6 February 2015

Australian Competition and Consumer Commission
c/o: Mr Michael Eady
via email: michael.eady@accc.gov.au

To the Commission,

Victorian wheat ports exemption assessments

The Victorian Farmers Federation ("VFF") Grains Group would like to thank the Australian Competition and Consumer Commission ("the Commission") for the opportunity to provide a submission and input into the Commission's assessment of recent applications from GrainCorp and Emerald seeking exemptions from certain provisions of the Port Terminal Access (Bulk Wheat) Code of Conduct ("the Code") for their Victorian port terminals.

The VFF Grains Group supports the need for an open, efficient, and transparent market to promote competition throughout the grain supply chain. To this end, the VFF Grains Group considers that the level of competition in the Victorian grains market is currently insufficient to warrant granting exemptions from Parts 3-6 of the Code.

The current competitive environment is such that the exemption of the three Victorian bulk wheat export terminals from these parts of the Code would not only restrict competition at the port terminals, but would also lead to competitive constraints in upstream markets. It is the strong view of the VFF Grains Group that such a reduction in competition would not be in the public interest, as identified in subclause 5(3) of the Code as a key matter to be taken into consideration for the determination of exemptions.

The VFF notes that the vertically integrated assets of GrainCorp and Emerald largely dominate the Victorian storage, handling, port and export markets. As prices in the domestic grain market are determined by 'export price parity', any inefficiency through lack of competition in the ports will pass back through to Victorian producers and consumers.

The VFF also considers that market failure and competition is being impeded through information asymmetry, as port terminal service providers have almost exclusive access to free stock information (wharehouse stocks). This asymmetry would only increase if the aforementioned exemptions were granted, as third party exporters and the domestic market will not have genuine market access since they would be unable to access the stocks information necessary to competitively acquire grain to load their vessels at port or for domestic processing.

In sum, the VFF Grains Group is concerned that granting exemptions from the Code for Victorian bulk wheat port terminals would lead to a reduction in competition and would not be in the public interest.

Yours sincerely,

Brett Hosking
President
Victorian Farmers Federation Grains Group

Submission to the ACCC regarding

Victorian wheat ports exemption applications

Submission to the Australian Competition & Consumer Commission regarding Victorian wheat ports exemption applications

Introduction

The Victorian Farmers Federation ("VFF") Grains Group would like to thank the Australian Competition & Consumer Commission ("the Commission") for the opportunity to provide a submission and input into the Commission's assessment of recent applications from GrainCorp and Emerald seeking exemptions from certain provisions of the Port Terminal Access (Bulk Wheat) Code of Conduct ("the Code") for their Victorian port terminals.

The VFF Grains Group supports the need for an open, efficient, and transparent market to promote competition throughout the grain supply chain. To this end, the VFF Grains Group considers that the level of competition in the Victorian grains market is currently insufficient to warrant granting exemptions from Parts 3-6 of the Code, and further, considers that granting such exemptions would have a negative impact on market efficiency and would not be in the public interest.

Additionally, although it has been argued by GrainCorp and Emerald that the Code impedes competition, the Grains Group considers that in reality the Code encourages competition and promotes efficiency in the market by driving volume through ports through providing provisions for all exporters to not be excluded or priced out of a market service provision. Further, it is the Grains Group's view that the access arrangements as provided by the Code are consistent with the port terminal service providers' business interests, by guaranteeing throughput and usage of the excess capacity at Victorian port terminals by all exporters.

It must be noted that the submissions from the port terminal service providers <u>failed to quantify</u> how the Code's access arrangements disadvantage these providers relative to access seekers, and failed to address the competition benefits that would arise from exemptions being granted. That is, the cost of the current regulation to the providers was not examined relative to the benefits of such competition.

Background

The Victorian Farmers Federation ("VFF") is one of the largest state farmer organisations in Australia, representing over 10,000 members who live and work on more than 6,000 farm businesses situated across Victoria. The VFF Grains Commodity Group, through its elected Council, has the responsibility and autonomy to determine VFF policy regarding grains industry issues.

The VFF Grains Group works actively with all market participants from across the supply chain, including farm input providers, research and development organisations, government departments, bulk handlers, traders, and exporters. This includes GrainCorp and Emerald as the dominant bulk handlers and primary service providers to grain producers in Victoria.

