



**UNDERTAKINGS TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION
GIVEN PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974**

given by

S.P.C. LIMITED

1. Definitions

The following definitions apply:

Act means the *Trade Practices Act 1974*.

Additional Canning Pears means Canning Pears required by SPC Ardmona in excess of the SPC Ardmona Total Base Pear Requirement.

Ardmona means Ardmona Foods Limited ACN 004 090 082.

Average Export Selling Price means a price calculated by dividing SPC Ardmona's total revenue from export sales by the number of Basic Cartons exported by SPC Ardmona.

Average Domestic Selling Price means a price calculated by dividing SPC Ardmona's total revenue from domestic sales by the number of Basic Cartons sold domestically by SPC Ardmona.

Base Price means the price announced by SPC Ardmona at the beginning of each season in accordance with clause 3 of these Undertakings.

Basic Carton means the equivalent of 24 x 825 gram cans of Canned Peaches or Canned Pears.

Business Day means a day on which the major trading banks are open for business in Canberra and Melbourne.

Canned Peaches means Canning Peaches that are not processed with any other type of fruit.

Canned Pears means Canning Pears that are not processed with any other type of fruit.

Canning Fruit Type Fruit means Canning Peaches and Canning Pears.

Canning Peaches means fresh peach fruit of a type and/or variety and quality required by SPC Ardmona for canning.

Canning Peach Intake Policy means a policy in the terms of Attachment 'A'.

Canning Pears means fresh pear fruit of a type and/or variety and quality required by SPC Ardmona for canning.

Canning Pear Additional Intake Policy means a policy in the terms of Attachment 'B'. This Policy may not be implemented until at least 47,706 tonnes of Canning Pears have been allocated to the Growers under the Canning Pear Base Intake Policy in the relevant year.

Canning Pear Base Intake Policy means a policy in the terms of Attachment 'C'.

Commencement Date is 1 January 2002.

Commission means the Australian Competition and Consumer Commission.

Consultative Committee means the committee formed by SPC Ardmona and Grower representatives, in accordance with clause 4.2(b), to consider issues relating to pricing and volumes.

Consultative Committee Meeting means the annual meeting of the Consultative Committee to be held in November each calendar year.

Delivery Point means the designated processing factory of SPC Ardmona as specified by SPC Ardmona from time to time.

Field Committee means the committee comprising, at SPC Ardmona's discretion, representatives of Directors and management of SPC Ardmona formed to consider fruit supply and general Grower related issues.

Fruit Season is the period in each calendar year including and between January and March.

Grower means both current and potential suppliers of Canning Fruit Type Fruit to SPC Ardmona.

Murray Goulburn Valley means the geographic area in northern Victoria from which the Processors acquire Canning Fruit Type Fruit.

N.V.F.A. means the Northern Victoria Fruitgrowers Association Ltd ACN 005 636 466.

Offering Grower means a Grower that offers to supply Additional Canning Pears to SPC Ardmona.

Processor means a manufacturer that converts Canning Fruit Type Fruit to processed products that are suitable for resale.

Related Company has the meaning given to the term 'Related Body Corporate' by section 4A of the Act.

SPC means S.P.C. Limited ACN 059 317 618.

SPC Ardmona means SPC Ardmona Limited ACN 059 317 618, the entity that it is proposed will result from the merger of SPC and Ardmona.

SPC Ardmona Total Base Pear Requirement means that portion of SPC Ardmona's total forecast demand for Canning Pears of each type and/or variety in a given Fruit Season up to a minimum of 47,706 tonnes. For the avoidance of doubt, this means that if the SPC Ardmona forecast demand for Canning Pears is 47,706 tonnes or less, such intake will all be treated as the SPC Ardmona Total Base Pear Requirement. The Canning Pear Additional Intake Policy will not be implemented in a given Fruit Season until an SPC Ardmona Total Base Pear Requirement of at least 47,706 tonnes is allocated to Growers.

SPC Ardmona Total Peach Requirement means SPC Ardmona's total forecast demand for Canning Peaches in a given Fruit Season.

Termination Date means 31 December 2004.

Undertaking Period means the period of time from the Commencement Date to the Termination Date.

