

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 232
Topic: Sumitomo Corporation
Hansard Page: 105

Senator Nash asked:

Senator NASH: They have indeed. I will quickly take you to that. Correct me if I am wrong, but my understanding is that the ABA is a wholly owned subsidiary of Summit Grain Investments, which is part of the major Japanese conglomerate Sumitomo Corporation. That is correct?

Mr Pearson: Senator.

Senator NASH: Last March, Sumitomo bought 50 per cent ownership in Emerald, which is interesting given that Emerald is obviously a grain trader. How is that not an associated entity? That would have required an access undertaking from Sumitomo last March.

Mr Pearson: Senator, I am sorry, but I do not have any knowledge of that. I would have to take that on notice.

Senator NASH: Does anybody? No-one in the room has any idea? I ask you to take on notice, then, given that Mr Woods has indicated to the RRAT committee that the Melbourne port terminal is not required to have an access undertaking due to the fact that there is no associated entity. Sumitomo, which obviously has a significant interest, bought 50 per cent ownership in Emerald, which is a grain trader-accumulator, last March. Why was there not a requirement at that point for Sumitomo to move to an access undertaking? I understand they did in December. But I am very interested in the time lag and why the requirement was not there. There seem to be a lot of mixed messages.

Mr Pearson: Senator, I will take that on notice.

Answer:

The question of whether a party is required to have an access undertaking in operation in order to be accredited under the Wheat Export Marketing Act 2008 (Cth) (WEM Act) is a matter to be determined by Wheat Exports Australia (WEA). The ACCC does not have a role in making this determination under the WEM Act.

Under the WEM Act, a party is prohibited from exporting wheat in bulk from Australia unless it is an accredited wheat exporter. The WEM Act provides that WEA is the body responsible for developing, administering and enforcing the accreditation scheme.

Section 13(1)(e) of the WEM Act states that, as a requirement of a party receiving accreditation from WEA to export bulk wheat, 'if the company, or an associated entity, is the provider of one or more

port terminal services' WEA must be satisfied that the company or associated entity passes an 'access test' for those port terminal services.

Part of passing the 'access test' involves having in operation under Part IIIA of the Competition and Consumer Act 2010 (CCA) an access undertaking relating to the provision to accredited wheat exporters of access to the port terminal service for purposes relating to the export of wheat.

As the body responsible for administering and enforcing the accreditation scheme, WEA determines whether a wheat exporter is required by the WEM Act to pass the 'access test' in order to be accredited. This may include WEA determining whether a company is an associated entity of a provider of port terminal services.

The ACCC notes that WEA has made the following public statements on the matter:

- WEA considered whether Melbourne Port Terminal (MPT) was required to pass the access test in June 2009 and determined that it was not.¹
- WEA's annual report for 2009/10 refers to a number of amalgamations involving bulk wheat exporters, including Sumitomo/Emerald, which 'have required WEA to deliberate on the implications for continued accreditation of a number of these companies.'²
- As referred to by Senator Nash, MPT was raised with WEA at Senate Estimates on 24 May 2011. There, WEA stated that '[d]ue to the way [MPT] is operated and managed, they do not have an associated entity who is an accredited exporter. There is no need for them to have an access undertaking.'³

It is the role of the ACCC to assess an access undertaking provided to it, having regard to the matters in section 44ZZA(3) of the CCA. If as a result of its assessment the ACCC accepts an access undertaking for port terminal services provided by a party, it then formally advises WEA. The ACCC is currently assessing an access undertaking for port terminal services provided under Part IIIA of the CCA by Australian Bulk Alliance Pty Ltd (ABA), parent company of the Melbourne Terminal Operator, on 23 December 2010.

¹ Wheat Exports Australia, *Melbourne Port Terminal and the access test*, 23 June 2009, accessed at http://www.wea.gov.au/publications/FactSheets/090623_MPT.pdf on 23 August 2011.

² WEA, Annual Report 2009-10, 31 October 2010, p. 4

³ WEA, Rural Affairs and Transport Legislation Committee estimates, 24 May 2011, p. 135.