

MALLESON'S STEPHEN JAKUES

Mr Anthony Wing
General Manager
Transport & Prices Oversight, Wheat Access Section
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

15 July 2009

Attention: Ms Sarah Sheppard

Dear Mr Wing

GrainCorp Operations Limited - port terminal services undertaking

Thank you for meeting with representatives of GrainCorp Operations Limited ("**GrainCorp**") and ourselves on Thursday 9 July 2009.

1 Purpose of letter

The purpose of this letter is to confirm the matters we discussed with you at the meeting on 9 July 2009. In particular, we address the following areas:

- the indicative access agreement (which GrainCorp has agreed to include in the port terminal services undertaking);
- the Port Terminal Services Protocols (which GrainCorp has amended to reflect industry consultation and the recent WEA audit); and
- the need for ringfencing of information relating to the provision of port terminal services to accredited bulk wheat exporters.

Further information on these key areas is set out below. This is not new information but summarises the information already provided in the supplementary submission of 24 June 2009.

2 Indicative access agreement

Publication and timing

As set out in the supplementary submission, GrainCorp proposes to include the terms of the Bulk Wheat Port Terminal Services Agreement ("**BWPTS Agreement**") in the Undertaking. In the interests of ensuring the business of exporting wheat in bulk can continue unimpeded up to and beyond the introduction of the proposed undertaking, GrainCorp is targeting the first week

of August 2009 for the release of its 2009/2010 port terminal services price schedule, Storage and Handling Agreement and BWPTS Agreement.

GrainCorp also proposes to amend the Undertaking to include an obligation to publish the reference prices and Port Terminal Services Protocols by 31 August each year.

This addresses many of the submissions made by interested parties claiming that they do not have a reasonable opportunity to review GrainCorp's terms and conditions of access before the grain season commences.

2009/10 transition

Accredited bulk wheat exporters will have to sign the BWPTS Agreement prior to 1 October 2009 to ensure that cargo nominations post 30 September 2009 can be accepted onto the GrainCorp shipping stem.

As there may be differences between agreements relating to the provision of services for the shipping of regulated grain signed prior to the introduction of the proposed Undertaking and the terms and conditions approved by the ACCC in the Undertaking, GrainCorp will offer customers the option to vary their agreements to be consistent with the terms and conditions which the ACCC approves.

To facilitate the transition between the current 2008/09 GrainCorp Storage and Handling Agreement and the 2009/10 GrainCorp Storage and Handling Agreement and the BWPTS, GrainCorp has informed port terminal services customers of an interim process for the nomination of cargos that will operate up until the 2nd of October.

The Interim arrangements (see correspondence set out in Attachment A) provide a transparent and fair process for the allocation of slots for cargos to be shipped after 1st October 2009 on the GrainCorp shipping stem, during the period in which Wheat Exports Australia is issuing bulk wheat export accreditation for the period commencing 1st October and beyond.

GrainCorp Trading

GrainCorp Trading will be required to enter into all relevant agreements relating to the provision of port terminal services and will be subject to the terms, conditions and prices contained therein.

3 Port terminal services protocols

On 15 June 2009 we provided to the ACCC a revised version of GrainCorp's Port Terminal Services Protocols which came into operation on 8 June 2009. The revised protocols are available publicly at <http://www.graincorp.com.au/prodserv/Ports/Pages/PortTerminalServiceProtocol.aspx> and on the ACCC's public register.

Consultation process

The current Port Terminal Services Protocols were revised to provide port terminal services customers with greater clarity on operational matters relating to the nomination of cargos and the assessment of cargo nominations. The changes implemented to the port terminal protocols follow 6 months of operational experience following the removal of the bulk wheat export monopoly, and consultation with customers during that time.

Attachment 3 (confidential) to GrainCorp's supplementary submission provided a summary of the responses from most major customers received during GrainCorp's consultation process prior to introducing the amended Port Terminal Services Protocols.

Key changes

The key changes to the Port Terminal Services Protocols from those attached to the Access Undertaking lodged with the ACCC are:

- Exporters can nominate cargos between 1 October and 30 September of the relevant shipping year.
- The voluntary Intention to Nominate procedures have been removed.
- All cargo nominations received will be added to the GrainCorp shipping stem on the business day following receipt and will be noted on the stem as 'pending acceptance'.
- Cargo nominations will be added to the stem in chronological order of receipt.
- The time in which GrainCorp must complete a Risk Assessment of a Cargo Nomination Application has been reduced from 7 days to 5 business days.
- Proof of grain ownership and ability to transport grain to port will be assessed at the time the Site Assembly Plan is required and not as a primary condition of listing on the stem. This will increase the 'transparency' of cargo nomination assessment. However in instances where a cargo nomination has been accepted and placed on the shipping stem, and where an exporter fails to accumulate a cargo in a timely manner, the risk of cargo accumulation delays causing consequential losses to other exporters and GrainCorp's port terminal operations may increase significantly.
- Cargo nominations will be removed from the stem if the relevant booking fee is not paid within the specified time.
- The ability for GrainCorp to reserve capacity at Port Terminals solely for the use of GrainCorp Trading has been removed.

