

28 May 2009

Mr Anthony Wing
General Manager – Transport and General Prices Oversight
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Wing,

Port Access Undertakings

The Victorian Farmers Federation (VFF) thanks you for the opportunity to contribute to the Australian Competition and Consumer Commission's (ACCC's) assessment of port access undertakings submitted by ABB Grain Ltd (ABB), Co-Operative Bulk Handling Ltd (CBH) and GrainCorp Limited (GNC) related to the export of bulk wheat.

Concern about monopolistic behaviour

VFF is concerned about monopolies forming in the grain supply chain as evidenced by recent market reports in particular from South Australia and Western Australia. A recent report from Credit Suisse, an independent brokerage company with no vested interest in the grains industry, validates VFF's concerns about monopolistic behaviour following the liberalisation of wheat exports.

Credit Suisse reports that ABB Grain Ltd (ABB) and GrainCorp Limited (GNC) are principal beneficiaries of the new marketing arrangements due to their dominant position in grain handling and ports. They state that it is likely we will see "increasing returns to ABB's bulk handling and ports infrastructure resulting from ABB's emergence from grower influence and recent deregulation of the wheat export single desk" and additionally; "Returns to GNC's grain handling infrastructure are likely to increase due to high barriers to entry into the storage and handling market in NSW and Queensland"¹.

Limitations of the legislation for review

Overall the VFF believe the current wheat export marketing legislation is flawed because of its limited scope. We also have concerns regarding the willingness of ACCC to investigate industry concerns. Because of the nature of the industry concerned entities are unwilling to make formal complaints aware that they still need to be able to export grain and continue their business.

The *Wheat Export Marketing Act 2008* is due to be reviewed in 2010. The Minister for Agriculture in his Second Reading Speech for the Wheat Export Marketing Bill 2008 acknowledged industry concern about the potential for monopolies to form in upcountry storage facilities in a similar manner to port facilities.

He stated if problems were identified then government would take steps to remedy the situation including if necessary development of a Code of Conduct.

¹ Grant Saligari of Credit Suisse Equities (Australia) Limited (27 April 2009) "Australian grains industry – Equity Research"

The VFF however understands the ACCC is constrained by the current legislation and is assessing the proposed undertakings in accordance with the *Trade Practices Act 1974*.

Under the current legislation Wheat Exports Australia (WEA) has stated that Melbourne Port Terminal (MPT) is not required to have an access undertaking accepted by the Australian Consumer and Competition Commission (ACCC).

MPT is jointly owned by AWB Limited (AWB) and Australian Bulk Alliance (ABA), and operated by Melbourne Terminal Operations, which is wholly owned by ABA - in turn a 50/50 joint venture between ABB and Sumitomo.

AWB, ABB and Sumitomo are accredited bulk wheat exporters. MPT does not fit the narrow definition under the WEMA of an associated entity of either of those companies and therefore is not required to have an access undertaking in place on 1 October 2009.

The federal access undertakings allow for fair and equitable treatment of bulk wheat exporters but also help provide consistency of port regulation. VFF Grains Group believes it is a loophole of the wheat marketing legislation that allows MPT to be the only exempted grain port terminal.

Without a federal access undertaking in place future disputes at MPT will have to be resolved via the *Trade Practices Act 1974* alone. Such disputes are often lengthy and cause loss of business long before any resolution is reached.

Areas of concern for growers

The VFF understands the circumstances and ownership structure which makes MPT exempt from the federal regime despite being affiliated with accredited bulk wheat exporters. Two issues have arisen from the decision to allow the exemption;

- There has been no commitment requested of MPT that they will not apply for an export wheat permit. Whilst they have not indicated an interest in doing so, no formal commitment was requested of them, this we believe is an oversight.
- VFF would like a commitment from the ACCC that action will be taken should the other port operators seek to avoid the port access regime by setting up structures which appear to distance themselves from their marketing arms. This is of greater concern now that ABB look to merge with a company that operates a very tightly controlled supply chain in Canada.

Without some level of commitment from ACCC to take action regarding anti-competitive behaviour the MPT decision, whilst not a concern in itself, sets a dangerous precedent for other accredited bulk wheat exporters who are also affiliated with port terminal operators. By distancing themselves in a similar fashion they may also avoid having to put a federal access undertaking in place.

WEA have advised that they have written assurance the Shipping Stem and standard Storage and Handling Agreement related to MPT will continue to be published on the Australian Bulk Alliance website until further notice. However, this cannot be deemed a formal commitment to do so which VFF believe would have been a fair request. Fair access outside of the federal regime will require a guarantee that the current shipping stem and storage and handling agreements will be published without fail as they are updated.

Further assurance can be achieved by an industry Code of Conduct outlining the rules all port operators should abide by. This code needs to promote transparency, consistency and comparability in port access charges.

Areas to investigate

VFF believes that when faced with evidence of anti-competitive behaviour the ACCC needs to be not only able to act but willing. VFF would like assurance that ACCC will take this on board and suggest the following two areas for investigation by the ACCC:

1. There is much anecdotal evidence throughout industry regarding actions taken by port operators to restrict movement of grain from up-country storages not in their control. The VFF acknowledge there are some practical reasons for these restrictions in terms of grain hygiene. However, the VFF is concerned it is also a way of forcing growers to deliver to particular up country storage facilities and of forcing non-port operating marketers to use specific up-country facilities.
2. The VFF believe ACCC should investigate the ownership/leasing of viable land surrounding current port infrastructure. If this land is held by the company who already owns the existing port infrastructure this prevents other entities building in the area and successfully competing for business. VFF Grains Group believes an appropriate investigation should be carried out regarding whether ownership of land around Port Adelaide restricts competition in providing grain accumulation facilities and potential port terminal services.

Please contact me on 03 9207 5538 if you have any questions regarding this letter.

Regards,



Russell Amery
VFF Grains Group President