V.P.A.G.A. means the Victorian Peach and Apricot Growers Association.

2. Background to the Undertakings

- 2.1 Ardmona is a Processor of fruit and tomatoes based in the Goulburn Valley. It services the retail food, foodservice and industrial food sectors and a range of export markets.
- 2.2 SPC is a Processor of fruit, vegetables and other food products based in the Goulburn Valley. It also services the retail food, foodservice and industrial food sectors and a range of export markets.
- 2.3 SPC and Ardmona intend to merge. Under the proposal, SPC will acquire Ardmona by way of a scheme of arrangement to be initiated by Ardmona. This proposal is subject to obtaining the approval of the shareholders of SPC and Ardmona as well as a condition that all necessary regulatory approvals are obtained.
- 2.4 The Commission has indicated to SPC and Ardmona that it is concerned that the merger may contravene section 50 of the Act. SPC and Ardmona do not agree with the concern expressed by the Commission. SPC has agreed to give these Undertakings under section 87B of the Act to address the Commission's concerns.

3. Undertakings in relation to price and excess fruit

3.1 Background

The arrangements between Growers and SPC, and Growers and Ardmona, in relation to the price paid by SPC and the price paid by Ardmona to Growers for Canning Fruit Type Fruit have, in the past, involved:

- (a) A price that applies generally across the board to all Growers. Neither SPC nor Ardmona negotiate individual prices with Growers. Instead, SPC and Ardmona separately announce a Base Price for each Canning Fruit Type Fruit; and
 - (b) Canning Pears generally being purchased from Growers by SPC and Ardmona on the basis of the Canning Pear Base Intake Formula and the Canning Pear Additional Intake Policy. In the event that the supply of Canning Peaches exceeds the quantity required for processing, Canning Peaches are purchased from Growers generally in accordance with the Canning Peach Intake Policy. Under this formula and these policies, the quantity of a particular Canning Fruit Type Fruit is generally purchased from each Grower based upon levels purchased in the previous three (3) years. Regardless of the quantity of Canning Fruit Type Fruit bought by SPC or Ardmona from a given Grower in a given Fruit Season, Growers have been treated equitably in terms of price as the price paid by SPC and Ardmona for Canning Fruit Type Fruit is determined by the quality of the Fruit being supplied and not the quantity.
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The Commission has indicated to SPC and Ardmona that it is concerned that the Growers would be disadvantaged by the proposed merger. In particular, SPC Ardmona would be unconstrained in its dealings with Growers with respect to the price paid to Growers for Canning Fruit Type Fruit. Due to their reliance on Growers, SPC and Ardmona do not agree with the concerns expressed by the Commission but to address these concerns SPC has agreed to give the Undertakings set out in this clause 3.

3.2 Undertakings in relation to price

(a) At the start of the Fruit Season, SPC Ardmona will announce Base Prices for:

- (i) Canning Pears required to meet the SPC Ardmona Total Base Pear Requirement; and
- (ii) Canning Peaches.

These Base Prices will apply to all Growers throughout the Fruit Season subject to clause 3.2(d).

(b) The Base Prices will be announced by SPC Ardmona following the consultation process in clause 4.

(c) At the start of the Fruit Season, SPC Ardmona will provide all Growers with written specifications for each Canning Fruit Type Fruit that will apply to all Growers throughout the Fruit Season.

(d) The Base Prices can only be varied by SPC Ardmona:

- (i) on the basis of its assessment of whether the relevant fruit meets the written specifications provided to Growers in accordance with clause 3.2(c) above. The assessment is to be conducted within 24 hours of the arrival of Canning Fruit Type Fruit; or
- (ii) if the Canning Fruit Type Fruit is not picked and delivered directly to SPC Ardmona's Delivery Point.

3.3 Undertakings in relation to the intake of Canning Pears

(a) Canning Pears required from Growers to meet the SPC Ardmona Total Base Pear Requirement shall be purchased from Growers in accordance with the Canning Pear Base Intake Policy.

(b) Any Additional Canning Pears required from Growers shall be purchased from Growers in accordance with the Canning Pear Additional Intake Policy.

