



5th September, 2016

Regulation of Australian Agriculture
Productivity Commission
Locked bag 2, Collins Street
MELBOURNE VIC 8003

By email: agriculture@pc.gov.au

Dear Review Commissioner

1. Canegrowers Burdekin wish to respond to the below Example 3 made on page 4 of Wilmar Sugar's submission DR139 dated 18 August, 2016 to the Productivity Commission's draft report into the Regulation of Australian Agriculture.

Wilmar Sugar
Regulation of Australian Agriculture
Submission on the Productivity Commission's Draft Report



Example 3

Non-sugar revenue – predominantly from molasses and co-generated electricity - underpins the viability of Wilmar's sugar milling business and loss of this revenue would result in a major impairment of Wilmar's investment and put the ongoing viability of the mill business at risk.

On 5 May 2016, a grower collective lodged a claim with Wilmar for 2/3rds of the profits from all non-raw sugar products produced from cane. This claim is understood to be made in belief that the Act has established in law a precedent for grower economic interest (being equated to ownership) that continues throughout the manufacturing process to the finished raw sugar product. Growers now wish to apply this precedent to capture a 2/3rds share of profits from all sugar and non-sugar products produced from cane.

This claim is made even though: legally, ownership of cane transfers to the mill at the siding; the Cane Price Formula reflects a notional price exposure in the sale of sugar rather than any right of ownership; and Wilmar has invested hundreds of millions of dollars in cogenerated electricity production assets to sustain the sugar milling operation and to produce this additional revenue.

The Act now provides an avenue for grower collectives to attempt to use binding pre-contract arbitration proceedings to have a 2/3rds share of non-sugar profits included in new cane supply agreements. Wilmar is highly unlikely to make further investment in renewable energy production capacity or other non-sugar product diversification opportunities in its Australian mills while the binding pre-contract arbitration provisions under the Act remain in force.

2. The above example is well written and could be an example that convinces the Productivity Commission that due to this claim Wilmar may not invest further in renewable energy or other non-sugar product diversification due to the December 2015 amendments to the Qld Sugar Industry Act.

3. Canegrowers Burdekin wish to respond to the above example we are very sure that we are the grower collective Wilmar are referring too.
4. We commence by stating that we were of the view that our discussions with Wilmar on 5th May were confidential and we were very surprised and disappointed to see Wilmar make any commentary of this nature in a public document.
5. We advise that on the 5th May, 2016 Canegrowers Burdekin met with representatives from Wilmar in what was a “Discussion meeting” ...this was not a negotiation meeting as at that time Wilmar refused to enter into any negotiations.
6. At that “Discussion meeting” Canegrowers Burdekin put to Wilmar a written list of 16 “Discussion” points. One of these points was in relation to growers receiving a fair share of non-raw sugar products produced from cane.



Canegrowers Burdekin Ltd
CSA Discussion Terms Sheet
5th May, 2016

Discussion points 1 to 6 and 8 to 16 removed due to confidentiality

7. **Fair Share of non-raw sugar products produced from cane:**
 - Bagasse
 - growers to receive a minimum of 66% of the profits obtained from any bagasse by products
 - Molasses (Schedule 5 clause 15 (a))
 - growers to receive a minimum of 66% of the profit ...annul P&L report to be provided
 - Any new non-raw sugar products:
 - Growers to have the right to a fair share in the ownership and the profits of any new non-raw sugar products eg bio fuels that the mill enters into

7. We make the following points:
 - a. We did not lodge a claim
 - b. Our putting forward this “Discussion” point had nothing to do with the Qld Sugar Industry Act
 - c. The reason we put forward this “Discussion” point was due to the fact that as per the current Canegrowers Burdekin Ltd Cane Supply Agreement (CBL CSA) growers are paid for their cane based on the sale price of the raw sugar produced from the cane (with the exclusion of a small profit share relating to Molasses)
 - d. Wilmar canceled the long standing CBL CSA effective from the end of the 2016 crush and a fresh CBL CSA needs to be negotiated prior to the commencement of the 2017 crush
 - e. Our thinking is that the new CBL CSA may easily be in place for many years and over these years’ cane could be used to produce different products e.g. plastics, biofuels etc.
 - f. It is for this reason that we put forward this “Discussion” point. A point that was simply the start of a conversation
8. Commissioners’ will also note that in the third point we raise the issue of a fair share of ownership, with this of course as the conversation progressed, would come a discussion around a fair share of capital contribution.

9. But in reality all of that is irrelevant, as Wilmar, using their monopoly position, completely dismissed this “Discussion” point in their response to us on 5th August. In this response Wilmar even quote the Act as a reason why they would “not agree to further discussions”.

Wilmar Sugar

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5 August 2016

General Manager
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Dear Debra,

Re: Canegrowers Burdekin Ltd CSA Discussion Terms Sheet dated 5th May and 23rd June 2016

Our response to matters raised in the Term Sheets:

Response to points 1 to 6 and points 8 to 16 removed due to confidentiality.

7. Fair Share of non-raw sugar products produced from cane

The Act does not include a requirement for linking of the price paid by the Mill Owner to the Grower for cane, to anything other than the sale price of on-supply sugar.

As stated on numerous occasions, the Mill Owner will continue making payments to growers associated with molasses gain-sharing at the current level. These payments are included in a separate agreement to the CSA.

Wilmar does not agree to further discussions in relation to payments for other non-raw sugar products manufactured by the Mill Owner from cane purchased from growers.

10. Commissioners will note that Wilmar had made their decision 13 days prior to using this as an example in their submission to the Commission on 18th August.
11. We take the time to raise this matter to the Commission’s attention as just one example of Wilmar’s behaviour.
12. If Wilmar cannot even treat the Productivity Commission with respect ...what chance is there that a small Australian family cane farm has a chance against them?

Yours sincerely

Debra Burden B. Bus FAICD FAIM | General Manager
CANEGROWERS Burdekin

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