GraincCorp Operations Limited

FOR PUBLIC REGISTER

FINAL: 16 April 2009

GrainCorp Operations Limited

Submission to the Australian Competition & Consumer Commission

Port terminal services access undertaking

Dated 16 April 2009

1 Introduction and purpose of submission

1.1 Introduction

This submission is made by GrainCorp Operations Limited ("**GrainCorp**") in support of its Port Terminal Services Undertaking ("**Access Undertaking**") submitted to the Commission under section 44ZZA of the *Trade Practices Act* 1974 (Cth) ("**TPA**").

The *Wheat Export Marketing Act* 2008 (Cth) ("**WEMA**") requires that, in order to be accredited as a wheat exporter, and therefore continue to have a right to export wheat in bulk, GrainCorp must submit an access undertaking under Part IIIA of the TPA, to be approved by the Commission and in operation by 1 October 2009.

The Access Undertaking relates to the provision of access to "Port Terminal Services" (as defined in the WEMA) provided by GrainCorp for purposes relating to the export of bulk wheat. The Access Undertaking is not required to, and does not, relate to any part of the export grain supply chain other than "Port Terminal Services".

The purpose of this submission is to provide the ACCC with background information on the proposed Access Undertaking in the context of GrainCorp's operation of grain export terminals. In particular, the submission explains how the Access Undertaking:

- balances the legitimate interests of GrainCorp as the Port Operator with the need for certainty and transparency for access seekers; and
- provides a level of regulatory oversight which ensures the objectives of Part IIIA of the TPA are met but remains appropriate in the circumstances of a competitive industry which requires some transitional certainty.

1.2 Background to GrainCorp's Access Undertaking

After discussions with the Commission, GrainCorp, ABB Grain Limited ("**ABB**") and Co-Operative Bulk Handling Limited ("**CBH**") (together, the "**Bulk Handlers**") agreed to prepare a template port terminal services undertaking ("**Template Undertaking**") given the commonality of issues involved and the administrative efficiency given the number of terminals involved. On 10 March 2009, GrainCorp, ABB and CBH provided the Template Undertaking and a supporting submission prepared by all three Bulk Handlers jointly to the Commission for discussion.

The purpose of submitting the Template Undertaking was to provide a common basis for each Bulk Handler's individual Access Undertaking, thereby minimising duplication to the extent possible and simplifying the ACCC's process of assessing access undertakings relating to as many as 20 separate port terminals.

Further, this approach is consistent with the objective of Part IIIA provided for in section 44AA(b) of the TPA to encourage a consistent approach to access regulation in each industry.

The Access Undertaking submitted by GrainCorp is based on the Template Undertaking but has been tailored to apply to GrainCorp's operations.

Each of GrainCorp, ABB and CBH recognised that it would be necessary to prepare separate undertaking compliance arrangements to suit their internal structures and address the particular characteristics of the different geographical markets in which they operate.

A consequence of this approach is that there will be some commonality in the submissions which each of the Bulk Handlers will provide in support of their individual Access Undertaking.

This is a logical reflection of the process they have engaged in with the Commission to date, their understanding of the Commission's requirements, the common industry characteristics and the co-operation in preparing the Template Undertaking and the joint submission.

1.3 Name and Contact Details of Applicant

GrainCorp's contact detail for requests for further information and for the service of documents is set out below:

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2 Summary

2.1 Key Features of the Access Undertakings

The Access Undertaking for provision of Port Terminal Services for the export of bulk wheat has the following key features:

a) **Publication of price and non-price terms for standard services**: GrainCorp must publish price and non-price terms for standard Port Terminal Services.

b) **Non-discriminatory access**: GrainCorp must provide access in accordance with price and non-price terms that include efficiency, fairness and transparency as central elements and must not discriminate between access seekers, or unreasonably in favour of its own operations.

c) **Negotiate access in good faith**: GrainCorp is obliged to negotiate with access seekers in good faith in accordance with a detailed negotiation process to ensure that such negotiations are progressed according to benchmark timeframes.

d) **Ring fencing**: GrainCorp does not consider that it has any ability to benefit from vertical information flows. However, to address any residual concerns, GrainCorp will be restricted in the use of information that it obtains through the management of vessel nomination and related allocation of vessel load dates and compliance with such restrictions to be the subject to audit.

e) **Arbitration of access disputes**: There is a detailed dispute resolution mechanism which will provide access seekers who are dissatisfied with the terms and conditions on which they can obtain access (including price) with an ability to have those terms and conditions reviewed by an independent arbitrator and overseen by the Commission.

2.2 An Appropriate Balance

The Access Undertaking provides a reasonable and appropriate level of regulation given:

a) there is no incentive to monopoly price or deny access because GrainCorp's primary incentive is to maximise throughput and ensure that Australian wheat exports remain competitive in the global market;

b) the likely access seekers are sophisticated purchasers of wheat, many of whom are multinational corporations with vertically integrated trading – supply chain – port terminal operations in countries that directly compete with Australian wheat exports, who are well resourced and have constraining bargaining power;

c) there is a history of open access and no history of access disputes;

d) there will be substantial oversight of the export arrangements by Wheat Export Australia under the WEMA and the Commission under the Access Undertaking;

e) a number of other constraining factors on the behaviour of GrainCorp which, in aggregate give further confidence that Port Terminal Services will be provided on a non-discriminatory basis.

Finally, the Access Undertaking is proposed to be of only short duration (2 years) to align with the timing of the Productivity Commission review of the WEMA and will therefore be subject to review by the Commission (if such an undertaking remains necessary) with the benefit of more experience in a wheat market no longer dominated by the export monopoly.

2.3 A Transitional Measure

On 1 July 2008, the Wheat Export Accreditation Scheme 2008 ("**Scheme**") was established under the WEMA to create a system of accreditation for exporters of bulk wheat from Australia. GrainCorp has been granted accreditation under the Scheme until 30 September 2009, and intends to apply for renewal of its accreditation from 1 October 2009.

In order to obtain and maintain accreditation under the Scheme from 1 October 2009, GrainCorp is required to satisfy the "Access Test" set out in section 24 of the WEMA.

The "Access Test" in the WEMA was established as part of the removal of the bulk wheat export monopoly. As the Commission is aware, prior to July 2008, AWB Limited held an exclusive right to export Australia's wheat in bulk.[1] The WEMA, which came into effect on 1 July 2008, removed AWB's "single desk" monopoly and introduced a regulatory regime under which parties can seek accreditation from Wheat Exports Australia ("**WEA**"). The purpose of the Access Test was stated to be:

> *"to avoid regional monopolies unfairly controlling infrastructure necessary to export wheat in quantities, to the detriment of other accredited exporters. All accredited exporters should have access to these facilities <u>while allowing the operator of the facility to function in a commercial environment</u>"[2].*

The need for the Access Test was not based on any actual evidence, merely a concern that monopoly behaviour or vertical leveraging *might* arise to the detriment of competitive exports occurring after the removal of the bulk wheat export monopoly. When the operation and characteristics of the export supply chain is carefully analysed, as is done in later sections of this submission, it is clear that this concern was overstated.

Further, the introduction of the Access Test needs to be considered in the broader context of access regulation generally in Australia and ports in particular.

a) The broad trend in Australia is towards lighter-handed forms of regulation for export industries (e.g. price monitoring regimes) or removing such regulation altogether. See for example gas pipelines and airports.

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[1] Containerised and bagged wheat could be exported by persons other than AWB International Limited.

[2] Wheat Export Marketing Bill 2008 Explanatory Memorandum

b) The Council of Australian Governments' Competition and Infrastructure Reform Agreement[3] provides that ports should be subject to economic regulation only in circumstances where there is a clear and demonstrable need for such regulation in order to promote competition in upstream or downstream markets or to prevent the misuse of market power.

c) The recent draft findings of the 2009 review by the Essential Services Commission ("**ESC**") of the Victorian Grain Handling and Storage Access Regime[4] in which the ESC concluded that, in the Victorian context, regulation of export terminals is unnecessary to permit effective competition in the grain market, as export terminals are not uneconomical to duplicate and there is a significant degree of substitutability between alternative options. This was consistent with its earlier review in 2006.

In this regard GrainCorp is confident that the Access Test and the need for Access Undertakings will be viewed as an overcautious transitional measure in moving away from the single desk arrangements for wheat export.

2.4 No Incentive to Provide Discriminatory Access or Monopoly Price due to Excess Capacity

GrainCorp's revenue from bulk handling services depends on throughput. Accordingly, GrainCorp has a clear incentive to maximise throughput through its export grain terminals in order to defray costs and recover its costs in providing Port Terminal Services. This is particularly the case given that, except in short periods of peak demand, the grain port terminals operated by GrainCorp generally have substantial excess capacity.

In circumstances where demand for Port Terminal Services exceeds capacity for short periods, certain delays and operational issues are inevitable. However, this does not raise intrinsic concerns in relation to the terms on which access is provided.

2.5 Constraining Bargaining Power

A number of the current and likely access seekers to the Port Terminal Services are substantial multi-national corporations and grain marketers who exert a significant constraining influence on GrainCorp's conduct. In particular:

- they are sophisticated grain traders and in many cases vertically integrated owners of port facilities in other countries;
- they have the resources and skills to assess the behaviour of GrainCorp and the extent to which access pricing and terms are reasonable. They are therefore in a good position to negotiate access terms, particularly if they have access to binding arbitration under the Access Undertaking;

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[3] Council of Australian Governments, Competition & Infrastructure Reform Agreement, 10 February 2006.

[4] On 27 February 2009, the ESC released its 2009 Review of the Victorian Grain Handling and Storage Access Regime draft report. A final report is expected to be completed by early April 2009.

- they are able to ship grain from other ports globally if dissatisfied with services provided in the Australian export wheat chain;[5]
- they have the financial capacity to develop their own export supply chain infrastructure.

2.6 Competition from Other Port Terminals and Containerisation

There are a number of other factors which constrain anti-competitive behaviour by GrainCorp. As previously recognised by the ESC in its 2006 and 2009 reviews of the Victorian Grain Handling and Storage Access Regime, GrainCorp is constrained by both:

- the ability for growers and marketers to divert between 70% to 100% of wheat to domestic customers depending on crop size or export grain via containers;
- competition between existing export terminals in Victoria and South Australia for export wheat from Victoria and Southern NSW; and
- the possibility of new entry by competing port terminal providers (as evidenced by the construction of the Port Melbourne grain terminal in 2000 and the Outer Harbour terminal in South Australia in 2009).

In any event, to the extent that any third party might have residual concerns about the ability or incentive of GrainCorp to deny access, provide access on discriminatory terms or engage in inefficient or monopoly pricing, these issues are comprehensively and appropriately addressed in the Access Undertaking.

2.7 No Material Benefit from Vertical Information Flows

The Commission has considered on a number of occasions the level of information that GrainCorp obtains from up-country operations and found the competition issues are not significant. The information available from up-country operations is of little competitive value and much of it is publicly available in an aggregate form.

In providing Port Terminal Services, GrainCorp will have access to very little information about their competitors which is not already publicly available, or readily observable by any person experienced in the grain industry.

In addition, any snapshot information that is available about the volume of grain to be exported on one or more vessels does not provide GrainCorp with any visibility of the exporters' customers, sale prices, future tenders or contracts, or wider global trading operations or trading position.

2.8 A History of Access to Port Terminals

GrainCorp already provides access to its Port Terminal Services for third party grain exporters. This has been the case, for bulk wheat exports since 1 July 2008 (when accreditation was first granted under the WEMA) and before that to AWB. Importantly, GrainCorp has provided Port Terminal Services for a number of years

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[5] Logjam forces wheat customers into arms of rivals, AFR, page 7, 24 March 2009

in the case of other grains[6] without significant issues despite the absence of specific access regulation of the kind contemplated here.

The removal of the bulk wheat export monopoly has been a major change for the industry and for GrainCorp. The wheat industry has moved from having a single monopoly bulk wheat exporter to having 23 accredited wheat exporters in the space of one season.

GrainCorp acknowledges that there have been some problems arising from the management of logistics in specific ports this season. However, any concerns about delays to the assignment of vessel load dates that have been raised this year relate primarily to the reduction in available rail capacity and the logistics of getting bulk wheat to port, rather than a denial of access to the port terminal.

Across the GrainCorp network rail operators have reduced rail capacity by between 40 and 60% compared to 2005/06.

GrainCorp has managed the shipping stem to minimise possible vessel delays to the point where demurrage at East Coast ports is comparatively lower this year than in previous similar years. In Queensland, which has had a record harvest at the same time as a reduction in available rail access for grain, record export shipments have still been achieved from the Fisherman Islands terminal (Brisbane) and ships have been loaded there with minimal demurrage.

In general the wheat industry in Eastern Australia has adapted quickly to the new market environment. The selling behaviour of growers did not change significantly, as they have been operating in a domestic wheat market that was deregulated in 1989.

2.9 GrainCorp is Constrained by Competition in the Global Market

Australian wheat and export grain terminals compete with wheat produced in, and export grain terminals located in, other countries.

Wheat from Eastern Australia comprises approximately 3% of globally traded wheat. Export prices for Australian wheat are determined largely by the global dynamics of competition, supply and demand.

GrainCorp grain terminals are not traditional “bottleneck” infrastructure, as pricing power is constrained as customers in downstream markets are able to choose between supply chains. In effect, the ports are one element of a supply chain, and the terminals must be efficient to compete in what is a global wheat market.

This was recognised by the 2005 Exports Infrastructure Taskforce which formed the view that regulation should be applied sparingly to infrastructure used by export industries, concluding that *“Australia’s export chains are strongly exposed to world market disciplines, and hence have strong incentives to be, and remain, efficient.”*[7]

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[6] Victoria (barley deregulated in 2000), Queensland (sorghum deregulated in 2003), NSW (barley, barley and sorghum deregulated in 2005).

[7] Australia’s Export Infrastructure, Report to the Prime Minster by the Exports and Infrastructure Taskforce, May 2005

2.10 Maintaining Efficient Supply Chains

The continuation of an efficient supply chain depends on port operators retaining some flexibility to respond to dynamic, evolving industry forces. There is a real risk that inappropriate access regulation will prevent this occurring. Over regulation of port terminals would undermine operational flexibility, reduce commercial viability and mute, or remove, the market based price signals necessary to manage a complex supply chain. This will promote inefficient behaviour by grain exporters and disadvantage the whole of the wheat sector.

For this reason, the Access Undertaking deliberately provides flexible processes for changes to prices, Port Terminal Services Protocols and non-price terms within a framework that ensures such changes are consistent with the objectives of the undertaking and Part IIIA.

Inevitably, there will be submissions for stricter regulation. The Commission needs to very carefully assess the downside risks of doing so.

In the current context where the port terminals have operated historically on an open access basis with few significant issues, GrainCorp strongly believes there should be a bias towards less rather than more regulation. Regulatory impositions do have impacts, including additional costs, reduced competitiveness and foreclosure of market based outcomes and innovation.

Prescriptive Port Terminal Services Rules that are effectively locked in for the life of the Undertaking may prevent efficient operation of port terminals and preclude the adoption of measures militating port congestion, particularly during peak periods.

2.11 Conclusion - the TPA Acceptance Criteria Are Satisfied

The Access Undertaking proposed by GrainCorp represents a reasonable, measured and balanced approach to access regulation in relation to Port Terminal Services.

The Access Undertaking:

- Provides for a detailed negotiate/arbitrate model with publication of prices and non-price terms before the start of each season - there is no need for ex ante approved pricing given the lack of incentive to monopoly price, the strong bargaining power of access seekers to negotiate and the resort of binding arbitration under the oversight of the Commission if an access seeker is not satisfied;
- Contains specific measures relating to the provision of access on non-discriminatory terms and, backed up by ring fencing measures, removes the potential favouring of related trading operations. Given that there is in fact little ability to use information obtained through the operation of facilities in the supply chain in an anti-competitive manner, it would not be appropriate to require GrainCorp to undertake major changes to operational structures and processes for a theoretical risk; and
- Together with the WEMA, contains provisions providing for the operation of the shipping nomination and queuing processes and the availability of shipping stem information to enable monitoring of compliance.

The incentive to provide open access (as demonstrated by past behaviour) and constraints on anti-competitive conduct mean that intrusive and prescriptive regulation is not necessary. Such an approach will add unnecessary costs which will be ultimately passed on to exporters and thus increase cost burdens placed upon growers.

This will also make GrainCorp less competitive relative to the other exporters, an outcome which is counter to the intention of the Access Test under the WEMA.

The relatively short term of the Access Undertaking means that the Commission retains the option of imposing more intrusive regulation in the future in the unlikely event that it should be necessary.

On this basis, the Access Undertaking satisfies the criteria for acceptance by the Commission under Division 6 of Part IIIA of the TPA. In particular:

a) the access arrangements (that already exist and expanded and more fully documented in the Access Undertaking) promote the economically efficient use of bulk wheat port terminals, and also promote competition in upstream and downstream markets by giving industry confidence that the transition away from the bulk wheat export monopoly will not be hindered by port access issues arising from anti-competitive behaviour;

b) the proposed process for publishing pricing and a binding third party arbitration process is, and provides for outcomes, consistent with the Pricing Principles set out in section 44ZZCA of the TPA;

c) the access arrangement will promote GrainCorp's legitimate business interest in providing access on price and non-price terms and conditions that ensure that it receives at least a return on investment that is commensurate with risk; and

d) the public interest and the interests of access seekers is served by GrainCorp continuing to provide access to Port Terminal Services to accredited wheat exporters but under more fully documented arrangements which ensure certainty, transparency and non-discrimination such that the public and access seekers can be confident of a successful transition from a single desk to competition in the export of bulk wheat.

Accordingly, GrainCorp considers that the Access Undertaking should be accepted by the Commission.

3 Structure of the Grain and Wheat Industry In Eastern Australia

3.1 Introduction of the Wheat Export Marketing Act 2008 (WEMA)

The bulk wheat export industry is in the early stages of transition following removal of the bulk wheat export monopoly on 1 July 2008.

On 1 July 2008, the Wheat Export Accreditation Scheme 2008 ("**Scheme**") was established under the WEMA to create a system of accreditation for exporters of bulk wheat from Australia. GrainCorp has been granted accreditation under the Scheme until 30 September 2009, and intends to apply for renewal of its accreditation from 1 October 2009.

In order to obtain and maintain accreditation under the Scheme from 1 October 2009, an exporter of wheat, which is also a provider of "Port Terminal Services" ("**Port Operator**"), is required to satisfy the "Access Test" set out in section 24 of the WEMA. The "Access Test" requires that on or after 1 October 2009:

a) the Port Terminal Operator complies with the continuous disclosure rules in relation to the Port Terminal Service (see below); and

b) either:

- there is in operation, under Division 6 of Part IIIA of the TPA, 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; or

- there is in force a decision under Division 2A of Part IIIA of the TPA that a regime established by a State or Territory for access to the Port Terminal Service is an "effective" access regime, and under that regime accredited wheat exporters have access to the Port Terminal Service for purposes relating to the export of wheat.