(c) If the Additional Canning Pears required from Growers exceeds 20% of the SPC Ardmona Total Base Pear Requirement then the price paid for any Canning Pears purchased by SPC Ardmona in excess of that 20% must be at least equal to (and may exceed) the Base Price.

3.4 Undertaking in relation to intake of Canning Peaches

In the event that the available supply from Growers of Canning Peaches is in excess of the SPC Ardmona Total Peach Requirement, Canning Peaches will be purchased from Growers in accordance with the Canning Peach Intake Policy.

4. Consultation with Growers - fruit pricing and volumes

4.1 Background

The determination of both pricing and volume intake levels each year for Canning Fruit Type Fruit involves a wide range of different factors. SPC Ardmona is committed to considering all relevant factors before finalising prices and intake volumes for a Fruit Season.

For these reasons, SPC Ardmona recognises the benefits of consulting with Growers, in a formal manner, on the various factors, prior to making its decisions in relation to pricing, varieties and volumes for the coming Fruit Season. This will also help ensure that there is an open exchange of information between SPC Ardmona and Growers.

4.2 Undertakings in relation to consulting with Growers

- (a) The SPC Ardmona representatives specified in clause 4.2(b) will meet with the Grower representatives specified in clause 4.2(b) to discuss issues that will affect the fruit pricing and intake decisions of SPC Ardmona (**Consultative Committee Meeting**). The meeting is to take place in November each year.
- (b) The Consultative Committee will comprise:
 - From SPC Ardmona (five persons):
 - (i) the Chairman or his or her nominee who will chair the Consultative Committee;
 - (ii) the Managing Director or his or her nominee;
 - (iii) the Chief Operating Officer or his or her nominee; and
 - (iv) Two other members of SPC Ardmona Senior Management and/or its Field Committee, including one Non Executive Director.
 - From Growers (five persons):
 - (v) Three representatives from N.V.F.A;
 - (vi) Two representatives from V.P.A.G.A;
- (c) SPC Ardmona will include on the agenda for each Consultative Committee Meeting all matters reasonably requested for inclusion by the Grower representatives. These agenda items should be accompanied by detailed written information (including the relevant background) to enable all members of the Consultative Committee to understand the issues raised. This information should be provided to SPC Ardmona at least ten (10) Business Days before the Consultative Committee Meeting.
- (d) SPC Ardmona undertakes to prepare all information for circulation to Consultative Committee members at least seven (7) Business Days before the Consultative Committee Meeting.
- (e) Without limiting the matters to be discussed at the Consultative Committee Meeting, SPC Ardmona undertakes to address the following matters:

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- (i) Information in respect of matters submitted by Growers:
 - (A) Increases/decreases in Growers' production costs;
 - (B) Improvements in productivity;
 - (C) Availability of supply; and
 - (D) Seasonal conditions.
 - (ii) Information in respect of matters submitted by SPC Ardmona (which may lawfully be made available to the Consultative Committee):
 - (A) Prices paid for Canning Fruit Type Fruit by Processors in competitor countries including, where known, payment terms and conditions and currency conversion rates to Australian dollars;
 - (B) Level of carry over stocks of processed Canning Fruit Type Fruit manufactured in the Northern Hemisphere for each Canning Fruit Type Fruit;
 - (C) Movements in currency and interest rates;
 - (D) Forecast Australian production and forecast Southern Hemisphere production (indicating whether inclusive or exclusive of Australia) for each Canning Fruit Type Fruit;
 - (E) Where available, selling prices, both domestically and internationally, of processed Canning Fruit Type Fruit comparable to processed Canning Fruit Type Fruit manufactured by SPC Ardmona, with reference to the point of sale, if possible;
 - (F) Sales volume split between domestic and export sales for each Canning Fruit Type Fruit;
 - (G) Average Export Selling Price and Average Domestic Selling Price expressed in Australian dollars for each of Canned Peaches and Canned Pears and calculated on the basis of ex-Factory delivery from Shepparton;
 - (H) Improvements in productivity by SPC Ardmona;
 - (I) Level of projected carry over of stock for SPC Ardmona for each Canning Fruit Type Fruit as at 31 December of the year in which the Consultative Committee is meeting;
 - (J) Movement in fruit costs as a proportion of production costs for each Canning Fruit Type Fruit;
 - (K) Profitability and financial performance of SPC Ardmona (restricted to publicly available information), to include but not limited to earnings before interest and tax (EBIT), net profit after tax (NPAT), return on equity expressed as a percentage (ROE) and return on assets expressed as a percentage (ROA); and
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- (L) Changes in payment terms and other auxiliary payments or charges that impact on the price being paid to Growers for Canning Fruit Type Fruit.
 - (f) Upon request from the Grower representatives, the Growers representatives be provided with access to source documents or, in the absence of such documents, details of the source of the information presented, to facilitate verification of the information presented in accordance with clause 4.2(e)(ii), with the exception of item (K).
 - (g) SPC Ardmona undertakes to consider all matters raised at the Consultative Committee Meeting, but, having taken into account those matters, reserves the right to set prices for Canning Fruit Type Fruit, intake volumes and the terms of other payments and charges such as bin hire, freight rates, payment terms and incentive schemes.

