

# Australian Grain Exporters Association

## Submission to the Public Consultation in relation to GrainCorp Operations Limited's proposed Port Terminal Services Access Undertaking

### Introduction

The Australian Grain Exporters Association (AGEA) was formed in 1938 and is the representative body for exporters of Australian grain. AGEA represents its members to facilitate an efficient and effective export industry and support Australian grains and oilseeds in both domestic and export markets. Members are active in grain accumulation, storage, handling and processing, as well as risk management and hedging strategies involving commodity futures, foreign currency and counterparty risk. AGEA member companies also have substantial investments in non-grain sectors of the rural economy, such as meat processing and intensive livestock production, oilseed crushing, fertiliser distribution, ocean freight ownership and bulk and container shipping.

AGEA's submission to the ACCC public consultation on the proposed GrainCorp port terminal services access undertakings addresses the questions raised by ACCC in its issues paper.

### AGEA response to ACCC issues for comment

#### Approach to pricing

AGEA believes that the 'publish and negotiate' approach has worked in relation to the port terminal services agreements offered by GrainCorp. In relation to arbitration, this has not been tested as far as AGEA is aware and thus, AGEA cannot make any comment.

The measures have provided a framework which has allowed access seekers to commercially negotiate with GrainCorp. There were some initial challenges in achieving an agreement that was satisfactory to users as GrainCorp adopted a 'no-negotiate approach', however this position changed in early 2010, and negotiation was entered into. AGEA understands that all port users have now signed agreements with GrainCorp.

#### Flexibility to vary the port loading protocols

The flexible approach to the port loading protocols [i.e. allowing GrainCorp to vary the port loading protocols without seeking formal approval from the ACCC] has not caused any concerns. AGEA supports this flexibility as part of the framework and is not aware of any issues for Australian wheat exporters as a result of this flexibility. AGEA and exporters cannot speak for any issues that GrainCorp may have incurred.

In general, AGEA understands that access seekers are relatively satisfied with the consultation process carried out by GrainCorp prior to varying its port terminal protocols. The consultation process has improved in recent times and this is reflected in agreements now being signed, despite the initial resistance.

Individual exporters may have incurred issues which they may choose to raise directly with the Commission.

#### **Substance of the port loading protocols**

AGEA does not believe that GrainCorp's port loading protocols have **been** fully tested yet in terms of the ability to efficiently allocate port loading capacity due to the small crop on the east coast in 2009. This is likely **to** be tested in the current season.

Similarly, it is hard **to be definitive on whether the 'first come, first served'** approach to allocation of capacity **is** sufficient to efficiently allocate resources in a year where demand exceeds supply as this has **not** yet been tested. In principle, AGEA believes that the 'first come, first served' approach can work efficiently, however, the effectiveness will be impacted by a couple **of factors**, such as whether:

- GrainCorp over-allocates or favours their trading division (this has not **been** evident to date)
- Inland inefficiencies/capacity allocation overrides port capacity allocation

#### **Substance of the Indicative Access Agreement**

The standard terms proposed initially were not acceptable, and nor was the no-negotiate approach that GrainCorp commenced with in late 2009 and early 2010. However, the GrainCorp approach improved **in** March 2010 and negotiation became possible.

There did appear to be some lack of clarity in relation to whether the standard terms could be varied. AGEA believes it would assist if ACCC provided clear guidelines on the ability to vary standard terms to deliver a better outcome than standard terms to individual access users and that such terms should not be less advantageous than those applying to the GrainCorp trading division where similar benchmarks apply.

#### **Dispute resolution**

As noted above, the dispute resolution provisions in the 2009 Undertaking have not been tested to **AGEA's** knowledge. In principle, no issues are expected with the dispute resolution process.

#### **Term of the undertaking**

**AGEA** has no issues with the proposed term of the Proposed Undertaking as put forward by Grain-rp.

#### **Publication of key port information**

**AGEA** has no issues with GrainCorp's publication of key port information.