The continuous disclosure rules in the Scheme require transparency in relation to the "shipping stem" for an accredited wheat marketer who owns or operates an export terminal. Specifically, these disclosure rules require:

a) publication on the Port Terminal Operator's website of a statement of the policies and procedures for managing demand for the Port Terminal Service (including for the nomination and acceptance of ships to be loaded using the Port Terminal Service); and

b) daily publication of up-to-date "shipping stem" information, including the schedule of the vessel nominations including vessel details, booking dates, and volumes of grain to be loaded.

3.2 A Competitive Global Wheat Market

Since the removal of the wheat single desk, Australian wheat exporters can now compete for sales directly in the global wheat market.

Despite Australia being one of the five largest exporters with the United States, Canada, the European Union and Argentina, Australia's wheat exporters are generally small participants in the international market. Australia is a small producer of grain, with wheat and barley each accounting for around 2-3% of annual world production.

Accordingly, GrainCorp port terminals in Eastern Australia play only a minor role in the export of wheat into the global market. As shown in Table 1 below GrainCorp's bulk wheat exports represent only approximately 2-3% of global wheat exports and around 20% of Australia's wheat exports.

Table 1: Wheat exports

Wheats Exports

(Mt)	**FY04**	**FY05**	**FY06**	**FY07**	**FY08**	**FY09E**	**Average**
World	103	110	109	110	110	118	**110**
Australia	17.9	14.7	16.0	8.7	7.5	11.7	**12.7**
GNC ports	3.6	3.8	3.9	0.8	0.1	3.0	**2.6**
% World	4%	3%	4%	1%	0%	3%	2%
% Australia	20%	26%	24%	10%	2%	26%	20%

Source: ABARE and GrainCorp

The Eastern Australian grain market is characterised by sales in spot markets, and such sales are therefore directly subject to the global dynamics of supply and demand.[8] The pricing power of the port owners is constrained when the customers in the downstream markets are able to choose between supply chains. In effect, the ports are one element of a supply chain which must be efficient to compete on a global market.

Wheat exports are constrained by strong competition from multi-national corporations including Cargill, Elders Toepfer and Glencore, and strong buying power from major importing countries. In relation to the position of Australia's grain exporters, the Commission has previously recognised that:

> *"Internationally, grain trading is very competitive and encompasses a large number of participants. Export grain prices are set in international markets in which Australia is a price taker".*[9]

This was also recognised by the 2005 Exports Infrastructure Taskforce which formed the view that regulation should be applied sparingly to infrastructure used by export industries, concluding that:

> *"Australia's export chains are strongly exposed to world market disciplines, and hence have strong incentives to be, and remain, efficient."*[10]

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[8] Allen Consulting Group (March 2008) "Competition in the export grain supply chain"

[9] Authorisation nos A30233, A30234 and A30235 ACCC determination 15 April 2005

[10] Australia's Export Infrastructure, Report to the Prime Minster by the Exports and Infrastructure Taskforce, May 2005

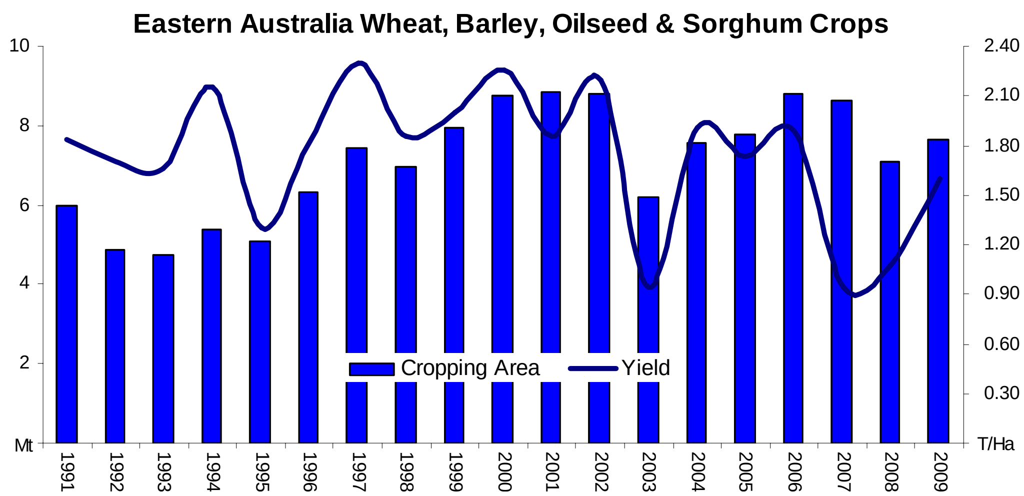
3.3 Grain Production

There are over 10,000 grain growers in Eastern Australia, producing around 15 million tonnes of grain. Growers are able to determine what crops (or wheat varieties) they will grow. Wheat is the most significant crop, accounting for an average 9 million tonnes production annually.

As shown in Figure 1 below, grain yield in Eastern Australia is subject to variations in rainfall and seasonal conditions. While underlying grain production area is relatively stable at around 8-9 million hectares, average grain yields can vary from 1 tonne per hectare to over 2 tonnes per hectare.

In the past 20 years there have been 4 'general droughts'. Furthermore there can be significant regional variations, for example in the recent harvest QLD and northern NSW enjoyed above average yields and southern NSW and VIC experienced significantly below average yields.

Figure 1:



Source: GrainCorp

3.4 Grain Trading and Accumulation

When grain is purchased by a grain buyer, that grain can be sold into either the domestic or export market. Most purchased grain is segregated into grades in accordance with industry (Grain Trade Australia) standards.

Grain traders drive the up country grain market as they fund the purchase of grain from growers, manage contract execution and thus provide price discovery for both domestic and export grain consumers.

More than 80% of grain in Eastern Australia (and 90% of grain received into GrainCorp country sites) is owned and managed by grain traders or merchants.

Grain is purchased neither for the 'domestic' or 'export' market; the price of grain purchased determines the flow of grain. Accordingly, through both trading and arbitrage opportunities, grain is frequently traded several times while it remains in the supply chain before being sold to either the domestic or export grain customer in response to the value of grain which is dependent on a large number of drivers:

- relative prices of substitute grains;
- relative prices of export and domestic grain; and
- relative cost of transport.

GrainCorp has no knowledge of the ownership of grain that is sold by growers to ‘other’ traders or the prices paid to growers, or paid for inter-trader sales. GrainCorp only becomes aware of ‘ownership’ when ordered to effect out-turn from a GrainCorp site into a particular market or for a customer.

Most of the 23 accredited wheat exporters trade in both the export and domestic markets for wheat and other grains. As a result, these industry participants have a significant degree of bargaining power and the ability to source grain through on farm and other bulk storage networks, thereby providing significant competitive constraints on the terms on which GrainCorp provides access to their Port Terminal Services.

[Confidential]

- GrainCorp accumulates only 20% of the grain received, despite being the owner of the country sites. This includes the 2008/09 harvest following the removal of the bulk wheat export monopoly;
- AWB, with the loss of single desk, has lost a significant market share of grain to the multinational grain traders; and
- The removal of the single desk, has led to grain being held in warehousing for a longer period of time.

[Confidential]

4 The Grain Supply Chain

4.1 Export Wheat Supply Chains in Eastern Australia

The export wheat supply chain in Eastern Australia is a highly fluid open market where grain traders frequently trade wheat in a secondary market. Wheat can be traded 2 or 3 times before it reaches the port for export. The export wheat supply chain is characterised by:

- substantial competition for the receival and storage of grains (noting that around 30% of grain is stored on-farm);
- a number of competing logistics services providers;
- a large number of grain traders - many of whom are substantial multi-national corporations - who compete for sales of wheat at a global level.

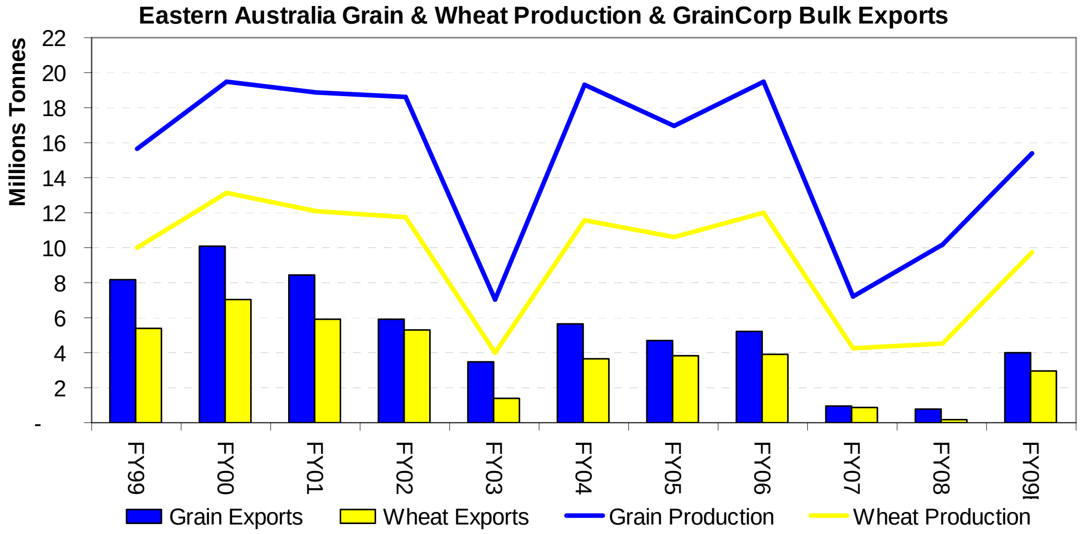
Unlike Western Australia and South Australia, the Eastern Australian grain market is highly complex and fragmented, where:

- in excess of 10,000 active grain growers produce around 15 million tonnes of grain annually. Wheat represents around 60% of this grain production;
- there is significant production and consumption variability. No other grain producing country experiences such variability in grain production. Accordingly the 'residual' bulk export volumes are highly variable, where GrainCorp bulk grain exports can range from 0.8 to 10 million tonnes;
- Eastern Australia is serviced by over 40 million tonnes of country storage, comprising of GrainCorp, AWB, ABA, ABB, other independent storage providers and on farm storage. GrainCorp receives on average 9 million tonnes of grain, which accounts for approximately 60% of grain produced;
- a large number of grain traders aggressively compete for the purchase of wheat from growers to supply both domestic and export customers, as well as trading between each other for the purposes of speculation, and managing customer orders and logistics - this means that the ownership of the wheat changes hands many times through the supply chain;
- the distinguishing feature of the grain and wheat industry in Eastern Australia is the primary focus in the supply of grain to domestic customers. Domestic end-users have 'first call' on grain produced, currently consuming at least 9.5 million tonnes of grain. GrainCorp handles around 4.5 million tonnes of domestic grain, around 45% of grain consumed domestically; and
- the export market consumes the 'residual' grain that is not consumed locally. This is handled at GrainCorp export terminals, Melbourne Port Terminal and via the expanding container market. GrainCorp handles on average 4 million tonnes of bulk grain, of which 80% proportion is generally wheat.

Figure 2 below summarises the volume of bulk grain and wheat exported from GrainCorp port terminals in the past 10 years. From Figure 2 it can be seen that:

- in an average year over 60% of wheat produced is consumed domestically and 40% is exported; and
- in poor seasons, the proportion of wheat used domestically is significantly higher in order to meet demand.

Figure 2



Source: ABARE & GrainCorp

4.2 Country Storage and Handling

Services Provided

Typically, grain is unloaded ex-farm at a central country receival site, sampled, analysed, weighed, graded and sorted. All grain must be treated or fumigated to protect it from insect infestation, prior to being out-loaded from the site.

Storage and handling services are provided under a Grain Handling and Storage agreement between the storage and handling provider and the grower or buyer. These agreements are standardised and broadly similar between all participants.

There is upcountry competition and low barriers to entry for the development of competing supply chains.

Grain growers in Eastern Australia have had complete freedom to determine the party to whom they will sell feed wheat since removal of compulsory acquisition by the Australian Wheat Board in 1984 and milling wheat since the complete removal of compulsory acquisition 1989. Growers are able to (and do) sell their grain to a wide range of grain traders or marketers at any time.

The significant capacity of country sites provides growers in Eastern Australia with a large range of both storage and marketing options.

GrainCorp is subject to significant competitive constraints as shown in Table 3 below.

Table 3: Estimated Eastern Australia country silo capacity

Operator	QLD	NSW	VIC	TOTAL
GrainCorp	35	148	69	252
	3,261,968	11,631,300	4,860,600	19,753,868
AWB	3	10	4	17
	416,800	1,412,400	808,100	2,637,300
ABA/ABB		7	5	12
		678,000	514,500	1,192,500
Merchant/Enduser	42	105	62	209
	495,500	3,577,650	994,100	5,067,250
On Farm (1)	1,849,229	9,150,727	3,167,611	14,167,566
Total Capcity	**6,023,497**	**26,450,077**	**10,344,911**	**42,818,484**
Average production	2,700,000	8,500,000	3,800,000	15,000,000
Capacity / Production	**2.2**	**3.1**	**2.7**	**2.9**

(1) 1999 Estimate from ABARE assumed increasing at 3% pa

Table 3 demonstrates that:

- in Eastern Australia there is in excess of 40 million tonnes of country storage, with the capacity to handle average grain production 3 times over;
- GrainCorp's share of country storage is less than 50% overall and in all States, except Queensland where its share is approximately 54%;
- competing central storages, made up of AWB, ABA/ABB and merchant storage, have a capacity of 9 million tonnes and can handle 60% of an average crop; and
- on farm storage has a capacity of 14 million tones and can almost handle an average crop.

GrainCorp's Storage and Handling Facilities

GrainCorp operated receival sites are open market places, where growers and buyers (including GrainCorp Trading) are given a large range of choices to sell and buy grain.

This includes the following options.

- A grower can "warehouse" their grain for between 30 and 60 days free of charge before sale (where title to the grain is transferred to another person). This enables the grower to hold back grain, exercising considerable market power. For example in the recent harvest up to 95% of grain was warehoused.
- A grower can sell grain at a cash price posted by up to 30 or more grain buyers at multiple GrainCorp sites.
- A grower can enter into a private contract with a buyer, either before, during or after harvest. GrainCorp stores contracted grain for around 100 grain buyers.

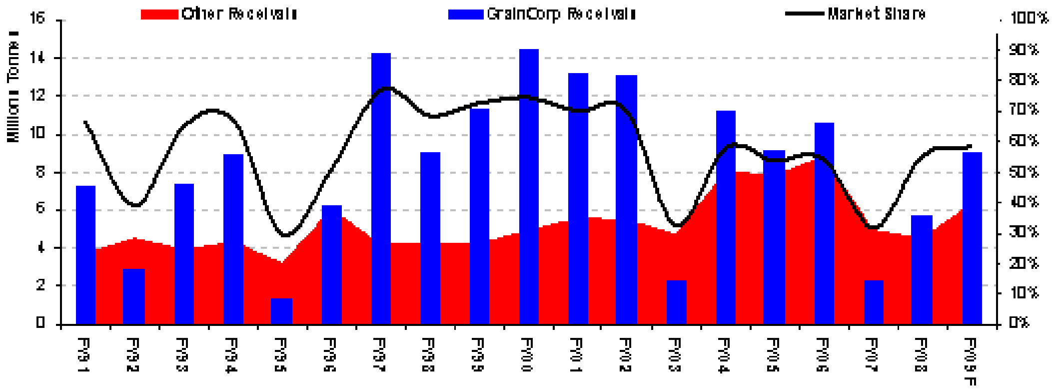
- A grower can choose to sell their grain to a pool, where price risk is shared by all grain pool participants and sales are managed by the pool manager.
- A grower may also use a product like GrainCorp Warehouse Cashflow, a product that allows them to manage their own price risk.

As shown by Figure 3 below, the share of grain production stored in GrainCorp storage facilities has declined in recent years from around 80% to less than 60% with increased competing country storage capacity, including on farm storage.

GrainCorp is subject to significant competition where:

- Competing storage capacity largely has first call of grain produced, handing the first 4 or 5 million tonnes of grain produced as growers will tend to utilise on-farm storage first and then deliver grain into the bulk handling network, or capture the domestic freight advantage by selling direct to a domestic consumer; and
- For most grain, GrainCorp handles 'residual' grain production, as a 'storage provider of last resort'.

Figure 3: GrainCorp share of Eastern Australian grain production



Source: GrainCorp

4.3 Bulk Grain Freight/Transportation

Grain is transported from upcountry receival and storage sites to port by rail or road. It is the responsibility of the grain owner to arrange transport of their grain from upcountry receival and storage sites to port or a domestic customer.

There have been significant changes in the transport of bulk gain to port terminals. In NSW and Victoria, rail transport is now only sold by Take or Pay arrangements, with the effect that the risk and cost of poor rail utilisation is now transferred from the rail provider to the party leasing the trains and thence to the grain owner.

This has provided a financial incentive to maximise rail utilisation and minimise excess rail capacity, where contracted rail capacity has been reduced to match the grain export grain task.

'Above rail' services are provided by Pacific National, El Zorro, ARG and Genesee & Wyoming Australia (GWA). GrainCorp is aware of the following rail arrangements in Eastern Australia.

- ARG operate 4 -5 trains in Queensland. This capacity is sold at tariff rates in proportion to the export task.
- GrainCorp contracts 8 Take or Pay main line trains from Pacific National in NSW and Victoria. GrainCorp allocated 6 of these trains to NSW and 2 in Victoria and has on-sold around 50% of its rail capacity to other grain owners on a forward contract and spot market rates.
- AWB has contracted 4 trains from El Zorro, with 2 currently in operation. These trains will operate in NSW and Victoria. To date AWB has used its rail capacity exclusively. Under this April 2007arrangement AWB will introduce an additional 84 standard gauge wagons to be hauled by El Zorro, which can also be converted to broad gauge for use in Victoria if required.
- Pacific National is currently operating 4 branch line trains in NSW under contact with the NSW Ministry of Transport. This capacity is sold to all grain companies at tariff rates.
- ABB has an option / contracts for at least 1 Take or Pay train in Victoria from GWA.
- **[Confidential]**

These arrangements, while complex, have led to the 'market pricing' of rail transport and a significant improvement in the efficiency of rail transport of bulk export grain in Eastern Australia in the first 6 months of this season. In particular:

- there has been an increase in average train utilisation; with annualised rate of 250-300,000 tonnes per train compared to 150-200,000 per train in the past;
- there has been increased consolidation from branch-line sites to sub-terminals to match variable shipping task; and
- there has been a return to profitability for 'above rail' operations, with Asciano announcing a turnaround in grain profitability on 25 February 2009.

