

3 April 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](mailto:adjudication@accc.gov.au)

Dear Mr Hatfield

### **ACCC Draft Determination – A91558**

Many thanks for an opportunity to provide a response to the points raised by the Australian Sugar Milling Council (ASMC) in its letter of 27 March 2017.

We do not consider the ASMC has raised any new issues in its letter nor has it provided new information to support its opposition to the proposed authorisation. However, it is important to address several claims made in that letter that either misinterpret the draft determination or misrepresent CANGROWERS application for authorisation.

#### **1. Canegrowers seeks to extend the authorisation beyond the limits of the draft determination**

- The ACCC final authorisation is not constrained by the terms of its draft decision.
- CANEGROWERS letter of 10 March seeks to clarify the extent of the proposed authorisation.

#### **2. Ownership of sugar**

- The ownership of sugarcane and sugar is not the subject of either CANEGROWERS application or the proposed authorisation.
- Under common and commercial law the terms on which the ownership of sugarcane changes hands are matters for the commercial agreements made between the parties.

#### **3. Summary section**

- CANEGROWERS suggested statement is an accurate representation of the evolution of industry marketing structures, revenue flows, the calculation of the net price of sugar and its use in the cane payment formula.


#### **4. “Mill companies do not provide marketing and trading functions”**

- Milling companies, their wholly owned subsidiaries and/or related body corporates do provide marketing services.
  - Milling companies
    - In its current cane supply agreements and sugar marketing and pricing agreements, Tully Sugar is named as the owner and operator of Tully mill and Tully Sugar offers growers Tully Sugar itself as a sugar marketing entity.
    - In its application (A91577) to ACCC for authorisation Bundaberg Sugar and Mackay Sugar are each described as a miller, refiner, and marketer.
  - Wholly owned subsidiaries and/or related bodies corporate that provide marketing services

- The Wilmar group of companies include, amongst others, Wilmar Sugar Australia Trading Pty Ltd and the Singapore company Wilmar Sugar Pte Ltd that engage in sugar marketing and trading activities.
- MSF Sugar uses its wholly owned related body corporate MSF Marketing Pty Ltd to provide sugar marketing services. On its corporate web site home page MSF Sugar describes itself as follows “MSF Sugar is a leading agribusiness – we are an integrated grower, processor, marketer and exporter of raw sugar.”

CANEGROWERS would be pleased to respond to any further questions or issues than might arise in your consideration of our application.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Galligan', with a large, sweeping flourish extending to the right.

Dan Galligan  
Chief Executive Officer