

# MALLESONS STEPHEN JAQUES

## For Public Register

Mr Anthony Wing  
General Manager  
Transport and General Prices Oversight  
Australian Competition and Consumer Commission  
Level 35 The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

24 September 2009

**Attention: Ms Sarah Shepherd**

Dear Mr Wing

### **AusBulk Limited - Port Terminal Services Access Undertaking**

We act for ABB Grain Limited (“**ABB**”) and AusBulk Limited (“**AusBulk**”).

The purpose of this letter is to formally:

- (a) withdraw the Access Undertaking submitted to the Commission by ABB on 16 April 2009; and
- (b) lodge the attached new Access Undertaking on behalf of AusBulk for consideration by the Commission under section 44ZZA of the *Trade Practices Act 1974* (Cth) (“**TPA**”).

Having regard to the Commission’s draft decisions dated 6 August 2009 and 23 September 2009 and to its discussions with the Commission, AusBulk considers that the attached new Access Undertaking satisfies the criteria for acceptance under Part IIIA of the TPA. In particular, AusBulk considers that, consistent with the requirements and objectives of the *Wheat Export Marketing Act 2008* (Cth) and Part IIIA of the TPA, the new Access Undertaking:

- (a) achieves an appropriate balance between the legitimate interests of AusBulk as a provider of Port Terminal Services and the need for certainty and transparency of access for exporters of bulk wheat who use AusBulk’s Port Terminals;
- (b) provides bulk wheat exporters with appropriate rights to access Port Terminal Services on terms which do not discriminate in favour of AusBulk’s related bodies corporate (except to the extent such discrimination can be justified on the basis of costs);
- (c) provides bulk wheat exporters with a clear and effective dispute resolution mechanism through which to settle disputes in circumstances where they are dissatisfied with negotiations for access to AusBulk’s Port Terminal Facilities; and
- (d) provides a high degree of regulatory oversight that will ensure that the requirements of the applicable legislation will be met.

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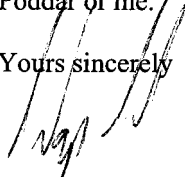
24 September 2009

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AusBulk respectfully requests that the Commission approves the new Access Undertaking lodged today before 1 October 2009.

If you have any questions in relation to the matters raised in this letter please contact either Dave Poddar or me.

Yours sincerely



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