5. Commencement, variation and termination of the Undertakings

5.1 Commencement of Undertakings

After these Undertakings have been executed by:

- (a) SPC; and
- (b) the Commission

these Undertakings:

- (a) take effect; and
- (b) shall be taken to have come into and had effect on and after 1 January 2002.

5.2 Termination of Undertakings

These Undertakings terminate on 31 December 2004.

5.3 Variation

If SPC Ardmona is unable to comply with its obligations in these Undertakings, or believes it is necessary to seek some modification due to changed circumstances, then SPC Ardmona and the Commission agree that they will review these Undertakings and negotiate in good faith the variation or revocation of all or any of the Undertakings in light of such circumstances having regard to the need to maintain the position of the Growers.

6. Force Majeure

- 6.1 If SPC Ardmona is prevented from performing any obligation under these Undertakings due to Force Majeure and if SPC Ardmona has used all reasonable diligence and employed all reasonable means to remedy or abate the Force Majeure as expeditiously as possible, then SPC Ardmona will not be liable for the failure to perform any such obligation during the presence of, and to the extent of, the Force Majeure.
- 6.2 If SPC Ardmona is unable to perform any obligation of these Undertakings by reason of Force Majeure, it will as soon as practicable and in any event within three (3) Business Days notify the Commission specifying:
- (a) the cause and extent of the non-performance;
 - (b) the date of commencement of Force Majeure; and
 - (c) the means proposed to be adopted to remedy or abate the Force Majeure.

7. Information

- 7.1 SPC Ardmona will provide within five (5) Business Days to the Commission any further information reasonably requested by the Commission relating to compliance with these Undertakings.
- 7.2 SPC Ardmona must provide a report to the Commission every 12 months while these Undertakings are in effect to enable the Commission to monitor compliance with clauses 3 and 4.

8. Procurement undertaking

- 8.1 Where an obligation under these Undertakings would require SPC or a Related Company or SPC Ardmona or a related company to perform or refrain from any action, SPC will procure the conduct of that Related Company.


9. Acknowledgments

- 9.1 SPC acknowledges that the Commission will make these Undertakings available for public inspection.
- 9.2 SPC further acknowledges that the Commission may from time to time publish and publicly refer to these Undertakings at its discretion.
- 9.3 This Undertaking is conditional on the merger of SPC and Ardmona Proceeding to completion by no later than 30 January 2002. For the avoidance of any doubt, the Commission is of the view that, in the event that, the merger of SPC and Ardmona is completed after 30 January 2002, these Undertakings will need to be revised to ensure that they address the Commission's concerns in relation to the merger.
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10. Enforcement action

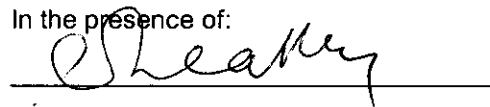
- 10.1 For the avoidance of doubt, the Commission may take enforcement action at any time during the relevant limitation period whether:
- (a) during the Undertaking Period; or
 - (b) after the Undertaking Period,
- in respect of any breach by SPC Ardmona of a term of these Undertakings or the Act.

