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Dear Sarah

CBH Access Undertaking - Further Submissions in relation to fumigation

We refer to paragraph 7.4 of the ACCC's draft decision in relation to CBH's access undertaking (**Undertaking**). In particular, we refer to the ACCC's conclusion (on page 88) that it is not appropriate to expressly exclude "*fumigation as a preventative measure*".

This letter contains CBH's further submissions in relation to that aspect of the draft decision (**Draft Decision**). This submission is one of a series of further submissions on particular aspects of the Draft Decision. They are being provided on an issue by issue basis so that the ACCC may have the maximum possible period for considering submissions prior to the issue of a final decision in relation to the undertaking.

1 "Fumigation as a preventative measure" is clear

1.1 On page 88, the Draft Decision states:

"The ACCC accepts submissions by AGEA and PGA that fumigation is an essential part of Port Terminal Services. While it may be the case that not all fumigation of grain is appropriate at port, it is unclear precisely how the term "preventative measure" would be interpreted in this context"

1.2 Fumigation as a preventative measure is the application of fumigant to a quantity of grain to prevent (rather than to respond to) pest infestation. It is clearly distinguishable from fumigation in response to infestation.

1.3 CBH considers that it would obviously be inappropriate for CBH to exclude fumigation of infested grain from the Port Terminal Service and in any event CBH requires that it is permitted to fumigate grain in order to protect the integrity of other grain stored at the Port Terminal Facility.

- 1.4 At clause 6.5 of CBH's proposed Port Terminal Services Agreement, CBH notes that fumigation will only be provided in response to insect activity. This ensures that services that are more appropriately offered up-country are not duplicated at a Port Terminal Facility in order to raise the cost of access at port.
- 1.5 CBH has agreed to consult with the Customer in order to ascertain the Customer's preference of fumigant but reserves the right to make decisions in the interest of all grain owners in the terminal if the Customer is not contactable.

2 Fumigation as a preventative measure is not usually provided at port

- 2.1 CBH generally conducts any preventative fumigation at up-country storage sites and does not normally fumigate during cargo accumulation at port. This is because:
- (i) as is explained below, fumigation with phosphine takes a week longer than the standard window for cargo accumulation;
 - (ii) risk of infestation increases over time and fumigation as a preventative measure is usually required only for grain that is stored for an extended period;
 - (iii) long-term grain storage occurs up-country, where storage is cheaper and is less likely to cause bottlenecks; and
 - (iv) at peak times, following the harvest, most of the grain coming through port terminals is harvest grain, which is unlikely to require fumigation at all.
- 2.2 For these reasons, CBH disagrees with the view that fumigation as a preventative measure is an essential element of Port Terminal Services.

3 Fumigation as a preventative measure takes longer than cargo accumulation

- 3.1 Fumigation of a stack of grain using phosphine requires a storage area to be "under gas" for a minimum of 28 days. The ACCC is aware, for efficiency purposes, the Undertaking and the port terminal Rules require cargo accumulation to occur within 21 days. Port Terminal storage facilities are not efficient locations for the long term storage of grain. Rather, they are used to accumulate grain for the purpose of export.
- 3.2 If the Undertaking required CBH to provide, on request, fumigation of grain as a preventative measure, the accumulation window would have to be extended to greater than 28 days or alternatively, preventative fumigation would have to be carried out for less than the recommended period of 28 days. The second of these options is likely to decrease the effect of the fumigant and increase the prospect of insect resistance due to insects being exposed to non-lethal doses of the fumigant.
- 3.3 In short, this requirement would lead to one or more of:

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- (i) a reduction in the efficiency of the port terminal;
- (ii) an increased risk of insect resistance to fumigant;
- (iii) an increase in the costs of fumigation within the Western Australian supply chain; and/or
- (iv) an increase in probability that the port will become stock bound and unable to ship or receive grain.


3.4 This aspect of CBH's Undertaking should not be viewed as a blanket refusal to supply preventative fumigation at port. If, in exceptional circumstances, CBH agrees with a party to provide storage for longer than the cargo accumulation window, CBH may also agree to provide fumigation and services as a preventative measure. However, it submits that it should not be compelled to offer such services in the Undertaking.

4 Neither ABB, nor Graincorp expressly offer preventative fumigation

- 4.1 Because Western Australia has a lower incidence of pest resistance to phosphine, there may be different approaches taken to fumigation services in Eastern Australia. That said, CBH observes that neither Graincorp nor ABB expressly offer preventative fumigation as part of their Port Terminal Services.
- 4.2 Graincorp's Undertaking offers only fumigation for infested grain (clause 3.4) and applies testing requirements for wheat from "unapproved" sources. It does not include preventative fumigation.
- 4.3 ABB's Undertaking and standard terms say very little about fumigation services. Methyl Bromide fumigation is offered at 3 of 6 ports but the circumstances in which that service will be provided are unclear.
- 4.4 In short, the only difference between CBH's position on this issue and that of ABB and Graincorp's is that CBH has explained itself more clearly. It is surprising that the ACCC has singled out CBH's Undertaking for criticism on this issue, given that industry practice is to avoid fumigation at a port terminal if at all possible.

Please contact me if you have any questions, comments or require any further information in relation to this issue.

Yours sincerely



Bill Keane
Partner