There is no monopoly over logistics in Eastern Australia. Any exporter is able to contract for road or rail transport. While the move to Take or Pay rail contracts requires a financial commitment, many of the grain exporters have significant financial capacity to contract trains direct with the rail provider (as can be seen above).

Alternatively, exporters can sub-contract rail capacity from GrainCorp and other companies that have contracted rail capacity. It is never possible to match perfectly shipping with contracted rail capacity and parties with contracted rail capacity have an incentive (and do) sell unused rail capacity to manage Take or Pay exposures.

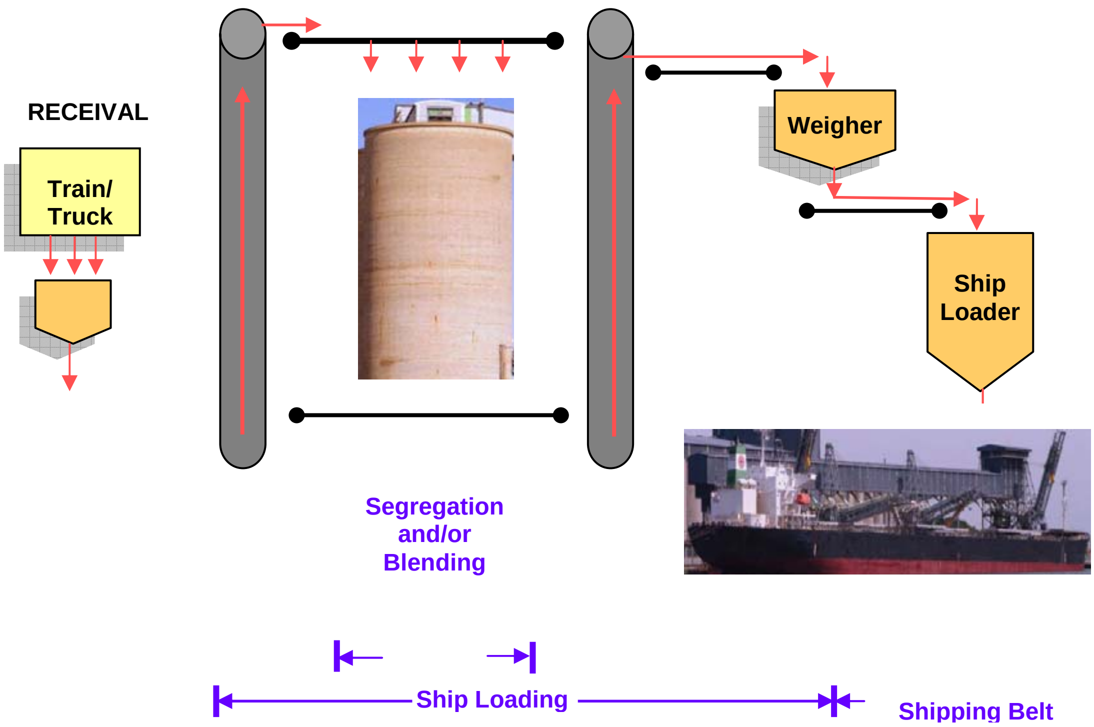
4.4 Port Storage and Handling

Once bulk wheat is transported to the port, it is stored and processed for cargo accumulation and ship loading. The services typically provided at port terminals include the following:

- Receival (by rail or road); Grain received at a port terminal is weighed, quality tested, checked for insect infestation and conveyed or elevated into storage facilities;
- Storage/blending: Grain is stored in silos, bins or bunkers and either segregated or potentially blended with other grain to meet the requirements of the exporter (title holder);
- Ship weigher: A conveyor belt is used to transport grain from the storage facilities to the ship weigher;
- Shipping belt: Grain is transported from the ship weigher to the ship loader by the shipping belt; and
- Ship loader: Located either on a jetty or a land-based berth, discharges grain into the hatches of bulk grain vessels.

Figure 4 below shows the grain handling process at port.

Figure 4: The grain handling process



There are currently more than 20 wheat exporters accredited under the WEMA The multinational companies accredited to export wheat in bulk have significant bargaining power through their international operations and trading activities, long standing relationships with overseas consumers and an ability to source wheat from multiple international locations.

There are significant competitive constraints imposed upon the terms on which GrainCorp can provide access to their Port Terminal Services. This is demonstrated **[Confidential]**where:

- GrainCorp, despite owning the port terminals, has in its own right only sold approximately 30% of the deregulated non wheat grain in the past 6 years.
- **[Confidential]**
- GrainCorp, despite owning the port terminals, has only sold in its own right approximately 35% of wheat exported in bulk from Eastern ports this season to date.
- **[Confidential]**
- Multinational traders have consolidated their position securing a significant 40% share of bulk wheat exports in this season to date.

[Confidential]

4.5 GrainCorp Port Terminals are only One Part of a Long Supply Chain

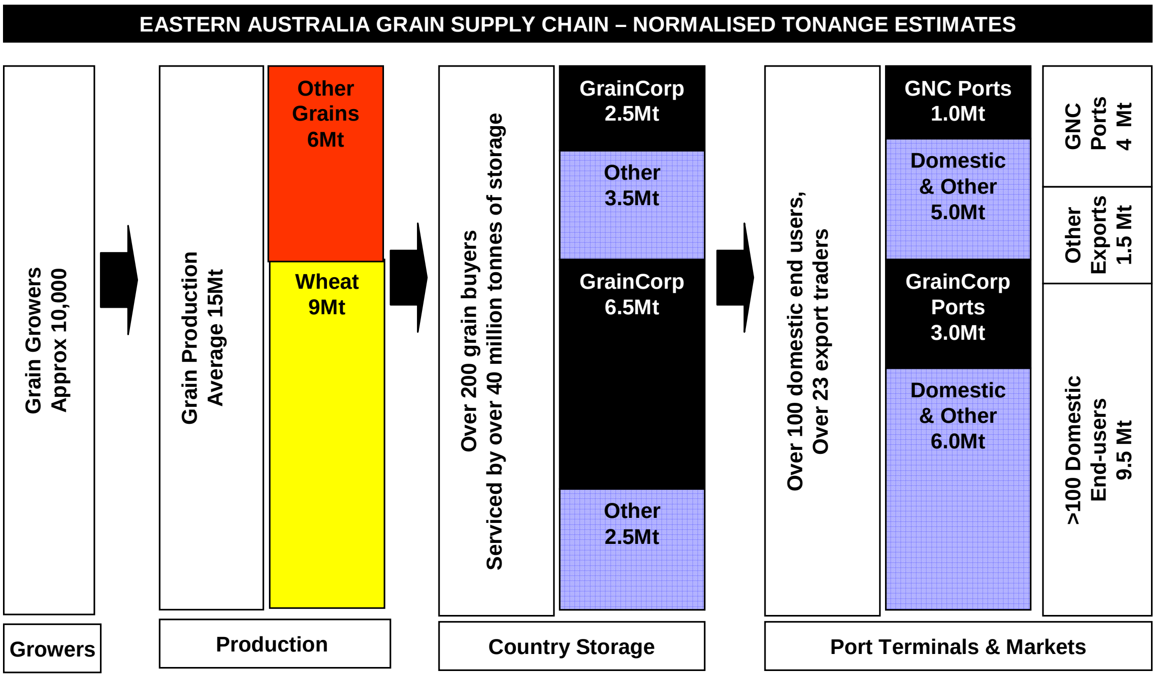
The grain industry in Eastern Australia is one of the most competitive commodity markets in Australia and is serviced by a large range of logistics service providers. The grain market, involving over 100 grain buyers, is very liquid with efficient price discovery and transparency at every point of the supply chain.

As summarised in Figure 5 below, GrainCorp grain port terminals play only a small part of the long and complex grain supply chain in Eastern Australia, where from an 'average' grain production of 15 million tonnes (all grains), only around 4 million tonnes is exported in bulk from GrainCorp port terminals (approximately 80% of which is wheat).

The Essential Services Commission ("**ESC**") identified that "…this has blurred the degree to which the grain terminals are to be considered bottleneck facilities"[11] where:

- wheat moves through a large number of supply chain steps from the farm to the overseas customer;
- the value of the wheat in terms of quality and location is enhanced through the supply chain;
- the ownership of the wheat changes hands 2 to 3 times through the supply chain where grain traders, in particular multinational traders, play a significant role in this supply chain; and
- the Australian supply chain is competing against other wheat supply chains in a very competitive global wheat market.

Figure 5: The Eastern Australian grain supply chain



Source: GrainCorp

[11] Review of Victorian Handling and Storage Access Regime (Draft Report), February 2009

4.6 No History of Access Disputes

GrainCorp has provided access for third parties to their Port Terminal Services for deregulated non wheat grains since 2000 and for wheat since the removal of the bulk wheat export single desk on 1 July 2008.

GrainCorp's past practices in providing access to third parties have not given rise to any concerns in relation to the terms on which access is provided, where:

- the deregulation of other grain industries, including barley, sorghum and canola did not lead to concerns in relation to the provision of access to Port Terminal Services;
- GrainCorp has always published tariff charges and conditions for use of its Port Terminal Services by third parties; and
- there were no access disputes notified under the Victorian Grain Handling and Storage Access Regime where binding arbitration has been available for many years.

The provision of access to third parties is demonstrated in Table 5 below, which shows that:

- over 65% of shipping of deregulated grains is shipped on behalf of other grain exporters; and
- over 20% of grain shipped is received from non GrainCorp sites.

Table 5: Proportion of grain shipped by third party grain exporters

Grain shipped	FY04	FY05	FY06	FY07	FY08	FY09 1H
% of wheat						66%
% of non wheat	64%	67%	76%	68%	69%	95%
% ex non GNC silos	19%	19%	25%	57%	52%	25%

Source: GrainCorp

Under *The Grain Handling and Storage Act* 1995 (Vic) ("**GHSA**"), the ESC is responsible for the regulation of "significant infrastructure facilities" at the Port of Portland and Geelong for the export shipping of grain.[12] (This regime is not certified as an effective access regime under Division 2A of Part IIIA of the TPA.)

The recent draft findings of the 2009 review by the ESC of the Victorian Grain Handling and Storage Access Regime[13] concluded that GrainCorp's past practices have not given rise to any concerns in relation to the terms on which access is provided and recommended either a "light handed approach" to regulation, or the complete removal of access regulation. The draft report confirmed the findings of the 2006 Grain Handling Regime Review - Final Report by the ESC which concluded also that a light handed approach to regulation was sufficient.

[12] The Melbourne Port Terminal is jointly owned by ABA and AWB Ltd. ABA is the operator of the facility.

[13] On 27 February 2009, the ESC released its 2009 Review of the Victorian Grain Handling and Storage Access Regime draft report. A final report is expected to be completed by early April 2009.

4.7 Conclusion

It is clear that the Eastern Australian export wheat supply chain is competitive:

- Growers have had numerous options for sale of wheat, since the removal of compulsory acquisition by the Australian Wheat Board in 1989, including sales to a large number of competing traders or storing on farm or in other storage facilities before sale.
- There are a number of competing options to GrainCorp storage facilities, including storage facilities owned by other traders and on farm storage. The barriers to new entry are low as shown by the increase in on farm storage.
- Wheat is continuously traded throughout the supply chain. Storage owners cannot be sure who owns the wheat in their storage facilities.
- Exporters are free to contract rail or road logistics. There has been a recent trend to exporters contracting rail on a Take or Pay basis which is welcome, as it had allowed more efficient planning and rail outcomes. Most accredited wheat exporters have the financial capacity to make this commitment but in any case, there is rail haulage still available as contracted capacity is on-sold to manage Take or Pay commitments.
- The global wheat market is very competitive - Eastern Australian wheat exports make up a small share of global sales and only occur once domestic demand is satisfied.

In this context, the port terminals are not true "bottleneck" facilities - they are throughput businesses and one small part of a supply chain competing against global supply chains.

GrainCorp's ownership of port terminals in Eastern Australia has not translated into a dominating share of Eastern Australian wheat exports, and this is consistent with other sectors of the grains industry that have undergone similar regulatory changes (removal of export monopolies) in the past decade.

5 No Ability to Discriminate or Monopoly Price at Port Terminals

5.1 Introduction

The following sections set out the key market factors that create incentives for GrainCorp to provide access to third parties at its port terminals and which act as a constraint on GrainCorp's ability to discriminate or monopoly price.

5.2 Incentive to Maximise Throughput Given Excess Capacity

Charges for use of Port Terminal Services are based on tonnes shipped and, given that the majority of costs are fixed, there is a clear economic incentive to facilitate increased throughput. This is particularly the case when the relevant export grain terminal is operating below capacity.

In this regard, all GrainCorp's grain terminals in Eastern Australia generally have significant excess shipping capacity.

This overcapacity means that one of the key challenges for GrainCorp is to ensure maximum utilisation of storage and handling capacity in order to minimise the cost of capacity which is only used occasionally. Thus the key incentive is to maximise throughput and grant access to a variety of users.

The substantial excess capacity at each of GrainCorp's export grain terminals is summarised in Table 6 below, where:

- nominal capacity of the port terminals is 15.8 million tonnes, compared to an average shipping task of 3.6 million tonnes and maximum shipping task of 8 million tonnes;
- average berth utilisation is only 10%, compared to industry efficient utilisation of 50%; and
- average storage utilisation is only 4.7 x per annum, compared to industry efficient utilisation of 25 x per annum in North and South America.

Table 6: GrainCorp port terminal capacity and utilisation

	Exports		Nominal	Maximum Utilisation			Average Utilisation		
Port (Mill Tonnes)	Max	Avg	Capacity	Capacity (1)	Berth (2)	Storage (3)	Capacity	Berth	Storage
Mackay	0.30	0.16	0.9	35%	15%	8.8 x	19%	8%	4.9 x
Gladstone	0.30	0.15	1.0	31%	14%	7.5 x	15%	7%	3.7 x
Fisherman Islands	1.50	0.63	1.5	100%	32%	25.0 x	42%	13%	10.6 x
Carrington	1.84	0.90	2.7	68%	21%	11.5 x	33%	10%	5.6 x
Port Kembla	1.64	0.78	3.8	43%	15%	6.3 x	20%	7%	3.0 x
Geelong	1.64	0.64	2.7	61%	30%	10.9 x	24%	12%	4.3 x
Portland	0.83	0.32	1.5	55%	27%	13.8 x	21%	11%	5.4 x
TOTAL	8.05	3.59	15.8	51%	22%	10.5 x	23%	10%	4.7 x

(1) Exports over nominal capacity

(2) Exports over 50% nominal shiploading capacity @ 12 hours per day

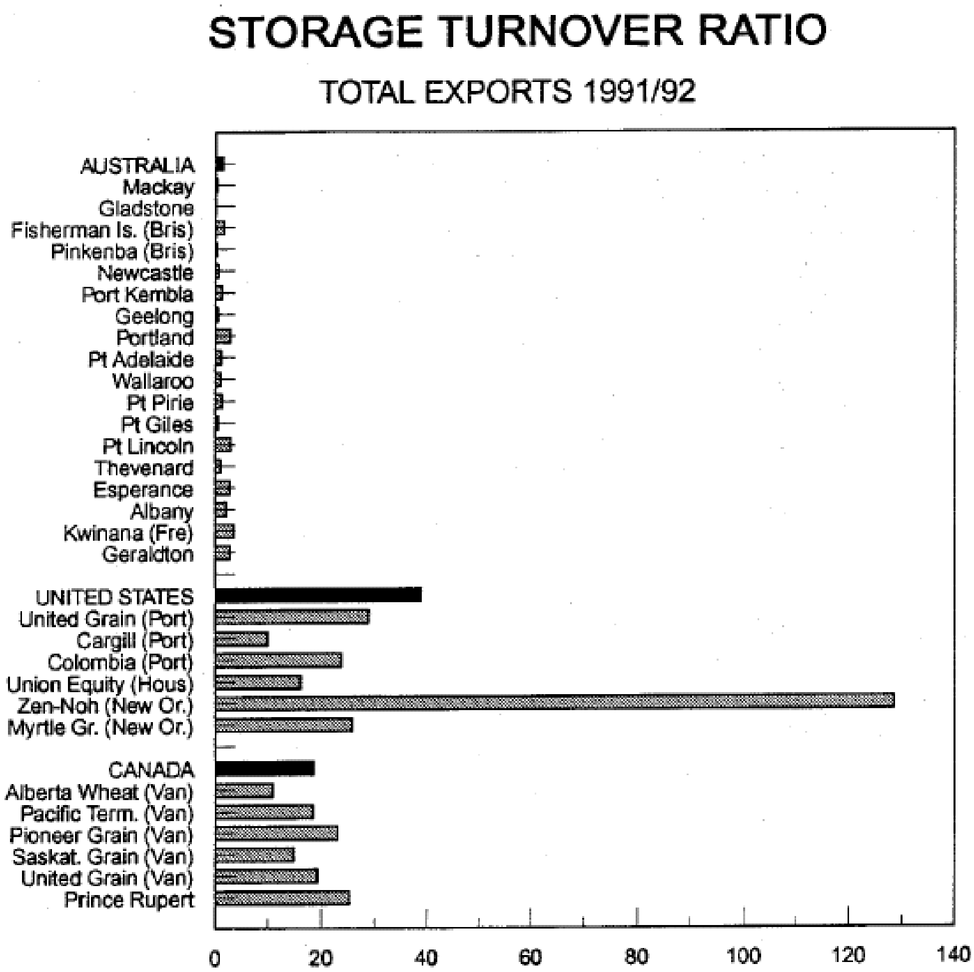
(3) Exports over storage capacity

Source: GrainCorp

The poor utilisation of GrainCorp (and Australian) grain port terminals was confirmed in an internal 1993 AWB international benchmarking exercise, and as a consequence of production variability, the level of port utilisation today has not improved.

An extract from this report is shown in Figure 6 below and demonstrates the difference in utilisation between Australian ports and ports in the United States and Canada, which is still representative of the situation today.

Figure 6: Port utilisation



5.3 Inability to Generate Monopoly Rent

GrainCorp's lack of market power is demonstrated by its low return on assets resulting from low grain volumes and high variability.

GrainCorp port terminals are subject to extreme demand variability as shown in Table 7 (next page).

In the past 5 years, when GrainCorp owned the 7 grain port terminals, exports have ranged from 1 million tonnes to 6 million tonnes. This variability is compounded by variability between the port terminals.

