



Australian
Competition &
Consumer
Commission

GrainCorp Operations Limited

Port Terminal Services Access Undertaking

Amendment Notice

20 June 2011

Section 44ZZAAA(1) Amendment Notice

The Australian Competition and Consumer Commission (ACCC) gives this amendment notice to GrainCorp Operations Limited (GrainCorp) under section 44ZZAAA(1) of the *Competition and Consumer Act 2010* (Cth) (Act).

The ACCC may issue an amendment notice setting out proposed amendments to an undertaking given to the ACCC under section 44ZZA(1) of the Act. On 22 September 2010, GrainCorp gave the ACCC an undertaking under section 44ZZA(1) of the Act [with a minor amendment made on 31 January 2011] (Proposed 2011 Undertaking).

The ACCC's proposed amendments to the Proposed 2011 Undertaking, including the reason for each proposed amendment, are set out in this notice. References in this amendment notice to the 'Explanatory Statement' are references to the ACCC Explanatory Statement to the Draft Amendment Notice released on 2 June 2011.

Part 1 of this notice sets out the proposed amendments to the General Terms, Part 2 sets out the proposed amendments to the Standard Port Terminal Services in Schedule 2 and Part 3 sets out the proposed amendments to the Port Terminal Services Protocols in Schedule 3 of the Proposed 2011 Undertaking.

Typographical errors should be corrected, and cross references to amended clauses, should be updated.

GrainCorp has until 5pm on 4 July 2011 ("due date") to respond to this notice. GrainCorp may give the ACCC a revised undertaking incorporating the proposed amendments in response to this notice. If GrainCorp does not respond by the due date, the proposed amendments are taken to not be accepted by GrainCorp.

1 General Terms

The following proposed amendments relate to various general provisions of the Proposed 2011 Undertaking.

1.1 Proposed amendment

Clause 1.1, subsection (f), insert the following —

At the date of this Undertaking, the ‘access test’ under the WEMA requires:

AND

Clause 6.3, subsection (b), insert the following —

- (ii) At the date of this Undertaking, an Applicant is required to be an Accredited Wheat Exporter. However, if the requirement to obtain accreditation under the WEMA, or any other applicable legislation, is removed at any time during the term of this Undertaking, an Applicant must otherwise be entitled to export Bulk Wheat. It is the responsibility of the Applicant to ensure that they are in compliance with the relevant legal requirements for the purposes of exporting Bulk Wheat.

Reasons

In each of the above clauses, the words ‘at the date of this undertaking’ should replace the word ‘currently’, to allow for the possibility that the government may accept the Productivity Commission’s (PC) recommendation to abolish the access test from 2014. The PC recommendations and “establishment provisions” of the Proposed 2011 Undertaking are discussed in further detail in section 3.3.2 of the Explanatory Statement, pages 21-2.

1.2 Proposed amendment

Clause 1.1, insert the following —

- (h) The ACCC monitors compliance of undertakings accepted under Part IIIA of the CCA.
- (i) The ACCC may approve the Regulated Access, Pricing and Monitoring Committee or a member of the ACCC to exercise a decision making function under this Undertaking on its behalf and that approval may be subject to any conditions which the ACCC may impose.

Reasons

The ACCC notes that the Proposed 2011 Undertaking includes provisions for the ACCC to authorise ACCC Commissioners to exercise the powers conferred on it

regarding the non-discrimination and arbitration provisions. As explained in the reasons for proposed amendment 1.8, the provision should be that the ACCC may approve ACCC Commissioners to exercise the power to appoint an arbitrator to avoid confusion for both the access provider and access seekers regarding the use of the term authorise. The approval provisions should be extended to cover all the ACCC's functions and powers under the Proposed 2011 Undertaking. Extending the approval provisions will allow the ACCC to respond and act in a timely manner, thereby facilitating the efficient operation of the undertaking. This will assist GrainCorp in running its operations efficiently for the benefit of the supply chain.

The ACCC notes that the Regulated Access, Pricing and Monitoring Committee is comprised of several ACCC Commissioners.

Clause 1.1(i) must state the correct the name of the Regulated Access, Pricing and Monitoring Committee.

This is considered further in section 5.3.1.4 of the Explanatory Statement, page 59.

