



Australian Government

Wheat Exports Australia

14 June 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

**PUBLIC SUBMISSION IN RELATION TO THE ACCC'S DRAFT AMENDMENT
NOTICE AND EXPLANATORY STATEMENT DATED 2 JUNE 2011 CONCERNING
GRAINCORP OPERATIONS LIMITED'S PROPOSED PORT TERMINAL SERVICES
ACCESS UNDERTAKING**

1 About Wheat Exports Australia

Wheat Exports Australia (WEA) was established on 1 July 2008 following legislative changes to Australia's wheat export arrangements. WEA is an Australian Government agency within the Department of Agriculture, Fisheries and Forestry (DAFF) portfolio.

Established under the *Wheat Export Marketing Act 2008* (the Act), WEA's primary role is to administer the *Wheat Export Accreditation Scheme 2008* (the Scheme). The Scheme allows the accreditation of bulk wheat exporters who meet specified 'fit and proper' criteria and for WEA to exercise monitoring and enforcement powers to ensure that a competitive bulk wheat export market exists. This provides growers with more choice in the marketing of their wheat.

The primary objective of the Act is "to promote the development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers".



2 Comments on certain areas of GrainCorp's revised Port Terminal Services Access Undertaking dated 27 May 2011 and on the ACCC's Draft Amendment Notice dated 2 June 2011

Item 4.3.3.1 Transferable capacity

WEA acknowledges that amendments to GrainCorp Operations Limited's (GrainCorp)'s Port Terminal Services Access Undertaking go some way to improving the transferability of shipping slots and improving its management of the shipping stem. However the following comments are based on WEA's consideration of market competition and substantial feedback from exporters and growers.

In order to maximise competition and improve port efficiency and utilisation of loading capacity, shipping slots need to have more flexibility and be managed in a more flexible fashion.

Many suggestions have been made within the industry to increase the efficiency, effectiveness and transparency of shipping arrangements. WEA encourages the industry to work together to improve current arrangements. Listed below are some identified potential improvements that WEA believes are worth considering:

- Tradeability of slots by exporters
 - Booking shipping slots is a significant financial burden especially for smaller exporters because large sums of capital are tied up for long periods of time.
 - All slots should be tradable or swappable to avoid profiteering by BHCs and hoarding or excessive bookings by traders. This would overcome cancellation and forfeiture of slots, thus promoting port terminal capacity and efficiency.
 - There may be a number of reasons for a vessel not arriving for its nominated load time, or why vessels are not nominated for a particular slot. The tradeability/ swapping of slots between exporters would increase the capacity of the terminal (this happens overseas where exporters negotiate with one another and then come to the terminal operator with a solution).
- Partial refund of nomination fee for early cancellation (the refund amount should be dependent on the number of days prior to loading that the nomination is cancelled).
 - We note this is part of GrainCorp's current submission but the proposed mechanism is relatively inflexible. In the case of early cancellation (i.e. before a nominated number of days prior to the commencement of the slot) partial refund of the booking fee should not be dependent on GrainCorp rebooking the slot.
 - A fair partial refund system will encourage exporters to submit cancellations earlier than is the current practice, providing the opportunity for other exporters to use the cancelled slot and thereby improving the efficiency of the port terminal operations.
- Bookings should not simply "disappear" from the stem as is currently the case.
 - A 'descriptor' is required to explain why a ship has been removed from the stem; either the ship was loaded and has departed, or it was moved to another port or cancelled, thus signalling available capacity for other exporters.
- A mechanism is required to alert exporters to potential congestion/delays and if vessels are running late (with the potential of being cancelled).
- A mechanism is needed to avoid overbooking of slots (hoarding), especially by a Bulk Handling Company's (BHC)'s associated exporter. Such a process should be

documented and auditable. In this regard WEA welcomes the ACCC's Proposed Amendment 1.4 in the Draft Amendment Notice.

- A related issue is the treatment of nomination fees on cancelled bookings. When a trading company associated with a BHC cancels a nomination, there is no actual penalty to the group as the fee is merely forfeited to another operating entity within the same group.
 - A number of alternative arrangements have been proposed to counter this inequity, including the depositing of all forfeited fees (minus any legitimate costs incurred by the BHC) in a separate account that is ultimately distributed pro rata amongst all exporters who utilised their slots.

