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Dear Mr Eady,

**Grain Producers Australia response to the ACCC draft determination**

Whilst we appreciate the opportunity to put forward a submission regarding the draft determinations, Grain Producers Australia remains concerned the ACCC has consistently failed to recognise the limitations imposed by their narrow definition of competition and their lack of understanding of the nature of the grain supply chain. They have been consistently criticised for their lack of expertise or understanding of agriculture. They have been seemingly unable and unwilling to understand the need to look at the broader picture.

As has been pointed out by groups such as the VFF Grains Group, growers are the ones who ultimately pay the storage and handling, freight and port costs as a direct deduction from their returns. Should the exemptions lead to greater costs growers will be the ones who pay. GPA supports the arguments put forward in the VFF submission and would like to provide some additional comments from the broader perspective.

The Graincorp submission, Victorian Port Terminals: Exemptions from Port Terminal Access (Bulk Wheat) Regulation December 2014, goes into considerable detail regarding the investment in up country storage facilities, containerised grain exports and proposed Bunge grain export facility.

However, it does not provide a clear argument in support of how the requirement to meet the non-discrimination requirements, dispute resolution for negotiations with access seekers and ACCC approval of capacity allocation systems is having an impact on their legitimate business interests.

Whilst in some areas growers have access to alternative up-country facilities the ability of these facilities to offer comparable rates and competitive pricing is in most instances also linked to their capacity to negotiate access to export facilities on equal terms to those offered by Graincorp and Emerald Grain to their own marketing arms.

Neither Graincorp nor Emerald have provided evidence or substantive argument to support how exemption from those clauses of the code would improve competition or increase the likelihood that

exporters would have fairer and more transparent access to port terminal services. Nor does the submissions provided by either company provide substantive argument for how an exemption would promote more economically efficient operation and use of the port terminal.

Questions should be asked regarding how an exemption would lead to those actions. On one hand Graincorp has argued that an exemption would allow them to further invest in their facilities, however, one of their main arguments has been that there is competition because there has been over-investment in capacity in the Eastern States.

Ultimately growers pay for this over-investment as companies strive to make a commercial return.

#### Subclause 5(3) of the Code

In making a determination under subclause

(2), the ACCC must have regard to the following matters:

(a) the legitimate business interests of the port terminal service provider; *(ie will Graincorp be able to make more money and put more grain through their system if an exemption is granted?)*

(b) the public interest, including the public interest in having competition in markets; *(the public interest in this case should be purely whether or not granting an exemption will encourage innovation and reduce prices to growers thereby facilitating trade of grain. The prices charged at port do not materially affect the Australian consumer, except as a consequence of supply chain costs charged to growers which impact on their returns and facilitation of trade. In the case of Port access in truth the public who should be under consideration are the customers of the services ie the growers who benefit when there is fair and transparent access or pay if the system is not appropriately regulated.)*

(c) the interests of exporters who may require access to port terminal services; *(Given there has been no evidence presented which clearly outlines any significant costs imposed on Graincorp or Emerald from meeting the 3 Code conditions, it is hard to argue that removing the transparency, non-discrimination and capacity allocation requirements would be of benefit to other exporters who require access to the ports).*

(d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services; *(One of the reasons there has been investment in port facilities by other companies is due to the lack of transparency and difficulties regarding access to the original facilities, no evidence has been presented to clearly outline how the concerns of the past have been addressed.)*

(e) the promotion of the economically efficient operation and use of the port terminal facility;

(f) the promotion of efficient investment in port terminal facilities; *(given both parties have already pointed out there has been over-investment in facilities, this condition becomes problematic. The ACCC need to better explain their reasoning behind this condition. What do they believe is the appropriate outcome?)*

(g) the promotion of competition in upstream and downstream markets; *(having all exporters be able to negotiate port access on a fair and transparent basis, reinforced by the Code allows smaller players to compete for export opportunities and therefore offer competitive prices up country)*

(h) whether the port terminal service provider is an exporter or an associated entity of an exporter; *(Both are in this case with both up-country receival facilities and a grain export program)*

(i) whether there is already an exempt service provider within the grain catchment area for the port concerned; *(this condition seems to operate as a two wrongs make a right clause, regardless of evidence presented if someone else is exempt this helps gain exemption for all).*

(j) any other matters the ACCC considers relevant

## Questions that must be asked of the ACCC and the parties

Transparent access to information remains a key problem. How will providing an exemption increase information flow?

Application of the non-discrimination test. How will providing an exemption help farmers and smaller companies negotiate better port access arrangements?

How does granting exemptions reduce costs to growers from utilising the facilities?

How does an exemption help reduce supply chain costs?

What actions have been taken to improve transparency and information flow ie foster competition through free and open transfer of information?

Have we got examples of costs being imposed on the companies from competitive behavior ie reduced access, restricted access to port slots for their own grain, costs of providing transparent information, costs relating to how many times the dispute resolution process has been used?

Up-country competition is used to illustrate competition but if access to a port is predicated on use of a particular supply chain then why is on farm storage and alternative domestic markets even relevant?

GPA would appreciate the opportunity to meet with the ACCC regarding the draft determination.

Regards,



Andrew Weidemann

Chairman

Grain Producers Australia Ltd