

Wheat Export Marketing Arrangements

Submission from the South Australian Farmers Federation Grains Industry Committee, November 2009

The South Australian Farmers Federation Grains Industry Committee (SAFF Grains) is concerned that a monopoly has continued to flourish in the grains industry supply chain in South Australia to the detriment of grain growers. Monopoly control of the grains supply chain has extracted revenue from growers to benefit a single company, ABB Grain Ltd and its shareholders, by providing effectively uncontested storage and handling services. ABB Grain also controls the majority of road and rail logistics in South Australia grains export supply chain.

This continues to flourish despite the wheat export accreditation arrangements under the *Wheat Export Marketing Act 2008* (WEM ACT) and the barley export licencing arrangements under the South Australian *Barley Exporting Act 2007*.

There are issues dealing with accountability and competition that are currently missing from the supply chain for the South Australian grain industry, for both wheat and barley. To increase productivity in the supply chain from the farm gate to the ship and to ensure all participants in the supply chain prosper, there is a need for transparency and full, open and fair access of the supply chain. For both wheat and barley, this is still missing. The Productivity Commission's Inquiry is an opportunity for change.

The position of SAFF Grains is to improve the accountability and remove the monopoly control within the supply chain. There is the need for real competition that can lead to efficiencies in the supply chain so that the whole industry operates in a streamlined and cost effective way.

An example of the risks to the industry and growers from the dominance of ABB Grain is the current shipping schedules that show that for the first months of the coming harvest nearly all the boats are only for ABB Grain. This is stopping growers from selling to other exporters and creating difficulties for other exporters to even buy grain ready for export. For the period from December to May, nearly 1.4 million tonnes of wheat is scheduled for shipping, with over 70% booked for ABB Grain. Obviously competition has not yet been generated under the WEM Act as it now stands.

Another example is that the shipping stem is dominated by the bulk handler with a \$5 a tonne nomination fee. If an exporter needs on a 50000 tonne boat, \$250 000 has to be paid up front. And any change is considered a new booking nomination. This means the same boat in the same slot requires another \$250 000. This fee is not refunded if the boat is not loaded for any reason. ABB Grain does not have the same fiscal restraint as in effect the left hand can pay the right hand, so that overall the business does not hand over cash under current nominations. If there was an independent stem operator, it is estimated that ABB Grain would be required to pay up to \$13.25 million.

Another example of this control is in the week of October 19 to 25, CBH in Western Australia were very aggressive when they had 310 000 million tonnes on the shipping

stem but had 220,000 million tonnes knocked back. The price then fell away because CBH had no where to put the grain. This shows the importance of having an independent shipping stem so that all traders have to fund the slots or a tradable system like in Western Australia. CBH have talked with the industry to develop their system in that State. The lack of flexibility in the South Australian system only adds to the risk.

There is also a lack of information available to the industry on what is in the bins in relation to the make up of the grade volume. South Australia needs a grain trading environment where all exporters will want to do business without feeling threatened or restricted by the dominance of ABB Grain. Currently there is no information or transparency for understanding where the grain is or what grade it is, and the bulk handler has the ability to manipulate grain flows.

The Australian Competition and Consumer Commission (ACCC) have responsibilities relating to whom exports bulk wheat and who also provide one or more port terminal services. On 1 July 2008, the WEM Act came into operation. The WEM Act establishes a system for the accreditation of exporters of bulk wheat. Under the system, to gain accreditation from Wheat Exports Australia, wheat exporters who own or operate port terminal services must pass an access test relating to each of those services.

From 1 October 2009 one mechanism by which an export marketer that is the provider of one or more port terminal services for wheat export can pass the access test is by having a formal access undertaking in operation relating to the provision to accredited wheat exporters of access to the port terminal services for the purposes of the export of wheat. This access undertaking is assessed by the ACCC under the requirements of Part IIIA of the *Trade Practices Act 1974*.

