

Senate Rural Affairs and Transport References Committee

**Questions on Notice – Wednesday, 16 November 2011
CANBERRA**

Inquiry into operational issues in export grain networks

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SENATE RURAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

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Questions Taken on Notice - ACCC

1. HANSARD, PG 5

Mr Pearson: It is not even so much complaints. Particularly when you look at the undertakings, there were a number of people—I do not know how many but there were several—who said they wanted the access arrangements to include upstream or transport or access and we said, 'No, it can't.' So it was more about requests or demands to spread that access regime up-country rather than specific complaints. We do of course have the odd complaint that comes in; sorry, I do not have them with me. But it was more that kind of request or suggestion while we were debating accepting the undertaking. So there were a number of people who did ask for us to spread to the upstream.

Senator NASH: Could I ask you to provide copies of those complaints to the committee, mindful of any privacy issues you have got to keep out of it? Could you give us some of those complaints/concerns you are talking about?

Mr Wing: They are in submissions, so we can provide them.

2. HANSARD, PG 5

Senator EDWARDS: Before we move on, what are the two biggest single issues that you receive as complaints that do not fit within your policy area or area of influence, that you have to turn people away on?

Mr Pearson: I think the main one would have been the requests to have the regime move upstream. Again it was not so much about specific complaints as about a request. I might want to take that on notice. I would have to say that generally most growers who have come back to us, and we have been to groups and to meetings, we have had a fair bit of praise from them and others about how the access arrangements have been handled, the undertakings, what we have tried to put in place. We have had some pretty good feedback from growers and others, grower groups and exporters and so on about what we have done. It would go back again to the request or the push to try and have the undertakings actually cover upstream. I might have to take it on notice.

3. HANSARD, PG 7

Senator NASH: About Melbourne port—and I know I have asked this before and I have not received a question back yet on notice yet but I am wondering whether in the interim you have

had a bit more information that you can now provide the committee—and it concerns Sumitomo and Emerald. I know that Melbourne port has been outside the arrangements that exist for all the others. Sumitomo has a 50 per cent ownership of Emerald—and it was not until December last year that I think the axis undertaking was granted—so there was a period of several months in question. What I am trying to get my head around is that, surely, during that time the axis undertaking should have been revoked. It just does not seem to make sense that there was a 50 per cent ownership of the port, having been told that Melbourne is outside the arrangements. It just does not seem to make sense. Can you enlighten me on that?

Mr Wing: The way the regulations work is that a vertically integrated bulk handler has to have an undertaking if he wants to export wheat. Wheat Exports Australia decides whether or not they need an undertaking. We assess whether it is appropriate or not but we do not decide whether or not they need an undertaking—

Senator NASH: So that is an WEA question, really, in terms of why that arrangement was allowed to continue?

Mr Wing: Yes. All we know about it is what is stated on the public record.

CHAIR: Who makes those judgments?

Mr Wing: My understanding is that for the two years, up to 2014, the government or the department will make that decision, but we would have to check that.

Senator EDWARDS: You are really frightening us now!

Senator NASH: So to clarify, your understanding is that it will be the government or the department that will do the role that has been previously done by WEA when it comes to that particular area?

Mr Wing: Just on that bit of the requirement to have an undertaking.

Senator NASH: Is there a way of getting some clarification around that for the committee?

Mr Pearson: Yes, we will have a look at that, Senator, and come back to you.

4. HANSARD, PG 8-9

Senator EDWARDS: I will just follow on. I am fleshing out this issue that Senator Nash has discussed and that we have been on this morning. I draw your attention to submission 21, which happens to be a submission from an independent grain analyst. He makes a number of recommendations in there which to me seem quite plausible and real. Those recommendations that are in there, it would seem, do not come within your sphere about auctions, shipping stems, operational activities, stack averages and all those kinds of things. How is it that you decide that they are or are not good ideas and things that you would pursue?

Mr Pearson: So the—

Senator EDWARDS: There are a number of recommendations that he—Malcolm Bartholomaeus—makes in there which deal with market failure between the states, which I would have thought comes within your bailiwick. Then there are recommendations about stack averages, which I can sort of see is in a grey area for you to interpret, and grain stocks information—daily grain stocks information being broadly available to the marketplace and those types of things. He makes some recommendations there. Who picks them up and says, 'We're going to change our operations because this is a very good idea,' or, 'We don't do that'? Who sets your terms of reference and how do we change those if we need to—probably?

Mr Pearson: In terms of the undertakings themselves, there is a fairly well established set of principles that are both in the act and through our own work, tribunal decisions and so forth. We know fairly well, within pretty tight bounds, how far we can push things. There is always a question about the perfect world versus an undertaking that satisfies certain requirements. To the extent that you can challenge what is in an undertaking—you say, 'Look, this is totally inappropriate for the effectiveness, so here's what we will do'—yes, that answers our concerns. People may differ on what that perfect world should be. That is a specific undertaking environment, but a lot of those other issues are issues that can be picked up in part by us—or, again, you would hope that, if they are good ideas, they could well be picked up by the industry, by players in the industry or by the policy people. The policy people have a very strong role to play here.

Senator EDWARDS: Can I ask you to have a look at that submission and just let me know which areas of that submission you can actually pick up on and the other areas that you believe should be addressed, and the recommendations. What I am getting to here is that I think there is going to be a lot falling between the cracks in 2014, and I just want to address that with the committee's deliberations before we go. But I just need to be very clear about what you can and cannot touch under your current charter.

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Response:

A total of 70 submissions from grower groups and exporters were made to the ACCC in the course of its consideration of the four port terminal services (wheat) access undertakings. In the submissions listed below, in addition to providing input about port operations, stakeholders raised the types of concerns referred to in Mr Pearson's response.

