

4 March 2011

Mr Anthony Wing
General Manager – Transport and General Prices Oversight
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Wing,

ABA, Viterra and GrainCorp Proposed Port Access Undertakings

The Victorian Farmers Federation (VFF) Grains Group thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to comment on the proposed port access undertakings by Viterra Ltd, Australian Bulk Alliance and GrainCorp Ltd.

Detailed in the attached submission the VFF Grains Group believes that:

- In the interest of transparency the requirement to publish shipping stems, stocks of grain at port and port access protocols should continue.
- Grain delivered ex-farm should not be unjustly discriminated against.
- Port access undertakings should be broadened to include requirements ensuring competition at the major up-country storage facilities that are also owned by the port terminal operators.
- The term for port access undertakings should not be only one year from the date of acceptance by ACCC.
- Port access undertakings should remain in place beyond 30 September 2014, to ensure independent oversight of the country's ports.
- If access undertakings were no longer a requirement under legislation, the port terminal operators and bulk handlers should submit a voluntary access undertaking such as those for the provision of rail and infrastructure services, to demonstrate to industry their commitment to upholding competitive principles.
- The breach by one of the port operators and their subsequent audit by Wheat Exports Australia further highlight the need for the actions of port operators to be scrutinised via port access arrangements.

In conclusion, the VFF Grains Group is supportive of the rigorous process in assessing port access undertakings as they are essential to ensure a fair and competitive Australian grain market.

Sincerely,



Russell Amery
VFF Grains Group President



Submission to the ACCC regarding
Port Access Undertakings proposed by
Australian Bulk Alliance Pty Ltd,
Viterra Ltd and GrainCorp Ltd

March 2011

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Executive Summary

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- Port access undertakings should be broadened to include requirements ensuring competition at the major up-country storage facilities that are also owned by the port terminal operators.
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- If access undertakings were no longer a requirement under legislation, the port terminal operators and bulk handlers should submit a voluntary access undertaking such as those for the provision of rail and infrastructure services, to demonstrate to industry their commitment to upholding competitive principles.
- The breach by one of the port operators and their subsequent audit by Wheat Exports Australia further highlight the need for the actions of port operators to be scrutinised via port access arrangements.

Introduction

The Victorian Farmers Federation (VFF) is Australia's largest state farmer organisation representing around 10,000 farmers including over half of Victorian grain farms. The VFF Grains Group thanks you for the opportunity to comment on proposed port access undertakings by Viterra Ltd (Viterra) for 1 October 2011 to 30 September 2014, Australian Bulk Alliance (ABA) for the period of one year from the date of acceptance and GrainCorp Ltd (GrainCorp) for 1 August 2011 to 30 September 2014 and 1 October 2011 to 30 September 2014 for clauses 5.5 (b), 5.5 (c), 9, 10, 11, 12 and Schedule 6.

Treatment of grain delivered to port directly off-farm

The VFF Grains Group had previously stated its concerns to ACCC about unjust discrimination against grain delivered ex-farm (sourced directly off-farm), and notes a change from GrainCorp's current undertaking in that Schedule 2 of the proposed undertaking is more expansive and includes a provision of services for grain from a single 'third party storage' category which consists of on-farm storage sites and bulk handling company (BHC) sites that are not operated by GrainCorp. The VFF Grains Group would like to see a tiered system in place to recognise the differences in quality of grain delivered from different storages.

Grain outloaded at port from bulk handlers such as Grain Flow and Viterra has already been quality tested and segregated on receipt from the grower, therefore at port the process of the grain intake is made more efficient, saving time and other resources. Requiring re-testing of grain received at port via BHCs, increases costs to the bulk handlers delivering which are then indirectly passed on to the sellers of grain which includes growers. Access to the port by growers would therefore become more costly. Future investment into storage and handling infrastructure by the BHCs facing these increased costs could also be discouraged as a result of the increased costs to deliver grain to port.

Monopolies at up-country silos

As in our previous submissions to the Australian Competition and Consumer Commission (ACCC) the VFF Grains Group is concerned about monopolies forming in the supply chain and especially at up-country silos. The VFF Grains Group notes that the Productivity Commission in its final report on the Wheat Export Marketing Arrangements has expressly stated that "the bulk handlers do arguably have incentives to institute additional charges to ensure growers and exporters use their supply chains. Such behaviour could potentially lead to supply chain inefficiencies and higher than necessary costs for exporters."¹ They go on to state it is not clear how the charges in place have been determined and that these issues should be dealt with in this round of access undertaking renewals.

The VFF Grains Group asserts that the port access undertakings should be broadened to include requirements ensuring competition at the major up-country storage facilities owned by the bulk handlers that are themselves grain port terminal operators. The threat of monopolies forming at up-country silos could be avoided by having in place access arrangements that ensure competition and fair access to the facilities by grain traders other than the bulk handlers.