This process highlighted in particular the monopoly that ABB Grain has in South Australia. While the ACCC eventually allowed ABB Grain, using Ausbulk, to pass the access test, this only happened once changes were made and the ACCC were satisfied that the following would occur:

“ Robust prohibitions against AusBulk anti-competitively discriminating in favour of its affiliated wheat trading business or hindering access to its port terminal services, with the ability for the ACCC to order independent audits of AusBulk’s compliance with such anti-discrimination obligations;

Clear and transparent port loading protocols that AusBulk is obliged to follow in managing demand for the port terminal services, for example in making decisions about the allocation of shipping slots;

Obligations on AusBulk to negotiate in good faith with eligible wheat exporters around price and non-price offers of access to port terminal services;

If negotiation fails, the ability of wheat exporters to seek mediation or binding arbitration on price and non-price terms of access to AusBulk’s port terminal services;

For those wheat exporters who wish to take a standard offer, a set of clear and certain minimum non-price terms and conditions of access to port terminal services, and an obligation on AusBulk to publish its standard prices for port terminal services at least one month prior to commencement of each new wheat exporting season; and

Obligations on AusBulk to publish certain port terminal information to provide greater transparency over its operations.”

SAFF Grains is not convinced that these safeguards are actually in place. How the now approved ABB Grain Port Terminal Services Access Undertaking operates will go part way to showing if there have been any real changes.

As part of its process, the ACCC called for submissions. Some of these can be found at <http://www.accc.gov.au/content/index.phtml/itemId/868800>. There were also several submissions lodged in confidence because of concerns of the monopoly power of ABB Grain. SAFF Grains made several submissions and these are attached.

The ACCC noted that several submissions made allegations that ABB Grain has engaged in conduct that may raise issues under the prohibitions on anti-competitive conduct under Part IV of the *Trades Practices Act 1974*. These matters are now being assessed by the ACCC's Enforcement and Compliance Division.

At issues for those other traders who have been accredited to export wheat from South Australia and for grain growers, is the position of the dominant bulk handler, ABB Grain who control the exports of wheat and other grain in South Australia through their six ports and their supply chain that feeds the ports. The commercial operations of ABB Grain as the sole supplier of ship-loading in this State have resulted in a conflicting position with the aims of the WEM Act. Many examples of such dominant control can be given to demonstrate the disadvantage caused to users of wheat exporting services, both growers and the accredited exporters.

For example, ABB prices third party bulk handler throughput rates through its ports at rates that make the use of any upcountry competing storage options outside of their supply chain untenable. As a sole provider of ship loading services for bulk grain in South Australia, ABB Grain has effectively complete control over the road and rail export logistical task, particularly as 80% of South Australian grain is exported. Their storage and handling agreement is structured in a way to ensure that third party storage providers cannot compete with their assets nor provide any competitive logistical services to bring grain to port.

For the wheat market to demonstrate fair market conduct and to be competitive, all participants must have access to a base level of information. Currently that information is available to one party in South Australia, ABB Grain who hold all details of the supply chain for wheat and most other grain. Information on receivals, quality, variety, domestic outturns, export shipments and stock balances (to name a few) and their absolute detail is held by ABB Grain load by load for its own commercial advantage to the detriment of other grain market participants – growers and traders alike. As ABB Grain does not ‘ring fence’ this information, it can use it

for commercial advantage by knowing not only all details of the information available but also details of each of its competitors' activities. And yet none of its own activities are known by any other participants in the grain industry, including SAFF Grains and Government.

Without flows of information in the grains industry, the added risks are factored in reducing the competitiveness in service and price to growers. SAFF Grains believes that unless information is provided to the consumers of grain export services, the market simply cannot be competitive, resulting in revenue shifts away from us, the South Australian grain growers.

In relation to the issues raised in the Productivity Commission's Issues Paper, the following brief comments are made –

1 Accreditation of exporters

The accreditation process has not been an issue, and could now be discontinued.

2 Port terminal access and services

3 Transport and storage

4 Information provision and market transparency

It is these three issues that should be at the crux of the Inquiry by the Productivity Commission. It is these three issues that are of extreme concern to most of the industry and particularly the growers, and in the SAFF Grains submission we have tried to show some of the examples of how the existing monopoly is costing the grains industry.

The legislation needs to be strengthened so that the ACCC has a greater chance of achieving a better policing role. Without open competition, there is a need for a regulated supply chain.

5 Wheat classification and market segmentation

6 'Industry good' functions

The Wheat Classification Council appears to be functioning correctly. The ABS information so far provided has been too little, too late and largely historical. An independent dispute resolution service is required – GTA may be the appropriate body.

7 Performance of the wheat export marketing arrangements

Despite the existing ABB Grain monopoly, SAFF Grains continues to support deregulation.