SIGNED by **S.P.C. Limited** by:



Nigel Garrard
Managing Director

In the presence of:



Witness' Signature

Michael V. Wheatley

Witness' Name

dated: 27 November 2001

accepted by the Australian
Competition and Consumer Commission:



Signature of Professor Allan Fels
Chairperson

dated: 28 November 2001

CANNING PEACH INTAKE POLICY

Purpose

The intention of this Policy is to provide a procedure for determining the allocation of quotas which will determine the volume of Canning Peaches that SPC Ardmona will purchase from each Grower if the SPC Ardmona Total Peach Requirement is less than the estimated Canning Peaches available in that Fruit Season.

Quota Procedure

1. Should the SPC Ardmona Total Peach Requirement be less than the estimated Canning Peaches available, SPC Ardmona will apply a quota to the Growers of Canning Peaches which will determine the volume of Canning Peaches purchased from each Grower in a Fruit Season.
2. A quota may be applied to:
 - a) all Canning Peach deliveries;
 - b) a variety group of Canning Peaches;
 - c) specific varieties of Canning Peaches;
 - d) a specific period of time.
3. The quota to be applied in relation to the supply of Canning Peaches shall be allocated to each Grower on the basis of that Grower's aggregate deliveries of Canning Peaches to SPC, Ardmona or SPC Ardmona, as the case may be, over the preceding three (3) years as a proportion of the total deliveries of Canning Peaches to SPC, Ardmona or SPC Ardmona, as the case may be, over the preceding three (3) years in respect of the relevant quota. The proportion shall be calculated from the combined deliveries of Canning Peaches made to both SPC and Ardmona or SPC Ardmona, as the case may be, divided by the total corresponding Canning Peach intake in the preceding three years by SPC, Ardmona and SPC Ardmona, as the case may be.

The quota for each individual Grower will be calculated on the following basis:

- (i) For 2002

$$G = \frac{A}{C} \times P$$

Where:

- G = an individual Grower's quota.
- A = the sum of the Grower's deliveries to both SPC and Ardmona in 1999, 2000 and 2001.
- C = the sum of SPC and Ardmona's Canning Peach intake in 1999, 2000 and 2001.
- P = the SPC Ardmona Total Peach Requirement less the intake retained in accordance with clause 4 of this Attachment A.

(ii) For 2003

$$G = \frac{A + B}{C + D} \times P$$

Where:

G = an individual Grower's quota.

A = the sum of the Grower's deliveries to both SPC and Ardmona in 2000 and 2001.

B = the Grower's deliveries to SPC Ardmona in 2002.

C = the sum of SPC and Ardmona's Canning Peach intake in 2000 and 2001.

D = the SPC Ardmona Canning Peach intake in 2002.

P = the SPC Ardmona Total Peach Requirement less the intake retained in accordance with clause 4 of this Attachment A.

(iii) For 2004

$$G = \frac{A + B}{C + D} \times P$$

Where:

G = an individual Grower's quota.

A = the Grower's deliveries to both SPC and Ardmona in 2001.

B = the Grower's deliveries to SPC Ardmona in 2002 and 2003.

C = the sum of SPC and Ardmona's Canning Peach intake in 2001.

D = the SPC Ardmona Canning Peach intake in 2002 and 2003.

P = the SPC Ardmona Total Peach Requirement less the intake retained in accordance with clause 4 of this Attachment A.

4. Notwithstanding anything in this Attachment A, SPC Ardmona may allocate up to 10% of its Canning Peach intake at its absolute discretion.
5. SPC Ardmona maintains the right to nominate the varieties and quantities of Canning Peaches required in any year.
6. SPC Ardmona reserves the right to vary a Grower's quota entitlement where that Grower's performance history is adversely affected by circumstances beyond the Grower's reasonable control.

CANNING PEAR ADDITIONAL INTAKE POLICY

Purpose

The intention of this policy is to provide a procedure for determining the allocation to Growers of Additional Canning Pears required by SPC Ardmona in addition to the SPC Ardmona Total Base Pear Requirement. This Policy may not be implemented until at least 47,706 tonnes of Canning Pears have been allocated in each Fruit Season under the Canning Pear Base Intake Policy.

