



Mr Matthew Schroder
General Manager
Infrastructure and Transport – Access and pricing branch
ACCC
GPO Box 520
MELBOURNE VIC 3001
Email: transport@acc.gov.au
Tel: 03 9290 1945

Dear Mr Schroder,

Grain Producers Australia response to the Graincorp and Riordan Grain Services requests for Port Access code exemption for their Portland facility

We appreciate the opportunity to put forward a submission regarding the requests for exemption. Grain Producers Australia (GPA) remain concerned about the overall impact of the continuing requests for exemptions and the need for review of many of the existing exemptions. We strongly supported the recommendations made by ACCC in their 2018 report on the Port Access Code.

GPA strongly supports the VFF submission outlining their concerns with regards Graincorp's request to become an exempt service provider.

GPA supports the Riordan Grain Services (RGS) submission requesting an exemption. We do remain concerned about the principle of granting of any exemptions to the Code however, we acknowledge the RGS submission is a small variation to the previous exemptions which were supported by GPA. 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.

The granting of an exemption for RGS should not be considered enough of a reason to grant a similar exemption to Graincorp. Temporary grain loading facilities such as 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 submission, Victorian Port Terminals: Exemptions from Port Terminal Access (Bulk Wheat) Regulation November 2018 as per their previous exemption requests does not provide any substantive evidence of 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 actual impact on their legitimate business interests.

GPA would question the claim of RGS 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 able to capture through the management of that system.

GPA does not believe the ACCC have been provided with any evidence to support the 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 could scarcely be considered onerous. GPA have long argued that the provisions in the Code need to be strengthened and do not currently 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.

Questions GPA believes must be answered during the assessment process

GPA continue to contend that the actual size and scope of any competition, the level of vertical integration of a competing business and the fees ultimately being charged to growers should all be key considerations in any assessment process.

Transparent access to information remains a key problem throughout the grain supply chain, mainly caused by the refusal of the major bulk handlers to provide a stocks reporting process or support the vital industry good functions, outlined as necessary by the Wheat Industry Advisory Taskforce. Therefore we ask how will providing an exemption increase information flow and assist in competition?

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

Competitive benefits: How does granting exemptions reduce costs ultimately imposed on growers for their grain to go through the facilities?

Supply chain costs: How does would an exemption help reduce overall supply chain costs?

Improving information flow: What actions have been taken by Graincorp to improve transparency and information flow i.e. foster competition through free and open transfer of information?

Where is the evidence to support the Graincorp claim of costs being imposed on the companies from being regulated to ensure competitive behaviour i.e. is there evidence of 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?

If they provide 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 requirement why are competitors having to invest in their own facility capacity? 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.

Clauses within the Port Terminal Access (Bulk Wheat) Regulation:

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 Where is the evidence that Graincorp would be able to make more money and put more grain through their system if an exemption were to be granted? GPA would content none of the requirements have any impact on the*

ability to put stock through their system and in fact the requirements improve transparency and ultimately give growers greater confidence to use the system)

(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 paid by growers thereby facilitating transparent and efficient 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 i.e. 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 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 the long running argument regarding the 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? As the representative of growers who paid for the establishment of the original port terminals, who ultimately pay for the usage of the terminals and ultimately pay for any over-investment through lower grain prices the ideal outcome of deregulation would have been a storage and handling system run to provide a fair and transparent service to all grain marketers/traders.

(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; (Graincorp has up-country receival facilities and a grain export program, they operate on a much larger scale with access to far more crop and grain information than their purported competitor)

(i) whether there is already an exempt service provider within the grain catchment area for the port concerned; (scale, scope and establishment time frame needs to also be considered).

(j) any other matters the ACCC considers relevant

GPA thanks the ACCC for the opportunity to put forward our views on the exemption requests.

Regards,



Andrew Weidemann
Chairman