In the interests of full disclosure, VFF Grains does have holdings of GrainCorp Limited shares through the VFF Property Trust.

Legislative framework

As advised by the ACCC, in making an exemption determination under the Code, the ACCC must have regard to the matters specified in subclause 5(3) of the Code. These matters are:

(a) the legitimate business interests of the port terminal service provider
(b) the public interest, including the public interest in having competition in markets
(c) the interests of exporters who may require access to port terminal services
(d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services
(e) the promotion of the economically efficient operation and use of the port terminal facility
(f) the promotion of efficient investment in port terminal facilities
(g) the promotion of competition in upstream and downstream markets
(h) whether the port terminal service provider is an exporter or an associated entity of an exporter
(i) whether there is already an exempt service provider within the grain catchment area for the port concerned
(j) any other matters the ACCC considers relevant.

VFF has structured its remarks in response to these criteria for the ACCC's consideration.

Natural Terminal Port (NTP) / 'Catchment Areas' – substitutability 5(3)

In assessing the exemption application it is fundamental to understand how grain is priced and exported from Australia. VFF Grains consider the Code is designed to ensure access by an exporter to port terminal loading facilities at the port in question. Further, whether there is a competitive & efficient alternative at that port. Not, whether an exporter can access an alternative port in another state for example, or a less competitively & possibly non-profitable area.

Historically rail lines and silo networks delivered to a particular port with the least cost – that is the Natural Terminal Port (NTP) for that catchment area. For example, Portland zone silos would deliver to Portland because it has the lowest freight cost, or NTP freight. Ports will all have a port zone, or catchment area, of silos with the least cost NTP freight pathway. i.e. the freight advantage to that port. Freight differentials between port zones are published by Grain Trade Australia.

Wheat (Grain) is generally priced on an FOB (Free on Board) basis at Port, the NTP freight is then deducted to give an at silo price. An exporter wishing to export from Portland, for example, will acquire grain in the NTP zone up-country from that port, as it represents the lowest cost pathway to port. This is a critical point as having acquired grain in the Portland zone an exporter may have no economic alternative other than exporting from the single port facility at Portland, for example. Especially where the only physically viable alternative is owned by the same port provider, potentially at an economic (freight) disadvantage.

In the case in point there are only two applicants with 3 separate port terminals in 3 distinct NTP port zones or catchment areas.

Export Price Parity / Exportable Surplus 5(3)

Despite comments by the applicants that domestic & container markets offer alternative pathways, the fact remains that wheat is still produced in surplus to domestic requirements (exportable surplus) year on year from Victoria. Thus export prices determine the floor price for wheat in Victoria through export price parity.

Therefore a bulk wheat exporter (access seeker) still requires access to individual bulk export port facilities, in the most cost efficient NTP port and port zone. Alternatively, the lack of an available competitive & efficient pathway precludes them from the bulk wheat export market. This is not in the interests of achieving a competitive and efficient supply chain.

Physical Port Attributes & Sea Freight 5(3)

Physical port attributes should also be considered as attributes such as port capacity, port berth draught, etc, mean that not all exporter's ships are immediately substitutable between shipping berths.

Further, sea freight differentials between port and export destination will impact an exporter's decision as to which port to ship from. To suggest ports are simply 'substitutable' does not account for either the physical port attributes or the additional sea freight costs that may be incurred as a result, again potentially pricing an exporter out of a market.

The business interest of the port terminal provider 5(3)(a)

Although it has been argued by GrainCorp and Emerald that the Code impedes competition, the Grains Group consider that in reality the Code encourages competition and promotes efficiency in the market by driving volume through ports through providing provisions for all exporters to not be excluded or priced out of a market service provision. It is the Grains Group's view that the access arrangements as provided by the Code are consistent with the port terminal service providers' business interests, by guaranteeing throughput and usage of the excess capacity at Victorian port terminals by all exporters.

Impact of exemptions on market competition 5(3)(a-h)

As a result the current competitive environment in the grains industry is such that the exemption of the Victorian bulk wheat export terminals from these parts of the Code would restrict competition.

