

1 June 2009

Ms. Sarah Sheppard
Australian Competition and Consumer Commission
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Melbourne VIC 3000

Email: Sarah.sheppard@ACCC.gov.au

Dear Sarah,

Port Terminal Services Access Undertakings

The Grain Industry Association of Victoria (GIAV) has been monitoring submissions and undertakings being provided to the Australian Competition and Consumer Commission (ACCC) regarding the Commission's Inquiry into Port Terminal Services Access undertakings, and wishes to comment on a certain aspect of the Inquiry.

The Grain Industry Association of Victoria Inc. is the representative body of the key participants in the grain industry supply chain in Victoria. Our broad membership base includes grain marketers and traders, grain brokers, end-user processors such as millers, maltsters and stockfeed manufacturers, and well as bulk handling companies, seed specialists, grain transport operators and container packers.

Members employ over 5000 people directly on Victorian grain industry activities, many more indirectly, and represent billions of dollars of activity in the Victorian economy. Some members are large publicly listed Australian Companies, some are medium sized enterprises, but with links to substantial multi-national organisations.

Many members are small to medium, long established businesses based in Regional Victoria, and as such they make a substantial contribution to local communities. Further information on the GIAV, including the list of members, is available from website www.giav.com.au.

The GIAV submits that the scope of the proposed access undertakings should not be limited to services at the port terminal but should address rail and road access.

Upstream access i.e. the capacity of transport resources to deliver grain to port, and/or, the capacity of the Bulk Handling Companies (BHC) to load transport at its up-country facilities, is often the limiting factor for export capacity.

Thus, excluding upcountry services from the proposed access undertaking can enable the BHCs' to restrict Australian Wheat Exporters' access to port terminal services by frustrating the logistics of getting their product to port.

Port terminal services are only one part of the services necessary for access to bulk wheat export markets. Competition in bulk wheat export markets requires that BHCs' provide access to all of the services provided by facilities which are upstream from and separate to port terminal facilities. It is artificial to try to compartmentalise port terminal services from the upstream services when such services are all provided by the same company and under the same contract.

While recognising that section 24 of the Wheat Export Marketing Act is only directed at port terminal services, this should not deflect the underlying commercial reality that both upstream and port terminal services are provided by the same entity or related entities.

The BHCs' have demonstrated in their agreements, pricing and discussion that they intend to leverage their position at the ports to protect their upcountry system. This is evidenced by the fact that both ABB and GNC tariffs

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for handling grain from their own up-country network is different to that coming from 3rd party storages. ABB and GNC charge a higher fee for handling grain from third parties, shippers must obtain ABB approval in advance, and they must adhere to a separate and additional set of terms and conditions.

GNC goes further in that they not only charge a higher fee to cover the risk of an adverse outcome from handling grain from 3rd parties, but should that risk be realized they then charge again to correct the risk.

CBH has shown a similar intent in their draft proposal that they have put forth for allocating export capacity in WA, where they state that they will provide some form of direct port access, but they have made it clear that this will be on restrictive terms and at higher prices.

BHCs' are both the monopoly provider of port terminal services and providers of upstream and downstream services. Upstream activities of port operators are closely related and cannot feasibly be separated from port terminal services. As the BHCs' standard grain storage and handling agreements illustrate, the port operator usually (either by itself or by a related body corporate) provides the upstream services and the port terminal services under a single contract.

The BHCs' wish to continue operating a total supply chain service because it gives them a considerable advantage to force Australian Wheat Exporters to use BHC transport and up-country services.

This results in the BHCs' discriminating against any private or non BHC storage.

The access rules should apply equally regardless of whether access is via the non-port terminal services of the BHC, or services provided by third parties.

Creating a clear pathway and opportunity for grain from private/third party upcountry facilities to come to BHC ports without being discriminated against as it is currently, will develop competition within grain handling services. The port terminal service provider will then seek to maximise efficiency and throughput at the terminal, as opposed to maximising capture within their total supply chain.

There is currently no clear non-discriminatory pathway and opportunity for wheat from private third party upcountry facilities to be delivered into the port terminal facilities.

In summary: The proposed access undertakings should not:

- allow BHCs' to discriminate in favour of upstream or downstream operations
- require Australian Wheat Exporters to use BHCs' road or rail services, for example under Grain Express;
- Charge receival, handling and shipping fees which are more expensive, if what is delivered into port from third party storage facilities versus the BHCs' upcountry facilities is identical.
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Yours sincerely

T.L Roche
Secretary