



23 February 2010

Ms Wendy Craik
Commissioner
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Wendy

Thank you for the opportunity to meet with you and the WEMA review team recently. We have addressed some of the issues raised in the meeting below.

Port Protocols

While there is some greater certainty and transparency in regard to the port protocols in the current environment, as the ACCC undertakings require port loading protocols to be published and the ability to change terms, conditions and fees without consultation is more limited, there are still some practices that are resulting in inefficiencies and uncommercial practices. This is limiting access for Australian wheat exporters.

The details and application of the port loading protocols are somewhat different across each of the operators, however, there are some key issues for exporters that apply to one or more of the operators. These issues are:

- **Timing – practices not aligned with international best practice**

In the case of CBH, slots are allocated on a half monthly basis whereas standard practice internationally is for monthly shipping slots and thus, it can be difficult to confirm ships within a half month window.

In the case of Viterra, there is a 18 day vessel nomination requirement where as the industry standard internationally is 15 days.

- **Accountability – no sharing of risk by port operators and significant dollars at risk**

The issue of accountability was addressed extensively in the AGEA submission to the ACCC process and in our previous submission to the Productivity Commission review. AGEA believe that the BHCs need to be accountable for services provided including implementation of commercially based risk sharing of activities, such as demurrage and despatch.

For example, in the case of CBH, capacity is allocated on basis of -5%, while international best practice is that grain is sold on basis + or – 10%. The actual grain loaded is the decision of the ship's captain and thus, this can result in considerable unused capacity that the exporter needs to pay for. On a typical ≈ 40000 +/- 10% tonne shipment, this could be $\approx 4000+$ tonnes and the loss incurred is the full elevation fee of \$14.10 plus the-up-front marketers' fee of \$3.00.

A key issue highlighted by AGEA to the ACCC was the BHCs accountability in relation to ship loading. Under the current practices, the BHCs' take on very little risk. They exclude consequential loss claims and exclude liability unless caused by negligence (gross or otherwise) or wilful default. Any liability is capped at commercially low levels, effectively transferring the majority of risk to Australian wheat exporters. Further, Australian wheat exporters are not entitled to limit any liability that they may have to the BHCs. Australian wheat exporters are willing to share the benefits of increased port terminal efficiency, by sharing demurrage/despatch arrangements. To ensure BHCs are accountable for shipping performance and the efficient operation of the facilities, Australian wheat exporters should be compensated for delays caused by BHCs' including vessel demurrage. Conversely, BHCs should be entitled to be rewarded by way of a share in despatch rates if vessels are unloaded at a faster than expected rate.

- **Lack of effective secondary market**

Another key difference between Australian practice and international best practice is that internationally shipping slots can be rolled forward and/or swapped thus, reducing risk and losses for exporters. Under the current BHC arrangements, not only is there not the flexibility to move/swap slots, but there is either not provision for or not an effective secondary market. In case of CBH, there is provision for a secondary market, but this is not working effectively, partly because the traded capacity must retain the supply chain option originally nominated. In case of GrainCorp and Viterro, there is not provision for a secondary market although, in some instances, there can be more operational flexibility.

Ring Fencing

AGEA has previously indicated it does not believe that the ring fencing provisions in the Undertakings are adequate and believe that the no discrimination and no-hindering access clauses by the BHCs are insufficient to deliver fair access.

AGEA remains concerned about the lack of transparency in a number of areas. Observed incidents and practices have highlighted ongoing concerns in regard to transparency on part of the BHCs. This includes observations such as:

- Access to knowledge regarding quality of grain in BHC storage – this was highlighted recently by a tender offered by an overseas government buyer which requested in terms that grain be offered with test weight of 80. Data provided by CBH on average stack quality showed that of the average of the two grades suitable for this tender was less than 79. As such, the risk for exporters to offer basis 80 was too great and thus, a number did not compete. Grain Pool had the confidence to bid for the tender basis test weight of 80
- Shipping stem movements – in relation to both Viterro and GrainCorp, capacity is allocated on a first in basis. Exporters pay a booking fee which is lost if capacity is not used, and in the case of Viterro, there is an additional fee payable one month from nomination which is also lost if capacity is not used. Both Viterro and GrainCorp held the bulk of capacity across the range of shipping periods and ports pre harvest. A significant amount of this capacity has been removed from the stem without being used. The tonnages booked and not used have been significant and this is not a position that exporters could afford to take as they need to absorb the fees forgone for capacity not used.

A further impact of the shipping stem issue above is that this sends poor market signals to growers. A number of growers and advisers to growers are monitoring the shipping stem as an indicator to the demand for Australian wheat. With the shipping stems strongly booked pre-harvest, this was interpreted by some as a signal that there would be a strong shipping program and therefore, strong demand for growers' grain. Consequentially a rational behaviour would have been to hold grain back on expectation that prices would rise; a position that was not supported by market fundamentals and international supply and demand data.

Logistics

The other key issue for exporters is the bundled service offers e.g. Grain Express in WA and Export Select in SA. Again, the AGEA submission to the Productivity Commission outlined issues with Grain Express.

While recognising that logistically these systems can work effectively, the major issues relate to the lack of flexibility and lack of transparency. As such, there is no ability to measure the efficiency and cost effectiveness of the services and no visibility on the individual cost components. There is no flexibility to organise alternative arrangements in the event of non delivery.

In case of CBH, exporters are essentially forced to use Grain Express as the terms of auction process requires exporters to nominate within 7 days whether or not they are using Grain Express or direct access. Furthermore, as the FOB fee is inclusive of carry charge, there is no incentive for direct access as exporters would incur the carry charge twice.

Undertakings

AGEA believes that it is essential that the two year period for which the Undertakings apply should be allowed to run its course. As the Undertakings were only approved by the ACCC end September 2009, there has not been sufficient time to see how ACCC undertakings will impact and change BHC behaviour. Under provisions of the Undertakings, there are a number of steps for exporters to take prior to initiating an arbitration in the event that there is not agreement and thus, absence of any arbitrations to date is not an appropriate measure of whether behaviour has changed and there is fair access.

Further in relation to a number of the ring fencing issues, whether there have been any breeches will be determined by the ACCC and there is time required for ACCC to gather evidence to determine whether or not an investigation is warranted and then a further time for the investigation to take place. Thus again the absence of any breeches reported by ACCC is not an appropriate indicator that the Undertakings have worked at this early stage.

AGEA notes that the BHCs proposed that the Undertakings are not required and could be replaced with a voluntary Code of Conduct. AGEA believes that there are still a number of issues that suggest that there is still potential for discrimination to occur and that the current arrangements will not necessarily encourage BHCs to behave fairly or make investments to maximise supply chain efficiency. As such, AGEA does not support the Code of Conduct at this time.

Thank you for your consideration of the above issues and we are happy to discuss further with you if required.

Yours sincerely



Rosemary Richards
Executive Officer