1.3 Proposed amendment

Clause 4.1, subsection (a), insert the following —

- (i) the negotiation of any new Access Agreement entered into, or to be entered into, by the Port Operator and a User in respect of Port Terminal Services to be provided by the Port Operator at any time during the period 1 October 2011 to 30 September 2014;

Reasons

The ACCC notes that certain provisions in GrainCorp's Proposed 2011 Undertaking take effect on different dates. The publish-negotiate-arbitrate provisions take effect on 1 August 2011 and relate to the negotiation of Access Agreements that do not commence until, or after, 1 October 2011.

The ACCC notes that for a two-month period, certain provisions of the Proposed 2011 Undertaking will operate alongside the 2009 Undertaking.

To prevent potential confusion due to the operation of two concurrent undertakings, it is appropriate to amend clause 4.1, thereby expressly limiting the scope of the Proposed 2011 Undertaking to Access Agreements that will operate during the term of the Proposed 2011 Undertaking.

This is discussed in further detail in section 3.3.1 of the Explanatory Statement, pages 20-1.

1.4 Proposed amendment

Clause 5.5, insert the following subsection (b) —

For the avoidance of doubt, Shipping Stem Maintenance is a Port Terminal Service to which clause 5.5(a) applies.

AND

Clause 5.5, insert the following subsection (c) —

Within five Business Days of executing an Access Agreement with its own Trading Division, GrainCorp must provide to the ACCC a copy of that Access Agreement.

AND

Amend subsection 5.5(d) —

The ACCC may approve a member of the ACCC to exercise any powers under clause 5.5(c) or Schedule 6 of this Undertaking on behalf of the ACCC.

Reasons

Shipping stem maintenance is a Port Terminal Service to which GrainCorp's undertaking, including its non-discrimination provisions, applies. It is appropriate that there is greater clarity regarding the requirement for GrainCorp to not discriminate in the provision of this service.

It is appropriate for GrainCorp to provide the ACCC with a copy of an Access Agreement executed with GrainCorp's own Trading Division to enable the ACCC to assess GrainCorp's compliance with the non-discriminatory access provisions in clause 5.5 of the Proposed 2011 Undertaking.

This is discussed further in section 3.3.3.2 of the Explanatory Statement, pages 24-5.

GrainCorp should provide that the ACCC may approve, rather than authorise, a member of the ACCC to make a decision regarding appointment of an arbitrator under clause 7.5. The use of the word approve is preferred to avoid any confusion for either the access provider or the access seeker which may arise with the use of the term authorisation which has specific meaning in the *Competition and Consumer Act 2010* (Cth).

The ACCC notes that if these proposed amendments are adopted in the undertaking, the numbering of the existing clause 5.5 in the Proposed 2011 Undertaking will be renumbered clause 5.5(a)-(e) and references to subsections amended in line with the renumbering.

1.5 Proposed amendment

Insert the following clause —

5.7 Request for information

- (a) The ACCC may, by written notice, request GrainCorp to provide information or documents that are required by the ACCC for the reasons specified in the written notice to enable it to exercise its powers or functions in relation to this Undertaking.
- (b) GrainCorp will provide any information requested by the ACCC under clause 5.7(a) in the form and within the timeframe (being not less than 14 days) specified in the notice.

Reasons

The ACCC notes that under the current drafting of GrainCorp's Proposed 2011 Undertaking, it may obtain information from GrainCorp through an ACCC directed audit. Further, the ACCC may obtain information at any time on a voluntary basis. These methods of information gathering may not be appropriate in every instance. Specifically, an audit may not lead to the timely provision of information to the ACCC and is limited to information related to the non-discrimination provisions of the Proposed 2011 Undertaking. Broader information gathering powers should be included in GrainCorp's undertaking to allow the ACCC to exercise its powers and functions.

This is discussed further in section 5.3.2 of the Explanatory Statement, pages 59-60.

1.6 Proposed amendment

Clause 7.1, subsection (b), insert the following —

- (i) the terms of the Initial Port Terminal Services Protocols or the Port Terminal Services Protocols applying at the time of the Access Application;
or
- (ii) a decision by GrainCorp to vary the fees at which Port Terminal Services are provided to reflect changes to the Consumer Price Index.