Procedure

1. A Grower's entitlement to supply Additional Canning Pears for a given Fruit Season will be shared between former SPC Growers and former Ardmona Growers on a proportional basis to be calculated in the following manner:

- (a) **Calculation of the split.**

- (i) Calculation of the proportion of the Additional Canning Pear intake to be allocated to former SPC Growers:

The proportion of the Additional Canning Pear intake to be distributed among former SPC Growers will be calculated by aggregating the previous three year base intake (2001, 2000 and 1999) of Canning Pears by SPC as a proportion of total SPC and Ardmona base intake of Canning Pears for the previous three years (**the SPC total Grower allocation**).

$$G_{(SPC)} = \frac{S}{S + A}$$

Where:

$G_{(SPC)}$	SPC total Grower allocation.
S	the sum of the total base intake of Canning Pear deliveries made by SPC Growers in 1999, 2000 and 2001.
A	the sum of the total base intake of Canning Pear deliveries made by Ardmona Growers 1999, 2000 and 2001.

To calculate the volume allocated to former SPC Growers, this proportion, $G_{(SPC)}$, will be applied to the additional volume of Canning Pears required by SPC Ardmona in the Fruit Season (**SPC Grower additional allocation**).

- (ii) Calculation of the proportion of the Additional Canning Pear intake to be allocated to former Ardmona Growers:

The proportion of the Additional Canning Pear intake to be distributed among former Ardmona Growers will be calculated by aggregating the previous three year base intake (2001, 2000 and 1999) of Canning Pears by Ardmona as a proportion

of total SPC and Ardmona base intake of Canning Pears for the previous three years (**the Ardmona total Grower allocation**).

$$G_{(ARD)} = \frac{A}{S + A}$$

Where:

$G_{(ARD)}$	Ardmona total Grower allocation.
S, A	as defined above.

To calculate the volume allocated to former Ardmona Growers, this proportion, $G_{(ARD)}$, will be applied to the additional volume of Canning Pears required by SPC Ardmona in the Fruit Season (**Ardmona Grower additional allocation**).

(b) Calculation of the proportion of Additional Canning Pears taken from individual SPC Growers in 2002 to 2004.

To calculate the proportion of the SPC Grower additional allocation, see (a), above, for each former SPC Grower, the sum of the Additional Canning Pear intake deliveries made by the individual SPC Grower in the previous three years will be divided by the sum of the total Additional Canning Pear intake deliveries made by SPC Growers in the previous three years (**SPC individual Grower entitlement**).

Calculation of the SPC individual Grower entitlement (proportion):

$$E_{(SPC)} = \frac{I_{SPC}}{R}$$

Where:

$E_{(SPC)}$	SPC individual Grower entitlement (proportion).
I_{SPC}	the sum of the Additional Canning Pear intake deliveries made by the individual SPC Grower for which the entitlement is being calculated in the three previous years.
R	The sum of the Additional Canning Pear intake deliveries made by SPC Growers in the three previous years.

To calculate the volume of Additional Canning Pears allocated to each individual SPC Grower, this proportion, $E_{(SPC)}$, will be applied to the SPC Grower additional allocation (see (a) above).

(c) Calculation of the proportion of Additional Canning Pears taken from individual Ardmona Growers in 2002 to 2005.

The calculation in 2002, 2003 and 2004 (the transition years) in relation to former Ardmona Growers is more complicated than for former SPC Growers. This is because Ardmona has never applied a Canning Pear Additional Intake Policy. Therefore the only figures available for use are those for the Ardmona Canning Pear base intake.

(i) 2002

To calculate the proportion of Ardmona Grower additional allocation for each former Ardmona Grower, the sum of the Canning Pear base intake deliveries made by the individual Ardmona Grower in 1999, 2000 and 2001 will be divided by the sum of the Canning Pear base intake deliveries made by all Ardmona Growers in 1999, 2000 and 2001 (**Ardmona individual Grower 2002 entitlement**).

Calculation of the Ardmona individual Grower entitlement in 2002 (proportion):

$$E_{(ARD,2002)} = \frac{B}{A}$$

Where:

$E_{(ARD,2002)}$	Ardmona individual Grower 2002 entitlement (proportion).
B	the sum of the Canning Pear base intake deliveries made by the individual Ardmona Grower in 1999, 2000 and 2001.
A	as defined above.