Table 7: GrainCorp port terminal grain exports

(Mill Tonnes)	FY04	FY05	FY06	FY07	FY08	FY09E (2)	Average	Variability (1)
Mackay	0.2	0.1	0.1	0.2	0.2	0.3	0.2	50%
Gladstone	0.2	0.1	0.1	0.1	0.1	0.3	0.1	55%
Fisherman Islands	0.7	0.7	0.5	0.1	0.3	1.5	0.6	76%
Carrington	1.1	1.8	1.2	0.2	0.0	1.0	0.9	75%
Port Kembla	1.2	1.1	1.6	0.1	0.0	0.7	0.8	83%
Geelong	1.7	0.5	1.1	0.3	0.1	0.2	0.6	97%
Portland	0.9	0.5	0.6	0.1	0.0	0.0	0.3	111%
Total	**5.9**	**4.7**	**5.2**	**1.0**	**0.8**	**4.0**	**3.6**	**61%**

(1) StDev/Average
(2) Highside estimate

Source: GrainCorp

Given the high fixed cost structure of the port terminals, GrainCorp's return on capital has only averaged 8% **[Confidential]** . It should be noted that this return includes revenue from non grain commodities and does not include unallocated support and corporate costs.

[Confidential]

The low margins faced by GrainCorp provide further incentive to maximise throughput at the Port Terminals, as even a small loss of throughput can give rise to an increase in fixed costs and reduce GrainCorp's profitability.

5.4 Constraining Influence of Multinational Grain Exporters

A significant number of grain exporters that seek access to Port Terminal Services are large multi-national companies with substantial experience in grain exports, supply chain logistics and global grain trading. These include Cargill, Glencore, Elders Toepfer, Louis Dreyfus as well as the former statutory monopoly, AWB Ltd.

These exporters have a substantial degree of bargaining power as, if dissatisfied with services provided in the Australian export wheat chain, they can readily shift their sources of supply (and crop investments) to wheat produced in other countries.

It is in this very real sense, that Australian wheat and export grain terminals compete with wheat produced in, and export grain terminals (or export supply chains) located in, other countries.

This is clearly demonstrated by the following recent comments reported in the Australian Financial Review:

> *The chairman of Indonesia's Wheat Flour Association, Franciscus Welirang, said his mills were being forced to secure supplies from Canada due to the long delays in Australia…*
>
> *Mr Welirang, who is a director of Indonesia's biggest flour mill, Bogasari, estimated that Australia had lost up to 150,000 tonnes in wheat sales to Indonesia, worth about $50 million at current prices.*[14]

[14] " Logjam forces wheat customers into arms of rivals", AFR, page 7, 24 March 2009

Table 9 below provides key details on the major grain marketers.

Table 9: Major grain marketers

Participants in Wheat Export Industry	Revenue p.a.	No. of Countries in which operations are conducted	No. of Employees
GrainCorp	AUD 1.5 Billion	1	800
AWB	AUD 6.8 Billion (07/08)	10	2,200
Cargill Incorporated	US$120.4 Billion (2008)	64	149,000
Glencore International AG	US$152.2 Billion (2008)	40	62,000
Louis Dreyfus Commodities	US$20 Billion	53	12,000
Bunge Agribusiness	US$37.8 Billion (2006)	30	25,000
Noble Resources	US$36.1 Billion	35	3,000

Source: Sources for this information are found in the relevant sections of Schedule 4

These customers are also well positioned to obtain and interpret the large amount of transparently available information, and to draw any concerns about the provision of the Port Terminal Services to the attention of the Government, Wheat Exports Australia, the Productivity Commission (in the forthcoming review), and the Commission (either under the Access Undertaking or competition provisions of the TPA).

5.5 Port Terminal Competition in Victoria and Southern NSW

In Victoria and South Australia there are a number of competing port terminals that have substantial (and excess) capacity. Accordingly, grain exporters in Victoria and southern NSW are able to ship grain through five port terminals owned by three companies, namely:

- GrainCorp’s port terminals at Port Kembla, Geelong and Portland; or
- ABA (50% owned by ABB) and ABB port terminal at Melbourne (MPT) and Adelaide (including ABB’s new port terminal at Port Adelaide Outer Harbour);

These port terminals compete with each other given the overlap in their transport drawing arc, where:

- Grain on the southern NSW standard gauge network can be consigned to Port Kembla or MPT;

- Grain on the Victorian broad gauge network can be consigned to either MPT or Geelong; and
- Grain on the Victorian standard gauge network can be consigned to Geelong, Portland, MPT and Port Adelaide.

Grain is swapped between ports as the distance and rail cost from the inland grain belt to competing port terminal is not significant, often with a differential distance of only 100km and rail cost of $5 per tonne.

The ABB Port Adelaide Outer Harbour port terminal will introduce a new competitor to Victorian ports, as Port Adelaide will have standard gauge rail access into western Victoria. ABB has also publicly acknowledged that its Outer Harbour grain terminal in Adelaide is to receive export grain produced in Victoria.[15]

These competitive dynamics in Victoria are reflected in the "*Grain Handling Regime Review - Final Report*" issued by the ESC in June 2006. In that report, ESC found that there could be a conclusion that the Victorian export grain terminals are not essential for market participants given the degree of substitutability between alternative options.

In particular, ESC stated that *'There appears to be a significant degree of competitive substitution between alternative export terminals, and there also may be some substitutability between the use of grain export terminals and other alternatives".*[16]

5.6 Competition from Containerised Exports

The ability of GrainCorp to raise prices above efficient levels is constrained by the ability to export wheat in containers.

Eastern Australia is well positioned to export wheat in containers given access to a surplus supply of empty containers that need to be back loaded to Japan and south east Asia. The container shipping cost is comparable to bulk shipping rates and in recent years has been significantly less expensive.

Containerisation of wheat (and grain) is handled by a large number of packers and mobile packers with an estimated packing capacity of 2.5 million tonnes per annum. Major container packers include ABB Prograin, ABA MPT, Riordan Grain, Agrinational, IPS, Agrigrain, Woods Grain and GrainCorp. It is estimated that GrainCorp's share of the container packing market is less than 20%.

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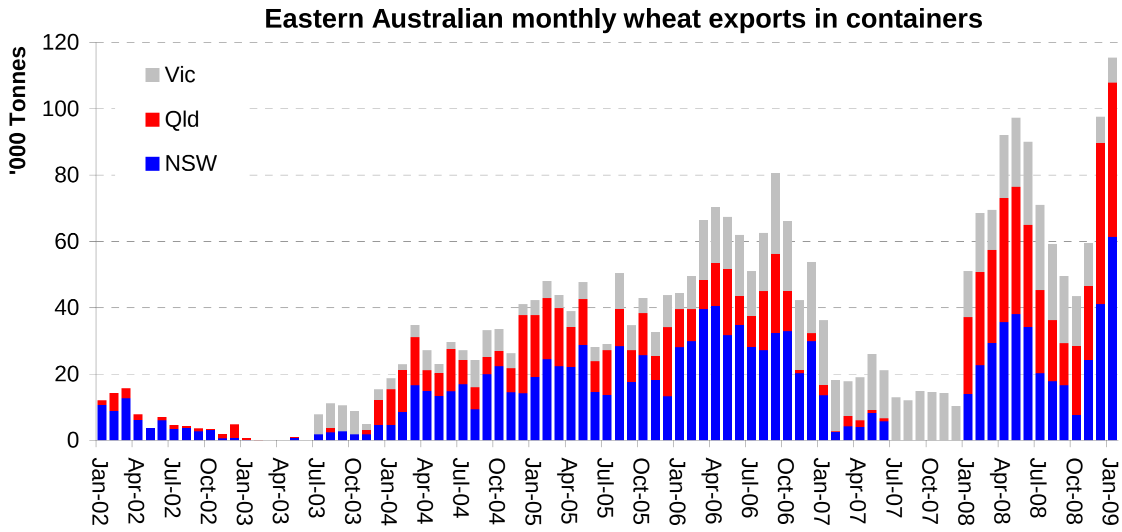
[15] Presentation by John Warda, Executive Manager, 24 March 2009, "National Supply Chain"

[16] Essential Services Commission Final Report Grain Handling Regime Review - Final Report , page 31

Containerised wheat exports have increased significantly in recent years, where 100,000 tonne of wheat can be readily exported in a month. (Figure 7)

On an annualised basis this represents 1.2 million tonnes, nearly 30% of GrainCorp's expected bulk wheat exports for the 2008/09 season.

Figure 7:



Source: AgIntel

While it is correct to assume that containerisation would not fully substitute for all bulk wheat exports, the loss of volume is still potentially significant if GrainCorp was to monopoly price port terminal services, and certainly enough to have major impacts on the profitability of the port terminals.

5.7 Constrained By Possibility of New Entry

The ability of GrainCorp to raise prices above efficient levels is also constrained by the potential entry of new competing port facilities.

Over the past 10 years, two new port terminals have been built in Victoria and South Australia namely:

- the construction of the 40,000 tonne MPT at Port Melbourne at a cost of $42 million; and
- the construction of a new 60,000 tonne port terminal at Outer Harbour at Port Adelaide by ABB Grain at a cost of $135 million.

The construction of these terminals suggests that port terminals are not uneconomical to duplicate and it would be possible for a major participant in the grain industry (or consortium of participants) to develop port terminal facilities if dissatisfied with their existing access to export markets. **[Confidential]**.

New entry, even at a small scale, would have a significant impact on profitability of the ports. This is a very real constraint on pricing behaviour.

5.8 Alternative Demand for Grain and Excess Storage Capacity

In Eastern Australia demand from the domestic market and competing export alternatives provides a competitive constraint on GrainCorp. As shown in Table 10 below only around 30% of wheat (and 20% on non wheat grains) produced exported in bulk via GrainCorp ports. This gives grain growers and buyers in Eastern Australia effective alternatives to market in excess of 70% of their grain.

Table 10:

Proportion of grain production exported through GrainCorp ports

GrainCorp ports	FY04	FY05	FY06	FY07	FY08	FY09 F	Average
% wheat exported	32%	36%	32%	20%	3%	31%	29%
% non wheat exported	26%	14%	18%	4%	11%	18%	17%

Source: GrainCorp

The conversion of wheat and / or other grains into biofuels, or the conversion of grain growing land into biofuel production, may have a significant impact on the 'exportable' surplus of grain produced in the Eastern States, further eroding the viability of GrainCorp port terminals. The mandating by the NSW Government of a prescribed level of ethanol in petrol is expected to compound this trend.

The provision of warehousing at GrainCorp country sites and excess country storage capacity provides grain growers an opportunity to exercise market power and to store all of their grain and defer selling it until they are able to obtain a more favourable price from these alterative markets.

5.9 Threat of Regulation Is Effective

GrainCorp is constrained by the very real threat of heavier-handed regulation if the Company is found to have acted inappropriately. This threat is heightened by the level of scrutiny to which GrainCorp is subject:

- through the transparency of information through the continuous disclosure requirements of the WEMA and the monitoring by WEA;
- through the ability of Wheat Exports Australia to suspend, vary imposed additional conditions upon or cancel Bulk Wheat Export Accreditation; and
- the presence of sophisticated and well resourced competitors who operate on a global level and therefore have the ability to critique GrainCorp's behaviour and pricing against global benchmarks.

5.10 The Access Undertaking Imposes an Additional Effective Constraint

In any event, to the extent that any third party might have concerns about the ability or incentive of GrainCorp to deny access, provide access on discriminatory terms, engage in monopoly pricing or obtain access to competitively sensitive information, these issues are comprehensively and appropriately addressed in the Access Undertaking.

6 Optimum operation of GrainCorp port terminals and efficient allocation of port capacity for bulk wheat

6.1 Interdependent Role of Port Terminals in the Grain Supply Chain

GrainCorp's port terminals are only one part of a long, complex, market driven and interdependent grain supply chain where:

- grain exports are managed on a transaction basis between different suppliers and end-users, rather than through long term contracts, given supply and quality variability;
- there is significant regional variability in the source of grain, grain volumes, availability, quality, prices and location within a harvest season period and between annual harvest seasons;
- wheat moves through a large number of supply chain components from the farm to the overseas customers, involving a large number of participants;
- grain is a bulk food product with variable quality parameters and is subject to degradation from insects, inappropriate use of pesticides and poor storage;
- the value of wheat changes over time related to quality and storage location at each stage of the supply chain; and
- grain traders, in particular multinational grain traders, play a significant role in this supply chain, where the ownership of wheat changes hands many times through the supply chain.

To efficiently manage the shipping of wheat for the benefit of all grain exporters there is an imperative for GrainCorp to flexibly co-ordinate port terminal operations with other components of the supply chain to balance the following objectives:

- minimise supply chain cost for the grain exporter's shipped grain;
- minimise the consequential cost to shipping vessels for other grain exporters, arising from the operational actions of the grain exporter; and
- maximise overall port terminal throughput.

As demonstrated by GrainCorp's business activities in the export and domestic grains market to date, GrainCorp has provided open access at its country and port terminal facilities, where all participants have sufficient commercial incentive to manage the export of grain in an efficient manner. It is GrainCorp's firm view that the continuation of an efficient supply chain through the port terminal only requires minimal and flexible regulation.

Over regulation of the port terminals by the Commission would undermine operational flexibility, commercial viability and remove market based price signals to manage a complex supply chain. This will promote inefficient behaviour by grain exporters with a consequential increase in port costs, reduced port capacity and higher land inbound transport and outbound shipping costs, thus impacting on the competitiveness of Australian grain exports.

6.2 Port Capacity is Limited by Grain Exporter Behaviour Not Infrastructure

GrainCorp port terminals generally have sufficient nominal port terminal capacity to accommodate all grain exporters. GrainCorp's port terminals combined, as shown in the table below (taking into account intake, storage and shipping capabilities) have a nominal capacity of around 16 million tonnes per annum based on normal operating characteristics. This capacity is 4 times that of GrainCorp's average export task, as shown in Table 11.

Table 11: GrainCorp port terminal capacity

	Exports		Port Capacity					Nominal
Port (Mill Tonnes)	**Max**	**Avg**	**Shipping (1)**	**Storage (2)**	***Rail in (3)***	***Road in (3)***	**In take**	**Capacity**
Mackay	0.30	0.16	1.0	0.9	*0.5*	*0.5*	1.0	**0.9**
Gladstone	0.30	0.15	1.1	1.0	*0.5*	*0.5*	1.0	**1.0**
Fisherman Islands	1.50	0.63	2.4	1.5	*1.4*	*1.3*	2.7	**1.5**
Carrington	1.84	0.90	4.3	4.0	*2.2*	*0.5*	2.7	**2.7**
Port Kembla	1.64	0.78	5.4	6.5	*3.3*	*0.5*	3.8	**3.8**
Geelong	1.64	0.64	2.7	3.8	*2.1*	*1.0*	3.1	**2.7**
Portland	0.83	0.32	1.5	1.5	*1.1*	*0.5*	1.6	**1.5**
TOTAL	**8.05**	**3.59**	18.4	19.1	*11.0*	*4.8*	15.8	**15.8**

(1) Based on 12 hours a day at 50% shipping elevation

(2) Based on storage turned 25 times per annum

(3) Based on past rail an road in tonnage for 250 days per annum

Source: GrainCorp

GrainCorp port terminals however only have storage capacity to pre-accumulate grain for 1 to 3 vessels. The efficient provision of port terminal capacity at GrainCorp port terminals, given the limited storage at GrainCorp port terminals compared to port terminals in other States, is dependent on 'turning' the port terminal storage over and over.

Port terminal capacity is usually constrained by external factors such as transportation limitations (e.g. insufficient road or rail) rather than a shortfall in shipping capacity.

This requires efficient co-ordination of both in-bound and out-bound grain, where poor co-ordination will result in 'port terminal block-outs'. This is where a port terminal is full, in terms of storage and / or segregation capacity, and it cannot:

- receive grain into the port: In this situation grain receivals are stopped with a consequential loss of in-bound rail capacity and shipments; and
- load grain onto a ship: In this situation the delayed ship incurs a demurrage cost with potential consequential delays (and demurrage) for subsequent ships for other grain exporters.

The direct and indirect cost of a port terminal block out can be significant to the port terminal operator, other grain exporters and other supply chain participants. For example a port terminal block-out lasting 3 days could potentially cost in excess of $250,000 (equivalent to around $6 per tonne) from:

- loss of the ability to tip 6 trains at the port terminal, **[Confidential]**;

- vessel demurrage if a ship is delayed waiting for grain to be received, **[Confidential]**; and
- loss of margin from stood down trains and reduced port terminal shipping.

6.3 Overseas Experience of Optimum Port Terminals Operations

The supply chain issues facing a grain port terminal operator are different to port terminal operators that handle other products. For example a container port operator handles unitised products and a coal operator handles an inorganic product that is sourced from limited locations under long term contracts.

In overseas countries port terminals are accessed only by buying grain from the port operator. This enables a port terminal operator to put in place an optimal grain supply chain where:

- the port terminal operator's ownership of the grain enables it to best manage the financial risk associated with performance for its port terminal for its customer; and
- the port terminal operator can price the grain into and from the port terminal to provide price signals to ensure the optimum allocation of capacity and interaction with other components of the supply chain.

GrainCorp on the other hand interacts with export grain traders in two ways;

- selling port terminal services for their grain; and
- buying and selling the underlying grain to the grain exporter.

Australia, to our knowledge, is the only grain market in the world where access to port terminals is provided by selling port terminal services.

It should be noted that grain exporters from Australia that operate port terminal overseas (such as Cargill and Glencore) have confirmed that they only sell grain, rather than port terminal services, from their overseas port terminals.

6.4 Sub-Optimal Behaviour by Grain Exporters

The sale of port terminal services can lead to a sub-optimal supply chain if there is a lack of price signals to drive an efficient allocation of capacity and an efficient interaction with other sectors of the supply chain.

Inefficient behaviour by some grain exporters will negatively impact the efficiency of the port terminal and the capability of that infrastructure to service all grain exporters seeking access to terminal services. The efficiency of other components of the interdependent supply chain will be similarly reduced.

The primary examples of inefficient behaviour by grain exporters include:

a) **Phantom vessels:** This is where a grain exporter books the port terminal for a vessel or shipment that does not exist. This gives the grain exporter a trading advantage by holding that 'berth slot' against grain exporters. The consequence of this action is that GrainCorp cannot allocate this capacity to a bona fide grain exporter.

b) **Slow grain accumulation:** This is where a grain exporter assembles grain at the port terminal over a long period of time given insufficient transport. This gives the grain exporter access to lower transport costs and lower grain prices by buying the grain during grain assembly. The consequence of this action is that GrainCorp cannot assemble grain for other grain exporter's ships as port storage capacity is tied up for a longer period of time.

c) **Late vessels**: This is where a grain exporter's vessel is late or fails survey and cannot be loaded on the given slot. This use of poor quality ships gives the grain exporter access to lower shipping costs and trading flexibility. This consequence of this action is that GrainCorp cannot assemble grain for other exporter's ships as port storage capacity is tied up for the late vessel.

d) **Ex-farm or 'non bulk handler' grain accumulation:** This refers to the assembly of a cargo direct to the terminal ex-farm or from storage that is not managed by a bulk handler (GrainCorp, AWB, ABB, ABA or similar companies). Significant quality and pest infestation problems characterise cargos assembles directly 'ex-farm' due to the higher than average rejection rate of trucks assessed at terminals, particularly for grain that doesn't meet exporters contracted quality specifications. The fumigation and insecticide treatment history of ex-farm grain is also unknown. A high degree of inappropriate use of grain protectants is associated with ex-farm cargo accumulation, as evidenced by the high Phosphine residues currently being found in wheat cargos sourced directly ex-farm. Many importers also require sophisticated trace back and chemical treatment provenance assurances that cannot be given for ex-farm assembled cargos.

