



7 April 2011

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Dear Ms Taylor

**Response to ACCC's RFI - Allocation of shipping capacity at Viterra Operations' South Australian port terminals**

Thank-you for this opportunity to provide information and AWB's views on the process Viterra currently adopts to allocate shipping capacity for South Australian port terminals.

At particular times and seasons shipping capacity from any Australian grain terminal can become a constrained resource. In such circumstances the operation of a competitive grain market in Australia can be substantially disrupted if fair access is not provided to these resources. In order to facilitate a vibrant and competitive market-place for the acquisition of grain from Australian grain farmers, AWB is strongly of the opinion that a fair and equitable model for both the initial allocation and subsequent transferability of shipping slots must be made available to all accredited exporters.

Under the current processes operated by GrainCorp in Queensland, New South Wales and Victoria, ABA in Victoria and Viterra in South Australia, there is neither a fair nor equitable allocation of shipping capacity nor an effective mechanism to transfer shipping slots between market participants. In Western Australia, the CBH system has an effective mechanism to transfer shipping slots and a mechanism exists to allocate shipping capacity, in the form of an open and contestable shipping slot auction process run by a independent auctioneer.

AWB recommends that the ACCC direct that all BHC's that operate port terminals be required to adopt an industry agreed, nationally consistent protocol for the conduct of shipping slot auctions at all Australian grain terminals, as well as adopting industry agreed and nationally consistent rules to govern the transfer of shipping slots between accredited exporters.

The ACCC should play a role in ratifying an industry agreed process for conducting auctions and a process for transferring slots and the associated rules for each, and the peak industry body, Grain Trade Australia, should be required to establish and develop the agreed auction process and transfer process on behalf of all port operators and accredited exporters. AWB believes that this process could be in place by October 2011 and should be applied for all shipping capacity from export grain terminals effective from January 1st 2012.

AWB is willing to participate in the definition of the rules that would govern both the shipping slot auction process and the transfer of shipping slots. Our experience in exporting substantial quantities of major grain, oilseed and pulse commodities from all of Australia's grain export facilities, as well as an operator of up country storage, road and rail assets and an arms-length part owner of the Melbourne Port Terminal gives us a unique insight into the development of fair rules for all direct participants in the management of bulk export supply chains in all port zones in Australia.

AWB is firmly of the view that greater efficiency in export supply chain paths can be extracted if greater certainty of access and flexibility of slot management is afforded to exporters through the adoption of consistent national processes for shipping slot allocation and transfers.

The recent unfortunate series of events that led to the booking of 6.8mmt of shipping capacity in South Australia was driven by the 'first come, first served' approach, which inherently favours Viterra's trading business unit, and discriminates against all other accredited exporters. Due to the fact that Viterra can discriminate both on price and the operation of its port terminal services in favour of Viterra's trading business unit and Viterra also controls the port assets, as well as most of the up-country storage, there will always be an element of bias in the South Australian supply chain in favour of Viterra's export trading business unit. The same circumstances exist for CBH in WA and GrainCorp in most of Queensland, New South Wales and Victoria. In South Australia this has the effect of allowing Viterra to dominate the grain accumulation market in South Australia as they encounter lower operational risks and lower charges than all other exporters who are currently forced to utilise Viterra's up-country storage and port assets to participate in the South Australian grain industry.

The fact that Viterra's trading arm, that has as its core business a multi-origin grain trading operation, did not also seek to book substantial volumes of shipping slots through GrainCorp's 'first come, first served' system concurrent to the timing that Viterra booked capacity in South Australia for 2011/12, provides sufficient evidence that it can extract significant benefits to its trading business through the ownership and operation of all South Australian grain port terminals, over and above any of their competitors. AWB would make the point that South Australian origin grain has no distinguishing quality characteristics that generate a price premium to Western Australian nor Eastern Australia grain, and that South Australian origin export grain carries the disadvantage of incurring a negative ocean freight cost differential relative to grain exported from other Australian export origins.