The revised Port Terminal Services Protocols will further improve the standard and transparency of port terminal service offered by GrainCorp to its customers.

Implementation

These Protocols currently apply to the handling of all grains, including regulated grain (bulk wheat).

It is GrainCorp's intention that:

- (a) these Protocols will supersede the Initial Port Terminal Service Protocols attached to the Access Undertaking in due course, although applying only to bulk wheat to reflect the scope of the Undertaking; and
- (b) while the Access Undertaking will contain protocols for regulated grain exports (bulk wheat only), they will be largely consistent with protocols applying to all other non-regulated grains. It may be necessary for GrainCorp to vary the application of port protocols for non-regulated grain exports at terminals where these grains constitute the majority of grain handled.

The current Port Terminal Service Protocols will apply until 30 September 2009. From 1 October 2009, they will be replaced with the protocols which will be appended to the 2009/10 Storage and Handling Agreement for non-regulated grain and the protocols which will be appended to the Wheat Port Terminal Services Agreement and the Access Undertaking for the provision of port terminal services for the handling of bulk wheat exports.

4 Ringfencing

GrainCorp reiterates that ringfencing (to the extent required) should be limited to information obtained relating to the provision of port terminal services, for the shipping of regulated grain by accredited bulk wheat exporters, which are the subject of the Undertaking. It is not warranted, nor appropriate, to extend any ringfencing protocols to information gained from the operation of infrastructure such as upcountry storage, which is not a natural monopoly, or the provision of any other grain logistics services.

The information GrainCorp receives in the course of providing port terminal services to exporters, and which interested parties claim provides GrainCorp Trading with a competitive advantage, is in any event confidential for no longer than 24 hours.

This is substantially different to when the previous iteration of the port terminal service protocols were in operation. Under the previous arrangements, vessel nominations were able to be considered by GrainCorp for an undefined time, giving the *impression* that GrainCorp could have manipulated the shipping stem to the company's commercial advantage. The Company did not engage in this sort of behaviour, but does acknowledge that the lack of transparency did leave it open to such allegations.

All cargo nomination applications are now placed on the shipping stem no later than the next business day after the day on which they are received. These nominations will be noted on the GrainCorp shipping stem as 'Pending Assessment'. Full assessment of cargo nominations will

take place at the time the Site Assembly Plan is required, generally 21 days from the commencement of the load laycan. It is important to note that the current Port Terminal Protocols (which will form the basis for the 2009/10 Protocols that will be included in the Undertaking) allow exporters to nominate cargos for the full period between 2nd October 2009 and 30th September 2010. The placement by GrainCorp of all nominations on the shipping stem on the business day following receipt means that, should an exporter provide a significant forward program to GrainCorp, that program will be displayed on the public shipping stem and will this not be confidential.

Given these new highly transparent measures GrainCorp has no ability to derive any competitive advantage from its possession of cargo nominations. The placement of all cargo nominations on the shipping stem, pending their assessment and acceptance / rejection, ensure that there is no 'confidentiality' about forward shipping intentions and thus diminishes the need for any ringfencing requirements.

5 Next steps

As noted in the supplementary submission, GrainCorp has agreed to make a number of changes to the Undertaking. Following the draft decision, GrainCorp proposes to lodge an amended undertaking with the ACCC which will include the following:

- the BWPTS Agreement included as part of the Undertaking;
- the revised Initial Wheat Port Terminal Services Protocols will be attached to the Undertaking (but may be varied without ACCC approval in accordance with the Undertaking); and
- other amendments to the body of the Undertaking as agreed to by GrainCorp as set out in the supplementary submission (eg the date of publication of reference prices by 31 August).

6 Public register

We confirm that this letter may be placed on the public register.

If you have any questions, or if we can be of further assistance, please contact either Stefanie Benson on (02) 9296 2435, or myself.

Yours sincerely

[Sgd] V Ahuja

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Monday, 13 July 2009

NAME
COMPANY
ADDRESS
ADDRESS
ADDRESS

Dear NAME

I am writing to you to clarify the current GrainCorp policy on the receipt of Cargo Nomination Advices (CNA's) for cargos with a laycan after 30th September 2009.

1. Background

GrainCorp's 2009/10 Storage and Handling Agreement and the 2009/10 Bulk Wheat Port Terminal Services Agreement (BWPTSA) are being prepared for distribution to customers by August 7, 2009.

Both of these Agreements will contain Port Terminal Services Protocols (Protocols) that will govern the manner in which GrainCorp receives and assesses CNA's and allocates positions on the GrainCorp shipping stem.

