

27th April 2011

Mr. Anthony Wing
General Manager
Transport & General Prices Oversight
ACCC
GPO Box 520
Melbourne Vic 3001

Dear Mr Wing,

Goodman Fielder Ltd submission to the ACCC in relation to GrainCorp Operations Limited ("GrainCorp")'s port terminal access undertaking

Goodman Fielder Ltd ("**Goodman Fielder**") is Australasia's leading listed food company. The company has an excellent portfolio of well known consumer brands in some of Australia's largest grocery categories, including Meadow Lea, Praise, White Wings, Pampas, Mighty Soft, Helga's, Wonder White, Vogel's (under licence), Meadow Fresh and Irvines. Our products cover every meal occasion, including breakfast, lunch, dinner and snacks.

We produce and market bread, milk, margarine, flour, dressings, condiments, dips, mayonnaise, frozen pastry, cake mix, pies, savouries, smallgoods, chilled and frozen pizza, desserts, sauces, vinegar and cooking oils. Relevant to this submission, Goodman Fielder is the largest supplier of flour to both New Zealand and Papua New Guinea.

Goodman Fielder does not currently accumulate its own wheat at port for export from Australia. Instead, Goodman Fielder is a FOB buyer from other accredited bulk wheat exporters. This means Goodman Fielder provides a ship into which the seller must load the bulk wheat for carriage to Goodman Fielder's own flour mills.

It is the seller that bears the risk of ensuring bulk wheat is accumulated at port and loaded onboard the ship within the period specified under the sales contract with Goodman Fielder. Goodman Fielder does not have any contractual relationship with GrainCorp for port terminal services.

However, as a FOB buyer, the allocation of shipping capacity at GrainCorp's port terminals impacts Goodman Fielder's business.

Where Goodman Fielder requires bulk wheat from Australia, it will seek tenders from accredited bulk wheat exporters for the supply of that wheat. A standard tender process usually commences approximately 2 months before the delivery period opens and the delivery period is usually 21 days.

The delivery period is an integral part of the sales contract. It is determined by Goodman Fielder's own obligations, which include ensuring that the Goodman Fielder mills have sufficient wheat to keep operating.

One important factor that any FOB seller of bulk wheat must consider before deciding whether to participate in the tender, is whether it will be able to accumulate and load the bulk wheat within the prescribed delivery period. To do that, it must be able to gain access to a vessel slot.

Goodman Fielder's experience with the current GrainCorp port terminal access regime is that it limits the number of potential FOB sellers that will have fair and open access to vessel slots and be able to accumulate and load bulk wheat within a specified delivery period. This means there will be less participants in the tender process. This can result in Goodman Fielder either:

1. paying more than it would, had it been able to participate in a fair and open market; or
2. not being able to actually purchase bulk wheat during the period required to fulfill its own obligations. This means Goodman Fielder may have to look to other markets to source its wheat outside of Australia, which it does not wish to do.

Goodman Fielder's experience is indicative of the problems faced by any FOB and or CFR buyer that wishes to buy Australian bulk wheat.

A practical example of the current port terminal regime excluding participation in Goodman Fielder's tender process is shown at **Attachment 1**. [CONFIDENTIAL]

Goodman Fielder sets out below some of the barriers that inhibit fair and open access to vessel slots and prevent port capacity being fully utilised.

1. **Shortfalls of the 2009 GrainCorp access undertaking – Speculative vessel slot booking**

Allowing the speculative booking of vessel slots, increases the chance that the slot will not be used, meaning the port capacity is underutilised.

The current port terminal protocols encourage speculative booking by:

- (i) selling vessel slots months in advance of when any sales contracts are likely to be executed; and
- (ii) allowing the vessel slots to be booked, without a sales contract standing behind that booking.

There is a material economic incentive for exporters to speculatively book up vessel slots so as to become the only exporter able to ship cargo from that port during the period of time for which they have booked up the slots.

This means that other exporters cannot offer to supply customers on FOB and/or CFR basis during that period as they cannot guarantee being able to deliver the product onto the ship, thus preventing there being a fair and open market for the sale of wheat through that port at that time. As stated above, access to a vessel slot is critical to an exporter's ability to compete for the sale of wheat to a customer.

This inhibition on competition can rarely be circumvented by utilising a different port that is operated by that particular bulk handling company, as there will usually be logistical cost differentials that are sufficiently material that they prevent exports being competitive from the alternate port.

Whilst an exporter engaging in the tactic of speculatively booking up vessel slots runs the risk of paying for unutilised slots, this cost is outweighed by the benefit to those exporters of the higher wheat prices that they can demand once they have obtained a virtual monopoly over the port at that time.

Goodman Fielder does not believe the non-refundable booking fee is of itself sufficient to stop the speculative booking of vessel slots. Larger exporters with sufficient cash flow are able to book and pay for slots once they are released, despite the booking being up to eighteen months in advance of when the slot is to be used and the risk that they may not use the slot.