AWB notes that in the Draft Decision on GrainCorp Operations Limited's Port Terminal Services Access Undertaking released on the 24th of March, that the ACCC currently holds the '*preliminary view that continuing the first come first served capacity allocation arrangements in Proposed 2011 Undertakings is likely to be appropriate*'(page 52). AWB also notes that subsequent to the release of ACCC's Request for Information regarding the allocation of shipping capacity at Viterra Operations' South Australian port terminals, that GrainCorp Operations has suspended it's 'first come, first served' shipping slot booking process for the 2012 shipping season.

Respectfully, AWB strongly disagrees with the current preliminary view of the ACCC in your draft paper regarding GrainCorp on the same basis that it has strong objection to the continuation of the current 'first come, first served' approach to allocating shipping slot capacity in South Australia. Recent history has demonstrated that the 'first come, first served' approach:

1. encourages long range hoarding by accredited exporters;
2. is a process that is biased in favour of the port terminal operator's trading business unit,
3. discriminates against accredited bulk exporters that do not have the ability to swap or move shipments between port zones over time to cover shipping slots bought well in advance of developing a sales program,
4. places increased risks upon exporters to forecast Australian grain supply and demand well in advance of grain production and sales negotiations and lock in to estimated shipping requirements **or** run the risk of making sales to reputable international buyers of Australian grain and run the unacceptable risk of not being able to secure shipping capacity to meet the timing requirements of these customers.
5. entrenches the power of the port terminal operator's trading arm within the geographic drawing arc of the port terminal's natural monopoly, which will diminish competition in the long term to the detriment of grain farmers and grain buyers.

AWB is also firmly of the view that the argument that auctioning shipping slots will encourage unacceptable levels of speculative behaviour is completely spurious on the grounds that the current 'first come, first served' basis of allocation in the twelve ports operating in South Australia, Victoria, New South Wales and Queensland is already encouraging unacceptable levels of hoarding behaviour on behalf of many accredited exporters, including AWB, because an equitable system to allocate this scarce resource does not exist. AWB contends that there is a substantial element of uncertainty for all exporters who have booked capacity for the 2012 shipping season based on the fact that almost no known buyers have purchased Australian origin grain for that period of time: certainly not 6.8 million metric tonnes from South Australia. Likewise South Australian farmers have not sold that volume of grain, or anything approaching that volume of grain for the 2012 shipping season.

The recent behaviour of the export participants was driven by a desire to avoid being locked out of the export pathways in South Australia and by extension the grain acquisition market in South Australia if sufficient shipping slots were not secured before being fully booked by each participating exporter. In AWB's view the recent 2012 shipping slot booking activity, that may appear to an external observer of the sector to be irrational and risky behaviour, cannot be avoided under the current 'first come, first served' approach that favours Viterra's trading business unit in South Australia and GrainCorp's in Victoria, New South Wales and Queensland.

Given that CBH has implemented a system to allocate shipping capacity through an independent, objective and transparent auction system that has proven to be workable, (albeit in AWB's view some of the rules that apply could be refined marginally to improve certainty for export accredited participants), there is an existing template for the Australian industry to refine and adopt nationally. AWB also notes that CBH operates its own trading arm which does not appear to have been disadvantaged by the adoption of this mechanism, and that CBH does not attract the criticism from other industry participants that the auction system favours its own trading arm to the detriment of its competitors. In that respect an auction system is an effective mechanism that actively provides a 'non-discrimination provision' as required in the Access Undertakings of all port terminal service providers.

An effective, independently operated and transparent auction system in conjunction with agreed rules that facilitate the transfer of shipping slots between accredited exporters will address all of the issues outlined above, leading to a substantial improvement in the efficiency of the operation of Australia's export supply chain pathways and level the playing field for export participants to ensure effective competition to the ultimate benefit of grain farmers (upstream market) and grain processors (downstream market) who rely upon an efficient supply chain to maximise returns to their businesses.

AWB appreciates the opportunity to provide our views to the ACCC on this issue and enclosed are the answers to the specific information requested by the ACCC pursuant to S.44ZZBCA(1). Should you or your colleagues have need for further discussions on this matter, I would be pleased to meet with you at your convenience to assist in your work.

Yours sincerely



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AWB Limited