In summary, there are a number of issues associated with the management of the shipping stem where further improvements can be made to ensure better equity and access for all exporters and provide for a more transparent and auditable process.

Item 4.3.4.2: Additional stocks at port information

GrainCorp proposes to publish more detailed information on stocks at port and to enshrine recently initiated more frequent publication of stocks at port information. Although this information is useful, it only goes part way to providing the information that market participants need.

WEA agrees with the ACCC's view that greater transparency regarding stocks at port is in the interests of access seekers as it improves information relevant to developing strategies to swap wheat and to assess the level of potential congestion at port. In this light, information on stocks at port should include grades as well as tonnages of each grade.

Exporters have discussed with WEA that unequal access to such information results in a significant marketing advantage to accredited exporters with associated entities which provide port terminal services. Greater disclosure of stocks information (both at port and upcountry) to all participants would improve the transparency and operation of the wheat market, potentially resulting in greater competition for growers' grain and more transparent and efficient port terminal operations.

Item 4.3.4.3 Elevation capacity booking, allocation and management

Exporters have indicated to WEA that current capacity tables published by BHCs lack the information required to make informed decisions on stem bookings. Exporters encourage BHCs to publish the available weekly elevation capacity for each port to improve the transparency of information and maximise out-load capabilities. Supporting this, WEA notes that:

- It is difficult for exporters to plan shipments when there appears to be no fixed in-load capacity (road and rail) and vessel loading capacity is determined by the number of shifts (1 x 8 hrs vs 3 x 8 hrs) the BHC has available to work in a particular period.
- BHCs have gone some way towards addressing this with the publication of various port capacity tables but these are limited in their information and inconsistent between BHCs. An exporter cannot verify from the current tables the capacity available at each of the ports.
- Each BHC should be encouraged to publish capacity tables that clearly identify available capacity.

- Clearly identified available capacity will also provide transparency of the cost associated with provision of surge capacity (in the form of an extra charge that is usually levied at harvest to cater for the use of extra road freight).

Item 4.3.4.4: Measures to counter anti-competitive behaviour (ring-fencing)

Ring-fencing is the separation of each BHC's bulk handling and marketing divisions as is currently the case between Co-operative Bulk Handling Limited and CBH Grain Pty Ltd as part of the ACCC's acceptance of Co-operative Bulk Handling Limited's "Grain Express" exclusive dealing notification.

Although the ACCC appears to be satisfied that there is sufficient competitive pressure on GrainCorp for it not to require ring-fencing, WEA considers that ring-fencing arrangements should apply to all BHCs that have an associated accredited exporter.

- BHCs, by virtue of their operations, are privy to information that is not publicly available. Sharing of this information (either inadvertently or intentionally) between the BHC and its associated accredited exporter gives rise to an information asymmetry.

Such information could include but is not limited to:

- Location, volume and quality of wheat stocks at port and in upcountry storage facilities.
- Activities on the shipping stem prior to general publication required under the continuous disclosure rules. This may be more advantageous to the associated accredited exporter where allocation is via a first-in first-served system.

WEA's strong view is that all BHCs should have an effective ring-fencing framework that prohibits the transfer of all non-public marketing-related information between the BHC and its associated accredited exporter. This is particularly the case whilst ever more comprehensive stocks information along the lines suggested above (refer comments on Item 4.3.4.2) is not required under the BHCs' access undertakings.

Item 4.3.5.2: Publication of other information (shipping stem information)

Under section 24 of the Act, if an exporter or an associated entity operates a port terminal service, the continuous disclosure rules require that the party publish a shipping stem which must be updated daily. The shipping stem must contain the following detail in respect of each vessel on the stem:

- ship name
- nomination time
- nomination acceptance time
- quantity of grain to be loaded
- estimated load date.

Based on feedback from exporters, WEA is of the view that this information should be augmented with the following information:

- Port terminal
- Destination country
- Exporter
- Commodity
- Volume (tonnes)
- Vessel name

- Date and time of nomination received
- Date and time nomination accepted
- Estimated arrival time of vessel
- Expected loading commencement time
- Estimated departure time of vessel
- Date of berthing
- Date vessel named
- Date of completion/execution

If you have any questions regarding this submission, please contact Peter Woods on (02) 6202 3430.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Woods', with a long, sweeping flourish extending from the end of the signature.

Peter Woods
Chief Executive Officer