Goodman Fielder sets out below what appears on the face to be an example of an accredited exporter booking a vessel slot on a speculative basis (**Attachment 2**). [CONFIDENTIAL]

The point being, that the current port access regime either allows or actually encourages the speculative booking of vessel slots. Such practice can only have a compounding affect, i.e., accredited exporters feel pressured to book slots on a speculative basis (before they have a contract sale), or risk not being able to book a vessel slot if they wait until they either have or wish to enter into a sales contract, as was the case in **Attachment 1**.

2. **Recommendations**

Goodman Fielder recognises that there are no easy solutions to the barriers inhibiting fair and open access to vessel slots and preventing port capacity being fully utilised. However, set out below are some recommendations that Goodman Fielder believes will both increase the likelihood of fair and open access to vessel slots and improve the use of port capacity.

The ACCC has specifically requested comment as to whether any recommendations for change would require GrainCorp to amend part of its standard terms and conditions, port terminal services protocol and indicative access agreement. It is likely that the recommended changes set out below would require GrainCorp to redraft some terms and clauses in relevant documents. However, Goodman Fielder considers seeking to achieve fair and open access to vessel slots should be the priority, rather than choosing to not implement change because it will require GrainCorp to redraft a small number of terms or clauses.

(a) **Contract in hand**

Goodman Fielder believes that the most efficient way to reduce speculation in buying vessel slots is to require parties seeking access to have a sales contract standing behind the request for a vessel slot.

The only effective way to ensure compliance is to have an independent body oversee the process. Goodman Fielder would not expect the associated cost to be significant, which could be funded by a small surcharge imposed upon shippers. This option is simpler and less expensive than other systems that have been put in place as attempts to resolve the problem of speculative purchasing of vessel slots.

The process would need to be audited on a regular basis, and if the independent body established that a shipper had breached the protocol without legitimate reason, (such as the buyer terminating the sales contract), that shipper could face a "fine", which could be used to fund the administration costs of the independent body.

(b) Trading and on-selling vessel slots as a secondary market

As an alternative to (a), if a party is not required to have a sales contract in place before booking a vessel slot, Goodman Fielder considers that it is necessary to allow vessel slots to be traded or sold, provided that can be done in such a way that does not artificially increase the contract price and limits the incentive for speculators to enter the market.

Allowing vessel slots to be traded or sold in a secondary market should increase the utilisation of port terminal capacity.

Goodman Fielder recognises that trading or selling vessel slots may increase the incentive to enter into the speculative purchase of vessel slots more than the current system, which does not allow unused slots to be traded. However Goodman Fielder believes that capping the price that the vessel slot can be sold at the original purchase price should reduce the incentive to speculate, as the seller cannot make a profit on that sale. In fact, it can not even recoup its costs of finance, and therefore has to sell at a "net" loss.

Goodman Fielder's preferred option is for an independent body to regulate the secondary market. However, if it is the ACCC's position that GrainCorp should administer the secondary market, it is essential that sufficient ring-fencing protection is in place to ensure that GrainCorp's marketing is treated on the same terms as other accredited exporters and does not gain any advantage. Further, GrainCorp should only be entitled to charge a nominal administration fee for the processing of any trade or selling of vessel slots, and should not be permitted to calculate its fee on the basis of the tonnage traded/transferred. The tonnage to be traded/sold does not have any impact on the cost of providing the service.

(c) Opening unused vessel slots

A further alternative is to require the party seeking access to enter into a sales contract at the latest 12 weeks before the first day of the vessel slot spread. If a sales contract is not in place within that period, there is a strong risk that the slot will not be utilised. However, there is still an opportunity that another accredited exporter could use that slot. For that reason, if a sales contract is not in place, the holder of the vessel slot should be required to either trade or relinquish that slot.

Goodman Fielder believes that this system is more likely to increase port terminal utilisation than option (b) above. Option (b), allows the accredited exporter to retain the vessel slot despite not

using it, which will result in a reduction of port terminal utilisation. It also allows the party holding the vessel slot to block other accredited exporters from using the port berths during that time.

Option (c) requires the exporter to either relinquish or trade the slot within a time frame that allows other accredited exporters to determine whether they could use that vessel slot. Again, the only effective way to ensure compliance is to have an independent body oversee the process.

(d) **Notification of excess capacity**

GrainCorp should be required to advise all interested parties at the same time of any excess port terminal capacity that becomes available.

Goodman Fielder suggests that interested parties could register an email address with GrainCorp to receive such notifications.

Goodman Fielder trusts the above will be of assistance to the ACCC and remains willing to meet to discuss any of the issues raised.

Yours sincerely



Jonathon West
Group Commercial Director
Goodman Fielder Limited