¹ Wheat Export Marketing Arrangements – Productivity Commission Inquiry Report No. 51, 1 July 2010, p255

Wheat Export Marketing Arrangements

The VFF Grains Group in its initial submissions to the ACCC on port access undertakings was concerned with inconsistencies of port regulation that allowed Melbourne Port Terminal (MPT) as operated by ABA, to be the only grain port terminal exempt from the requirements under the wheat export marketing legislation. The VFF Grains Group understands that due to acquisitions in the past year by Sumitomo Corporation, Emerald Group Australia Pty Ltd (Emerald) an accredited bulk wheat exporter, and ABA are now associated entities as defined in the *Wheat Export Marketing Act 2008* (WEMA) and therefore ABA is now required to pass the port access test.

In the interest of consistency if Emerald were for any reason no longer accredited as a bulk wheat exporter and ABA's requirement to have a port access undertaking in place ceases as a result, the VFF Grains Group feels ABA should continue to uphold its port access undertakings, to prevent MPT once again being the only grain port terminal to be exempt from the legislated requirements due to an inadvertent omission in the wording of the WEMA. The VFF Grains Group commends ABA in upholding consistency of regulation amongst grain port terminals as shown in their proposed undertaking that adopts similar dispute resolution processes as in the current approved undertakings of the other port terminal operators. These resolutions provide certainty and transparency to access seekers and are a crucial aspect of the port access undertaking in providing fair access to the port.

The VFF Grains Group feels that there should be independent oversight of the country's ports and that in the absence of the Wheat Export Authority (WEA), port access undertakings would need to be ongoing beyond 30 September 2014. Fair access to ports and up-country sites should be guaranteed by the ACCC via an access undertaking, or an appropriate regulatory regime.

The need for transparency of information

The VFF Grains Group believes lack of transparency of information restricts competition therefore it is crucial for all port operators to continue to publish their shipping stem, stocks of grain at port and port access protocols. To this end it is not appropriate that the term of ABA's proposed port access undertaking is only for one year from the date of acceptance by ACCC but rather should be consistent with the other port access undertakings and be for the term ending 30 September 2014. This would accord with a "consistent approach to access to the Port Terminal Services at the different port terminals to the extent practicable²", being one of the objectives of ABA's undertaking. Publishing the above port information should be within the bounds of practicable and achievable. Beyond 30 September 2014 if there are still issues associated with port access and contestability in the logistics supply chain it may be appropriate for grain port terminal operators to voluntarily publish their shipping stem and port access protocols in the interest of competition and to demonstrate the commitment to upholding anti-discrimination principles.

² ABA's proposed Port Terminal Access Undertaking, p7

The need for port access arrangements to remain in place

As stated in its submission to the Productivity Commission's inquiry into Wheat Export Marketing Arrangements, the VFF Grains Group feels that without port access arrangements in place preventing unjust barriers to entry, disputes about access must be resolved under the *Trade Practices Act 1974* alone as they have formerly been. Such disputes are often lengthy, extremely costly and cause loss of business long before any resolution is reached.

A quick analysis of Viterra's shipping stem as published on its website on 2 February 2011 shows that Viterra is the exporter of 30% of the outgoing grain. This is a significant proportion of grain exports at a single point in time considering Australia has 25 accredited bulk wheat exporters alone, under the current marketing arrangements.

A similar situation can be seen in New South Wales and Victoria where GrainCorp, the major bulk handler, occupies around the same proportion of shipping slots as Viterra out of South Australia. This demonstrates the monopoly power of Viterra and GrainCorp and the need for port access arrangements to be kept in place to ensure true competition and market access.

Further to this need, the VFF Grains Group notes the recent external audit conducted by Wheat Exports Australia (WEA) of Viterra's compliance with its obligations particularly surrounding administration of its shipping stem under the *Wheat Export Marketing Act 2008*. The audit identified a number of areas for improvement, including tighter administration of excess vessel bookings, more timely cancellation of bookings that are not going to be used and immediate updating of the shipping stem when slots become available. Viterra agreed to an internal review of policies and procedures relating to the shipping stem and compliance with continuous disclosure rules. These examples all highlight the need for port access arrangements to remain in place in order to maintain high standards of competition.

If port access undertakings were no longer a requirement under the legislation, the port terminal operators and bulk handlers should submit a voluntary access undertaking to demonstrate to industry their commitment to upholding anti-discrimination principles. In the interest of competition port access undertakings should remain in place beyond 2014.

Conclusion

In summary the VFF Grains Group believe the deregulated grain market in Australia is still in the transition stage and requires genuine legislative controls. These are to ensure true competition and market access between regional monopolies and to ensure growers as one of the largest group of industry stakeholders have guaranteed representation in the market. Otherwise VFF Grains Group considers that growers will be left without protection as 'consumers' of big business services. The VFF Grains Group stresses the importance of the port access undertakings and subsequently their robust assessment and scrutiny in ensuring the Australian grains industry remains competitive.