Reasons

The ACCC notes that the Indicative Access Agreement attached to the Proposed 2011 Undertaking exempts disputes based on a change to Fees due solely to a change in the Consumer Price Index. The ACCC notes that the dispute resolution provisions of the Proposed 2011 Undertaking do not explicitly exempt disputes based on price increases in Fees to reflect changes in the Consumer Price Index.

The inconsistency between the Proposed 2011 Undertaking and the Indicative Access Agreement should be rectified. Specifically, it is appropriate to narrow the circumstances under which Disputes can be raised under the Proposed 2011 Undertaking, to prevent price disputes where prices are varied solely to reflect changes in the Consumer Price Index. The ACCC considers that the proposed amendment appropriately balances the legitimate business interests of GrainCorp with the interests of access seekers.

This is discussed further in section 3.3.3.5 of the Explanatory Statement, pages 26-7.

1.7 Proposed amendment

Clause 13.1, insert the following definition —

“Consumer Price Index” means the Eight Capital Cities Weighted Average All Groups Consumer Price Index number published by the Australian Bureau of Statistics.

Reasons

The proposed amended clause 7.1(b)(ii) refers to the Consumer Price Index (see proposed amendment 1.6 above), and therefore it is in the interests of clarity to include a definition of Consumer Price Index in the Proposed 2011 Undertaking.

1.8 Proposed amendment

Clause 7.5(b), amend as follows —

If within five Business Days of receiving notice in accordance with clause 7.5(a), the ACCC advises GrainCorp and any other party to the Dispute in writing that it wishes to be the arbitrator in respect of the Dispute, then the ACCC will be appointed to arbitrate the dispute and the arbitration will be conducted in accordance with clause 7.6. The ACCC may approve a member of the ACCC to make a decision under this clause 7.5(b).

AND

Clause 7.5, subsection (d), insert the following —

Within two Business Days of the parties agreeing an arbitrator, GrainCorp must notify the ACCC of the name of the arbitrator.

Reasons

GrainCorp should provide the ACCC with details of the arbitrator appointed by the parties. Clause 7.7 of the Proposed 2011 Undertaking sets out the arbitration process where the ACCC is not the arbitrator. The process allows for ACCC involvement and actually requires the arbitrator to keep the ACCC informed about the progress of the

arbitrator. Considering the ACCC's involvement in the arbitration process even when not acting as arbitrator, it is a clear step to provide the ACCC with the name of the arbitrator once appointed.

This is discussed further in section 3.3.3.5 of the Explanatory Statement, page 27.

GrainCorp should provide that the ACCC may approve, rather than authorise, a member of the ACCC to make a decision regarding appointment of an arbitrator under clause 7.5. The use of the word approve is preferred to avoid any confusion for either the access provider or the access seeker which may arise with the use of the term authorisation which has specific meaning in the *Competition and Consumer Act 2010* (Cth).

Port Terminal Services Protocols variation process

The following discussion relates to proposed amendments 1.9-1.14.

The Port Terminal Services Protocols (PTSP) prescribes how GrainCorp will operate its ports regarding bulk wheat export. GrainCorp may vary the PTSP in accordance with the process set out in its Proposed 2011 Undertaking. The PTSP variation process requires the following amendments to ensure the process is fair and transparent.

1.9 Proposed amendment

Clause 9.2, insert the following —

- (b) the Port Terminal Services Protocols must be, and continue to be, a comprehensive statement of GrainCorp's policies and procedures for managing demand for Port Terminal Services;

Reasons

In order to provide sufficient certainty to access seekers, the PTSP should be a comprehensive document that encompasses all of GrainCorp's policies and procedures for managing demand for Port Terminal Services. The ACCC is concerned that this has not been the case at all times under the 2009 Undertaking. To ensure clarity and certainty, the Proposed 2011 Undertaking should expressly provide that the PTSP must be, and continue to be, a comprehensive document.

This is discussed further in section 3.3.1.1 of the Explanatory Statement, pages 52-3.

1.10 Proposed amendment

Clause 9.3, subsection (a)(iii), insert the following —

- (C) GrainCorp collating, reviewing and considering the responses from interested parties in good faith;

Reasons

GrainCorp should consider responses received as part of consultation during the variation process in good faith. The extension of the 'actively consider' requirement in the Proposed 2011 Undertaking to a 'good faith' requirement would put GrainCorp in line with other port operators and result in consistent regulation. The introduction of a good faith requirement will encourage meaningful consultation.

