The Australian

MSF bid signals effort to sew up sugar exports

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Asian groups will control most of Australia's sugar production if the Maryborough Sugar bid is successful *Source:* Bloomberg

IF Thailand's largest sugar producer, Mitr Pohl, mounts a successful takeover bid for Maryborough Sugar (MSF), three Asian groups will control all of Australia's major sugar millers other than Mackay Sugar. But a larger game is under way than mere consolidation of sugar production.

The motivation of the Asian groups is almost certainly to secure the marketing of export sugar produced by the mills.

It's a $2.5 billion market, but if the Asian companies can control the export marketing they could improve their margins by 7-15 per cent, which at the top end would equate to $300 million a year.

Until 2006, all export sugar had to be sold by Queensland Sugar Limited, the authorised sugar marketing arm. The market was deregulated in 2006, but QSL tied the mills to long-term contracts. To date, only MSF markets its sugar independently.

However, the QSL contracts mature over the next few years, meaning new owners would be able to take over export marketing.

Consolidation has been going on for some years but the pace has quickened in recent months.

Three years ago, MSF acquired Mulgrave Central and the following year failed in a bid for Tully Sugar. Earlier this year it completed the purchase of the northern mills of Bundaberg Sugar, owned by Belgium's Lippen Brothers. That made MSF the third largest producer of raw sugar in Australia, with 6 per cent of the trade in east Asia.

Two years ago Singapore's Wilmar International acquired CSR's sugar business, Sucrogen, which accounts for about 50 per cent of export sugar. Earlier this year China's state-owned Cofco won a three-way bidding war with Mackay sugar and global agribusiness Bunge.

Mackay then expressed interest in the smaller Proserpine Sugar but never got to make an offer as a bidding war erupted between Sucrogen and Cofco. Mackay has also said it is open to mergers and will consider offers.

Last month growers rejected a $115m offer from Sucrogen and Proserpine then rejected a $120m offer from Cofco's Tully, because of claimed uncertainty, and placed the company in administration. Tully has now increased the offer by a further $2m to $122m and will deal with the administrator rather than growers. It remains to be seen if Sucrogen, which advanced funds to Proserpine, returns to the fray.

A year ago Mitr Pohl bought Guinness Peat Group's 19.9 per cent stake in MSF for $4 a share, and soon after supported an equity raising for the purchase of the north Bundaberg mills.

In June, the Thai group reported a cash settled equity swap over a further 2.03 million MSF shares, putting its foot on 22.01 per cent of the capital, and signalling its continuing interest.

On Monday, MSF obtained a two-day trading halt because it expected to make an announcement on a "material control transaction".

Because of its strategic holding, speculation has focused on Mitr Pohl as the likely bidder.

MSF shares are due to resume trading this morning so an announcement is expected, either of a firm bid for MSF or a progress report if agreement has not yet been reached.

Any bid is expected to be in a range of $4.25-$4.50 a share, which would represent a control premium of between 25 per cent and 32 per cent to MSF's previous closing share price of $3.40.

Bloody battle

THE extraordinary goings-on surrounding the annual meeting of biotechnology company Cryosite should leave corporate governance experts gobsmacked. Cryosite, which operates one of only two cord blood banks in Australia, held its meeting on Monday in Sydney.

Cryosite has three directors: chairman Theo Onisforou, the former investment manager for the Packer family's Consolidated Press and nowadays a professional investor, and two executive directors, managing director Gordon Milliken and Graeme Moore -- that is, more executive than non-executive directors.

That's not in accordance with ASX corporate governance principles but Cryosite is small and the board says a "small, closely involved board" is best at its current size and stage of development.

At the meeting, Cryosite joined the ranks of companies whose remuneration reports were rejected by shareholders under the newly introduced two-strikes rule, which requires a board spill resolution if 25 per cent of votes cast at two successive annual meetings oppose the remuneration report. If the spill resolution is passed by a majority at the second annual meeting, a spill meeting is required within 90 days at which all directors, other than the managing director, must seek re-election.

In Cryosite's case the no-vote was overwhelming, with 80 per cent opposing the report.

Moreover, Onisforou, who was up for re-election was voted off the board by the shareholders and again the no-vote was overwhelming, with 70 per cent opposing his re-election. Onisforou was unable to vote his 8.8 per cent shareholding on either resolution but it would have made no difference had he been able to.

Undaunted, the two executive directors held a board meeting after the annual meeting and took the unusual, if not unprecedented, step of reappointing Onisforou as a director to fill a casual vacancy.

That defies the will of the meeting, expressed in the vote.

Shareholders may own a company but they have no say in the management, which answer to the board. If shareholders are unhappy with the way a company is run, their only remedy is to change the board.

The Corporations Act does not prohibit a board from reappointing a director voted off the board to fill a casual vacancy, even if the vacancy was created by voting off the director. The legislation is silent on the issue, possibly because it was not expected that boards would behave in that way.

The vote against Onisforou and against the adoption of the remuneration report was largely accounted for by Cryosite rival Cell Care Australia, which owns Australia's other cord blood bank and is owned by merchant bankers Jim Craig and Alastair Lucas. Cell Care acquired 9,279,381 shares, or 19.9 per cent of the capital, in June from Strategic Pooled Development Fund at 10c a share.

A Cell Care representative told the meeting it had been influenced to buy the stake by Onisforou's statement at last year's meeting that Cryosite expected to be able "to announce our maiden dividend at the end of the 2011 year".

That didn't happen despite the fact that the company has 6c a share in cash on hand, and is cashflow-positive.

Cell Care did not show its hand by lodging proxies, instead seeking a poll. A total of 3,792,832 proxy votes were lodged on the resolution to re-elect Onisforou but on a poll he was defeated by 9,299,881 votes to 3,851,880.

But at last year's annual meeting more than 28.25 million proxy votes were lodged for Onisforou's re-election and none against. Even if that included the 9.27 million shares acquired by Cell Care, it suggests an erosion of shareholder support for Onisforou. Cell Care will now consider its options, one of which could be to requisition an meeting to seek board changes.

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