



29 January 2014

Mr David Salisbury
Deputy General Manager
Fuel, Transport and Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Salisbury

In respect to the ACCC's Issues Paper relating to GrainCorp Operations Limited – Application to vary the 2011 Port Terminal Services Access Undertaking in relation to its Newcastle Port, AGEA provides the following submission. This does not comment in detail on specific issues in the GrainCorp submission and ACCC issues paper as AGEA's position is that it is inappropriate to consider such significant changes to the Undertakings while the Government and industry are working towards a new mandatory Code that will replace the Undertakings subject to the Minister's approval. AGEA believes the issues raised in the GrainCorp submission and ACCC Issues Paper fundamentally deal with the intent of the Undertakings and run the risk of creating inequities ahead of the industry moving to a new set of rules.

As the Issues Paper notes, the Wheat Export Marketing Amendment Bill makes provision for the industry to move a mandatory code and, while acknowledging that there is some uncertainty regarding the current status of the Code, AGEA believes that the issues raised in the GrainCorp submission require an industry wide approach and should not be considered on a ad hoc basis. A decision in isolation may have unintended consequences and may set precedents that influence consideration of these issues during the consultation and negotiation phase related to the Code.

The industry and Government have worked cooperatively through the Code Development Advisory Committee (CDAC) process to develop a set of principles that provide a solid basis for development of a more flexible and relevant regulatory framework for the future. While acknowledging that there was not full agreement in all areas, the document produced by the CDAC was constructive and provides a platform for further discussion.

The GrainCorp submission goes directly to some of the contentious issues debated by the CDAC and is essentially requesting a decision on issues which are still subject of debate, with the industry's expectation being that the Government would provide a view on these issues in the draft Code which is expected to be released for consultation in the near term. The GrainCorp submission also removes for the Newcastle terminal some of the core obligations that were agreed by all parties during the CDAC process.

AGEA agrees that a review of the access framework is appropriate given the changes in the industry which has seen new capacity come available or underway, but believes that any changes to the framework need to be considered in a holistic manner to ensure that there is a level playing field for all parties.

AGEA recognizes that, with the current timing of the Code being unclear and with GrainCorp's current undertaking due to expire on 30 September 2014 this could cause some uncertainty, however, as indicated by ACCC in the issues paper the existing undertakings could be extended for a period.

GrainCorp acknowledges in its submission that with all bulk wheat exporters being subject to the Code that such arrangements could make for a fairer playing field in the industry and could remove its perceived competitive disadvantage. GrainCorp's view is that it should not be expected to wait for the new arrangements to be introduced and that there is too greater uncertainty around the timing, scope and introduction of the Code to wait for discussions on the Code to be concluded.

AGEA's view is that that the risks of making a decision on key elements of the Undertakings that have been core to discussion around future arrangements are equally untenable for the exporters wishing to access capacity.

GrainCorp proposes to exclude most of its activities and operations at Newcastle from the current obligations in the GrainCorp Undertaking on the basis that it is competitively disadvantaged against Newcastle Agri Terminal (NAT) and Louis Dreyfus due to having less commercial freedom and flexibility. However, as noted above, the intent is that all bulk terminals be included under the Code and thus, will address these issues by ensuring there is a level playing field for all parties; or where it is determined that a level of competition requires a lighter touch regulatory approach this can be applied in a consistent manner.

AGEA would urge the Government to move forward with the Code that provides the opportunity for a review of the access framework to better reflect the current industry structure. On this basis, AGEA does not support ACCC making a determination on GrainCorp's request, but would support a variation to extend the undertakings until the Code is clarified.

If you would like any further clarification, please do not hesitate to contact me.

Yours sincerely



Rosemary Richards
Executive Officer