

The ACCC received submissions to its Draft Decision regarding GrainCorp's Proposed 2011 Undertaking that were provided in confidence. To facilitate an open and transparent process, the ACCC has prepared the following summary of the views provided:

Allocation of Slots

In regard to allocation of slots submitters propose the following:

- That an independent body manages the allocation of slot bookings and receipt and management of fees relating to slot bookings.
- That defined terms, conditions and costs of loading vessels be in place prior to bookings being made available.
- That slot booking windows are published in an adequate and timely manner.
- That appropriate anti-hoarding provisions are enforced.

Transferability of Slots

Submitters stated that an appropriate method of transferring slot bookings between exporters is an essential tool for the Australian grain industry to achieve greater efficiencies and competitiveness.

The current system requires grain exporters to make forward commitments for slots well before grain is sold, grain quality is known or even purchased from farmer. It is unknown to the exporter until much closer to the export period what exactly their shipping program might look like and having the ability to swap with other exporters would improve market efficiency markedly – especially when looking at the GrainCorp stem for 2010/11 season.

In regard to transferability of slots submitters propose the following:

- That slots are able to be transferred across ports.
- That slots are able to be transferred across time frames.
- That slots are able to be transferred across counterparties.
- That counterparties must have a current Storage and Handling Agreement with GrainCorp.
- That all rights and obligations owing to the holder of the slot are transferred to the receiver.

Treatment of Booking Fees/Penalties

Submitters consider that there is a fundamental flaw under the current conditions whereby all BHC's, including GrainCorp, have the ability to book slots with no real penalty resulting from non-performance. In effect, the most damaging result is a journal entry across divisions of the same parent, whereas every other participant in the marketplace bears these non-performance costs as real.

Submitters propose the following:

- That agreed booking fees are paid by all participants across all GrainCorp ports into an escrow/trust account managed by the independent body.
- That agreed charges resulting from non-performance by an exporter (excluding GrainCorp) result in forfeiture to GrainCorp.
- That agreed charges resulting from non-performance by GrainCorp result in forfeiture to an agreed charity/industry goodwill recipient.

Demurrage and Despatch

Submitters consider that appropriate demurrage/despatch clauses need to be created and included within the GrainCorp's 2011 Port Access Undertakings in line with comparative global grain industry participants.

The current Undertakings have the effect of misaligning risk and control as GrainCorp are paid to control loading and potentially logistics whilst the FOB seller is exposed to the risk which would be extremely rare outside of monopolistic environments.

This situation is not commercial given the substantial fee structure GrainCorp is paid to efficiently elevate product.

Ring Fencing

Submitters consider that GrainCorp's marketing arm has unfair access to commercial information not available to the rest of the industry and as such request that appropriate ring fencing measures be put in place.

The type of information to come under ring fencing provisions include but are not limited to:

- Daily harvest receival volumes and qualities.
- Individual exporter stock holdings by quality and location.
- Warehoused stocks by grower by quality and location.
- Quality of grain being loaded at each port.
 - This in comparison to the basic published stem information (i.e. GrainCorp's marketing arm can see an exporter needing to load APH2 where the industry only sees Wheat).

Submitters requested that, if the ACCC maintains their position and does not enforce ring fencing provisions, information available to GrainCorp's marketing arm be made available to the industry as it comes to hand to level the playing field.

Reporting

Submitters consider that increase port loading efficiencies would result if GrainCorp is required to publish relevant performance measures and key stock at port information. This will assist in clarifying and predicting potential bottlenecks, allowing remedial actions to occur in a timelier manner.

These include but are not limited to:

- Weekly stock at port report by quality and volume noting excess capacity available.
- Port performance (i.e. average daily receival rates, assigned loading dates)
- Capacity versus accepted bookings versus actual tonnes shipped by month.
- Port congestion notifications (i.e. vessel survey failures, nominations rejected, port receival block-outs)