This is discussed further in the Explanatory Statement at section 5.3.1.2, pages 55.

1.11 Proposed amendment

Clause 9.3, subsection (a)(iii), insert the following —

(D) subject to clause 9.3(a)(iv), GrainCorp publishing on its website any written submissions received from interested parties under this clause 9.3(a)(iii) within 5 Business Days of receiving that submission.

AND

Clause 9.3, subsection (a), insert the following —

GrainCorp is not required under clause 9.3(a)(iii)(D) to publish on its website any written submissions which are offensive, abusive or inappropriate for publication. GrainCorp will however provide any such submission to the ACCC within 5 Business Days of receiving the submission.

Reasons

In the interests of transparency, GrainCorp should be required to publish all written submissions received during the PTSP variation process. Transparent consultation will facilitate dialogue between GrainCorp and access seekers in the variation process.

Publishing all submissions may not appropriately balance the interests of access seekers with the legitimate business interests of GrainCorp. The requirement to provide those submissions that are not published on GrainCorp's website to the ACCC, therefore, will allow the ACCC to monitor the variation process.

This is discussed further in the Explanatory Statement in section 5.3.1.2, pages 55.

The ACCC notes that if this proposed amendment is adopted in the undertaking, the numbering of the existing clause 9.3(a)(iv) in the Proposed 2011 Undertaking will be renumbered clause 9.3(a)(v).

1.12 Proposed amendment

Clause 9.3, subsection (a)(iii), insert the following —

(E) at any time during the consultation process under this clause 9.3(a)(iii) GrainCorp may prepare and circulate a further variation to the proposed changes to take into account feedback from interested parties or from the ACCC. To avoid doubt, this clause 9.3(a)(iii)(E) does not require GrainCorp to recommence the consultation process under clause 9.3(a)(iii).

Reasons

If the Proposed 2011 Undertaking is amended to expressly allow GrainCorp to amend a proposed variation based on consultation, the variation process will benefit from increased efficiency and a greater ability for GrainCorp to respond to consultation.

Taking the operational nature of the PTSP into account and the importance of certainty in port operations, it is not necessary to recommence the consultation process if a proposed variation is amended based on engagement between GrainCorp and access seekers.

This is discussed further in the Explanatory Statement in section 5.3.1.2, pages 55-6.

1.13 Proposed amendment

Clause 9.3, subsection (a), insert the following —

(v) any variation must be published at least 20 Business Days prior to the date on which it is to become effective in the same locations as GrainCorp publishes its Port Terminal Services Protocols.

Reasons

A proposed variation to the PTSP should be published within a reasonable timeframe before becoming effective. A 20 business day period is appropriate as it provides GrainCorp and access seekers with sufficient time to prepare for the implementation of the varied PTSP.

The ACCC notes that the 20 business day notice period follows a 10 business day consultation period, making the total time to conduct a variation no less than 30 business days. This appropriately balances the need for operational certainty for both GrainCorp and access seekers, with an appropriate level of transparency in the variation process.

The ACCC notes that this proposed amendment amends the existing clause 9.3(a)(iv) of the Proposed 2011 Undertaking, but if accepted, will appear in the undertaking as clause 9.3(a)(v). This is discussed further in the Explanatory Statement in section 5.3.1.2, page 56.

1.14 Proposed amendment

Insert new clause 9.4, Objection notice —

- (a) If GrainCorp seeks to vary the Port Terminal Services Protocols in accordance with clause 9.3, the ACCC may object to the proposed variation (or part thereof). If the ACCC objects to a proposed variation (or part thereof), it must issue a notice to GrainCorp stating that it objects to the proposed variation and providing reasons for its objection. The ACCC will publish any notice issued under this clause 9.4(a) on the ACCC website.
- (b) Any notice issued under clause 9.4(a) must be issued at least 10 Business Days prior to the date on which the variation is proposed to become effective.
- (c) At least 5 Business Days before issuing a notice under clause 9.4(a), the ACCC must provide GrainCorp with a draft notice stating that it objects to the proposed variation and providing reasons for its objection.
- (d) In issuing a draft notice under clause 9.4(c) or a final notice under clause 9.4(a), the ACCC must have regard to whether the proposed variation:
 - (i) is material; and
 - (ii) amounts to a breach of the anti-discrimination provision in clause 5.5 and/or the no hindering access provision in clause 9.5.
- (e) The ACCC may withdraw a draft notice issued under clause 9.4(c) or a notice issued under clause 9.4(a) if in all the circumstances it becomes aware that the reasons specified in the draft notice issued under clause 9.4(c) or the notice issued under clause 9.4(a) no longer exist.
- (f) If the ACCC issues a notice under clause 9.4(a), GrainCorp will, within 3 Business Days:
 - (i) withdraw the proposed variation and commence a new variation process and place a notice to that effect in a prominent place on the GrainCorp website and notifying the ACCC in writing; or
 - (ii) withdraw the proposed variation and confirm the status of the existing Port Terminal Services Protocols by publishing a notice in a prominent place on the GrainCorp website and notifying the ACCC in writing.

