



Australian
Competition &
Consumer
Commission

GPO Box 3131 Canberra ACT 2601
23 Marcus Clarke Street Canberra ACT
tel: (02) 6243 1111 fax: (02) 6243 1199
www.accc.gov.au

NEWS RELEASE

ACCC SEEKS VIEWS ON GRAINCORP'S PORT TERMINAL ACCESS ARRANGEMENTS AT NEWCASTLE

The Australian Competition and Consumer Commission is seeking views on whether the scope of regulation of GrainCorp's bulk grain port terminal in Newcastle should be reduced due to the presence of other bulk export grain facilities at the Port of Newcastle. The ACCC is inviting submissions on GrainCorp's application to vary its Access Undertaking for its Carrington grain terminal.

The ACCC's assessment will examine the level of competition faced by GrainCorp's port in Newcastle, and whether it is appropriate to remove existing Undertaking obligations as a result, against the relevant matters in Part IIIA of the Competition and Consumer Act.

GrainCorp has proposed that its Carrington terminal in Newcastle be subject to less access regulation because it now faces competition from two other bulk wheat export terminals. GrainCorp states that the recently completed Newcastle Agri Terminal is due to receive grain shortly, while Louis Dreyfus has operated a joint venture facility since 2011.

GrainCorp also notes the other facilities are not subject to access regulation and argues that it is at a competitive disadvantage as a result. GrainCorp has said that there is now significant excess capacity available to wheat exporters at the Port of Newcastle. GrainCorp argues that this will provide it with the incentive to continue to provide exporters with commercial and open access to its terminal.

GrainCorp is therefore seeking to amend the Access Undertaking to make changes to exclude the majority of its current access obligations from applying at the Carrington terminal. GrainCorp also proposes to exclude the application of the current Port Terminal Services Protocols (PTSPs), which cover operational and logistics procedures. It will introduce specific PTSPs for the Carrington terminal, but these will not fall under the Undertaking.

Amongst others, GrainCorp proposes to exclude from applying at Carrington its Undertaking provisions which relate to terms of access, non-discriminatory access, negotiating for access, dispute resolution, oversight of capacity management systems, and information on stock at the port. Overall, other than maintaining the Continuous Disclosure Rules, the proposed variation would remove essentially all existing access provisions and has the effect of removing the current negotiate-arbitrate framework from applying at Carrington.

In addition, GrainCorp has made a number of more minor changes to reflect the changes made to the *Wheat Export Marketing Act 2008* (Cth) since the 2011 Undertaking was accepted.

The ACCC has published an Issues Paper outlining GrainCorp's major changes and is seeking public submissions from interested parties in the bulk wheat export industry in response to questions in the paper. The closing date for submissions is Friday 31 January 2014.

The Issues Paper and other relevant documents are available at www.accc.gov.au/wheat

Background

Following the abolition of the single desk for bulk wheat exporting, the Australian Government set up a new system for regulating the export of bulk wheat, as provided for under the *Wheat Export Marketing Act 2008* (Cth) (WEMA).

The WEMA reforms required bulk wheat exporters that also own, operate or control port terminal facilities to provide fair and transparent access to their facilities to other exporters. The reforms sought to achieve competition in the market and contestability in the provision of export market services to growers.

In accordance with the WEMA, GrainCorp's initial two year undertaking was accepted by the ACCC on 29 September 2009. It provided access for third party exporters to GrainCorp's port terminal services for bulk wheat export at seven of its ports terminals on the East Coast of Australia. This arrangement was replaced in 2011 by the current GrainCorp Undertaking, which GrainCorp is now seeking to vary.

At the time of the 2011 decision, the ACCC noted that GrainCorp's access arrangements had successfully allowed access to GrainCorp's port terminal services by wheat exporters. The ACCC decided that it was appropriate for the existing arrangements to largely continue.

The 2011 GrainCorp Undertaking is currently due to expire on 30 September 2014, when it is anticipated that a mandatory wheat port code of conduct will come into operation.

The ACCC may consent to a variation of an access undertaking if it thinks it is appropriate to do so having regard to:

- the objects of Part IIIA of the CCA which are to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets, and provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry
- the pricing principles specified in the relevant section of the Act
- the legitimate business interests of the provider of the service
- the public interest, including the public interest in having competition in markets (whether or not in Australia)
- the interests of persons who might want access to the service
- whether the undertaking is in accordance with an access code that applies to the service
- any other matters that the ACCC thinks are relevant

Media inquiries

ACCC Media 1300 138 917 or 0408 995 408

General inquiries

Infocentre: 1300 302 502

MR 291/13

12 December 2013