

28 January 2014

Ms Katie Young  
Acting Director  
Infrastructure & Transport - Access & Pricing Branch  
ACCC, GPO Box 520  
MELBOURNE VIC 3001

Email: [katie.young@acc.gov.au](mailto:katie.young@acc.gov.au)

Dear Ms. Young,

RE Applications seeking exemption from provisions of the Port Terminal Access (Bulk Wheat) Code of Conduct – GrainCorp Operations Limited and Emerald Logistics Pty Ltd.

Under the Port Terminal Access (Bulk Wheat) Code of Conduct (the Code), which commenced in 2014, port terminal service providers are able to formally apply to the ACCC for exemption from parts 3 to 6 in relation to a specified port terminal facility. Exempt service providers face a lower level of regulation as they remain subject to only parts 1 and 2 of the Code.

GrainGrowers note the ACCC is currently assessing the following exemption applications:

- 1) Emerald's application to be an exempt port terminal service (PTS) provider in relation to port terminal services provided at its Melbourne Port Terminal (MBT) (November 2014)
- 2) GrainCorp's applications to be an exempt PTS provider in relation to port terminal services provided at its Geelong and Portland port terminals. (December 2014)

In 2014, during the consultation process involved in developing the Port Terminal Access (Bulk Wheat) Code of Conduct, GrainGrowers provided a submission to the regulator which highlighted the importance of creating conditions in the grains industry that enable, support and facilitate a competitive grains industry with a range of small and large market operators. The key concerns for GrainGrowers are that:

- There is sufficient competition in the provision of, and access to, port services, to deliver efficient pricing; and
- There is sufficient certainty and incentive for PTS operators and owners to invest in the ongoing maintenance and upgrade of facilities into the future.

This vision for a competitive industry, with multiple operators, is best realised through the ability of the ACCC to adapt its regulation to a changing environment. In light of this, GrainGrowers provides the following comments on the applications currently under review:

## **1) Application of the Code to Emerald in the port of Melbourne**

- Victoria is one of Australia's most competitive grain regions; currently there are two port operators, operating three grain export terminals. Melbourne encounters high levels of competition from GrainCorp's facility at Geelong and Portland.
- In addition, in 2014, Bunge announced it will be building a new terminal at Geelong. Bunge's terminal will target export of approximately 450,000 tonnes per annum and will compete directly with Melbourne and GrainCorp's Geelong facilities.
- Emerald, compared to GrainCorp, has very minimal influence on upstream markets, and this is diminished by the strong domestic market, competing storage, and container trade.
- Emerald's key clients to date are understood to have exported out of Melbourne and Geelong and have significant bargaining power. One of those clients, Bunge, has announced development of its own terminal at Geelong.
- Exemption to the Code will allow Emerald to work around the rigidity of the capacity allocation system and the uncertainty of application of the non-discrimination test. Melbourne's first-in-first-served (FIFS) capacity allocation system has some impact on Emerald's ability to invest in long term up-country storage and rail assets.

## **2) Application of the Code to GrainCorp Operations Ltd (GrainCorp) for an exemption for GrainCorp's Geelong Port Terminal Facility (Geelong Port Terminal) and Portland Port Terminal Facility (Portland Port Terminal)**

- GrainCorp faces a competitive market in Victoria with significant excess capacity in most years. A number of grain supply chain alternatives are available to grower and buyers.
- In Victoria, GrainCorp faces competition from competing alternative domestic and container packing markets, combined with excess country and packing capacity, for the majority of Victorian grain. Granting an exemption to GrainCorp will place GrainCorp on a level playing field with alternative and competing markets (the majority being domestic and container packing markets) that are not subject to regulation.
- GrainCorp also faces competition in the provision of port elevation services for bulk grain from Emerald's Melbourne Port Terminal (MPT), and the planned Bunge Terminal (Bunge Port Terminal) at Geelong, combined with competition from Glencore Port Terminals in Adelaide. Granting GrainCorp an exemption will likely enhance, and promote grain industry competition, by allowing GrainCorp to provide competitive services to exporters for bulk grain exports.
- Excess port elevation capacity (and excess country storage capacity) where GrainCorp is commercially incentivised to maximise throughput from all users at its Port Terminals. Granting GrainCorp an exemption may therefore help lower supply chain costs by allowing GrainCorp to operate its Port Terminals flexibly and invest in improving its port and supply chain infrastructure.

- Pricing of upcountry storage is currently below market rates, which GrainGrowers believe is in an attempt to price on-farm storage and subsequent grower direct to port grain, out of the market. The discount on upcountry storage is accompanied by higher port costs for grower direct to port grain. This manipulation of pricing is cause for concern and the capacity of smaller operators to obtain efficient port pricing.

In light of the above points highlighted in this submission, GrainGrowers consider there will likely be sufficient competition in the grain catchment area in question, to warrant exemption under these two applications. However, much of this is contingent on the Bunge announcement of the new facility at Geelong. As such GrainGrowers strongly recommends:

- *that exemptions be reserved until following the successful initial operation of the Bunge facility; and*
- *that all PST operators in the catchment (Melbourne, Geelong, Portland, Adelaide) be required to publically report stocks daily, beginning immediately, and then ongoing as a condition of exemptions. This will provide greater understanding of capacity and therefore greater transparency and therefore efficiency in the negotiation of port services pricing.*

We strongly encourage the ACCC to consider the critical need for new forms of regulation, such as the Code, to remain responsive and adaptive to a changing environment and to minimise the cost of regulation on individual operators.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alia B.', with a horizontal line extending to the right from the end of the signature.

CEO – GrainGrowers Ltd