and they can use it for other purposes. <ul style="list-style-type: none"> ○ This point is relevant because the Draft Determination asserts that collective bargaining is beneficial to the public in part because it addresses a supposed imbalance in bargaining power. ▪ Paragraph 218 of the Draft Determination goes to the collective bargaining rights already existing under the Sugar Industry Act. The extension of collective bargaining proposed in the Draft Determination goes much further and is a disincentive to innovation and investment, with no matching public benefits identified.
13	Phil Marano,	Is it true that under the current legislation, growers can negotiate an On-

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Reference	Speaker	Comments made
	Canegrowers Burdekin	Supply Agreement?
14	Dominic Nolan, Australian Sugar Milling Council	If the miller and the marketer agree so, yes.
15	Phil Marano, Canegrowers Burdekin	We would like clarification on growers negotiating on On-Supply Agreements. We have been threatened with breaches of the competition law over this issue.
16.1	Commissioner Featherston	It is important to note that when assessing an application for authorisation, the ACCC doesn't consider what would be breached. The relevant question is the public benefits and the detriments of the proposed authorisation.
16.2		In relation to GEI sugar, don't growers have a commercial interest in this?
17	Mike Barry, MSF Sugar	There is no doubt that growers are interested in GEI sugar, but the question is what is their commercial right to the sugar. Consider the processing costs that MSF Sugar will bear in operating its green power plant – these costs will be borne by MSF Sugar in the same way that mills bear the processing costs in processing cane. MSF Sugar wants growers to get as much for their cane as they can, but MSF Sugar is the party doing the work in getting value out of by-products.
18	Commissioner Featherston	I understand that raising the flow-back of revenue to growers too much removes any incentive for MSF Sugar to innovate, but isn't that balance a commercial matter?
19	Mike Barry, MSF Sugar	Yes, it is.
20	Dan Galligan, Canegrowers	In that respect, the authorisation allows this commercial negotiating to go on a collective bargaining basis.
21	Mike Barry, MSF Sugar	Can I ask how far the Draft Determination extends to on this area of value-adds? For example, on the question of MSF Sugar's green power plant, would the authorisation extend to value realised through that process?
22	Commissioner Featherston	The authorisation is limited to the conduct specifically authorised. The ACCC will look at clarifying language on the conduct.
23	Mike Barry, MSF Sugar	Something that MSF Sugar is not clear on is the benefit of the proposed authorisation, and what it is in the industry at the moment that is failing.
24	Canegrowers' representative	The stimulus for the application for authorisation was the negotiations between Burdekin growers and Wilmar Sugar on molasses.
25	Phil Marano, Canegrowers Burdekin	The dispute with Wilmar Sugar shows why growers need collective bargaining. Wilmar Sugar has said that it has no interest in GEI sugar, which means that growers have a 100% interest in GEI sugar.
26	Mike Barry, MSF Sugar	This is a good example of a how a specific region and a specific problem is being addressed by a state-wide authorisation.
27	Commissioner Featherston	Can I return to the point MSF Sugar made in relation to what has been called a "tripartite" On-Supply Agreement. Can you please elaborate your concern?

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Reference	Speaker	Comments made
28	Paul Heagney, MSF Sugar	QSL submitted that MSF Sugar was involved in a tripartite negotiation with a grower on an On-Supply Agreement. In reality, the grower was involved in the preliminary discussions, but then observed the negotiations and were not involved in the deliberations.
29	Isis Central Sugar Mill Company representative	Isis Sugar reiterates that it wishes to be excluded from the authorisation. Isis Sugar wants to see real competition between millers and does not want its Cane Supply Agreements being shared.
30	Warren Males, Canegrowers	Going back to the question of the tripartite negotiations. I was there, and Paul Heagney's correct in that the growers were involved in the early part of the discussion. Those discussions were on the broad approach of the On-Supply Agreements, not the nitty gritty, but the growers still had constructive involvement in the negotiation of the framework of the agreement.
31	Dan Galligan, Canegrowers	It looks like clarity, the issue of GEI sugar, and the tripartite question are the key issues. Canegrowers wishes to be absolutely unambiguous that we will not benefit without the negotiation services authorised in paragraph 218 of the Draft Determination.
32	Jim Crane, Australian Sugar Milling Council	We are concerned about the ambiguity between paragraph 218 and paragraph 222. Can Canegrowers outline what they see as the differences between what is authorised and what is not authorised?
33	Canegrowers' representative	It is true that there is no specific definition of what "best practice" is. However, the authorisation allows growers to do business without separate legal and other advisors assisting each time they negotiate on an individual basis.
34	Dominic Nolan, Australian Sugar Milling Council	Is it currently prohibited to collectively bargain across regions?
35	Dan Galligan, Canegrowers	That practice currently occurs, but it has been brought into question.
36	Dominic Nolan, Australian Sugar Milling Council	The last two paragraphs in the Draft Determination, setting out what has been authorised, concern us because it seems this will end up with contract harmonisation.
37	Canegrowers representative	We will be very careful in complying with the confidentiality clauses in Cane Supply Agreements. For us, our headquarters needs to be able to see what milling companies are doing across regions.
38	Mike Barry, MSF Sugar	How does this work? This is a dealbreaker point for us. The reality is that MSF Sugar has strategies and tactics to out-compete our rivals. Sharing these strategies, if they are "best practice", eliminates our advantage. It means that we will see cherry-picking across Cane Supply Agreements. The ACCC has not appreciated that actual effect of this sharing on the ground, and what it means for millers who are in competition with one another.
39	Canegrowers representative	We think, from current and past practice, that this problem won't transpire. Cane Supply Agreements have to be different across regions to cater for different characteristics.
40	Dominic Nolan, Australian Sugar	The reason that Cane Supply Agreements are different is because you can't currently share them across regions.

