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Director
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By email: aginquiry@accc.gov.au

Dear Director

Perishable Agricultural Goods Inquiry
Bargaining power of primary producers

Reference is made to the inquiry into perishable agricultural goods, particularly as it pertains to the bargaining power between primary producers and processors.

Our organisation represents growers in the Burdekin who supply sugar cane to Wilmar Sugar. As has been well publicised, the growers and Wilmar Sugar battled during 2016 and 2017 to negotiate a cane supply agreement for the start of the 2017 season. Our organisation's experience, and that of the growers that we represent, is illustrative of the imbalance in bargaining power between producers and a monopoly processor.

Whilst the sugar industry is outside of the scope of this enquiry, this brief submission is in support of other primary producers facing similar circumstances with monopoly processors, or very limited choice of processors to sell their commodity, often due to the perishable nature of the commodity or the cost to transport the commodity to an alternate processor.

Set out below are salient comments, from our experience, of an imbalance in bargaining power –

1. Collective bargaining, as permitted pursuant to the *Sugar Industry Act 1999* (Qld), is not, by itself, the panacea to an imbalance in bargaining power. This is particularly the case where the grower has expended significant money and incurred substantial costs growing or producing the commodity. Financially, the grower is committed to selling the commodity. The processor is well aware of this fact. Collective bargaining, is nevertheless, very important, as it at least provides some assistance to growers by pooling resources to respond to those of very large, commercially sophisticated and financially resourced processors.

2. Primary producers have made substantial capital investment to produce a commodity. It is naive and simplistic to argue there is not an imbalance in bargaining power because a primary producer can grow any commodity. Multiple factors impact the choice of commodity of which the grower has no control, such as access to water, quality of soil, weather (variations in rainfall, temperature, cyclones, storms, floods etc). As well as the infrastructure required to grow the commodity and transport the commodity to the processor or market.

3. Negotiating a commercial contract with a processor is a very expensive process, in terms of time, energy and resources. It has been our experience that the processor has its contract and the expectation is that all growers who supply that processor utilise its contract. A grower attempting to negotiate a different contract or merely changes to the "standard" contract, is often met with a negative response; that is, a straight out response of "no". Unless there is a true market, with real choices for the grower to sell the commodity, the grower will accept the contract proffered by the processor. What else is the grower to do with the

commodity? This imbalance in bargaining power impacts many aspects of the contract, including terms of payment, the power to determine clauses and which party bears the risk.

Our organisation has a very "real life" experience of the imbalance in bargaining power between growers and monopoly processors, particularly with respect to negotiating a supply contract for its members. We are available to provide further evidence should this be of assistance to the Commission.

Yours faithfully
PIONEER CANE GROWERS ORGANISATION LTD

Julie Artiach

Julie Artiach LL.B.
MANAGER AND COMPANY SECRETARY