6.5 Recent GrainCorp Port Terminal Experience

Coincident with the removal of AWB's export wheat monopoly a number of operating issues have come to the fore this harvest. These predominately relate to the transport of an above average season in the north (after 2 years of drought) rather than removal of bulk export wheat.

GrainCorp does not control land based transport into its port terminals nor does control outbound vessel transport from its port terminals. Grain exporters must contract and organise their own transport. They can contract direct from transport providers for from transport resellers such as GrainCorp and AWB. Many grain exporters have long term contracts for rail, road and vessel transport.

While GrainCorp is not responsible for the organisation of in-bound transport into its port terminals, the Company has undertaken proactive steps to manage logistics in an optimal manner.

Issue 1: Reduced Train Capacity into Fisherman Islands

In recent years the QR Network in South Queensland has reduced the number of grain train paths into Brisbane from 2 or 3 trains a day to only 1 train a day. Train paths previously used for grain have been contracted to the coal industry.

This has reduced ARG's (the QR above rail operator) rail capacity from over 1.0 million tonnes to only 0.5 million tonnes per annum.

Queensland's largest grain crop in history in 2008 has exposed the lack of train paths. Fisherman Islands this season is on track to record the second highest tonnes shipped with 1.5 million tonnes of grain, 250% of the previous ten year average. This has precipitated 2 consequences:

- the need to ration the limited rail capacity to all grain exporters. GrainCorp in cooperation with ARG has rationed ARG's rail capacity on a pro-rata basis i.e. grain exporters are allocated a 33% rail capacity for every grain export vessel (wheat and sorghum); and
- increased transport costs and logistic issues with grain exporters having to use road transport for up to two thirds of their exports through Fisherman Islands.

GrainCorp, in cooperation with the Port of Brisbane, has responded to this issue by significantly changing its port operations to increase it road capacity from 2,000 tonnes per day to up to 7,000 tonnes per day.

GrainCorp has incurred increased costs and has had to invest in temporary storage to lift its road intake capacity to 1.0 million tonnes this season.

The significant increase in the use of road transport has led to congestion at the port terminal with up to 250 semi-trailer movements per day.

To manage this congestion GrainCorp has introduced scheduling of grain trucks and the grain and grade that can be received into the port terminal.

Issue 2: Reduced Rail Capacity in NSW

Pacific National, the largest rail provider in NSW (and Victoria), had a contractual obligation to provide capped tariff rail rates to AWB for the movement of export grain in NSW. This obligation ended on 14 November 2007.

On 11 December 2007, Asciano (the holding company of Pacific National) announced its intention to withdraw from grain.

[Confidential]

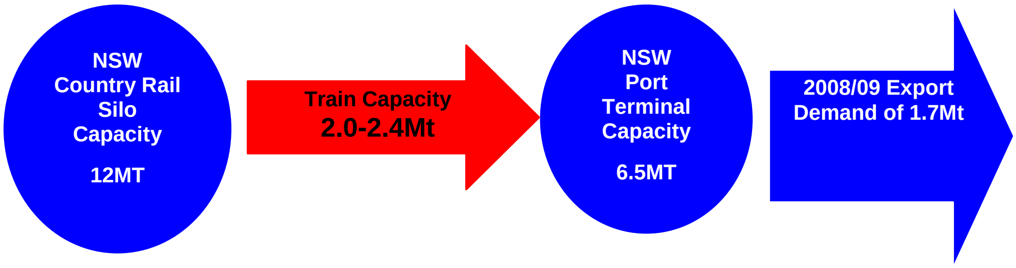
This forced GrainCorp (and other grain owners) to step up and secure rail freight under long term contracts with a 'Take or Pay' fixed cost.

[Confidential]

The move to Take or Pay train arrangement has led to a 50% reduction in the number of grain trains operating in NSW, from 24 trains to 12 trains.

There are sufficient trains to handle all export grain from NSW this season on an efficient even spread basis as shown in the Figure 8 below.

Figure 8: Export supply chain capacity



Source: GrainCorp

The key issue facing grain exporters in NSW is not access to country and port storage capacity, but access to rail capacity in peak exporting months from January to April.

In response to these circumstances, GrainCorp contracted rail capacity in excess of what it would foreseeable require to transport its own grain. GrainCorp resells this excess capacity to other grain exporters.

The rationale for this action was to minimise the overall shortfall in above rail capacity in NSW given that, had GrainCorp not secured rail freight under Take or Pay contracts, the rail capacity would have been withdrawn by the rail providers and provided to other industries.

The primary objective was to more closely align rail capacity with port terminal capacity, thereby maximising exports through GrainCorp's port terminals. The key issue facing grain exporters in NSW is not access to country and port storage capacity, but access to rail capacity in peak exporting months from January to April.

To manage an even spread of rail transport, rail in peak months has been rationed through higher rail rates providing a financial incentive for grain exporters to spread their shipping requirements from the peak to low peak shipping months.

Issue 3: Receival of Grain from On Farm Storage

The optimum supply chain is to campaign grain from country storages with known quality parameters into the port terminal. This increases port throughput capacity and reduced shipping risks resulting from infested, mistreated or out of specification grain.

GrainCorp has received grain from on-farm storage from farms near Brisbane and Geelong, during harvest when the grain is not infested, given the lack of local country sites.

However the entry of new wheat exporters, combined with reduced rail capacity, has increased the demand to deliver wheat from on-farm storage direct by road transport into the port terminal after harvest.

The receival of grain from on-farm storage direct to the port terminals has increased costs and risk for GrainCorp, as evidenced by the following incidents.

- The ad hoc receival of a grade of grain from on farm storage which is not being received into the port terminal for a vessel has led to increased road congestion and decreased terminal efficiency.
- Multiple trucks from on farm storage each day being rejected due to insects. Unfortunately it is not possible to detect all insects with one ship from Carrington being delayed due to infested grain.
- Instances where trucks have been received where grain has been treated with Dichlorvis, a fast insect knock down. This chemical can only be detected following a 4 day analysis period.
[Confidential]
- Trucks that have been fumigated with Phosphine in transit. This practice is illegal and has exposed GrainCorp staff to unsafe levels of this fumigant. (higher than 0.3 ppm).

Consequential impacts of these problems include:

- Infestation of other cargos assembled at the terminal, requiring fumigation or treatment,
- Infestation of elevating and conveying equipment, requiring disinfestations,
- Terminal blockages leading to vessel delays and demurrage,
- Potential loss of market access,
- Potential loss of AQIS export accreditation for a terminal,
- OH&S problems for terminal staff, truck drivers and the general public,
- Potential for breaching local transport and related legislation,
- Potential for breaching importing country phytosanitary and chemical residue laws and regulations.

GrainCorp has responded to this issue by putting in place new procedures in the Port Terminal Handling and Storage Agreements and off site sampling stations to better schedule and screen trucks from on farm storages.

The objective of these arrangements is to reduce the consequential cost to all grain exporters arising from the receival of out of specification grain at the port terminal.

7 Development of GrainCorp Port Terminal Services Protocols

GrainCorp requires flexibility to alter the protocol and applicable financial incentives to meet the challenges of a rapidly evolving market. This is why there is a flexible mechanism for changing the Port Terminal Services Protocols included in the Access Undertaking as explained in section 8.7.

The GrainCorp Port Terminal Services Protocol have been framed to promote efficient behaviour by grain exporters, through a series of defined operating processes and supporting financial incentives.

The Protocol has evolved over a period time based on GrainCorp's experience in dealing with the supply chain through its port terminals and incorporates:

- established custom and practice in the grain industry, including 69 years under the Australian Wheat Board / AWB bulk export monopoly;
- experience from the large Victorian export program in 2006, where limited rail capacity and significant tonnages of deregulated barley being exported led to significant port terminal block outs and shipping delays; and
- experience in the past 6 months under the new bulk wheat export arrangements.

While the structure of the protocol has been largely maintained over time, it has been refined several times in the past 2 years. The most recent version was proposed in April 2009.

GrainCorp is developing a specific 'Port Terminal Services Agreement' that will contain the Port Terminal Services Protocols for the provision of Port Terminal Services to bulk wheat exporters. The current draft of the Port Terminal Services Agreement is located in Schedule 3.

Conditions for the provision of Port Terminal Services for the export of other grains will be contained within the standard GrainCorp Storage and Handling Agreement.

This will require a bulk wheat exporter to be a party to both the GrainCorp Storage and Handling Agreement and the new Port Terminal Services Agreement.

7.1 New Dispute Resolution Mechanism for Rejections of Cargo Nominations

The new Port Terminal Service Protocols contain a dispute mechanism for the timely resolution of any disputes arising from GrainCorp's decision to reject a Cargo Nomination Application.

This mechanism has been included because:

- the acceptance / rejection of a Cargo Nomination Application is the critical decision under the protocols;
- GrainCorp believes it is difficult to itemise this decision making process as it requires a complex set of 'real time' decisions based on a set of externalities that vary from day to day, where an element of judgment based on experience is required;

- the alternative would be to move to very rigid rules in an attempt to remove all discretion, such as a requirement that an exporter must be able to prove title to the complete cargo prior to acceptance. (This would be similar to requirements currently in place in SA and WA). However this will remove flexibility and may act as a disincentive to export;
- the dispute mechanism provides a balance in that GrainCorp's decisions to reject Cargo Nomination Applications can be subject to review. This gives disaffected users a quick mechanism for review and also places an incentive on GrainCorp to make justifiable decisions given the presence of the mechanism.

The Port Terminal Service Protocols dispute mechanism is limited to rejections of Cargo Nomination Applications, because the other decisions under the protocols are objective in nature.

The Access Undertaking requires GrainCorp to provide a report to the ACCC annually on any material disputes in relation to an Access Agreement, including the details of any resolution and the status of unresolved matters.

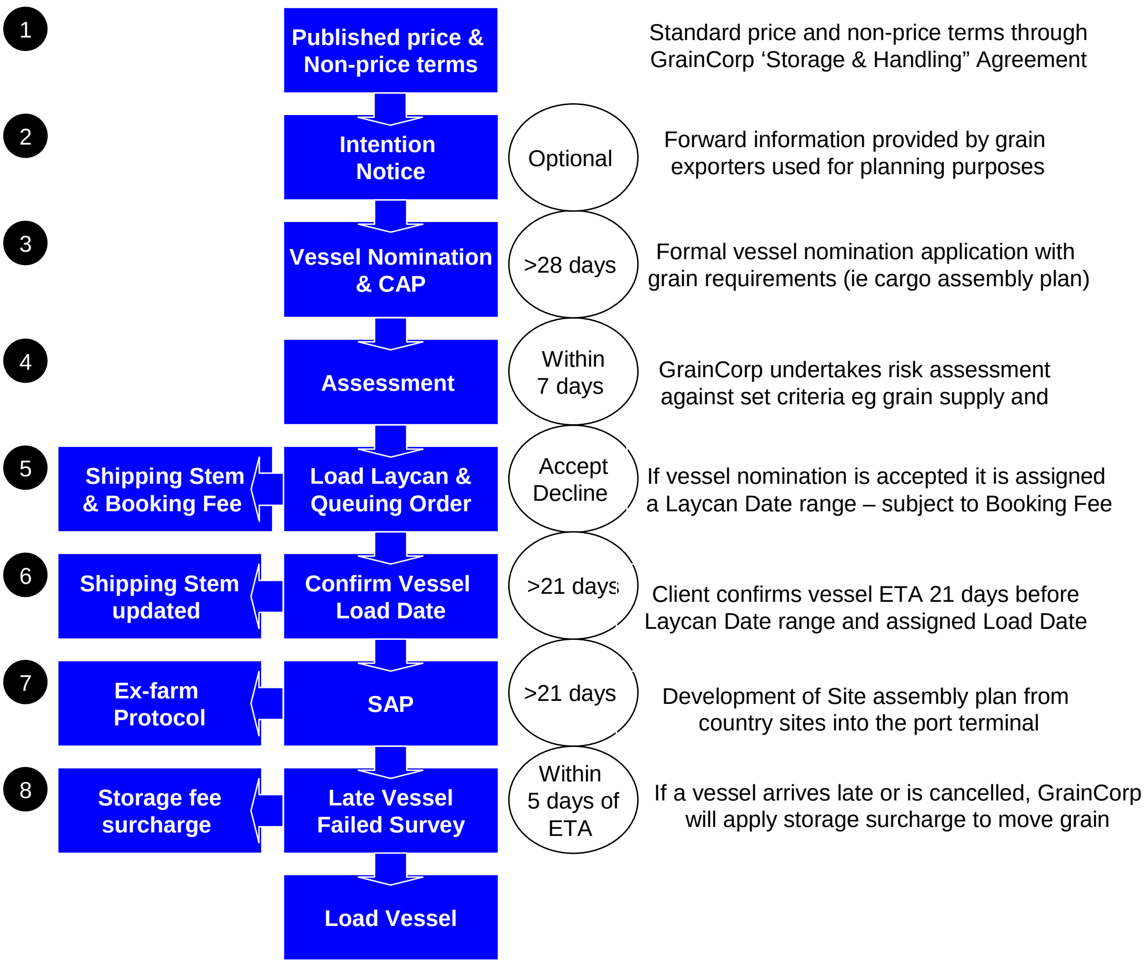
7.2 Overview of Vessel Nomination and Allocation Process Under the GrainCorp Port Terminal Services Protocol

GrainCorp currently provides access to its Port Terminal Services in accordance with its Port Terminal Services Protocol, where:

- this protocol is applied uniformly to all grain exporters (including GrainCorp Trading which receives no advantage in the export of bulk wheat); and
- GrainCorp currently voluntarily applies this protocol for the export of all grains to provide operational consistency.

An overview of the key steps of the Port Terminal Services Protocol are summarised in the Figure 9 below.

Figure 9: Overview of Port Terminal Services Protocol



Source: GrainCorp

Details of key steps in the Port Terminal Services Protocol and the supporting rationale include.

1. **Published Price and Non-Price Terms:** GrainCorp publishes details of the terms and conditions on which grain storage and handling services (including Port Terminal Services) are provided each year. Currently GrainCorp operates under a combined country and port terminal storage and handling agreement, but these will be separated into 2 agreements to separately cover country silo and port terminals. The terms of the Port Terminal Service Protocols currently form part of the combined Country and Port Terminal Storage and Handling Agreement and will comprise the key provisions of the Port Terminal Storage and Handling Agreement.
2. **Intention to Nominate:** (Non compulsory) Grain exporters have the option to inform GrainCorp of its vessel nomination intentions, providing high level shipping plans. This information in non binding on both parties.

Rationale: The provision of this information allows GrainCorp to forward plan future demand for its country silo and port terminal facilities.

3. **Cargo Nomination Application:** (Compulsory) Grain exporters must in writing nominate their vessel no later than 28 days before the required shipment date by submitting a Cargo Nomination Application and Cargo Assembly Plan (CNA/CAP). The CNA/CAP contains relevant grain and vessel loading information. The nomination does not require vessel details and the nominee can specify 14 laycan date range for the arrival of the ship rather than a firm Estimated Time of Arrival (ETA). The receipt of each CNA/CAP is date and time stamped and assessed in chronological order.

> Rationale: The flexibility of not providing vessel details and laycan date range in a vessel nomination, enables a grain exporter to nominate the vessel as early as possible to maximise the time to manage port terminal capacity and inbound transport logistics.

4. **Assessment:** GrainCorp assesses each CNA/CAP based on a number of criteria including:
   - the grain exporter demonstrating it has access to sufficient grain at GrainCorp or other storages to accumulate for the vessel in a manner that minimises the risk of disruption to the shipping stem;
   - the grain exporter demonstrating it has access to sufficient rail or road grain transport to accumulate for the vessel in a manner that minimises the risk of disruption to the shipping stem;
   - the grain exporter can meet phytosanitary requirements for the port terminal and the nominated market as determined by AQIS; and
   - GrainCorp has sufficient port terminal capacity taking into account other accepted vessels and its requirements for non-grain and non-wheat commodities.

> Rationale: This assessment provides a level of assurance that the grain exporter can accumulate the wheat to meet the nominated vessel. It also ensures that port terminal capacity is not over allocated creating delays and demurrage for other grain exporters.

5. **Load Laycan and Queuing Order:** GrainCorp will accept or decline a vessel nomination within 7 working days of receipt of a Vessel Nomination Advice, where:
   - if the vessel nomination is declined, GrainCorp will provide reasons and allow the grain exporter to renominate the vessel; or
   - if the vessel nomination is accepted GrainCorp will assign a 14 day Laycan Date and Queuing Order number. The grain exporter must pay a non-refundable booking fee to confirm the acceptance.

Upon acceptance of a Cargo Nomination Application GrainCorp will publish the relevant vessel information on the Shipping Stem on its Internet site in accordance with the relevant WEMA continuous disclosure provisions.

> Rationale: This payment of a non refundable booking fee by the grain exporter provides a financial incentive for the grain exporter to nominate a bonafide vessel and comply with the Site Assembly Plan and vessel timeliness requirements in steps 6 and 7.

6. **Confirm Vessel Load Date:** The grain exporter must provide vessel details and vessel estimated time of arrival (ETA) within 21 days of the ships ETA, where:
   - GrainCorp will confirm a Load Date to the grain exporter within the Laycan Date range based on the provided ETA;
   - If the grain exporter fails to this information within 21 days or fails to provide an ETA within the assigned Laycan Load date, it will lose its Cargo Nomination Application and Booking Fee.

Upon assignment of an ETA GrainCorp will update the relevant vessel information on the Shipping Stem on its Internet site.

> Rationale: GrainCorp requires a firm ETA from the grain exporter at least 21 days out to plan the order of vessels arrival at a port terminal to plan grain accumulation.

7. **Site Assembly Plan:** The grain exporter must provide a Site Assembly Pan (SAP) within 21 days of the ETA for the accumulation of grain against as vessel. Grain accumulated from non-approved or on-farm storage will be required to comply with the procedures for sampling and testing as set out under 'Receival of Grain from non-approved storage' in the Port Terminal Grain Handling Storage and Handling Agreement . If the grain exporter fails to provide these details within 21 days of an ETA, it will lose its vessel nomination and Booking Fee.