Reasons

Considering the scope of matters GrainCorp could amend through a PTSP variation process, it is necessary to introduce a mechanism for the ACCC to object to a proposed variation.

The ACCC's power to issue an objection notice would be discretionary and be limited to variations that are:

1. material in nature; and
2. amount to a breach of the anti-discrimination clause 5.5 and / or the no hindering access clause (which would be renumbered as clause 9.5).

The ACCC notes that certainty, flexibility and timeliness regarding the operation of the PTSP are of critical importance, given that the PTSP is the document by which the port operates. However, the objection notice is necessary to ensure that the PTSP are not used as a mechanism to discriminate or hinder access.

The objection notice is not onerous, particularly as the process requires that a draft objection notice be given to GrainCorp, allowing GrainCorp the ability to address the ACCC's concerns before reaching the stage of the formal objection notice.

The power to issue an objection notice will not interfere with port operations when proposed variations do not give rise to concerns within the limited criteria above.

The ACCC notes that if this proposed amendment is adopted in the undertaking, the existing no hindering access clause 9.4 in the Proposed 2011 Undertaking will become clause 9.5

This is discussed further in the Explanatory Statement, section 5.3.1.3, pages 56-59.

1.15 Proposed amendment

Clause 10.1, replace subsection 10.1 (a) with—

- (a) In order to expressly satisfy ACCC's requirements GrainCorp will publish and update weekly in a prominent position on its website the following:
 - (i) total stocks of Bulk Wheat held at each Port Terminal;
 - (ii) The three (3) grades of Bulk Wheat contributing the largest tonnage at each Port Terminal;
 - (iii) total stocks of barley, sorghum, canola, and aggregate of all other grains held at each Port Terminal;

AND

Clause 10.1 renumber existing 10.1(b) as 10.1(c)

AND

Clause 10.1, replace existing subsections 10.1(a)(iii) and (iv) with new subsection 10.1(b) —

- (b) In order to expressly satisfy ACCC's requirements GrainCorp will publish and update monthly in a prominent position on its website the following:
 - (i) cargo nominations; and
 - (ii) Nominated Elevation Capacity of each Port Terminal.

Reasons

GrainCorp should publish more detailed information on stocks of Bulk Wheat at port to promote effective competition in the wheat export market. Publication of such data would allow all bulk wheat exporters access to market information relevant to sourcing swap wheat and to assess potential congestion at port. This is discussed further in the Explanatory Statement at section 4.3.4.2, pages 44-5.

1.16 Proposed amendment

Clause 13.1, insert the following definitions —

“Elevation Period” is a period of one month, commencing on either the first or the fifteenth day of a calendar month, or a 15 day period as defined in a CNA.

“Nominated Elevation Capacity” is the tonnage of Elevation Capacity published on the GrainCorp web site that is available during any one Elevation Period at a particular port.

Reasons

The proposed amended clause 10.1(b)(ii) refers to Nominated Elevation Capacity (see proposed amendment 1.15 above), and therefore it is in the interests of clarity to include a definition of Nominated Elevation Capacity in the Proposed 2011 Undertaking. The proposed definition refers to the Elevation Period, and therefore it is similarly in the interests of clarity to include a definition of Elevation Period.

1.17 Proposed amendment

Clause 11, subsection (a), insert the following —

GrainCorp will publish the following key service performance indicators in a prominent position on its website:

Reasons

It is appropriate to extend the requirement on GrainCorp to publish a report on its performance against the Key Performance Indicators, to ensure that the report is published in a prominent place on the GrainCorp website. This extended requirement will assist in providing greater transparency and accountability.

