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Dear Mr Schroder,

Grain Producers Australia response to the draft determination regarding GrainCorp requests for Port Access code exemption for their Portland facility.

We appreciate the opportunity to put forward a submission to support the ACCC draft determination regarding requests for exemption from the Port Access code.

Grain Producers Australia (GPA) remains concerned about the overall impact of the continuing requests for exemptions and believes there is a strong case to support the need for review of many of the existing exemptions.

GPA strongly supports the ACCC draft determination not to grant GrainCorp's request to become an exempt service provider.

GPA believes that while the industry is still not functioning, as a truly competitive market should, there is a need to provide incentive for smaller operators to challenge the status quo.

GPA does not support GrainCorp's contention that granting of an exemption for RGS should be considered a reason to grant a similar exemption to GrainCorp. Temporary grain loading facilities such as those utilised by Riordan grains services should not be considered as being able to provide permanent competitive pressure to a facility such as GrainCorp's Portland terminal.

The GrainCorp response to the draft determination, as per their previous exemption requests does not provide any substantive evidence regarding how the current 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.

GPA do not support GrainCorp's claim that RGS is providing equal competition at the port site. Riordan Grain Services operate on a smaller scale, on a temporary basis without the benefit of an established up-country grain receipt and accumulation system and all of the information GrainCorp is still able to capture through the management of that system.

GPA does not believe the GrainCorp response to the draft determination provides adequate additional substantive evidence to support their claims that granting an exemption would be in the best interests of the Victorian or broader Australian grains industry. Nor would we agree that their submission provides any evidence to support their claims that an exemption would:

- Allow GrainCorp to compete commercially for the export of bulk grain;

- Support operational flexibility to improve service and reduce supply chain costs;
- Provide equity with the competing export container packers that are not regulated and RGS, assuming it is exempt from the Code; and
- Reduce the overall level of regulation and cost of compliance.

The provisions GrainCorp must currently meet can scarcely be considered onerous. GPA has long argued the provisions in the Code need to be strengthened, with penalties provisions enabled. Currently the Code requirements do not go far enough or have enough penalties for non-compliance attached to provide the support necessary for a fully transparent and functioning competitive deregulated Australian grains industry.

Where is the substantive evidence to support GrainCorp's claim of costs being imposed on the companies from being regulated to ensure competitive behaviour.

- **Operational Flexibility**

GPA does not support the GrainCorp contention that compliance with the Code substantially impacts their ability to compete for throughput.

If GrainCorp provides a cost competitive, well run, open and transparent system run under fair terms and conditions with a focus on ensuring their port access customers can meet their market requirements how can they not be a competitive and economically efficient option for exporters? They have access to a vertically integrated bulk handling chain, which can offer customers capacity, quality control and a smooth pathway to market.

- **Competition at Portland from Riordan Grain Services RGS**

As GPA have previously stated ultimately growers pay for this inefficient and duplicative over-investment and are therefore supportive of all measures which support the efficient and cost effective use of existing infrastructure. The RGS services provided at Portland are neither a permanent competitor to GrainCorp at the site, nor are they of the scale that GrainCorp is. That RGS is acting as a disruptive influence to GrainCorp's business model should not be grounds alone to grant an exemption. GrainCorp has the capacity to differentiate itself and innovate in how they utilise their fixed infrastructure in a way provide services at a competitive rate.

GrainCorp's assertion that RGS does not publish its tariff rates to the open market is a concern, but not one that would be solved by granting GrainCorp an exemption. GPA would support ACCC action to investigate this claim and to require action as appropriate under the section of the Port Access Code (Bulk Wheat) to which RGS is not exempt.

- **Competition from other ports**

GPA is concerned that GrainCorp has criticised the use of location differentials without providing data regarding freight costs to substantiate their claims. GPA has long held concerns regarding the setting of locational differentials by the trade in a way that disadvantages farmers utilising the warehousing systems. However, in the context of GrainCorp's response to the ACCC draft determination GPA would challenge GrainCorp to provide actual, real time data regarding freight rates to substantiate their claim that the analysis undertaken by the ACCC is flawed.

The current poor seasonal should also be taken into consideration as a reason to consider the importance of Portland as a export port during more productive years. During years of higher production all parts become highly valuable assets and parties with the capacity to streamline the use of ports through their control of the up country handling system have a substantial advantage.

The current lack of information flow from GrainCorp proves the value of their upcountry system. If the information regarding quantity/quality and variety were not of value there would be little value in maintaining

their opposition to providing that information in a transparent way. GrainCorp have provided no evidence of how an exemption would materially benefit their ability to offer a more competitive service to customers.

- **Competition in up-country storage and handling facilities**

It has been of grave concern to GPA that since deregulation of bulk wheat exports, the only way for farmers to have good information regarding their grain, control over its treatment and the flexibility to negotiate a reasonable price has been to spend substantive amounts of money on on-farm storage. GPA continues to contend that the most cost efficient and profitable way for export grain to be stored and transported to market is through a bulk handling system focused on cost effectiveness and therefore maximising profits to its key paying customer, the grain producer. If the market was operating in a truly competitive way there would have been no need for the duplicative investment in on-farm storage.

GPA wishes to raise concerns regarding the GrainCorp statement on page 5 of their submission that “there is little or no restriction on farmers, buyers or other end users in utilising our storages and no restrictions in outload destinations.” That the GrainCorp submission also included information regarding an exporter preferring to deliver grain from outside the GrainCorp system should also raise concerns about the legitimacy of their statement. As ACCC are aware there is growing concern regarding grain producers ability to manage their grain within the GrainCorp warehousing system, the use of location differentials to disadvantage growers and the lack of transparency regarding the sale and movement of grain which grain producers still own within the warehousing system.

- **Importance of Portland**

The importance of Portland should not be underestimated. It is the only deep water port in Victoria. The only port capable of fully loading Panamax vessels (55,000 tonne cargo). Those size vessels are increasingly being invested in by shipping companies due to efficiencies of size. This should lead to lower per tonne costs coming out of grain producers pockets as these vessels become more prevalent, subject to end market destinations. Neither Geelong nor Melbourne can fully load a Panamax vessel. They can only part load, due to draft considerations, and have to top up the load at a Port capable of accommodating Panamax requirements, e.g. Portland.

The permanent ship loading and storage capacity of the GrainCorp Portland site should be vastly superior for the loading of the Panamax vessels. Faster loading is highly sought after by shipping companies as it reduces the risks of demurrage. The RGS facility doesn't provide permanent or equivalent capability therefore it is not true competition to the GrainCorp facility.

Portland offers key export facilities during peak export periods. The ability to access innovative, competitive services is vital to the ongoing viability of Victorian grain producers. The original VFF submission clearly outlined the importance of the port and the clear arguments in favour of ensuring the use of the port continues to be supported by all the provisions of the Code.

Allowing exemptions to the Code undermines the effectiveness of the Code which, given the review of the Code recommended strengthening and broadening the Code, cannot be supported. The ACCC has proposed a line in the sand regarding the granting of exemptions by proposing not to grant exemptions to GrainCorp, the GPA strongly supports the ACCC position.

Regards,



Andrew Weidemann
Chairman
Grain Producers Australia Ltd