> Rationale: GrainCorp requires at least 21 days to accumulate grain for the nominated vessel. Conversely GrainCorp cannot accumulate grain over a longer period given limited port terminal storage capacity to pre-accumulate grain for a vessel.

8. **Vessel Late or Fails Survey:** If the vessel is more than 5 days late than the assigned ETA or fails survey (i.e. not fit to be loaded) GrainCorp will apply a storage fee surcharge for any grain in the port terminal accumulated for that ship and cannot be loaded onto the vessel. The grain export can lose its vessel nomination and Booking Fee.

Rationale: The application of storage fee surcharge (at a level in line with vessel demurrage costs) will provide the financial incentive for the grain exporter to swap its grain and / or vessel with another grain exporter on the shipping stem to load the accumulated grain.

7.3 Overview of the Accumulation of Wheat Ex On-Farm and Non-Approved Storage

GrainCorp has amended its Storage and Handling Agreement to require received grain to meet certain safety and quality standards, thereby enabling GrainCorp to maintain the efficient operation of its port terminals.

Such requirements are transparent and applied uniformly to all grain exporters acquiring Port Terminal Services. As noted above, the new provisions can be found in the Port Terminal Agreement.

The new procedures are necessary as it is not possible to pre-assess grain from over 10,000 on farm storage sites. These procedures will enable GrainCorp to receive grain from on-farm at its port terminal and manage the following operating issues that will negatively impact port terminal services and capacity:

- **Road congestion:** GrainCorp port terminals only have one dedicated road intake facility. To maximise receival capacity by not changing grades it is necessary to limit receivals to one grain and grade.
- **Grain segregation** capacity: GrainCorp port terminals can only segregate grain for the next 1 or 2 grain shipments. Accordingly GrainCorp cannot receive grain from on farm that is not allocated to a ship and only has limited capacity to segregate this grain to manage potential quality issues.
- **Infestation risk:** GrainCorp port terminals cannot receive grain with insects. While all grain is sampled and tested on receival, it is not possible to ensure the received grain is free from pests of stored grain. In the best case, the receival of infested grain will result in the bin(s) that received the grain to be fumigated, resulting in delays. In the worse case, the receival of infested grain will result in the fumigation of the whole port terminal, pesticide resistance and potential suspension of the port terminal's licence.
- **Contaminants:** GrainCorp is not able to certify the cleanliness of trucks from on farm storage. This exposes the port terminal to contaminants if the truck was previously used to carry other products such as glass or metals. As for infested grain, while all grain is sampled and tested on receival it is not possible to ensure the received grain is contaminant free.
- **Pesticide risk:** GrainCorp port terminals service export markets that have strict pesticide protocols e.g. Japan can only receive pesticide residue free grain. GrainCorp assesses the pesticide residue levels on all grain received from on-farm storage, using a test that takes 4 days to return results. The identification of treated grain that was incorrectly declared will result in the

bin(s) that received the grain to be quarantined, resulting in delays to organise replacement grain.

- **Phosphine risk:** Many growers treat their infested grain in the truck during transit using Phosphine. This practice is illegal and is an Occupational Health and Safety matter affecting GrainCorp staff and the community at large. GrainCorp monitors the Phosphine level of every truck received at its port terminals.

The key elements of the new sampling procedures are summarised below:

- reinforce grain exporters obligations to meet required grain quality and chemical / fumigant requirements and provide supporting declaration as required under the Grain Trade Australia Commodity Vendor Declaration;
- reinforce grain exporters obligations to provide clean trucks and provide supporting declaration as required under the Grain Trade Australia Bulk Freight Code of Practice;
- reinforce grain exporters requirement to accumulate grain from on-farm storage within 14 days of the accepted vessel's assigned Load Date and meet port truck scheduling arrangements; and
- sampling and testing requirements at the port terminal or at an off-site location as required under the SAP, en-route to the port terminal, if there are significant volumes of grain being accumulated for a vessel.

8 Vertical Information Flows and Ring Fencing

8.1 Introduction

Issues have been raised in the past about GrainCorp's access to information from operating up-country and port infrastructure and the extent to which this information can be used to the advantage of their related trading businesses

The liquid nature of grain trading allows GrainCorp customers to retain confidentiality in their trading activities. The information GrainCorp has access to is incomplete, it does not provide a material competitive advantage in relation to either domestic or export wheat sales.

This matter has been tested by the Commission on numerous occasions after GrainCorp commenced grain trading in 1996, with the Commission acknowledging the fact that this information does not give it a material advantage on 3 occasions. (See Section 8.7).

8.2 Aggregate Information is Publicly Available

Much of the information which may be available to GrainCorp in relation to grain held at, or shipped from, their ports is not confidential in the industry and therefore will not deliver any unique informational advantage to GrainCorp. Customers or competitors (or any other person) can obtain much of that information from government agencies (e.g. ABARE, ABS), from field observations or from their day to day trading activities.

Public information includes grain production, grade / quality information, surplus export tonnages, rail movements, port prices and shipping stem information. By way of example:

- ABARE publishes monthly reports which provide information on:
    - opening stocks held by bulk grain handlers, milling operators and feed and other wheat users;
    - the current year's production, supplies and wheat available;
    - the volume of wheat used for export and domestically;
    - the volume of wheat committed for export and domestically; and
    - the wheat balance as at the end of each month (see http://www.abare.gov.au/interactive/AusWheat/);
- the Australian Bureau of Statistics publishes information in relation to the stocks of grain held by bulk handling companies and grain traders. This includes the volume of wheat held for milling and for other purposes;
- Wheat Exports Australia publishes the wheat export charge on its website (http://www/wea.gov.au/WheatExports/WheatExportCharge.htm); and
- GrainCorp, in accordance with the continuous disclosure requirements of the WEMA, publishes shipping stem information for each port for wheat and, of its own volition, non wheat grains.

8.3 GrainCorp Stock Information is Incomplete

The nature of grain trading, the diverse sources of grain and diverse markets serviced in Eastern Australia limits the ability of GrainCorp (and any other participant) to assess the trading activities undertaken by its customers and competitors.

In excess of 90% of grain accumulated in GrainCorp (and other) country sites is by grain traders, who sell this, and grain from other storages, into a large range of domestic and export markets under private contractual arrangements.

Accordingly is not possible to ascertain the intention of the owner of the grain from the grain itself. The complexity of the grain markets serviced and inability for GrainCorp to use stock information to determine the intention of the owner of the grain is demonstrated in Table 12 below, where on average:

- GrainCorp's wheat receivals only represent 62% of grain stocks held in Eastern Australia; and
- 53% of grain received is consigned to any one of over 100 domestic end-users and only 47% is consigned to a port terminal for export.

Table 12: Incomplete view of export information from grain stocks

Activity	FY04	FY05	FY06	FY07	FY08	FY09 F	Average
% wheat received	66%	65%	65%	34%	53%	69%	62%
% wheat exported	48%	55%	50%	57%	6%	45%	47%
% non wheat received	50%	35%	39%	28%	58%	34%	42%
% non wheat exported	52%	40%	47%	15%	19%	52%	40%

Source: GrainCorp

8.4 Stock Information Does Not Reveal the Owner's Intention

Given the nature of grain trading in almost all cases the grain trader will ***not*** know the intended destination of this grain on its purchase.

A grain trader will keep their trading options open and only allocate grain at a receival site to a market immediately prior to organising delivery logistics.

Accordingly the ownership of grain by a grain trader at a point in time does not provide GrainCorp information on the ultimate owner or destination of the grain. This is demonstrated by the following trading activities:

- All owners of grain can transfer title of their grain to another owner 'in store'. Title transfers are completed on-line with GrainCorp Stock System without reference or approval from GrainCorp.
- **[Confidential]** on average all grain in each season is title transferred to another owner. In this current year nearly 6 million tonnes of grain has been title transferred (68% of receivals) in the first 6 months.

[Confidential]

- Given the liquidity of the grain market, a grain owner can maintain its stocks and delivery information confidential by:
    - Holding all or part of its grain stocks in another grain owner's name; and / or
    - Out-loading grain to their customers on a free to transport basis, so that GrainCorp never knows the ultimate destination where:
        - If the grain is shipped, the customer only discloses the destination country not the final overseas customer; and
        - If the grain is out-loaded by road, the customer often does not disclose the domestic customer.

8.5 Stock Information Only Represents One Component of a Trading Position

GrainCorp cannot ascertain the grain trading position of each grain owner based on its stock information. The grain trading position ('long' or 'short') represents a grain owner's view of the market and has a direct impact on their trading margin.

The amount of grain held by a grain owner in a particular storage facility does not reflect a grain owner's grain trading position. That position is determined by the owner's grain purchases or sales of grain (before and after harvest) that is not delivered or harvested or received, viz:

Trading Position= Contracted Purchases + ***Stock on hand*** *– Contracted Sales*

While GrainCorp may have incomplete information on a grain owner's stock on hand it is not privy to a grain owner's:

- Domestic and international sale and purchase contractual arrangements; and
- The contractual prices and terms in which grain has been or will be acquired or sold.

As the grain owner is not required to (and does not) disclose this information, GrainCorp does not have any competitive advantage in relation to their grain trading activities.

8.6 All Customers Have Access to Quality and Cash Price Information

Grain quality and cash prices are freely available at all GrainCorp receival sites.

Grain quality

All grain owners (traders and growers) have access to grain quality information for both the grain they purchase and the total stack quality where that grain is located (e.g., if a buyer purchased 200 tonnes of APH Wheat in a 10,000 tonne stack at a silo, the buyer would know the quality of both the 200 tonnes and the other grain contained in the stack).

This information is provided to buyers by way of ticket information and weekly lab reports to verify that ticket information. Accordingly as all large grain exporters purchase grain at all major sites, they have a good profile and understanding of the grain quality as it is delivered to those sites.

Cash prices

Most grain is purchased under private contracts direct with growers, or from another grain owner, rather than by a cash price at a receival site.

Any cash prices offered by grain buyers at GrainCorp sites are uploaded by them and published daily on the relevant section of the GrainCorp internet site during harvest receival periods. Therefore, all participants receive that information at the same time.

8.7 The Commission Has Tested These Issues Previously

The Commission has previously considered issues relating to GrainCorp's access to the grain storage information of their customers in its consideration of:

- GrainCorp's and Cargill's acquisition of Milling Australia; and
- GrainCorp's proposed acquisition of Ridley Corporation.

In each case, the Commission concluded that the provision of storage, handling or logistics services would not result in GrainCorp obtaining access to customers' competitively sensitive information such as would distort competition or provide any competitive advantage.

The Commission found, following its market enquiries in relation to the Milling Australia transaction, that:

> *"there were strong constraints on GrainCorp's ability to discriminate against particular users of its storage and handling facilities:*

- *The main constraint was that the ownership of grain within GrainCorp's facilities was not fixed and millers could, and did, buy and sell large amounts of grain within GrainCorp's storage system. This means that GrainCorp would not be able to target grain within its system because the ownership of that grain could change;*
- *In terms of access to storage, a large amount of grain entered GrainCorp's system in the name of growers or traders and was then purchased by millers.*

Therefore GrainCorp would not know who the grain was destined for when it entered GrainCorp's storage facilities;

- *In terms of raising rival millers' storage costs, the Commission considered that millers' ability to contract for traders to hold grain on their behalf, thereby defeating a price rise, would deter GrainCorp from attempting to raise charges;*
- *In terms of GrainCorp using knowledge of millers' stocks to identify their shortages of particular types of wheat and bidding up the prices of those stocks, the Commission found that GrainCorp did not have complete information of millers' stocks either because millers used some storage other than GrainCorp's, or because wheat was held for millers by traders in the traders' names, effectively disguising the wheat…".*[17]

8.8 Vessel Nomination Information is Only After the Fact Information

Port Terminal Services are essentially a logistics function which takes place after the relevant customer contract has been won (i.e. after competition has taken place for the relevant supply and after the customer has placed its order).

A snapshot of information about the volume of grain to be exported on one or more vessels provides GrainCorp with no visibility of individual exporters wider trading operations or intentions.

The provision of Port Terminal Services provides GrainCorp with very limited. Only a partial picture of the sales arrangements of a grain exporter's activity (up to 7 days) is available while a Cargo Nomination Application is being assessed.

Once the Cargo Nomination Application has been accepted the publication of the shipping stem under the WEMA effectively discloses any information of real value which is obtained by the Port Operator and provides a level of transparency not found anywhere else in the world.

For example, while the provision of Port Terminal Services will provide GrainCorp with certain information about the amount and quality of the wheat being shipped, the destination country of the wheat and the timing of export, the Port Operator will not have any information about:

a) the identity of the ultimate customer (unless there is a monopoly buyer at the relevant destination port). This is particularly the case as grains are often traded several times while they remain in the logistics or delivery chain;

b) the price at which, or other terms on which, the wheat was sold;

c) the date on which the exporter won the tender, or entered into the contract, to supply the wheat;

d) whether the exporter is fulfilling the entire customer order from wheat exported from that port (or whether the exporter is supplementing the order from wheat exported from any other port around the world);

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[17] Commission's letter to Mallesons Stephen Jaques dated 16 August 2002.

e) whether the wheat exported will be blended at another location after export;

f) each of the other arrangements the exporter may have to acquire wheat, trade wheat or supply wheat, either in Australia or overseas; or

g) any of the customer's future tenders, contracts, marketing proposals or trading positions.

8.9 Ring Fencing Arrangements

The only information that GrainCorp may have that could be perceived to be sensitive, is a formal Cargo Nomination Application from a customer for a period of up to 7 days while it is being assessed and before it is approved or declined.

Up to the point of formal Cargo Nomination Application, GrainCorp has no knowledge of the grain exporter's intention. Some customers may however have an unfounded concern that Cargo Nomination Applications could have some advantage for GrainCorp's Trading business during the 7 working day assessment period. (This matter has been discussed in sections, 3.5, 6.6 and 6.8).

Once a Cargo Nomination is approved by GrainCorp, the key relevant information is published on the shipping stem as required under the conditions of the Company's Bulk Wheat Export Accreditation.

The result is that any theoretical information asymmetry is available for no more than 7 days.

GrainCorp believes that Cargo Nomination Application information is not commercially sensitive for the following reasons:

- The information provided in the Cargo Nomination Application is limited in nature and does not require the grain exporter to disclose commercially sensitive information, including prices paid and location of grain.
- Given the involvement of multiple grain exporters in major overseas grain sales (often involving grain being supplied from competing origins) export sale information is usually known by all grain traders before the grain exporter has to organise the grain logistics for a vessel.
- GrainCorp's Trading business has no ability to take advantage of this information in securing export sales. When a vessel is nominated by a grain exporter the export sale is generally completed. It is not possible for GrainCorp to complete and execute a competing export sale within working 7 days, as the usual time to negotiate an export contract is two to three months prior to shipment.
- This is not demonstrated by grain exporter's behaviour this season. Many grain exporters have provided information on their forward vessel intentions which was not sought or required by GrainCorp. This has led to the development of new provision in the Port Terminal Services Protocol giving grain exporters the option to provide forward non binding information on their intentions.

While GrainCorp believes it is not necessary, the Company is willing to enter into an Access Undertaking that includes ring fencing provisions to address any residual concerns the Commission may have in relation to information held by GrainCorp on a Cargo Nomination Application in the 7 working day assessment period.

GrainCorp will ensure separation between port / logistics operations and trading operations.

GrainCorp will also restrict information flows between these two sections of the Company, and include a mechanism to monitor and ensure compliance.

GrainCorp does not believe additional ring fencing provisions are warranted given:

- the reasons states above; and
- they will create an unnecessary and disproportionate operating burden and cost on GrainCorp in managing its activities given the size and structure of the business.

9 Terms of the Access Undertaking

9.1 Overview

Given this background, GrainCorp believes that the Access Undertaking strikes a reasonable balance between providing certainty of non-discriminatory access for access seekers while ensuring that the resulting regulatory intervention in GrainCorp's operations is set at a level which is appropriate in the circumstances.

Further details on the proposed Access Undertaking, and the reasons the proposed undertaking are appropriate, are set out in the following sections.

9.2 Structure and Scope

The Access Undertaking covers multiple ports.

The Access Undertaking only covers Port Terminal Services in relation to bulk wheat as required under the WEMA. It is does not cover (nor should cover) all services provided in the grain supply chain or to other grains.

9.3 Term and Variations

The term of the Access Undertaking is 2 years to align with the forthcoming Productivity Commission review of the WEMA. This will commence by 1 January 2010 and GrainCorp would expect any recommendations to take 12 months to implement.

As set out above, the Access Undertaking is provided as a requirement of the WEMA. As a result, it allows GrainCorp to seek the Commission's consent to a withdrawal of an Access Undertaking:

- if the WEMA no longer requires it or an Applicant or a related body corporate ceases to be accredited; or
- in respect of a particular port, if a port is sold or a port becomes subject to a certified State-based access regime which meets the Access Test requirements.

9.4 Price and Non-Price Terms

Consistent with current arrangements, GrainCorp must publish on an annual basis the prices and standard terms for standard Port Terminal Services. The Access Undertaking does not require prior regulatory approval to the price and non-price terms. The reasons why this is appropriate are explained below.

Publication of Pricing is Appropriate

Annual publication of pricing for Standard Port Terminal Services is appropriate because:

- it provides transparency in the provision of Port Terminal Services which facilitates *ex post* monitoring to ensure GrainCorp does not engage in discriminatory pricing and promotes efficient negotiation and timely

agreement on the terms of access to the port terminal by competitors operating in the market for services provided by GrainCorp;

- access seekers are well resourced and have the knowledge, experience and bargaining power to assess and, if necessary, to negotiate prices;
- given there may be up to 20 ports involved, and a range of divergent business and operating models used by GrainCorp, ABB and CBH in providing Port Terminal Services, it is not practicable to undertake a uniform price determination exercise for each port in an attempt to determine an efficient price in advance of such negotiations; and
- to the extent disputes may arise, access seekers will have clear and ready recourse to binding arbitration.

In the context of the way that GrainCorp has and continues to provide access to Port Terminal Services for the export of bulk wheat, the regulatory costs of undertaking *ex ante* regulation of prices outweighs the benefits.

This is particularly the case given that:

- the legislative framework of the WEMA itself leans towards light-handed regulation as evidenced by the continuous disclosure rules which are cast as an obligation to publish only, however Wheat Exports Australia has considerable scope to sanction bulk wheat exporters through their ability to place conditions upon, suspend or remove Accreditation;
- there is a history of open access on reasonable terms and conditions;
- GrainCorp’s business is volume-driven and there is no incentive to turn away customers with volume, but rather an incentive to encourage increased throughput volumes;
- the Port Operator has historically faced wheat exporters with considerable constraining power and will continue to do so;
- the commitment in the Access Undertaking not to discriminate between wheat exporters ensures that the Port Terminal Operator cannot charge other wheat exporters monopoly prices to subsidise its own wheat export business. Furthermore, as Australian wheat exporters (including the Port Operator’s wheat export businesses) face a competitive global market for bulk wheat. This imposes a constraint on the maximum price that a Port Terminal Operator can charge its own bulk wheat exporting business. Any attempt to charge a monopoly price for Port Terminal Services may lead to a reduction in wheat exports; and
- the threat of arbitration and/or heavier-handed regulation is a powerful disincentive against monopoly pricing (to the extent that is possible in the first place).