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Reference	Speaker	Comments made
	Milling Council	
41	Canegrowers representative	No, even when Cane Supply Agreements were all published by the Queensland Government, we had different terms across different regions.
42	Phil Marano, Canegrowers Burdekin	That's right, Cane Supply Agreements are different across different regions. For us, the point is that the milling company has negotiations across regions; they know what their mills up and down the state are doing, but growers don't have this.
43	Michael Pisano, Canegrowers Herbert River	We have a situation where the miller knows what is going on in other regions, but when growers ask to see the same, they are unable to.
44.1	Duncan Glasgow, Wilmar Sugar	Wilmar is the largest sugar processor in Queensland. We have made comments on how the Sugar Industry Act already allows collective bargaining within regions.
44.2		Wilmar Sugar found a commercial use for molasses. This used to be a by-product cost, but we found a way to commercialise it. Molasses is not part of the Cane Supply Agreement unless the parties want to it be.
44.3		One of Wilmar's concerns is the idea of the "voluntary" nature of collective bargaining. We are concerned that this won't be the reality. It needs to be clarified that there will be no penalty for mills not agreeing to what might be proposed by growers collectively bargaining.
44.4		Cane Supply Agreement are complex. Wilmar Sugar has over 60 CSAs, and lots of schedules to those agreements which are specific to regions. We don't want this complexity eroded.
44.5		Wilmar Sugar wants to reiterate that we want to see clarity on what exactly is and is not authorised.
45.1	Robert Hines, Queensland Sugar Limited	QSL has growers and millers as members. We are obliged to act in the best interests of all of our members.
45.2		QSL supports the authorisation proposed in the Draft Determination.
45.3		QSL has had good experiences in negotiating On Supply Agreements with MSF Sugar, Isis Sugar, and Tully. The authorisation is more important than just On Supply Agreements, but that is important to note.
45.4		QSL believes that there are instances of bargaining imbalance that detrimentally affect growers.
45.5		While it is true that not all millers have issues with growers, that does not mean that voluntary collective bargaining as proposed can't happen.
46	Dominic Nolan, Australian Sugar Milling Council	ASMC would like to point out that although it is expressed that QSL is presenting a fair and balanced view, the fact is that all millers oppose the authorisation. QSL has not presented this view.
47	Robert Hines, Queensland Sugar Limited	QSL's remit is complex. We have to look at the whole industry. We understand the millers' position, but QSL has to weigh that against other parties in the industry and come to a view.
48	Dominic Nolan, Australian Sugar Milling Council	Millers can only work with growers, so ASMC's remit is industry-wide, too.

Application for authorisation (A91558) – Predetermination Conference
 Brisbane, 10 February 2017
 Meeting notes

Reference	Speaker	Comments made
49.1	Canegrowers representative	To go back to the discussion on molasses in Cane Supply Agreements: this used to be covered under the Sugar Industry Act.
49.2		The application is for the ACCC to authorise collective bargaining and the sharing of information on the basis set out in the application. It is not about the content of the negotiations or about the outcome of negotiations.
50.1	Steve Pila, Canegrowers Burdekin	Can I address the angst about the "one-size-fits-all" Cane Supply Agreements. This isn't the intent of the application. One size fits all would not fit into growers' negotiations and growers would not want this because of the differences between each region.
50.2		Like the millers, growers are also not interested in being dragged into problems in different regions.
51	Mike Barry, MSF Sugar	MSF Sugar would like to make some closing comments. We have legacy Cane Supply Agreements, but we want to deliver more aligned and effective agreements to growers that reflect our progress. We have our own strategic direction, and we don't want our competitors getting our ideas and our direction which we will be in our contracts.
52	Paul Heagney, MSF Sugar	It's important to remember that while we are in competition with other mills for cane supply, we are also in competition for the sale of raw sugar.
53	Joe Marano, Canegrowers	MSF Sugar's strategy is to talk to newspapers. There is not secret about MSF's strategic direction.
54	Kevin Borg, Canegrowers Mackay	The reason for the application in the first place is the situation with Wilmar Sugar. Wilmar has adopted a "divide and conquer" approach, using the Sugar Industry Act to separate negotiations between different regions.
55.1	Dominic Nolan, ASMC	If that is the reason the application was made, why are all mills subject to a rule that is only wanted to address one relationship?
55.2		I would also like to note that the ASMC does not have any of our members' Cane Supply Agreements.
56	Dan Galligan, Canegrowers	Can I say that the application for authorisation is not about the situation with Wilmar Sugar.
57	Commissioner Featherston	[Thanked attendees and closed conference. Noted that written submissions must be made to the ACCC by Friday 24 February].

Conference concluded at 2:35pm