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4 March 2011

Mr Anthony Wing
General Manager
Transport & General Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

By email: transport@acc.gov.au

Dear Mr Wing

ABA Access Undertaking for 2011 to 2014

I write in response to the issues paper dated 20 January 2011. This letter may be placed on the public register.

Heading

1. Proposed term of the Access Undertaking

1.1 CBH Grain considers that it would not be appropriate for the undertaking to be withdrawn during the course of the year. Entry into agreements may be made on the understanding that the Undertaking is in existence and without the Undertaking different terms may have been requested. CBH Grain considers that the Undertaking should be for a minimum term that would comprise a full season.

1.2 CBH Grain notes that if ABA only wishes to provide an undertaking for a single year it is within its rights to do so.

2. Capacity Management

2.1 CBH Grain considers that there is a requirement for additional transparency in the Loading Protocols and the Shipping Stem.

- 2.2 In particular CBH Grain would like to see greater detail around the prioritisation of vessels arriving into Melbourne Port and the subsequent prioritisation of grain accumulation into the port. It is this prioritisation which appears critical to the efficient functioning of the Melbourne Port Terminal.
- 2.3 CBH Grain enquires whether it was the intent of ABA to require a vessel name to be lodged at the time that an Intent to Ship Advice was delivered as opposed to a Vessel Nomination. In particular CBH Grain notes that rule 9 of the Port Loading Protocols (PLP) states that ABA will not accept "TBA" notifications yet the example stem shows TBA nominations.
- 2.4 Following acceptance of an Intent to Ship Advice by ABA a Booking is created. CBH Grain assumes that the Booking would necessarily be uncertain as it may be a considerable period in advance. When the Booking is made a liability to pay the Booking Fee is created and the shipper should have a reasonable belief that endeavours will be made to allow the shipper to export grain within the parameters of the Booking.
- 2.5 The shipper is then required to make a Vessel Nomination into the Booking Window at least 21 days before the estimated time of arrival of a vessel. This effectively narrows the likely time of performance that will be demanded of the terminal. CBH Grain considers that the terminal is effectively operating a system that pulls stock to port to meet vessel arrivals and that accumulation should be prioritised accordingly. Specific cargo factors may allow multiple cargoes to accumulated at the same time but it would appear unlikely that two full cargoes would be simultaneously accumulated.
- 2.6 CBH Grain questions what happens if the Vessel's are prioritised by ABA such that the elevation of grain no longer occurs within the booking window or ABA refuses to accept a vessel nomination. Will ABA refund the booking fee that was paid if it frustrates the performance of the vessel loading? CBH Grain notes that under rule 35 ABA will forfeit the Booking Fee if a vessel's ETA is revised such that it is more than 5 days from the original ETA.
- 2.7 CBH Grain notes that there are some minor definitional alignment that needs to occur between the Undertaking and Agreement and the PLP. In particular, CBH Grain notes that:
- (a) the PLP are referred to by a number of different terms, including as Port Terminal Operating Protocols in the Agreement. CBH Grain has assumed that they are the same.
 - (b) it assumes that the Booking Fee referred to in the PLP is the same as the Nomination Fee referred to in the Agreement?
- 2.8 CBH Grain is unsure whether a first in time booking process is actually set out in the PLP as it is only if all other things being equal that the first in time Intent to Ship Advice will be given priority. If all other things are not equal (and it is unlikely that they would be) then it would appear that ABA has a complete discretion as to which Intent to Ship Advice it will accept. In addition ABA's discretion to accept or reject a Vessel Nomination also cast some doubt whether a first in time

booking process is actually in place. There is no obligation on ABA to not accept more Intent to Ship Advices than it can reasonably handle.

3. Publication of Information and Performance Indicators

3.1 CBH Grain considers that there is other information that could be published by ABA which will assist access seekers in understanding the operation of the facility. In particular, ABA should publish statistics more frequently than six monthly, perhaps quarterly, which demonstrate how access seekers and the terminal are complying with the Loading Protocols including:

- (a) days between ETA and NOR receipt;
- (b) number of vessels failing survey in the quarter and year to date;
- (c) average time between receipt of application and acceptance or rejection;
- (d) number of vessels loaded in the quarter and year to date; and
- (e) number of tonnes loaded in the quarter and year to date.

3.2 CBH Grain considers that information about the utilisation of storage throughout each month will also assist in determining whether the Port Terminal is being efficiently operated, especially given that storage capacity is one of the key determinants of terminal throughput.

4. CBH Grain considers that there are certain terms in the Storage and Handling Agreement which would not be appropriate in the operation of the Access Undertaking. In particular:

4.1 The variation process set out in clause 18 of the Agreement is not appropriate;

4.2 The liability provisions of the Agreement are not appropriate in all circumstances. CBH Grain considers that ABA should be responsible for outturning grain delivered into its care or else compensating the affected party to the extent that ABA is responsible for the loss.

Yours sincerely



Brian Mumme
General Manager – CBH Grain