



## **Australian Grain Exporters Association**

### **Response to the Draft Amendment Notice in relation to GrainCorp Operations Limited's proposed Port Terminal Services Access Undertaking**

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#### **Introduction**

AGEA appreciates this opportunity to provide comment on the Draft Amendment Notice in relation to GrainCorp Operations Limited's Port Terminal Services Access Undertaking.

AGEA would like to take this opportunity to reiterate a number of points that it has previously highlighted and which it does not believe have been adequately addressed in the Draft Amendment Notice.

As we have previously indicated AGEA believes that ACCC approach to the access test for GrainCorp (and CBH and Viterra) should be designed to deliver an efficient supply chain and certainty of performance for all users of port terminal services across Australia. AGEA does not believe that the arrangements outlined in the Draft Amendment Notice will achieve these objectives.

Areas where AGEA would like to see further change in the Draft Amendment Notice are discussed following.

#### **Transferable capacity**

In its Draft Decision the ACCC noted that a system of transferable capacity would provide mechanisms to both enable exporters who value capacity most highly at peak times to acquire it from a shipper who places a lower valuation on it and to enable an exporter to acquire capacity that is unwanted by the holder of the booking. The ACCC notes that in submissions received to the Draft Decision, GrainCorp was opposed to bookings for its port terminal services being transferable, while access seekers and the industry members supported capacity being transferrable.

The ACCC in the Draft Amendment Notice accepts GrainCorp's proposed alternative to transferrable capacity that will allow shippers with capacity booked for a peak period to receive a partial refund of the booking fee if that capacity or greater is subsequently taken up by another shipper. GrainCorp proposes a conditional 50% refund of the booking fee when capacity booked for a peak period is surrendered at least 35 days prior to the first day of a confirmed elevation period. A peak period is defined as one for which total tonnage showing as 'accepted' on the shipping stem equals the published total tonnage of elevation capacity for the corresponding elevation period.

AGEA does not believe that this meets the definition of transferable capacity; that it will not deliver the efficiency gains that AGEA is seeking through its proposals; and will not provide exporters with certainty to acquire and execute slots.

AGEA believes that it would be relatively simple to introduce transferable capacity and would not require the establishment of a secondary market. AGEA believes that slots should be transferrable across approved counterparties; as well as ports, grain and elevation periods.

This could be done by GrainCorp establishing a set of business rules to protect both GrainCorp and exporters including such as aspects as:

- the maximum number of times a individual port/time period combination of slots are transferrable between counter parties

- the requirement of the party to which the slot is transferred to hold a current agreement with the port terminal operator; not have any outstanding matters with the port terminal operator; and meet the BHC's usual trade terms
- once transferred, the booking carries all booked arrangements as confirmed with the transferor; and the transferee acquires all obligations, and rights, held in relation to the booking by the transferor at the time of the transfer
- timeframe for application of additional rules e.g. if the original booking nominated wheat, the commodity would not be able to be changed if the transfer was inside the window of where grain may have begun to be assembled for that shipment

AGEA believes that transferable slots will greatly enhance flexibility and efficiency, particularly in periods of peak demand and strongly encourages ACCC to require GrainCorp to develop a proposal that allows for transferable slots across counterparties as it does for ports, grain and elevation periods.

### **Information on stock at the port**

AGEA acknowledges that the additional information that GrainCorp has agreed to publish provides some improvement and addresses, in part, concerns of exporters, but this remains inadequate in AGEA's view.

AGEA has previously stated that it does not support the ACCC view that the current undertakings deal adequately with the issues relating to information that can be used to the advantage of GrainCorp's wheat exporting arm.

AGEA strongly encourages the ACCC to require BHCs to put in place mechanisms that avoid vertically integrated companies from advantaging their trading arms through access to information/services that are not available to other exporters i.e. anything that a BHC trading team sees/receives should be made available to the market and at the same point in time.

Specifically the information that GrainCorp should make available is:

- i) Stocks at port by grade
- ii) Warehouse stocks by port zone and grade<sup>1</sup>
- iii) Crop profile i.e. average quality data by port zone by commodity by grade by tonnes

In relation to the information GrainCorp has proposed to publish in the revised Undertakings, AGEA believes that this should be modified so that stocks published cover a minimum of 90% of stocks at port i.e. rather than publish stocks of the three grades of bulk wheat contributing the largest tonnage at each port terminal, the stocks by grade comprising 90% of bulk wheat at port should be published.

In addition, AGEA would request that GrainCorp reflect the stocks as a percentage of capacity for that grade i.e. x tonnes of APW represents y% of capacity available for APW.

### **Shipping stem fees**

The ACCC recognises in the Draft Amendment Notice that GrainCorp has a degree of market power in relation to its control of its port facilities and incentive to advantage its activities upstream and downstream of the port, but continues to believe that the countervailing competitive constraints means that GrainCorp has a significantly lower incentive for self preferential treatment in its capacity management relative to that of either Viterro or CBH.

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<sup>1</sup> The information referred to in ii) and iii) applies to the whole network not just at port

The ACCC notes in the Draft Amendment Notice that one way of dealing with problems of hoarding capacity is by independent management of the shipping stem and/or the booking fees, but does not consider that these are required of GrainCorp at this point in time.

AGEA disagrees with this and believes that a process for the independent management of shipping stem and/or booking fees should be established as a matter of priority and utilised across GrainCorp, Viterra and CBH. AGEA strongly encourages the ACCC to establish an independent management to ensure that capacity allocation and management occurs in a competitively neutral way.

### **Accountability, in particular, demurrage/despatch**

The ACCC remains of the view that demurrage and liability arrangements are contractual issues to be resolved through commercial negotiation between parties and notes that parties seeking to negotiate in relation to the liability provisions of the Indicative Access Agreement may avail themselves of the dispute resolution procedures in clause 7 of the Proposed 2011 Undertaking.

AGEA does not agree that this is adequate as to date access seekers have not been able to successfully negotiate satisfactory commercial arrangements. AGEA maintains that appropriate demurrage/despatch clauses should be created within the Port Access Undertakings in line with the global grain industry to encourage greater efficiencies through Australian ports. In particular, where the incumbent BHC offers a bundled service, this should be accompanied by commercially realistic load rates and the payment of demurrage/despatch at prevailing market shipping rates.

It is noted that GrainCorp opposes the inclusion of dispatch demurrage provisions in the proposed 2011 undertaking on the basis that they do not manage the whole supply chain. It is AGEA's view that arrangements could be developed whereby GrainCorp is only accountable in relation to tasks where they have responsibility.