With reference to determining a pricing dispute, the General Terms give the arbitrator the same guidance that would be available in an arbitration for declared services under Part IIIA.

Given the proposed short duration of the Undertaking, the history of available port access on reasonable terms and conditions, the availability of binding arbitration and the Productivity Commission review of the Access Test requirement in the near future, it is appropriate that any price requirements should be light-handed, timely and cost effective.

Publication of Standard Terms is Appropriate

Schedule 2 sets out the current standard Port Terminal Services for the provision of services to accredited bulk wheat exporters. This will ensure that the obligation to provide access extends to the services that are available that relate to the export of bulk wheat at the port, and includes services that the broad majority of access seekers will require for that purpose.

The Access Undertaking does not preclude an access seeker requesting non-standard services or amendments to the Standard Terms. If there is a request for non-standard services, GrainCorp is required to negotiate in good faith with the availability of binding arbitration should negotiations fail.

GrainCorp has not included the terms and conditions as part of the Access Undertaking as the Company believes this approach would introduce a level of inflexibility, unnecessary complexity and delay in GrainCorp's ability to vary and / or negotiate with a willing third party the terms and conditions.

It is also inconsistent with the way the industry operates. The industry generally works on an annual contracting basis, and requiring the approval of the Commission to vary the terms and conditions is impractical, as it would remove the flexibility needed to deal with developments and emerging market efficiency incentives (such as capacity booking mechanisms).

Finally, there is no suggestion that GrainCorp's current price or non-price terms are unfair or unreasonable.

However, the Undertaking requires the access agreement to contain the Port Terminal Services Protocols. In fact the protocols are the primary terms which apply to the provision of Port Terminal Services. Section 5 of the GrainCorp Grain Handling & Storage Agreement deals with the provision of Port Terminal Services and is effectively the current Port Terminal Services Protocol.

As discussed in section 9.7,he Access Undertaking does regulate the Port Terminal Services Protocols and therefore the Access Undertaking also effectively regulates the primary contract terms through having the initial protocols annexed to the Undertaking and thus subject to a change mechanism.

The concerns raised by AWB and others through the WEMA consultations have focussed on the potential for, rather than any actual, discrimination and leveraging.

It is therefore unnecessary for the Commission to approve upfront terms and conditions dealing with boilerplate clauses relating to payment terms, or operational matters such as safety, emergencies and insurance.

9.5 Non-Discriminatory Access

The set of standard Port Terminal Services for which GrainCorp will publish price and non-price terms are the same as the set of standard Port Terminal Services that GrainCorp would supply to all access applicants and users, including their own bulk wheat export business should they choose to export bulk wheat using the standard Port Terminal Services regulated by the proposed Undertaking.

To the extent that additional costs have to be incurred, the Access Undertaking provides that these cost variations are to be reflected in the published prices available to applicants and users. This approach is consistent with the pricing principles set out in section 44ZZCA of the TPA.

The Access Undertaking also recognises that it can be appropriate for Port Terminal Services to be provided to different users on differentiated terms, reflecting the particular requirements of each user. Again, this approach is consistent with the pricing principles set out in section 44ZZCA of the TPA and promotes efficiency in the use of Port Terminal Services.

The non-discriminatory nature of existing access to the Port Terminal Services is evidenced by the large number of wheat exporters which have sought accreditation from Wheat Exports Australia and most of which are active participants in the wheat market. A list of the wheat exporters which are currently accredited by Wheat Exports Australia is set out in Attachment 3.

9.6 Negotiation and Dispute Resolution Proposal

Detailed negotiation process

The negotiation arrangements are similar to those found in the ARTC access undertaking, except the removal of the step involving the Indicative Access Proposal. This step is not considered necessary given that the agreements are likely to only run for no more than a year, although there is sufficient flexibility to accommodate other requests.

Binding arbitration

The Access Undertaking contains a detailed dispute resolution mechanism to provide access seekers with an opportunity for review by an independent arbitrator should they be dissatisfied with of the terms and conditions on which they are granted access. Again this is based on the ARTC arrangements although it provides for independent arbitration rather than arbitration by the Commission. However, the Commission is given an oversight role in that it can choose the arbitrator if the parties are unable to agree and participate in the arbitration process.

9.7 Capacity Management

Overview

As noted above, there is generally excess capacity at each export grain terminal operated by GrainCorp, except for short periods of peak demand as is the case currently at Fisherman Islands. The terminals operate through allocations being given in accordance with published non-discriminatory protocols.

There are two key mechanisms for capacity management on which the Access Undertaking relies, both of which are in the public domain:

a) the Port Terminal Services Protocols; and

b) the shipping stem,

These mechanisms need to be read in conjunction with the ring fencing provisions in the Access Undertaking. These commitments address any concerns about the way port terminal capacity or information obtained through port usage is managed.

The Access Undertaking obliges GrainCorp to publish these documents and therefore GrainCorp is subject to oversight by both the WEA under the WEMA and the Commission under the Access Undertaking.

Port Terminal Services Protocols

The continuous disclosure rules under the WEMA require a current statement setting out the Port Terminal Operator's policies and procedures for managing demand for the Port Terminal Service (including policies and procedures relating to the nomination and acceptance of ships to be loaded using the Port Terminal Service).

As outlined in Section 4 above, the wheat export supply chain services a highly fluid and dynamic market. For this reason it is necessary that GrainCorp has sufficient flexibility to vary the Port Terminal Service Protocols to ensure the consistent efficient operation of the Port Terminals.

Accordingly, the initial Port Terminal Service Protocols are attached to the Access Undertaking but are subject to change. GrainCorp does not consider it is necessary, or that it would aid in the efficient operation of the port terminals, to require ACCC approval to vary the Port Terminal Service Protocols from time to time. However, under the Access Undertaking GrainCorp may not vary the Port Terminal Protocols except in accordance with the objectives of the Access Undertaking and the non-discriminatory principle in clause 5.4 of the Access Undertaking.

Given that the Port Terminal Protocols are an element of the contractual service agreement in place between GrainCorp and terminal service customers, the Protocols cannot be unilaterally varied during a season as any variation has to be done with the agreement of both contracted parties.

Shipping stem

GrainCorp is obliged as a condition of the bulk wheat export accreditation scheme to publish a "shipping stem", which includes information concerning the nomination and scheduling of vessels for each port and which is updated on a daily basis.

This is a new measure that provides a level of transparency about the operation of the port and the port allocation that enables bulk wheat exporters to ensure that GrainCorp is complying with its obligations under the WEMA, export accreditation and the Port Rules.

The requirement for publication of the shipping stem was introduced as a component of the WEMA and no equivalent information is available from the countries that compete directly with Australian wheat exports in the global market.

International grain traders accredited to export wheat in bulk from Australia are not subject to this level of transparency where they may operate vertically integrated trading – supply chain – port terminal businesses in these competitor countries.

9.8 Capacity Expansion

Given the proposed short term of GrainCorp's Access Undertaking, the Access Undertaking does not address capacity expansion as any expansion would need to be addressed over a longer period than the likely term of the undertaking.

Any imbalance between demand and capacity will be adequately addressed by GrainCorp's policies and procedures for capacity management. It would not be commercially viable to build capacity equivalent to meet peak demand as this would mean even more idle capacity for most of the year.

For these reasons, GrainCorp considers it unnecessary to address capacity expansion in the Access Undertaking.

10 TPA Requirements

For the reasons set out above, GrainCorp considers that it is appropriate for the Commission to accept the proposed Access Undertaking having regard to the requirements of the TPA.

10.1 The Level of Regulation Is Sufficient

During the process of making legislative amendments to the GHSA in 2007, the Victorian parliament made it clear that undertakings in relation to Victorian ports should be "light-handed".[18]

Light-handed is taken to mean:

> *"regulatory methods that do not control prices directly, but emphasise commercial negotiation and information transparency, with regulatory intervention through the right to the arbitration of disputes, being retained as a default"*[19]

Importantly, in Victoria, the ESC considered that the limits on the terminal operators' ability to use their market power were sufficient to warrant light-handed regulation only.

Similarly, in its 2007 Ports Pricing and Access Review, ESCOSA confirmed that a light-handed approach based on published pricing and a negotiate/arbitrate model was sufficient. For the reasons set out in section 4 above, GrainCorp considers the level of regulation proposed by the Access Undertaking is sufficient.

GrainCorp believes a similar approach is warranted for all its ports given the context in which these services are provided

10.2 The Objects of Part IIIA

To the extent that port terminal facilities cannot be economically duplicated, an undertaking to provide access to services from those facilities on transparent and non-discriminatory terms would promote the economically efficient use of those facilities and promote competition in vertically related markets, thereby promoting the objects of Part IIIA.

However, the assumption that Port Terminal Facilities cannot be economically duplicated has not been fully established.

GrainCorp considers that there is scope for new entry, and there is some potential for intra-port competition. Given that GrainCorp has historically provided access to Port Terminal Services in the absence of a formal access undertaking, the Commission should accept an undertaking that only requires GrainCorp to publish reference prices for a set of standard services without submitting price and non-

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18 Grain Handling and Storage (Amendment) Bill 2007: Tabling of Statement of Compatibility and Second Reading Speech

19 NCC (August 2008) The National Gas Law A Guide to the functions and powers of the National Competition Council under the National Gas Law; Part C, Light regulation of covered Pipeline services d

price terms and conditions to the Commission for prior approval as part of the undertaking. This approach would protect investment incentives and promote economically efficient investments in port terminal facilities.

Accordingly, the Access Undertaking is sufficient to promote the economically efficient operation of, use of and investment in bulk wheat export terminals and thereby promote effective competition in upstream and downstream markets by giving industry confidence that the transition from the bulk wheat export monopoly will not be hindered by port access issues arising from anti-competitive behaviour.

10.3 The Pricing Principles Specified In Section 44ZZCA of The TPA

The Access Undertaking requires access to Port Terminal Services to be provided on non-discriminatory terms and has provisions specifically prohibiting GrainCorp from unreasonably discriminating in favour of its own business.

This, together with a binding dispute resolution process, ensures that GrainCorp provides access at prices that generate expected revenue for Port Terminal Services that is at least sufficient to meet the efficient costs of providing access to the Port Terminal Services including a return on investment commensurate with risk.

Furthermore, an undertaking that allows GrainCorp to determine their own access prices at the first instance will retain the incentives to reduce costs. In contrast, an undertaking that requires GrainCorp to provide access at cost-based prices would dampen incentives to reduce costs and require further compensating regulatory mechanisms to provide this incentive such as CPI-X mechanisms which involve difficult regulatory judgments.

Accordingly, the published pricing proposed under the Access Undertaking is consistent with the Pricing Principles set out in section 44ZZCA of the TPA.

10.4 The Legitimate Business Interests of the Provider

GrainCorp has a legitimate business interest in providing access on price and non-price terms and conditions that ensure that they receive at least a return on investment that is commensurate with risk. GrainCorp is satisfied that the Access Undertaking would not prevent this outcome.

10.5 The Public Interest, Including the Public Interest in Having Competition in Markets

The public interest would be served if GrainCorp continues to provide access to Port Terminal Services on terms and conditions determined by them subject to a binding process for resolving any dispute about the terms of access. It would protect incentives to make economically efficient investment in Port Terminal Services which would promote the public interest in the long run. It also balances the potentially large cost of regulation with the relatively minimal benefits of access regulation in this case.

The more fully documented arrangements under the Access Undertaking ensure certainty, transparency and non-discrimination such that the public can be confident of a successful transition from a single desk to competition in the export of bulk wheat.

10.6 The Interests of Persons Who Might Want Access to the Service

Under the Access Undertaking, GrainCorp will continue to provide access to Port Terminal Services to any accredited wheat exporter that meets reasonable prudential requirements.

Such users are adequately protected by the requirement to publish pricing for standard services, the obligations not to discriminate and the detailed negotiate/arbitrate mechanisms.

It is also relevant to observe that, if the Commission did not approve the Access Undertaking or required onerous regulatory requirements, there is a real risk that exporters of bulk wheat who provide Port Terminal Services may cease to be accredited wheat exporters.

This may reduce competition between exporters of bulk wheat, which would not be in the interest of the Australian export industry or Australian farmers who would face reduced choice of bulk wheat exporters.

GrainCorp Operations Limited

16th April 2009

GrainCorp Operations Limited

SCHEDULE 1

1 GrainCorp Background Information

Overview

GrainCorp is an Australian agribusiness company listed on the Australian Securities Exchange. GrainCorp operates primarily in Queensland, New South Wales and Victoria, but also provides services across all mainland Australian states as well as to customers and suppliers internationally.

GrainCorp was the first government authority in the Australian grain industry to be privatised in 1992. The following timeline provides an overview of GrainCorp's evolution.

Table 14: Timeline of GrainCorp's evolution

1992	NSW Grain Corporation acquired from NSW Government by Prime Wheat Association (now Grain Growers Association)
1996	First bulk handler to trade grain
1998	First grain business to list on ASX
2000	Acquires Victorian based Vicgrain
2002	Acquires Milling Australia (now Allied Mills) from Goodman Fielder, through a joint venture with Cargill Australia Limited
2003	Acquires Queensland based Grainco Australia and MarketLink
2007	Acquires Hunter Grain
2008	Shareholders vote to remove Grain Growers Association Foundation Share providing a normalised company structure
2008	GrainCorp enters into a 5 year deal with Pacific National for 10 trains to transport export and domestic grain in New South Wales and Victoria
2008	Removal of the bulk export wheat monopoly from 1 July 2008

Source: GrainCorp

2 Business Activities and Organisational Structure

GrainCorp's principal business activities are aligned into three business units - Storage and Logistics, Trading, and Ports and New Business. These comprise the following activities:

(a) **Storage and logistics**: provision of receival, handling and storage of wheat and other bulk commodities as an agent for marketing organisations, end users and growers in relation to both domestic and export markets;

(b) **Transport:** road and rail transport services for certain bulk commodities is managed by the Storage and Logistic business unit;

(c) **Port terminals:** provision of receival, handling and storage of grain and other products;

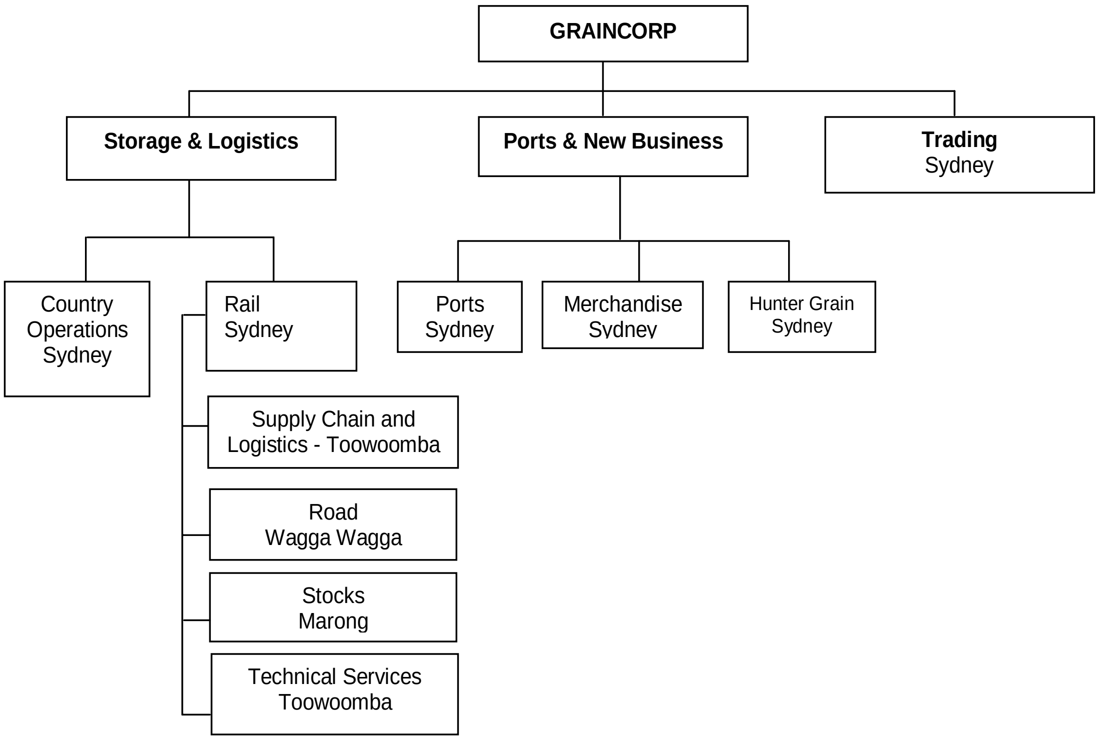
(d) **Grain Trading and Hunter Grain:** trading of grain, meals and other bulk commodities and the operation of grain pools in relation to both domestic and export markets;

(e) **Merchandising:** provision of farm input products; and

(f) **Allied Mills:** flour milling and mixing services (through investment in Allied Mills -a joint venture with Cargill Australia Limited ("**Cargill**")).

Figure 10 below shows GrainCorp's internal structure.