The Wheat Export Marketing Act 2008 (the Act) requires that on or after 1st October 2009 any company accredited as a bulk wheat exporter that also provides port terminal services has to have in place an access Undertaking approved by the ACCC in order to retain that accreditation.

In the lead up to 1st October 2009 and the renewal of bulk wheat accreditations by Wheat Exports Australia, there is a degree of uncertainty over the form that port terminal service agreements will take and how they relate to the proposed Undertaking.

To reduce uncertainty, GrainCorp is providing the following transitional arrangements that will apply to the receipt of CNA's for cargos to be loaded at GrainCorp terminals after 30th September 2009 and will cease on 4.00 PM 9th October 2009.

2. Transitional Arrangements for Post 30th September 2009 CNA's

- a. Cargo Nomination Advices for the shipment of regulated and non-regulated grains through GrainCorp port terminals after 30th September 2009 will be received and noted on the shipping stem as '**Provisional**' nominations the business day following receipt.
- b. These 'Provisional' nominations will not be processed or assessed under the relevant provisions of the GrainCorp Port Terminal Protocols until an exporter has;
 1. Received confirmation from Wheat Exports Australia that their bulk wheat export accreditation has been granted or renewed and, as the case requires;
 - i. Signed a 2009/10 GrainCorp Storage and Handling Agreement for the export of non-regulated grains, or;
 - ii. Signed a 2009/10 GrainCorp Bulk Wheat Port Terminal Services Agreement for the export of regulated grain (bulk wheat).

- c. An exporter making a 'Provisional' nomination of a cargo under these transitional arrangements will not be invoiced for the CNA Booking Fee until the relevant Agreement has been signed.

3. Receipt of cargo nominations as 'Provisional' up to 2nd October

The process of accreditation of bulk wheat exporters between now and the beginning of October will mean that some companies receive accreditation before others.

To ensure that all parties are treated fairly and transparently **from the date of this correspondence** to 4.00 pm Friday 2nd October 2009 all cargo nominations for cargos to be shipped post 30th September 2009 received will be considered to be 'Provisional' nominations.

All 'Provisional' nominations will be placed on the GrainCorp shipping stem on the business day following receipt.

4. Assessing 'Provisional' nominations

1. For fairness and transparency, 'Provisional' nominations will be only be assessed between 8.00 AM Monday 5th October 2009 and 4.00 PM Friday 9th October 2009.
This will allow all companies submitting nominations prior to 4.00 PM Friday 2nd October to meet the accreditation and agreement criteria listed in 2. b. 1 (above).
2. Exporters that have submitted 'Provisional' nominations before meeting the criteria listed in 2. b. 1 will have to meet that criteria by 4.00 pm Friday 2nd October 2009 to ensure that 'Provisional' cargo nominations can be assessed.
 - a. Exporters should forward the following advice to GrainCorp Logistics to support any 'Provisional' nominations as soon as practical;
 - i. The date on which they received Bulk Wheat Exporter Accreditation from Wheat Exports Australia; and,
 - ii. The date on which they sign either the Storage and Handling Agreement and / or the Bulk Wheat Port Terminal Services Agreement.
3. Any 'Provisional' cargo nomination that is not supported in the abovementioned manner will not be assessed and will be removed from the shipping stem.
4. 'Provisional' nominations will be assessed between 8.00 AM 5th October 2009 and 4.00 PM 9th October 2009 and will be placed on the shipping stem as 'Pending' if they pass the assessment process.
5. Exporters will then have to pay the Booking Fee detailed in the 2009/10 GrainCorp Port Pricing Schedules for 'Pending' cargo nominations in the manner specified in the GrainCorp Port Terminal Protocols¹.
 - a. Once the Booking Fee has been paid, the 'Pending' CNA's will be 'Confirmed' on the GrainCorp shipping stem.
6. If the Booking Fee is not paid in the manner specified in the GrainCorp Port Terminal Protocols, 'Pending' nominations will be removed from the GrainCorp shipping stem.
7. In the event that two or more 'Provisional' nominations are made for the same laycan period at a single port, shipping stem priority will be given to the nominations in the chronological order in which they were received by GrainCorp as 'Provisional' nominations.

¹ <http://www.graincorp.com.au/prodserve/Ports/Pages/PortTerminalServiceProtocol.aspx>

5. Cessation of Transitional Arrangements

These provisional arrangements will cease at 4.00 PM 9th October 2009.

I trust that you will see the transitional arrangement detailed above as a bone fide attempt on the part of GrainCorp to clarify and provide certainty during a period that is unique.

GrainCorp will work with customers during August to ensure that relevant Agreements are signed and in place, and that the transition to the new port terminal access regulations provides little disruption to grain export activities.

Yours sincerely

A handwritten signature in black ink, appearing to be 'B. Griffin', written in a cursive style.

Bruce Griffin

General Manager, Storage & Logistics