



TRADE PRACTICES ACT 1974
UNDERTAKING TO THE AUSTRALIAN COMPETITION
AND CONSUMER COMMISSION GIVEN UNDER
SECTION 87B
BY
ABB Grain Ltd

20 September 2004



**UNDERTAKING
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ABB Grain Ltd (ACN 084 962 130) (ABB)

20 September 2004

1. BACKGROUND

On 10 May 2004, ABB and AusBulk Ltd ACN 007 556 256 (**AusBulk**) entered an agreement under which they proposed to merge pursuant to a scheme of arrangement (**the Transaction**). Further details of the Transaction were announced to the ASX and despatched to shareholders on 20 August 2004.

The Transaction will combine ABB, AusBulk and United Grower Holdings Ltd 092 780 768 (**UGH**) by both AusBulk and UGH becoming wholly owned subsidiaries of ABB. The Merged Entity will (at least initially) retain the name ABB Grain Ltd and remain a listed company.

Completion of the Transaction is subject to ABB obtaining written confirmation from the Australian Competition and Consumer Commission (**the Commission**) that it does not object to the Transaction on the basis of section 50 of the Trade Practices Act 1974 (**the Act**).

The Commission has made extensive market enquiries and substantial material has been submitted to the Commission by the parties. The Commission enquiries were to assess whether or not the proposed Transaction was likely to be in contravention of section 50 of the Act.

The Commission has expressed concerns regarding the implications of the Transaction for competition between traders in grain, particularly barley traders.

While ABB and AusBulk do not agree with the concerns expressed by the Commission, they have agreed with the Commission that, in order to address the concerns raised by the Commission, ABB will give the undertakings contained in this document.

The Commission has advised that, upon implementation of this Undertaking, its concerns in respect of the Transaction will be addressed.

2. DEFINITIONS

ABB means ABB Grain Ltd ACN 084 962 130.

Act means the *Trade Practices Act 1974*.

Access means access to South Australian port terminal facilities owned or controlled by the Merged Entity and the supply of associated services by the Merged Entity for the receipt, testing, classification, storage, handling, treatment, processing or shipping of commodities at or from such facilities.

AusBulk means AusBulk Ltd ACN 007 556 256.

Barley Trader means a person entitled to trade in barley and includes a person licensed to export barley from South Australia under the *Barley Exporting Bill 2004* when it becomes law or any legislation allowing barley exports by parties other than the Merged Entity.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for banking business in South Australia.

Commission means the Australian Competition and Consumer Commission.

ESCOSA means the Essential Services Commission of South Australia.

Force Majeure means any event or cause outside the reasonable control of the Merged Entity (including any governmental restraint, direction or delay due to third parties) and which could not have been avoided or overcome by the Merged Entity by the exercise of reasonable care.

Grain Trader means a person licensed to trade in grain under relevant legislation and includes a Barley Trader.

Merged Entity means ABB following the Transaction.

Related Body Corporate has the meaning given to it by Section 4A of the Act.

Transaction means the proposed merger of ABB and AusBulk pursuant to a scheme of arrangement, as described in the agreement between ABB and AusBulk entered into on 10 May 2004.

UGH means United Grower Holdings Ltd ACN 092 780 768.

3. COMMENCEMENT AND DURATION OF UNDERTAKING

3.1 Commencement

This Undertaking comes into effect when:

- (a) the Undertaking is executed by ABB; and
- (b) the Undertaking so executed is accepted by the Commission.

3.2 Termination

This Undertaking will terminate on the date five years from the date of commencement, unless otherwise terminated in accordance with clause 5.1.

4. UNDERTAKINGS BY THE MERGED ENTITY

4.1 Access to South Australian bulk terminals for barley traders

The Merged Entity undertakes not to unfairly or unreasonably:

- (a) hinder or deny Access in relation to barley to any Barley Trader; or

- (b) discriminate between Barley Traders as to the terms and conditions (including, without limitation, priority of access and service levels) upon which Access in relation to barley is provided to Barley Traders; or
- (c) discriminate between the price charged to any Barley Trader for Access in relation to barley and the corresponding charge published on the Merged Entity's website in accordance with clause 4.3.

4.2 Access to South Australian bulk terminals for traders of grains other than barley

For each particular grain other than barley, the Merged Entity undertakes not to unfairly or unreasonably:

- (a) hinder or deny Access in relation to that grain type to any Grain Trader; or
- (b) discriminate between Grain Traders as to the terms and conditions (including, without limitation, price, priority of access and service levels) upon which Access in relation to that grain type is provided to Grain Traders.