To calculate the volume of Additional Canning Pears allocated to each individual Ardmona Grower, this proportion, $E_{(ARD,2002)}$, will be applied to the Ardmona Grower additional allocation (see (a) above).

(ii) 2003

This is the first year that there will be a history of Canning Pear additional intake being calculated for former Ardmona Growers.

To calculate the proportion of Additional Canning Pear allocation for each former Ardmona Grower, the Ardmona individual Grower 2002 entitlement will be multiplied by two and added to that Grower's proportion of the sum of the Canning Pear additional intake deliveries made by Ardmona Growers in 2002. This figure is divided by three to calculate an average.

$$E_{(ARD,2003)} = \frac{2 \times E_{(ARD,2002)} + P_{2002}}{3}$$

Where:

$E_{(ARD,2003)}$	Ardmona individual Grower 2003 entitlement (proportion).
$E_{(ARD,2002)}$	as defined above.
P_{2002}	The individual Grower's proportion of the sum of the Canning Pear additional intake deliveries made by Ardmona Growers in 2002.

To calculate the volume of Additional Canning Pears allocated to each individual Ardmona Grower, this proportion, $E_{(ARD,2003)}$, will be applied to the Ardmona Grower additional allocation (see (a) above).

(iii) 2004

To calculate the proportion of Additional Canning Pear allocation for each former Ardmona Grower, the Ardmona individual Grower 2002 entitlement will be added to that Grower's proportion of the sum of the Canning Pear additional intake deliveries made by Ardmona Growers in 2002 and 2003. This figure is divided by three to calculate an average.

$$E_{(ARD,2004)} = \frac{E_{(ARD,2002)} + P_{2002} + P_{2003}}{3}$$

Where:

$E_{(ARD,2004)}$	Ardmona individual Grower 2004 entitlement (proportion).
P_{2003}	the individual Grower's proportion of the sum of the Canning Pear additional intake deliveries made by Ardmona Growers in 2003.
$E_{(ARD,2002)}, P_{(2002)}$	as defined above.

To calculate the volume of Additional Canning Pears allocated to each individual Ardmona Grower, this proportion, $E_{(ARD,2004)}$ will be applied to the Ardmona Grower additional allocation (see (a) above).

2. If Additional Canning Pears are required in any year, SPC Ardmona will, by 14 January, invite expressions of interest from all Growers in relation to the supply of the Additional Canning Pears.
3. If a Grower wishes to deliver Additional Canning Pears, the Grower must advise SPC Ardmona in writing by 24 January of the quantity of Additional Canning Pears that the Grower wants to deliver (**Offering Grower**).
4. If the quantity of Additional Canning Pears offered by all Offering Growers exceeds SPC Ardmona's requirements, the required intake tonnage will be allocated to each Offering Grower in accordance with the formula set out in this Policy.
5. SPC Ardmona will advise all Offering Growers of their allocation by 31 January.
6. All Additional Canning Pear deliveries must be made prior to 15 March in the relevant year or such other date as is approved in writing by SPC Ardmona.
7. If a Grower fails to deliver the Grower's allocation of Additional Canning Pears, the following penalties will apply:
 - a) the Grower's aggregate deliveries for the year in which the Grower fails to deliver the Grower's allocation of Additional Canning Pears and the preceding two (2) years will be deemed to be reduced by three times the shortfall; and
 - b) the price payable for all Additional Canning Pears delivered by the Grower in that year will be reduced by one third.
8. A Grower shall not be penalised for failure to deliver the allocation of Additional Canning Pears if:

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- a) the Grower can demonstrate to the Field Committee that the shortfall was due to circumstances beyond the Grower's reasonable control; or
 - b) without limiting a), the shortfall does not exceed 10% of the allocation and the Grower can demonstrate to the Field Committee that the shortfall was due solely to a shortfall of Canning Pears harvested by the Grower.
9. Additional Canning Pear allocations are not transferable.
10. Notwithstanding anything to the contrary in this Policy;
- a) Up to 25% of SPC Ardmona's Additional Canning Pear requirement as at 14 January in a given Fruit Season may be sourced from any Grower at SPC Ardmona's absolute discretion;
 - b) Any requirement for Additional Canning Pears arising after 14 January may be sourced at SPC Ardmona's absolute discretion.