This is discussed further in section 3.3.3.6 of the Explanatory Statement, pages 28-9.

1.18 Proposed amendment

Clause 11, subsection (b), insert the following —

GrainCorp will notify the ACCC within five Business Days of publication, that it has published a report on the GrainCorp website under clause 11(a).

Reasons

It is appropriate to include a requirement on GrainCorp to notify the ACCC when it publishes a performance report on its website. Such a requirement will allow the ACCC to more easily monitor GrainCorp's compliance with reporting requirements under the Proposed 2011 Undertaking. A notice requirement is a simple measure to increase transparency and not onerous on GrainCorp.

This is discussed further in section 3.3.3.6 of the Explanatory Statement, pages 28-9.

2 Standard Port Terminal Services, Schedule 2 of the Proposed 2011 Undertaking

The following proposed amendments relate to Schedule 2 of the Proposed 2011 Undertaking.

2.1 Proposed amendment

Schedule 2, clause 1.1, subsection (a), insert the following —

Site Assembly Plan co-ordination;

AND

Schedule 2, clause 2.2 subsection (a), insert the following —

Site Assembly Plan co-ordination;

Reasons

Amending Schedule 2 to state that GrainCorp will provide Site Assembly Plan co-ordination is an appropriate amendment, as it broadly expresses the role GrainCorp has at port.

3 Port Terminal Services Protocols – schedule 3 of the Proposed 2011 Undertaking

The following proposed amendments relate to the Port Terminal Services Protocols, which govern the operation of the ports under the Proposed 2011 Undertaking.

3.1 Proposed amendment

Schedule 3, clause 1, insert the following –

Nominated Elevation Capacity. This is the tonnage of Elevation Capacity published on the GrainCorp web site that is available during any one Elevation Period at a particular port.

Non-Peak period. A ‘non-peak’ period occurs when the total of Booked Elevation Capacity shown as ‘accepted’ CNA’s on the GrainCorp Shipping Stem is less than an amount 10,000 tonnes less than the Nominated Elevation Capacity of a port during a relevant Elevation Period.

Peak period. A ‘peak’ period occurs when the total of Booked Elevation Capacity shown as ‘accepted’ CNA’s on the GrainCorp Shipping Stem is at least equal to an amount 10,000 tonnes less than the Nominated Elevation Capacity of a port during a relevant Elevation Period.

Shipping Stem. This has the meaning given in clause 2.

Workflow Online Platform or Workflow. This means the platform for booking elevator capacity on GrainCorp’s website.

AND

Amend the definition of **Vessel Nomination** in clause 1 to reference clause 18.

Reasons

The ACCC notes that the PTSP submitted as part of the Proposed 2011 Undertaking incorrectly reference clause 20 in the definition of Vessel Nomination. This typographical error should be corrected to remove ambiguity and avoid confusion for access seekers. Due to Proposed Amendments 3.2 discussed below, it is necessary for the PTSP to include definitions of Nominated Elevation Capacity, Non Peak period, and Peak period. The ACCC considers that the inclusion of definitions for Shipping stem and Workflow Online Platform or Workflow is appropriate as it provides additional clarity and transparency for access seekers.

The substance of the PTSP is discussed further in the Explanatory Statement, section 4.3.6, page 48.

3.2 Proposed amendment

Schedule 3, insert new clause 11, Conditional Refund on Surrender of Bookings at Peak Periods –

11 Conditional Refund on Surrender of Bookings at Peak Periods

Should a customer wish to surrender BEC during a Peak period, the following will apply.

11.1 A customer may surrender BEC by amending the relevant CNA(s) using Workflow **no later than 35 days prior** to the first day of the CEP in which the surrendered BEC is to be executed. As soon as GrainCorp receives a notification to surrender BEC in this manner it will be deemed final and cannot be reversed. Hereinafter such BEC will be referred to as ‘Surrendered BEC’.

11.1.1 The total tonnage of Surrendered BEC will be placed back on the Shipping Stem the next business day following receipt by GrainCorp of notice in accordance with Clause 11.1. Customers will be notified that BEC has been returned to the Shipping Stem and is available for booking via the daily ‘Available Elevation Capacity’ email.