4.3 Published prices

The Merged Entity undertakes to publish on its website its Access charges from time to time to the barley export pools managed by the Merged Entity.

4.4 Reasonable discrimination permitted

Discrimination as to terms and conditions or price is not to be taken as unfair or unreasonable for the purposes of this Undertaking if the relative terms reasonably reflect normal commercial considerations, including, without limitation:

- (a) relative costs of providing Access to different Grain Traders, having regard to grain type, grade and/or throughput; and
- (b) the reasonable cost of providing services reasonably required by or in respect of some Grain Traders, but not others, including testing of grain integrity or grain classification.

4.5 Dispute resolution

In the event of a dispute between the Merged Entity and a Grain Trader over the terms and conditions or price of Access, upon agreement with the Grain Trader, the Merged Entity will refer the matter to mediation or, if required and agreed to by the Grain Trader, to independent arbitration of the dispute, and the Merged Entity will abide by the decision of the independent arbitrator.

5. REVIEW OF UNDERTAKING

5.1 Material change in circumstances

If the Merged Entity believes that it is necessary to seek some variation due to a material change in circumstances, including, but not limited to the following:

- (a) ESCOSA varies the form of regulation applying to South Australian bulk port terminal facilities; or

- (b) another bulk port terminal facility is constructed in South Australia by a person other than the Merged Entity; or
- (c) the single desk in respect of barley export is removed, partially removed or otherwise altered,

then the Merged Entity and the Commission agree to review this Undertaking and negotiate in good faith the variation or withdrawal of all or any of the terms of the Undertaking in light of the circumstances and having regard to the need to avoid any substantial lessening of competition in grain exports from South Australia.

5.2 Circumstances that do not constitute a material change

Clause 5.1 shall not apply in respect of circumstances:

- (a) that exist at the date of this Undertaking;
- (b) that are reasonably foreseeable; or
- (c) that arise, whether directly or indirectly, by virtue of any act, matter or thing done by or on behalf of the Merged Entity or the failure of the Merged Entity to do any matter or thing.

6. FORCE MAJEURE

The Merged Entity is not liable for any failure to perform any obligation in this Undertaking if the failure to do so is due to Force Majeure.

7. OBLIGATIONS TO PROCURE AND NOTIFY

7.1 Related Bodies Corporate

Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the Merged Entity to take some action or refrain from taking some action, the Merged Entity will use its best endeavours to procure that Related Body Corporate to take that action or refrain from taking that action.

7.2 Provision of information

The Merged Entity agrees to promptly provide to the Commission (subject to obligations of confidentiality to third parties) all information relevant to this Undertaking reasonably requested by the Commission. The Merged Entity will comply with such requests within ten business days.

7.3 Service of notices on Commission

Any notice or other communication to the Commission pursuant to this Undertaking must be sent to:

General Manager - Mergers & Assets Sales Branch
 Australian Competition & Consumer Commission
 470 Northbourne Avenue
 DICKSON ACT 2602

Facsimile: (02) 6243 1199

7.4 Service of notices on ABB

Any notice or other communication from the Commission to ABB must be sent to:

Company Secretary
ABB Grain Ltd
Grain House
123-130 South Terrace
ADELAIDE SOUTH AUSTRALIA 5000

Facsimile: (08) 8231 1249

or in whatever manner ABB subsequently notify the Commission in writing.

8. ACKNOWLEDGEMENT

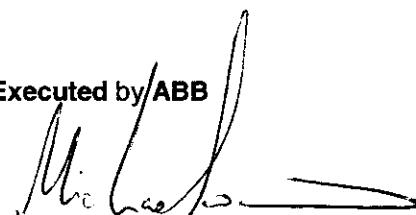
8.1 Public Inspection

ABB acknowledges that the Commission will make this Undertaking available for public inspection.

8.2 Reference to Undertaking

ABB acknowledges that the Commission will from time to time publicly refer to the Undertaking.

Executed by ABB



Signature of director

MICHAEL IWANIEW

Name of director (print)

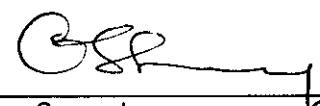
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Signature of director/company secretary
(Please delete as applicable)

PAUL COLLINS

Name of director/company secretary (print)

**Accepted by the Australian Competition and
Consumer Commission pursuant to section 87B
of the Trade Practices Act 1974**



Graeme Julian Samuel
Chairman

20th September 2004

Date