Allocation Formula

11. Additional Canning Pears for a particular year shall be allocated as follows:
- a) Each offering Grower shall be entitled to a minimum allocation of the lesser of the quantity offered by the Grower or the Grower's entitlement calculated in clause 1 of the Policy, above;
 - b) Any Additional Canning Pear requirements not allocated under a), above, shall be allocated between all offering Growers pro rata to their respective Additional Canning Pear percentages as calculated in clause 1 of the Policy, above, until the required total intake has been fully allocated or all offers from Growers with an Additional Canning Pear percentage have been filled;
 - c) Any balance shall be offered to Growers without an Additional Canning Pear percentage pro rata to the quantities offered by them.

CANNING PEAR BASE INTAKE POLICY

Purpose

The intention of the policy is to provide a procedure for determining the allocation of quotas in respect of the SPC Ardmona Total Base Pear Requirement in any Fruit Season.

Quota Procedure

1. SPC Ardmona shall apply a quota to Growers in relation to the supply of Canning Pears to meet the SPC Ardmona Total Base Pear Requirement for each Fruit Season.
2. The quota shall be allocated to each Grower on the basis that the quantity of Canning Pears purchased from each Grower as a percentage of the SPC Ardmona Total Base Pear Requirement for its relevant Fruit Season shall be equal to the three season pear average.
3. In this policy, the three season pear average means a percentage calculated on the basis of a Grower's aggregate deliveries of Canning Pears to meet the SPC Ardmona Total Base Pear Requirement over the three previous Fruit Seasons as a proportion of the SPC Ardmona Total Base Pear Requirement deliveries over that period.
4. Where a Fruit Season referred to in clause 3, above, involves deliveries that pre-date the merger, that proportion of the three season pear average that pre-dates the merger shall be calculated having regard to the Grower's combined deliveries to both SPC and Ardmona as a proportion of the combined total base pear requirement deliveries to SPC and Ardmona over the relevant period.

The entitlement quota for each individual Grower will be calculated on the following basis:

(i) For 2002

$$G = \frac{A}{C} \times P$$

Where:

G = an individual Grower's quota.

A = the sum of the Grower's deliveries to each of SPC and Ardmona in respect of their respective total base Canning Pear requirements in 1999, 2000 and 2001.

C = the sum of SPC and Ardmona's Canning Pear base intake in 1999, 2000 and 2001.

P = the SPC Ardmona Total Base Pear Requirement.

(ii) For 2003

$$G = \frac{A + B}{C + D} \times P$$

Where:

- G = an individual Grower's quota.
- A = the sum of the Grower's deliveries to each of SPC and Ardmona in respect of their respective total base Canning Pear requirements for 2000 and 2001.
- B = the Grower's deliveries to SPC Ardmona in 2002 in respect of the SPC Ardmona Total Base Pear Requirement.
- C = the sum of SPC and Ardmona's Canning Pear base intake in 2000 and 2001.
- D = the SPC Ardmona Total Canning Pear base intake in 2002.
- P = the SPC Ardmona Total Base Pear Requirement.
- (iii) For 2004
- $$G = \frac{A + B}{C + D} \times P$$

Where:

- G = an individual Grower's quota.
- A = the Grower's deliveries to each of SPC and Ardmona in respect of their respective total base Canning Pear requirements in 2001.
- B = the Grower's deliveries to SPC Ardmona in 2002 and 2003 in respect of the SPC Ardmona Total Base Pear Requirement.
- C = the sum of SPC and Ardmona's Total Canning Pear base intake in 2001.
- D = the SPC Ardmona Total Canning Pear base intake in 2002 and 2003.
- P = the SPC Ardmona Total Base Pear Requirement.

5. SPC Ardmona reserves the right to vary a Grower's quota entitlement where that Grower's performance history is adversely effected by circumstances beyond the Grower's reasonable control.