Viterra Port Terminal Services (Wheat) Access Undertaking:

- AWB response to Issues Paper – raises up-country supply chain and storage concerns
- Victorian Farmers Federation (VFF) response to Issues Paper – raises issue of monopolies at up-country silos
- South Australian Farmers Federation (SAFF) response to Issues Paper – raises up-country storage competition issues
- Concordia response to Draft Decision – raises up-country logistics and freight issues
- SAFF response to Draft Decision – raises whole-of-supply chain concerns and that the ACCC regulatory role should extend to all grains
- Louis Dreyfus response to Draft Decision - raises issues concerning up-country stock information and up-country logistics

- Bunge response to Draft Decision – raises issue of up-country storage information

CBH Port Terminal Services (Wheat) Access Undertaking Submissions:

- Australian Grain Exporters Association response to Issues Paper – discusses up-country stock receipt and storage information
- Pastoralists and Graziers Association response to Issues Paper – discusses up-country storage including pricing
- Queensland Rail National Freight response to Issues Paper and Draft Decision – discusses cross subsidisation across the supply chain

GrainCorp Port Terminal Services (Wheat) Access Undertaking Submissions:

- Timothy Bush response to Issues Paper – discusses wheat export supply chains and alternative export pathways
- Victorian Freight and Logistics Council response to Draft Decision – discusses supply chain issues

Australian Bulk Alliance Port Terminal Services (Wheat) Access Undertaking Submissions:

- VFF response to Issues Paper – discusses supply chain and up-country storage

The submissions are available on the ACCC website at:

<http://www.accc.gov.au/content/index.phtml/itemId/846439>

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Response:

The ACCC confirms that the most significant issues that have been raised in the course of its assessment of the access undertakings which lie outside the scope of its role relate to two up-country issues: storage and freight logistics.

As outlined in the response to question one, there were some calls for the undertakings to cover not just issues of access to port terminal services, but also to services at storage facilities. For example, there were calls for the undertakings to require publication of information on the quality and quantity of stocks at all storage facilities.

The second key up-country issue raised by stakeholders concerns supply chain logistics and freight arrangements. For example, some parties expressed concern with the effects of bulk handler control of whole of supply chain arrangements.

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Response:

Under existing arrangements, Wheat Exports Australia (WEA) determines whether a grain port terminal operator that exports bulk wheat is required to have an access undertaking in place with the ACCC, based on the provisions of the Wheat Export Marketing Act 2008. The ACCC assesses proposed undertakings and monitors accepted undertakings.

The Government has announced that these arrangements will continue until 30 September 2012.

The Government announcement states that while the wheat export accreditation scheme will be abolished on 30 September 2012 and WEA wound up by 31 December 2012, the requirement for grain port terminal operators that export bulk wheat to have an access undertaking in place with the ACCC will remain until 30 September 2014. The ACCC understands that the criteria that currently apply will continue to be used to determine which port terminal operators require an undertaking. The ACCC understands that it is proposed that the Department of Agriculture, Fisheries and Forestry will undertake this role acting on advice from the Australian Government Solicitor. The ACCC will continue to monitor existing undertakings and assess any new proposed undertakings that are required in the period from 1 October 2012 to 30 September 2014.

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Response:

Mr Bartholomaeus makes recommendations relating to five main areas in his submission to the Inquiry:

1. receival classifications and segregations
2. receival and outturn standards
3. allocation of shipping slots
4. grain stock information
5. the role for a statutory body.

Receival classifications and segregations and receival and outturn standards

Mr Bartholomaeus appears to be recommending regulated service standards and protocols and outturn standards be imposed on bulk handlers relating to the receival, classification and outturn of grain up country. The ACCC does not have a specific regulatory role in relation to up-country services and would only get involved in such issues if the conduct complained of amounted to a breach of the competition provisions of the *Competition and Consumer Act 2011*. For example, if such conduct amounted to misuse of market power or unconscionable conduct, the ACCC could investigate and possibly take legal action against the bulk handler.

A decision to regulate receival classifications and segregations and receival and outturn service standards would be a policy matter for the relevant State or Australian government.

Allocation of shipping slots

Mr Bartholomaeus argues for having the same auction system operating in all States for allocating shipping slots and makes a number of recommendations for the administration and rules of such systems. The ACCC has recently assessed the systems for allocating shipping slots proposed by the bulk handlers in their access undertakings. The ACCC accepted differing systems for allocation, taking into account the different circumstances operating in the areas covered by each undertaking. The ACCC accepted undertakings from GrainCorp and Australian

Bulk Alliance (ABA) operating in the East Coast, which incorporated first come, first served (FCFS) systems. In these cases, the ACCC considered that the FCFS systems had operated effectively, and that it was not necessary to require those operators to allocate capacity by auction. However, in South Australia and Western Australia, the ACCC considered that auction systems were appropriate in order to allocate demand for shipping slots efficiently, taking into account the degrees of capacity constraints in those States and the degree of competitive constraints operating on the bulk handlers in those States. The ACCC has a role set out in Viterra's access undertaking in the introduction of an auction system in South Australia in 2012.

Grain stock information

Mr Bartholomaeus recommends a system of reporting on all grain stocks. The ACCC's current regulatory role relates to access to port terminal services for bulk wheat exporters. In the access undertakings recently accepted by the ACCC, reporting obligations on the bulk handlers relating to bulk wheat stocks have increased, as well as limited information about non-wheat grains, but this is limited to stocks at port.

A decision to regulate for information about grain stocks up-country would be a policy matter for the relevant State or Australian government.

Industry body

Mr Bartholomaeus recommends an industry-specific regulatory body to carry out a number of functions. This is a policy issue for government.