

MEMORANDUM

To: ACCC
Cc:
From: Grain Trade Australia
Date: 25 August 2009
Subject: ACCC Access Undertaking – Dispute Resolution

Background

As part of the deregulation of the Australian bulk export wheat market, Australian Bulk Handlers who are also exporters are required to give an enforceable undertaking to the ACCC to allow fair access by other exporters to export terminal facilities.

Grain Trade Australia is the “post farm-gate” Australian grain industry association. As part of its role, GTA provides an arbitration service for the resolution of contractual disputes, based on the GTA Trade Rules and the Dispute Resolution Rules (which include a set of “Fast Track” Rules for the expeditious resolution of disputes).

GTA has conducted approximately 150 arbitrations over the last 20 years. GTA relies on volunteers from within the industry to act as arbitrators. Currently GTA has 100 arbitrators on its list. GTA arbitrations are conducted in accordance with the Commercial Arbitration Acts in place in the various States. Any challenges to GTA arbitration to date have been dismissed by the Courts who have up-held the GTA process.

It is likely that any access disputes would be between GTA members.

ACCC Access Undertaking – Dispute Resolution

The form of Access Undertaking currently proposed contains a Dispute Resolution mechanism which culminates with arbitration.

GTA is able to offer its expertise in administration of dispute resolution as part of the ACCC Access Undertaking process.

It is envisaged that disputes would broadly concern

1. the Access Application process, and
2. the Access Agreement (inc Standard Terms and Shipping Protocols).

While the terms of the process are open to negotiation, GTA would propose;

1. An expedited process producing a legally binding award within 3-5 days of commencement of the process, or sooner (i.e. hours) if the parties require;
2. Specialist trained arbitrators drawn from the current GTA list to deal with Access Application and Access Agreement disputes.

The parties would be encouraged to agree on an arbitrator from the GTA list. If the parties cannot agree, the GTA CEO would be empowered to make an appointment (which would be subject to a parties right to object on the grounds of apprehended or actual bias).

It is anticipated that an “unreasoned” award could be produced within 3-5 days with a fully reasoned award to be produced shortly thereafter.

It is not anticipated that the process would provide for appeals (other than to the Courts) unless the parties so desire. Similarly enforcement of awards would ultimately be a matter for the Courts, or perhaps the ACCC if appropriate.

Fees would be in-line with current GTA arbitration fees, estimated at \$7,000 each party, perhaps subject to the time taken and complexity of the dispute.