Australian
Competition &
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2 June 2009

Mr Vishal Ahuja
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

By email: vishal.ahuja@mallesons.com

Dear Mr Ahuja

Re: GrainCorp Port Terminal Service Access Undertaking

I refer to the proposed access undertaking from GrainCorp Operations Limited (GrainCorp) for its port terminal services at Carrington, Fisherman Island, Geelong, Gladstone, Mackay, Port Kembla and Portland terminals (the Undertaking) submitted to the ACCC on 15 April 2009 for consideration under Part IIIA of the *Trade Practices Act 1974* (the Act).

In order to facilitate the ACCC's assessment of the proposed Undertaking, the ACCC seeks the further information from GrainCorp requested at **Attachment A**. Responses by GrainCorp in relation to the questions at Attachment A are relevant to the ACCC's ability to assess whether to accept or reject the Undertaking having regard to the matters set out in section 44ZZA(3) of the Act.

There are two parts to the information request at Attachment A. The first part relates to various statements made by GrainCorp in its supporting submission to the Undertaking relating to issues such as the competition provided by other grain terminals, the possibility of new port entry and the countervailing power of customers. The ACCC notes that a number of these assertions have not been backed up by detailed supporting submissions and would like to give GrainCorp the opportunity to substantiate the claims. In addition, the ACCC considers that this information will assist the ACCC to form a view about whether it would be appropriate to accept the Undertaking, having regard to the matters set out in section 44ZZA(3), in particular, the objects of Part IIIA of the Act, the legitimate business interests of the provider, the public interest, including the public interest in having competition in markets and the interests of persons who might want access to the service.

The second part of the information request relates to the ACCC gaining an understanding of the rationale for, workability and appropriateness of specific clauses of the Undertaking. The ACCC requires this information in order to assess whether the Undertaking, as provided by GrainCorp, will operate to provide access to the port terminal services in a manner considered by the ACCC to be appropriate pursuant to section 44ZZA(3).