

Submission to ACCC on ABB Grain Ltd Port Terminal Services Access Undertaking Draft Decision

Responses from the South Australian Farmers Federation Grains Industry Committee, September 2009

The South Australian Farmers Federation Grains Industry Committee (SAFF Grains) welcomes the Draft Decision from the Australian Competition and Consumer Commission (ACCC).

The ACCC has reached a view that it would not accept ABB Grains proposed undertaking in its current form.

The ACCC in its Draft Decision has highlighted the need for there to be in the undertaking:

- efficient operation of, use of and investment in facilities;
- fair and transparent access; and
- sufficient certainty and clarity.

As SAFF Grains raised some of these same concerns, it is pleasing that the ACCC has reached the same conclusions.

In general SAFF Grains agrees with the ACCC recommendations.

However SAFF Grains does have concerns with the ACCC finding that in the present circumstances, it is appropriate that ABB Grains' proposed undertaking should only apply to port terminal services rather than including up-country services (Chapter 7 Scope). As ABB Grains up-country services are linked to its port terminal services it is not possible to separate these in any meaningful transparent way that would give the rest of the grains industry in South Australia any confidence. It is for this reason that SAFF Grains also considers that ring-fencing would not work, even if ABB Grains' undertaking was amended as suggested by ACCC (Chapter 11 Ring-fencing).

Rather than reiterate the points made in the previous submission, this submission concentrates on what SAFF Grains now believes is required:

- Transparency of Stock Inventory

There needs to be transparency in providing details of the stock inventory for all Grain Trade Australia-recognised receival points, detailing for each commodity the variety, received tonnes, grades and quality, (stack averages). This must be provided for all commodities received at that receival point.

- Logistics Transparency

All participants along the whole supply chain need to share the risks and the rewards (demurrage / despatch). Currently ABB Grain gets virtually all the rewards but for little or no risk. There is a need to remove this "all care no responsibility."

There is a need to quantify the charges and these need to be linked to performance. These charges need to be completely transparent and at a minimum need to be clearly defined and announced publicly no later than 15 August each year.

An example of the need for transparency with charges is with overtime rates. There is the potential to exploit timing of grain movements to penalise some exporters over others. As part of the service that is being offered, exporters should be charged the average rate over the week so that no trader is discriminated against.

All exporters need to be involved in negotiating freight contracts, so that all take on both the risks and the rewards. Currently ABB Grain has a rail agreement with Genesee & Wyoming Australia, and ABB Grain has stated they have taken on all the risk. All exporters need to share in this risk. For transparency the details of this agreement needs to be made public.

Any grain exporter who has the ability to negotiate their own road freight more efficiently (road logistics including price and service) should not be penalised when getting back into the ABB Grain system.

- Non-ABB Grain Sites

Those using non-ABB Grain sites should not be penalised when grain moves into the ABB Grain system. Currently there are penalties in place which are not commercial charges and on a per tonne basis do not reflect commercial reality.

It is accepted that there are the costs for testing grain when it first comes into the ABB Grain system, but this should not be on a per tonne basis.

Those providing this grain need to be penalised if it is found that the grain is not of the specified description and standard, but this penalty should not be made in advance on the premise that the grain may not meet the required specifications.

- Shipping Stem Transparency

There needs to be processes in place which allows for information to be readily available on who has nominated ships, what vessels are pending, and the amount of grain shipped (which must include grain type, volume and grade). All this needs to be time stamped so that then there can not be allegations of anyone jumping the queue.

To nominate a vessel, it should not be necessary to have stock in the system before nominating. Three weeks before loading, the tonnage in the system owned by the trader should become the tonnage available for shipping.

- Independent Dispute Resolution Service

An independent dispute resolution service is required that is both transparent and timely (with a process leading to an outcome within two to three days).

Grain Trade Australia already has a dispute resolution procedure in place for contracts, and would be an ideal organisation to run this independent dispute resolution service.

It is noted that the ACCC is suggesting that it should be involved in the dispute resolution process. This is necessary to ensure that there is competitive tension and transparency throughout the supply chain, and to make sure that monopolistic behaviour and extreme market power is not abused.

New pricing model required

Ideally what is required in the long term is a pricing model that has the following attributes:

- Flexibility
- Transparency
- Fairness
- Inclusiveness
- Predictability
- Sustainability

SAFF Grains have examined the pricing model used in the telecommunications industry. While this model is not appropriate for the grains industry it shows what can be developed.

A pricing model that suits the needs of the grains industry needs to be put in place to prevent pricing exploitation. The return on capital needs to be taken over the longer term and not on up-front replacement costs.

ABB Grain currently is a monopoly and with the potential to exploit its position, regulatory control is needed. Even if the wheat marketing legislation sunsets, ongoing supervision by the ACCC is required while the monopoly or this extreme market power is in place.

Bulk handlers should be subject to sanctions, such as the removal of export licences, to make sure they abide by their undertakings. The bulk handlers should be required to undertake this process every five years.