

EMERALD LOGISTICS PTY LTD

APPLICATION TO BE AN EXEMPT PORT TERMINAL SERVICES PROVIDER FOR MELBOURNE PORT TERMINAL

SUPPLEMENTARY SUBMISSION

Introduction

On 25 November 2014 Emerald submitted an application to be an exempt port terminal services provider in relation to services provided at its Melbourne Port Terminal. This was followed shortly after by an application from GrainCorp for exemption of its Geelong and Portland grain terminals.

On 12 December 2014 the ACCC released an Issues Paper to commence a public consultation process on the applications submitted by Emerald and GrainCorp. Public submissions were due by 30 January 2015.

The public submissions received on or prior to 30 January 2015 were unanimously either supportive of or generally not opposed to the granting of the exemptions for each of the port terminals.

On 6 February 2015 the Victorian Farmers Federation Grains Group (“VFF”) lodged a submission opposing the exemption of any of the port terminals.

The purpose of this Supplementary Submission is to address the concerns raised by VFF as they apply to Emerald’s proposed exemption.

General point about separate applications

As a general point, the VFF has approached their market analysis on the basis that the applications of Emerald and GrainCorp can be regarded as one joint application. This is not the case. The applications are separate applications and it is open to the ACCC to exempt Emerald’s MPT only, or GrainCorp’s port terminals only, or all of them. Consequently many of the VFF’s observations may be valid in respect to GrainCorp’s position in the market (we express no opinion on this) but they are demonstrably inapplicable to Emerald’s position in the market, and the VFF has failed to make this very important distinction.

Specific Responses

1. Substitutability of NTP Catchment Areas

The VFF has submitted that Melbourne and Geelong are in distinct NTP port zones and are therefore not substitutable. This implies that Melbourne and Geelong do not compete with each other.

This submission flies in the face of the evidence. There is a strong overlap in the catchment area of Melbourne and Geelong. The GrainCorp sites that compete up-country with Emerald sites, due to proximity, direct their grain through Geelong whereas the clients at Emerald sites direct their grain to either Geelong or Melbourne or sometimes both. The freight differential between the two ports is relatively minor, the physical attributes of the two

ports are similar and none of the other public submissions received by the ACCC questioned the fact that the two port terminals compete with each other.

2. Business interests

The VFF submits that Emerald's business interests would be better served by the existing regulation through "*guaranteeing throughput and usage of the excess capacity at Victorian port terminals by all exporters*".

To the contrary, Emerald is concerned that its demonstrated excess capacity is not being utilised despite mandated open access under the regulation, and that it needs to offer bespoke, flexible and more certain arrangements for exporters, which are discouraged under current regulation, in order to grow patronage. Furthermore, Emerald has not stated any intention to exclude any exporter and it is our submission that, following exemption of MPT, continued and increasing competition will ensure viable export options for all Victorian exporters.

3. Impact of exemptions on market competition

VFF submits that exemption of the three port terminals (Melbourne, Geelong and Portland) would "*entrench market power through a duopoly*" and result in competitive constraints in upstream markets.

As pointed out above, it is wrong to assess the market power of Emerald in conjunction with the market power of GrainCorp. Emerald has lodged its own separate application for exemption, and the decision for exemption should be based on the impact on competition of the exemption of MPT, not on the exemption of MPT, Geelong and Portland.

As it turns out, Emerald's share of the port terminal services market is smaller than its major competitor and likely, without change, to decline even further when new capacity from Bunge Geelong comes on stream. Not to mention the impact of the ability of traders to sell into the domestic and container markets, which are significant and growing in size. Emerald's share of the up-country storage market is relatively minor compared to the shares of GrainCorp, Cargill/GrainFlow, private stores and on-farm storage.

While it is true that Emerald is a vertically integrated operation, this is for reasons of efficiency and Emerald certainly does not have the power to leverage its structure to control the market, as feared by VFF.

4. Information Asymmetry

VFF is concerned that port terminal service providers have access to warehouse stock information. Under current regulation there is no requirement for the disclosure of warehouse stocks, which are primarily held up-country, and it is not therefore clear on the face of the VFF submission why this information "asymmetry", as VFF terms it, would increase if exemptions for port terminals were granted.

5. Promotion of efficient investment

VFF cites the proposed Bunge facility at Geelong as evidence that the Code has not been an impediment to investment in the supply chain. It should be noted that the Code apparently does not actually apply to Bunge's Bunbury port terminal and it may well not apply to its Geelong facility, based on Bunge's investment model.

In any event, the point is not whether more investment will be promoted, but rather whether efficient investment will be promoted by the exemption of MPT. We can confirm that Emerald's investment in the supply chain has been curtailed by the current regulatory regime (we have supplied the ACCC with a confidential real life example) and that there are many opportunities to increase the efficiency of the Emerald supply chain which will only be realised if we have the flexibility to work with exporters on long term vision, bespoke export solutions and risk-sharing models. The current level of regulation discourages these initiatives.

Conclusion

The VFF's farmer members will benefit for the exemption of MPT through a more efficient export supply chain and a greater level of competition at port and up-country.

END