

**AUSTRALIAN SUGAR MILLING COUNCIL'S SUBMISSION TO THE
QUEENSLAND COMPETITION AUTHORITY**

DRAFT REPORT FOR CONSULTATION

**BURDEKIN HAUGHTON WATER SUPPLY SCHEME: ASSESSMENT OF
CERTAIN PRICING MATTERS RELATING TO THE BURDEKIN RIVER
IRRIGATION AREA**

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November 2002

Introduction

The Queensland Competition Authority (QCA) has made some general statements in its draft report in relation to capital contributions. While the QCA notes that there is no universally accepted definition of the term “*capital contributions*”, the QCA views capital contributions as “*capital payments made towards the capital cost of an asset by a third party with the intention of reducing the capital outlay by the owner of the asset and with the expectation that the payment will be recognized for pricing purposes*”.

Although the QCA recognised that corporate entities such as SunWater operating for commercial ends should be entitled to seek to achieve a commercial and therefore positive rate of return, it was also recognised that there were circumstances where it may not be appropriate for an entity to charge a positive or a fully commercial rate of return – principally where capital contributions have been made towards infrastructure.

Australian Sugar Milling Council (ASMC) seeks further clarification with respect to the statement regarding capital contributions.

Background

The issues of what may fall within the definition of capital contributions and when it may be appropriate for a corporate infrastructure entity to charge a positive rate of return are important issues for the sugar industry. They arise not only in relation to water pricing issues but in other areas in which the industry incurs charges set by other government-owned corporations.

It is submitted by ASMC that, to date, many government-owned corporations have applied their own definition of what may or may not amount to a capital contribution.

Accordingly, ASMC submits that in order to achieve some consistency and certainty, it is appropriate for the QCA to articulate some definitive, generally applicable principles regarding capital contributions and the precise circumstances in which it may be appropriate for an infrastructure entity to charge fully commercial rates of return.

Areas requiring further clarification

The QCA makes the general statement that a payment should be regarded as a capital contribution if the intention of the parties at the time was that the capital payment would be recognized for pricing purposes. This statement requires further clarification in the following areas:

- ❖ Why is it necessary to establish that the parties had an intention that the capital payment would be recognized for pricing purposes? Is the QCA seeking to draw analogies with principles of equity, unjust enrichment or contract? It is not suggested that the capital contributors have some right in equity or in contract to the infrastructure asset. The ASMC submits that it ought be sufficient to show that asset contributions were made and that these contributions have not been otherwise recognised (i.e. it is not a circumstance in which past price reductions have fully

compensated the contributor for the contribution or the infrastructure asset towards which the contribution was made has been consumed, sold, transferred or acquired).

- ❖ If the QCA maintains that it is necessary to show an intention between the parties that capital payments would be recognised for pricing purposes, can the QCA be more specific about how this intention should be shown, particularly in circumstances where there may not have been a formal agreement between the parties? What evidence does the QCA consider essential to establish such an intention?
- ❖ The QCA states that in the absence of formal arrangements attesting to the quantum of payment, its nature or its purpose (or a lack of clarity regarding those arrangements), a judgment must be made on the basis of all available evidence. ASMC notes some of the matters which were taken into account in deciding, for example, whether mill levies were a capital contribution included the 1980 Parliamentary report, the scheme of the relevant legislation and a decision of the Federal Court of Australia. ASMC submits that it would be appropriate for the QCA to set down some general guidelines in relation to the sort of evidence which it considers relevant in deciding whether a capital contribution has been made in circumstances where there is no direct evidence indicating the intention of the parties.

Conclusion

Given that the QCA has acknowledged that it is generally inappropriate for an infrastructure entity to charge a positive or commercial rate of return in circumstances where capital contributions have been made, the issue of what amounts to a capital contribution and the circumstances in which it should be recognized as such are important issues for the sugar industry as they have application across a broader range of areas not limited to the area of water pricing.

Further, these issues affect not only the sugar industry but other industries across a range of areas. For these reasons, ASMC submits that it would be appropriate that the QCA formulate some generic guidelines which can be applied to establish the circumstances in which payments should be regarded as capital contributions.
