



23 April 2010

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Ms Jessamine Lumley
Legal Counsel
National Competition Council
Level 9 128 Exhibition St
Melbourne VIC 3000

Dear Ms Lumley

Re: Application under Part IIIA of the Trade Practices Act 1974 for declaration of the Herbert River Tram Service

Thank you for the opportunity to comment on the application from North Queensland Bio Energy to be granted access to tramlines in the Herbert River area under part IIIA of the Trade Practices Act.

CANEGROWERS represents over eighty percent of cane growers in Australia and has the financial membership of over 95% of growers in the Herbert River area.

CANEGROWERS is supportive of the provision of competition for the purchase of sugarcane generally, and in the Herbert River area specifically. Competitive purchase by processors is not possible at present because the nearest mill owned by a company other than CSR (Sucrogen - the owner of the two existing mills) is Tully Mill, which, at 97km distance, is too far away for sugar to be transported economically.

This organisation is of the view that competition must be sustainable and a competitive mill must be economically viable and itself able to withstand competition. CANEGROWERS is not currently privy to financial or business planning details of the NQBE proposal, with information on the project largely limited to that provided in the application and from public statement. Clearly, building a new mill with the excess capacity that the business model indicates will be a significant financial undertaking and the incumbent mills will have clear incentive for competition during the establishment phase.

CANEGROWERS, in determining its overall position in relation to the NQBE proposal would need to understand how the proponents plan to achieve financial security. Any response must therefore be largely generic and while the application to the NCC does not depend directly on this question, our organisation's approach must include an element of caution until the financial situation is clearer.

In relation to transport, the requirements for the proposed NQBE establishment and the existing mills would likely be very similar. Cane growers require a reliable and efficient cane transport system; one that allows harvesting to proceed smoothly.

CANEGROWERS notes that the reliability of the tramline system in the Herbert is, at present, less than desirable and has been subject to some criticism. CANEGROWERS Herbert River has noted that "CSR's Herbert River transport system ... barely meets the seasonal needs of 600 suppliers whose cane is delivered by 70 harvesting groups to some 261 sidings across the Herbert to be transported to both Victoria and Macknade mills for processing. CSR's sugar output is also hauled along part of the network on its route to the bulk sugar terminal at Lucinda. A Collective Cane Supply Agreement stipulates the performance requirements on CSR to deliver empty bins, collect harvested cane that is loaded in bins for weighing, analysis, processing and how harvesting and crushing operations are integrated with cane transport. Suppliers and their contractors are disadvantaged when the expectations

of the Collective Agreement cannot be met. There have been times when the system lets us down and results in down time in the field as well as delays in processing cane which in turn causes a loss in cane value.”

Without more details on how the applicant would propose to coordinate operation of rolling stock, CANEGROWERS would be concerned that two users on lines that are designed for one could only make access and reliability worse. Conversely, should the operation generate increased revenues for the owner (Sucrogen), which may result in an improved capital and maintenance commitment.

The applicants are seeking the declaration of the tramline system in the Herbert. It is noted that this will, potentially, allow access not only to NQBE but also to any other organisation that can make a case for access. As noted, this organisation has concerns about the ability of the system to cope with two operations. The fact that a ruling in favour of NQBE would allow potentially more operators on the line is even more concerning.

On a similar issue, it is noted that the applicants have asserted that “there is no reason why access to the Tram Service cannot be provided safely”. CANEGROWERS notes that safety of operating tram lines will be a major issue, important for operators of the tramline, harvesting personnel loading cane on the line and growers requiring reliability. Access by two operators of rolling stock on the single system would demand adoption of improved and coordinated management and will certainly create significant safety issues. It would be critical to undertake a detailed analysis in order to demonstrate more comprehensively how two tramline operating systems can coexist on lines designed for one operator – from both safety and operational efficiency bases.

In relation to the construction of tramlines, CANEGROWERS would wish to clarify some of the applicant’s comments relating to construction of the lines. While it is true that, in some cases, growers have contributed to the cost of new lines, this has always been with the understanding that the ownership of the lines resides with CSR. Growers have contributed on the basis that easier, cheaper or more reliable tramline access would be provided, particularly through the provision of land for easements, loading areas and line loops. This is not however an application from growers for access to the line, it is an application by a private company, NQBE. Ownership of NQBE is not, as yet, determined.

CANEGROWERS also notes that NQBE indicated that it is involved in the development of “energy canes”. This organisation is not aware of particular commitments or programs undertaken by the applicant, however the interest and investment in these potential fuel sources is not exclusive, other industry stakeholders are also interested. Specific project on this topic is being undertaken by the CRC for Sugar Industry Innovation through Biotechnology. We are not aware of any contribution from NQBE to this work. It should also be noted that, in work conducted to date, there are indications that increasing fibre for energy canes is likely to lead to a reduction on sugar content, rather than the increase. Work undertaken by NQBE may indicate other potential outcomes.

CANEGROWERS’ response to this application is therefore threefold:

- Our organisation does not, at present, have any particular knowledge or insight into the business case for constructing a new mill. and while supportive of competition for the crushing of cane, would not wish to see the establishment of an enterprise that cannot compete with the strong incumbent diverting resources away from more productive investments
- CANEGROWERS has concerns that reliability and efficiency of the tramline system could be further degraded if there are two operators using the line.
- CANEGROWERS is not able to form a view on the assertions of safety of the tramlines from the submission.

Our organisation would appreciate being kept abreast of the progress with considering this application and would be happy to supply any further information that the National Competition Council might require

Yours sincerely



Ian J Ballantyne
CHIEF EXECUTIVE OFFICER