This would entrench market power through a duopoly operating three export bulk terminals in Victoria, drawing predominantly from different catchment areas. This market power will prevent fair and transparent access (section 5(3)(d) of the code) as duopoly service providers will be able to price differentiate/discriminate and 'only those with the biggest cheque books will be able to play'. For example, the introduction of long term agreements with cash-up front requirements will reduce capacity of small (niche) marketers to access port services, reducing competition. This will further exacerbate market concentration through duopoly service provision, and can be seen in the applicant's submissions whereby small exporters are being squeezed out and only a few large multi-nationals or the terminal operators themselves dominate exports from the ports in question.

It would also result in competitive constraints in upstream markets as the lack of competitive pressure provided by other smaller exporters on prices & supply chain costs, would then not be passed through to either farmers or the broader community.

It is the strong view of the VFF Grains Group that such a reduction in competition would not be in the public interest or the interests of exporters (as identified in clause 5(3) of the Code), or the general interest in efficient markets.

There are currently no exempt service providers in Victoria (as per subclause 5(3)(i)), and at each port there is only one port terminal service provider. In terms of grain catchment areas for Victorian ports, Portland is predominantly a separate Port Zone (catchment area), with no alternative port provider. That is both Portland & Geelong ports are owned and operated by GrainCorp.

Geelong and Melbourne port terminals also have separate port zones, and grain is naturally freight advantaged into either one port or the other port. This establishes a relatively restricted competitive environment for exporters as mentioned above.

In addition to this, the vertically integrated assets of GrainCorp and Emerald largely dominate the Victorian storage, handling, port and export markets. The degree of vertical integration held by these providers is significant, as noted by the providers in their own submissions to the ACCC, and it provides a significant advantage at port as well. The providers' extensive upcountry infrastructure and networks can be likened to the control held by Telstra in the telecommunications industry – it sets up a natural advantage for the providers that flows through to their control of the ports, and means that there is not a level playing field for other exporters wishing to access the applicants networks (clause 5(3)(c)&(d) of the code). Exempting the providers from Parts 3-6 of the Code would increase their vertical integration and reduce competition in upstream and downstream markets.

Vertical integration facilitates an environment for 'closed-loop' operations such as those in the United States, where the supply chain and market are dominated by a small number of large multinational corporations. For example, in the United States ADM own the up-country silos, the transport to port, the ports, the ships, and even have interests in the overseas end-users. This is not seen as conducive to competition.

As prices in the domestic grain market are determined by 'export price parity,' any inefficiency through lack of competition in these markets will pass back through to Victorian producers and consumers. Reducing competition by exempting the Victorian port service providers from Parts 3-6 of the Code would therefore have negative flow-on effects for farmers, rural communities, and the broader community in general. It is the VFF Grains Group's position that this would not be in the public interest.

Fair & Transparent Access 5(3)(d) - information

The VFF also considers that market failure and competition is being impeded through information asymmetry, as port terminal service providers have almost exclusive access to free stock information (warehouse stocks). This asymmetry would only increase if the aforementioned exemptions were granted, as third party exporters and the domestic market will not have genuine market access since they would be unable to access the stocks information necessary to competitively acquire grain to load their vessels at port or for domestic processing.

Associated entities 5(3)(h)

The port service providers applying for exemptions from parts of the Code each have their own trading houses and operate their own export businesses. According to their own submission, GrainCorp currently exports approximately 30 percent of the market share at Geelong and Portland (with the top 5 exporters accounting for 89 percent and 88 percent respectively). The risk with exemption is that there would be nothing to prevent GrainCorp favouring their own export business, through discriminatory pricing, over and above other exporters seeking access to port facilities.

Impact of exemptions on efficient operation & investment 5(3)(f)

The Code is consistent with economic efficiency, it drives volume through ports by providing provisions for all exporters to not be excluded or priced out of a market service provision. It thereby new market entrants and competition to the benefit of farmers and the wider community,

Promotion of efficient investment in port terminal facilities 5(3)(e)

VFF Grains consider that proposed investments by Bunge, in on-farm storage assets, and containers, demonstrate that the Code has NOT been an impediment to investment in the supply chain. That is, it is consistent with encouraging new market entrants & competition. Exemptions, on the contrary could stifle investment by smaller exporters if they have no guaranteed access of an export terminal pathway to market.