Comment [RN1]: Update 11.1?

11.2 Refund of any booking fee(s) related to Surrendered BEC will be managed in the following manner.

11.2.1 If no later than 28 days prior to the first day of the Confirmed Elevation Period in which the Surrendered BEC was to be executed no new booking is made by a customer:

- (a) for an amount of tonnes equivalent to or greater than the quantity of tonnes surrendered, and
- (b) at the same port and for the same Elevation Period in which the Surrendered BEC was to be executed,

The customer shall not be entitled to any refund of the Booking Fee in whole or part.

11.2.2 If no later than 28 days prior to the first day of the CEP in which the Surrendered BEC was to be executed and a new booking is made by a customer (other than the customer that Surrendered BEC under Clause 11.1);

- (a) for an amount of tonnes equivalent to or greater than the quantity of tonnes surrendered; and
- (b) at the same port and for the same Elevation Period in which the Surrendered BEC was to be executed that

would replace as the Surrendered BEC,

GrainCorp will refund 50% of the original Booking Fee to the customer that Surrendered BEC under Clause 11.1

11.2.3 For the avoidance of doubt;

- (a) A new booking is defined as the lodgement of a new CNA under Clause 3; and
- (b) BEC transferred from another elevator, or from another Elevation Period at the same elevator, is not considered a 'new' booking for the purposes of this Clause 11

Reasons

To promote efficient use of its port terminal services, GrainCorp should encourage customers to return unwanted capacity booked for peak periods to the stem for use by other wheat exporters. GrainCorp should also ensure that capacity at peak periods that is returned to its shipping stem is made available for new bookings.

This is discussed further in the Explanatory Statement at section 4.3.4.1, page 44.

3.3 Proposed amendment

Schedule 3, clause 2, insert the following –

2 Shipping Stem

Pursuant to the obligations of wheat export Port Terminal service providers under the Wheat Export Accreditation Scheme 2008 established under the Wheat Export Marketing Act 2008 (Cth) (“Act”), GrainCorp will publish Shipping Stem information on its website in accordance with s. 24(4) of the Act (Shipping Stem).

2.1 Opening of the Shipping Stem

GrainCorp will open the Shipping Stem by the end of June each year for the following Shipping Year.

2.2 Provision of Announcement of Stem Opening

At least two (2) weeks prior to the day on which the Shipping Stem will be opened, GrainCorp will provide all customers with current Bulk Wheat or Bulk Grain Port Terminal Services Agreements with a notice in writing of the date and time upon which the stem will open, and will place a copy of the announcement on the Shipping Stem web page.

2.3 The Elevation Capacity of GrainCorp port infrastructure will be determined from time to time, and the Elevation Capacity of each facility will be published on the GrainCorp web site.

2.3.1 GrainCorp will inform customers in writing of any changes to elevator capacity two (2) weeks prior to any capacity change being implemented.

Reasons

To promote efficient use of its port terminal services, GrainCorp should ensure that customers have clarity and certainty regarding the operation of its shipping stem and sufficient notice to plan their export requirements and assess likely booking needs in advance of the shipping stem opening.

This is discussed further in the Explanatory Statement at section 4.3.4.3, pages 45-6.

3.4 Proposed amendment

Schedule 3, clause 5, insert the following –

5.3 All matters related to the management of CNAs will be recorded in an individual ‘shipping file’, which will include a copy of the original CNA upon which the date and time of receipt of the CNA will be recorded.

AND

Clause 6, insert the following –

6.1 CNAs will be assessed in chronological order of receipt, where the chronology will be determined by the time and date allocated to a CNA by the Online Workflow system.

AND

Clause 7, amend subclause 7.5 as follows –

7.5 Whether GrainCorp has available sufficient intake, grain segregation, storage and Elevation Capacity at the Port Terminal that will allow accumulation of the cargo at the Port Terminal, taking into account, other Booked Elevation Capacity previously accepted by GrainCorp that appears as ‘accepted’ on the GrainCorp Shipping Stem.

To promote efficient use of its port terminal services, GrainCorp should ensure that customers have clarity and certainty regarding the systems used to allocate and manage capacity bookings on its shipping stem.

This is discussed further in the Explanatory Statement at section 4.3.4.3, pages 45-6.