Figure 10: GrainCorp's internal structure



Source: GrainCorp

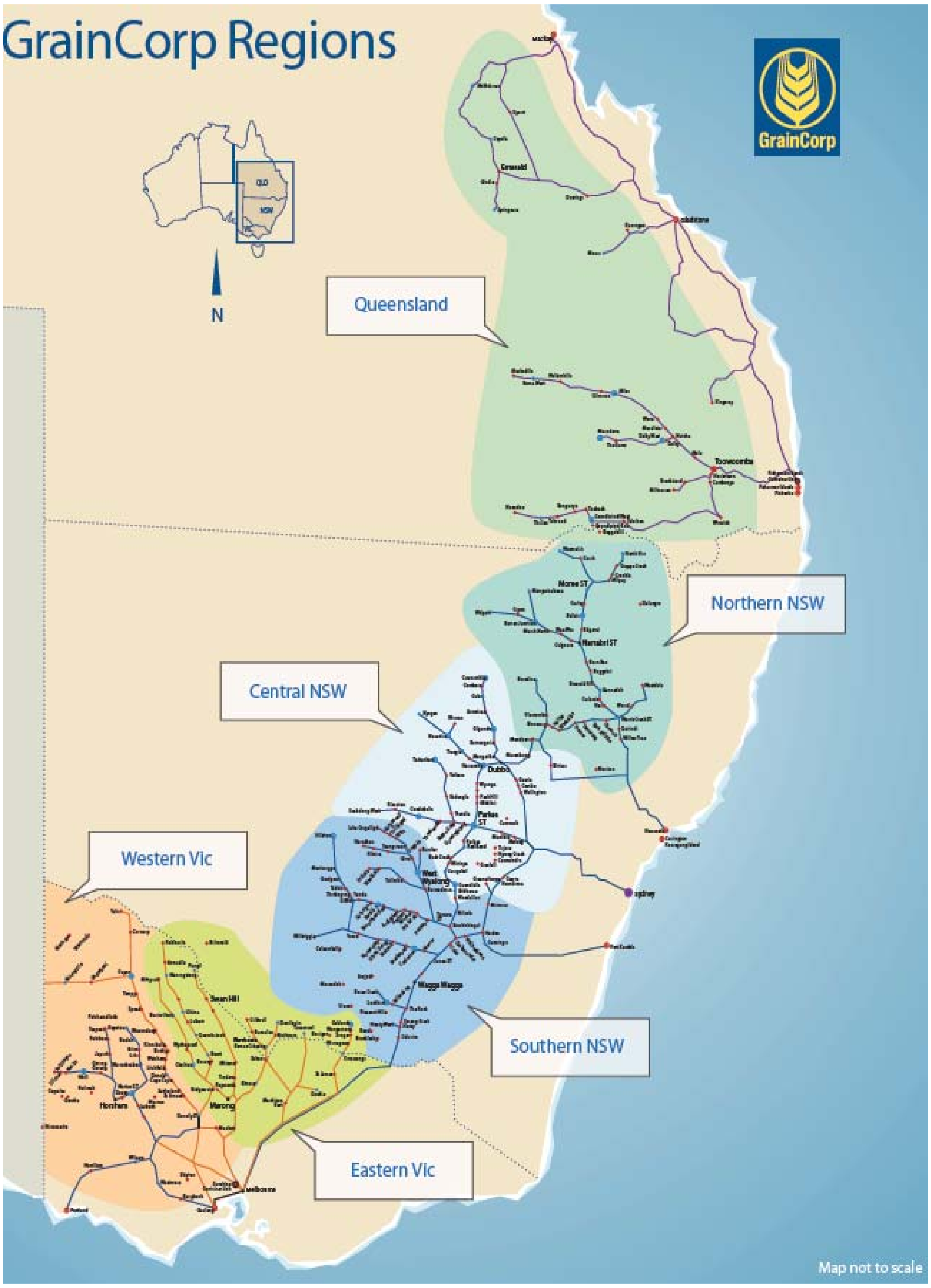
An overview of GrainCorp's core business activities is outlined in the following sections.

3 Country Storage and Handling Facilities

GrainCorp owns and operates approximately 280 grain storage facilities in New South Wales, Victoria and Queensland, and one silo in South Australia. 69 of these receival sites are 'Primary Sites' that have the capacity to receive over 100,000 tonnes of grain. 8 of these sites are Sub-Terminals with the capacity to consolidate grain from rail with a capacity of in excess of 300,000 tonnes.

The country receival site network has a capacity of around 20 million tonnes and receives on average 9 million tonnes. As shown in Figure 11 below, most of the country sites are serviced by rail to the port terminal and major domestic grain consumers.

Figure 11: Map of GrainCorp's country receival site network



Source: www.graincorp.com.au

The expansion of on-farm and storage facilities that compete directly with GrainCorp sites, combined with the move to larger sites, has led to the closure of over 300 Grain Corp sites in the past 10 years.

GrainCorp's country receival site operations are managed under 6 regions. Orders for the outloading of grain from these sites are managed by a separate logistics unit located in Toowoomba (Queensland).

Country storage and handling is provided by GrainCorp to over 10,000 grain growers and over 100 grain buyers pursuant to a standard Warehousing Storage and Handling Agreement at tariff rates. Under this agreement GrainCorp guarantees the quality and quantity of grain held in its storage facilities.

All customers' grain (including grain belonging to GrainCorp Trading) is stored under standardised agreements and uniform fees are applied. Given the ability of grain traders to arbitrage differences in terms and fees by trading grain at a country silo, a discount provided to one grain trader will effectively be available to all traders, as that trader will use that rate to buy and sell grain to other traders.

4 Transport

GrainCorp's transport operations sit within its Storage and Logistics division. GrainCorp logistics services manage approximately 2 million tonnes of rail transport and 1 million tonnes of road transport of commodities every year between customers and GrainCorp facilities (including both inland warehousing facilities and Port Terminal Facilities).

In May 2008, GrainCorp signed a 5 year Take or Pay agreement with Pacific National for operational control of 8 main line grain export trains that will operate in NSW and Victoria. This represents approximately 2/3 of average annual grain exports from NSW and Victoria through GrainCorp port terminals.

GrainCorp uses this rail capacity principally for the Company's own grain transport requirements and provides transport services to Allied Mills, and sells excess rail capacity to other wheat exporters. More information on rail contracts is provided in Section 4.3.

5 Port Storage and Handling Facilities

GrainCorp operates 7 port terminals with a grain shipping capacity of over 15 million tonnes per annum. On average these terminals handle only 4 million tonnes of grain per annum.

GrainCorp's bulk grain export terminal facilities are located at:

- Mackay, Queensland;
- Gladstone, Queensland;
- Fishermans Island, Queensland;
- Carrington, NSW;
- Port Kembla, NSW;
- Portland, Victoria; and
- Geelong, Victoria.

Two non-grain port terminal facilities are located at Pinkenba (Queensland) and Kooragang Island (NSW).

Given declining grain exports in the past 10 years, GrainCorp's port terminals now also handle a range of non grain bulk products including woodchips, mineral sands, fertiliser and meals, as summarised in Table 15 below.

Table 15: Materials handled at GrainCorp port terminals

Port terminal	Export products	Import products
Mackay	Grain	Magnetite
Gladstone	Grain, Magnesia	
Fisherman Islands	Grain, Woodchips, Sugar, Cottonseed (plus containerised grain)	
Carrington	Grain	Grain, Orange juice
Port Kembla	Grain	Grain, Fertiliser
Geelong	Grain, Woodchips (plus containerised grain and domestic barley)	Fertiliser, Meals
Portland	Grain, Woodchips	Fertiliser

Source: GrainCorp

GrainCorp's port terminals have limited vertical capacity for storage of grain. Therefore, the efficient operation of these port terminals, like those in North and South America, depend on the ability to receive and ship grain quickly to turn over the storage capacity.

GrainCorp's share of Eastern Australian wheat exports has declined from around 30% to 20% given the growth of domestic grain consumption and expanding export competition from the new Melbourne Port Terminal and containerisation.

Historically, GrainCorp has been impacted to a greater extent by droughts, as evidenced in 2002/03, 2006/07 and 2007/08, where the share of Australian wheat exports fell below 15%.

6 GrainCorp Containerisation of Grain

GrainCorp also conducts grain container packing operations at Sunshine in Melbourne, Geelong and Fisherman Island. Customers using GrainCorp container operations can receive delivery of commodities by road or rail at each facility.

7 GrainCorp Trading

GrainCorp's Trading operations are located in Sydney and provide services to domestic and export customers. GrainCorp's Trading operations account for approximately 20% of grain production in Eastern Australia.

GrainCorp markets domestic grain for human consumption (flour mills, including Allied Mills, malt houses and oilseed crushers) and stockfeed customers (including poultry, beef feedlots, pig and dairy) and to customers worldwide, with key markets in Asia and the Middle East.

Following the removal of the bulk wheat export monopoly on 1 July 2008, GrainCorp loaded its first shipment of bulk wheat on 9 December 2008 from its Carrington terminal. More information on GrainCorp's share of wheat exports since the removal of the bulk wheat export monopoly is provided in section 4.

On 3 April 2009, GrainCorp and Cargill announced that GrainCorp would sell its 50% interest in the parties' joint venture, Australian Grain Accumulation Services Pty Limited ("**AGA**"), to Cargill and GrainCorp will form a new grain accumulation team. Previously AGA had been a buyer of grain for Allied Mills, Cargill and GrainCorp.

8 Flour Milling - Allied Mills

GrainCorp holds a 60% interest in Allied Mills, a joint venture company formed in 2002 to acquire Goodman Fielder's flour milling and mixing business. The remaining 40% interest is held by Cargill Australia Limited.

Allied Mills operates 9 flour mills and mixing sites throughout Australia and supplies a full range of flour-based products, including biscuit flour, bakers' flour, speciality flours, speciality grains and pre-mixes. Allied Mills also produces a co-product from flour milling (mill run) which is sold to stockfeed producers.

Further information

Further information in relation to GrainCorp is also available at www.graincorp.com.au.

GrainCorp Operations Limited

Schedule 2 - Published information

The appended information includes;

- GrainCorp Shipping Stem
  http://www.graincorp.com.au/prodserv/Ports/Pages/ShippingStem1.aspx
- Multiple Parcel Cargo Nomination Application form.
- Single Parcel Cargo Nomination Application form.

GRAINCORP SHIPPING STEM

GrainCorp Operations Ltd ABN 52003875401

Last Updated 14 April 2009

Terminal	Vessel Name	Exporter	Commodity	Tonnes	Date of Nomination	Time of Nom'n	Date of Acceptance	Time of Accept	Est. Loading Date
Carrington	Nord Ace	CARG	Wheat	43,000	14/11/2008		3/02/2009		9/04/2009
Carrington	Darya Mahesh	GCOP	Wheat	14,000	14/11/2008		3/02/2009		14/04/2009
Carrington	B Asia	GCOP	Wheat	25,000	29/01/2009		2/02/2009		16/04/2009
Carrington	Sliver Star	GCOP	Wheat	21,000	29/01/2009		25/02/2009		18/04/2009
Carrington	Great Harmony	AWB	Sorghum	16,500	3/03/2009		2/03/2009		20/04/2009
Carrington	Tein Hau	AWB	Wheat/SOR	7,600	26/02/2009		16/03/2009		23/04/2009
Carrington	Sheng Mu	ABB	Wheat	18,000	13/02/2009		9/03/2009		26/04/2009
Carrington	Joalmi	GCOP	Wheat	30,000	29/01/2009		25/02/2009		28/04/2009
Carrington	Ocean Diamond	GCOP	Wheat	24,150	29/01/2009		25/02/2009		30/04/2009
Carrington	Papora Wisdom	JKI	Wheat	25,000	10/02/2009		5/03/2009		3/05/2009
Carrington	TBA	AWB	Wheat	35,000	5/03/2009		13/03/2009		8/05/2009
Fisherman Islands	Yick Zao	CARG	Wheat	32,000	15/01/2009		23/02/2009		14/04/2009
Fisherman Islands	Trans Friendship	DREY	Sorghum	20,000	16/01/2009		23/02/2009		17/04/2009
Fisherman Islands	Ikuna	AWB	Wheat	5,500	14/01/2009		4/02/2009		19/04/2009
Fisherman Islands	Skyros	ABB	Sorghum	20,000	12/01/2009		16/02/2009		21/04/2009
Fisherman Islands	B Asia	GCOP	Wheat	26,250	16/12/2008		3/02/2009		23/04/2009
Fisherman Islands	Vijitra Naree	RIVE	Sorghum	21,000	29/01/2009		24/02/2009		25/04/2009
Fisherman Islands	Golden Strength	AWB	Wheat	27,500	16/01/2009		8/04/2009		28/04/2009
Fisherman Islands	Ken Goh	ETG	Wheat/SOR	31,750	5/02/2009		8/04/2009		30/04/2009
Fisherman Islands	Torm Tina	GCOP	Wheat	31,000	13/01/2009		25/02/2009		3/05/2009
Fisherman Islands	Ace Dragon	ETG	Sorghum	21,000	5/02/2009		8/04/2009		5/05/2009
Fisherman Islands	Hakula	AWB	Wheat	5,500	13/01/2009		9/02/2009		9/05/2009
Fisherman Islands	Angel Accord	AWB	Sorghum	27,500	14/01/2009		4/02/2009		10/05/2009
Geelong	Bogasari Dua	CARG	Wheat	30,000	7/04/2009		8/04/2009		27/04/2009
Geelong	TBA	GLEN	Barley	6,600	11/03/2009		17/03/2009		10/05/2009
Gladstone	Ocean Diamond	AWB	Wheat	18,000	18/02/2009		25/02/2009		21/04/2009
Gladstone	Torm Tina	GCOP	Wheat	20,000	18/02/2009		25/02/2009		26/04/2009
Mackay	New Ambition	GCOP	Sorghum	21,000	29/01/2009		2/03/2009		18/04/2009
Mackay	Tien Hau	AWB	Wheat	10,000	26/02/2009		5/03/2009		4/05/2009
Port Kembla	Lake Konipira	GCOP	Wheat	26,000	29/01/2009		25/02/2009		14/04/2009
Port Kembla	Darya Mahesh	GCOP	Wheat	38,000	29/01/2009		25/02/2009		17/04/2009
Port Kembla	Avalon	GCOP	Wheat	25,000	29/01/2009		25/02/2009		22/04/2009
Port Kembla	Lake Maja	JKI	Chick Pea	24,000	27/01/2009		28/01/2009		28/04/2009
Port Kembla	Gao Qiang	CARG	Wheat	21,000	27/01/2009		28/01/2009		28/04/2009
Port Kembla	Golden Strength	GLEN	Wheat	27,500	2/01/2009		27/02/2009		1/05/2009
Port Kembla	Alabanda	AWB	Wheat	22,000	17/03/2009		15/03/2009		3/05/2009
				817,350					

GrainCorp advise that the load dates shown are indicative only and are subject to change

CARGO NOMINATION APPLICATION – MULTIPLE PARCEL

GrainCorp

New Advice: ☐ **Amended Advice:** ☐ **Version No:** ____ **Customer Reference No:** ____ **Date:** ____

Nominating Customer:		GC Code:	
GrainCorp Load Port:		2nd Port [1.]	

NOTE 1.: Separate Vessel Nomination Advices are required for each Port

VESSEL DETAILS			
Name: MV			
Destination		ETA	
Type		Laycan	
Flag		Draft	
LOA		DWT	
Beam		Grain Cubics	
Holds		Agents	
Hatches		Charterers	
Cranes		Latest Shipment	
Date Built			

PARCEL No		**CARGO ASSEMBLY PLAN (CAP) – *Including Quality Specifications***			
Commodity				Parcel Grade	
Tonnage				Load Grade/s [2.]	
Tonnage Tolerance	Min:		Max:	Season/s [2.]	
	% -		% +	Expected Lift	

Quality Specifications (per Grade or Specify)	Min	Max	Load Specs	Treatment (per Codex or Specify)	Max Residue Limits (MRL)	Weed Seed Type (per Grade or Specify)	Limit
Use Parcel Grade Specifications: Y/N				Codex: Y/N		Use Parcel Grade Specifications: Y/N	
Protein				PRF Y/N			
Moisture				Pest. Restricted Y/N			
Screenings				Chlorpyrifos-Methyl			
Test Weight				Deltamethrin			
Unmillable				Dichlorvos			
Falling Number				Fenitrothion			
Oil Content				Methoprene			
Impurities							
Foreign Material							

Phytosanitary Requirements:

Sampling Requirements:

Comments:

NOTE 2.: Specify Tonnes per Grade & Season if there are multiples of either

Completed forms are to be emailed to the relevant Port contacts via the listing on the GrainCorp website in the Ports section, under the Port Terminal Service Protocol. The website also contains all Terms and Conditions in the Storage and Handling Agreement and Pricing Schedules documents.

Vessel Acceptance: GrainCorp will reply in writing to the nominating Customer contact if acceptable or otherwise.

CARGO NOMINATION APPLICATION – MULTIPLE PARCEL

PARCEL No		**CARGO ASSEMBLY PLAN (CAP) – *Including Quality Specifications***				
Commodity					Parcel Grade	
Tonnage					Load Grade/s [2.]	
Tonnage Tolerance	Min:		Max:		Season/s [2.]	
	% -		% +		Expected Lift	

Quality Specifications (per Grade or Specify)	Min	Max	Load Specs	Treatment (per Codex or Specify)	Max Residue Limits (MRL)	Weed Seed Type (per Grade or Specify)	Limit
Use Parcel Grade Specifications: Y/N				Codex: Y/N		Use Parcel Grade Specifications: Y/N	
Protein				PRF Y/N			
Moisture				Pest. Restricted Y/N			
Screenings				Chlorpyrifos-Methyl			
Test Weight				Deltamethrin			
Unmillable				Dichlorvos			
Falling Number				Fenitrothion			
Oil Content				Methoprene			
Impurities							
Foreign Material							

Phytosanitary Requirements:

Sampling Requirements:

Comments:

NOTE 2.: Specify Tonnes per Grade & Season if there are multiples of either

Completed forms are to be emailed to the relevant Port contacts via the listing on the GrainCorp website in the Ports section, under the Port Terminal Service Protocol. The website also contains all Terms and Conditions in the Storage and Handling Agreement and Pricing Schedules documents.

Vessel Acceptance: GrainCorp will reply in writing to the nominating Customer contact if acceptable or otherwise.

GrainCorp

CARGO NOMINATION APPLICATION – MULTIPLE PARCEL

PARCEL No		**CARGO ASSEMBLY PLAN (CAP) – *Including Quality Specifications***			
Commodity				Parcel Grade	
Tonnage				Load Grade/s [2.]	
Tonnage Tolerance	Min:		Max:		Season/s [2.]	
	% -		% +		Expected Lift	

Quality Specifications (per Grade or Specify)	Min	Max	Load Specs	Treatment (per Codex or Specify)	Max Residue Limits (MRL)	Weed Seed Type (per Grade or Specify)	Limit
Use Parcel Grade Specifications: Y/N				Codex: Y/N		Use Parcel Grade Specifications: Y/N	
Protein				PRF Y/N			
Moisture				Pest. Restricted Y/N			
Screenings				Chlorpyrifos-Methyl			
Test Weight				Deltamethrin			
Unmillable				Dichlorvos			
Falling Number				Fenitrothion			
Oil Content				Methoprene			
Impurities							
Foreign Material							

Phytosanitary Requirements:

Sampling Requirements:

Comments:

NOTE 2.: Specify Tonnes per Grade & Season if there are multiples of either

Completed forms are to be emailed to the relevant Port contacts via the listing on the GrainCorp website in the Ports section, under the Port Terminal Service Protocol. The website also contains all Terms and Conditions in the Storage and Handling Agreement and Pricing Schedules documents.

Vessel Acceptance: GrainCorp will reply in writing to the nominating Customer contact if acceptable or otherwise.

CARGO NOMINATION APPLICATION – SINGLE PARCEL

GrainCorp

New Advice: ☐	**Amended Advice:** ☐	**Version No:**		**Customer Reference No:**		**Date:**	

Nominating Customer:		GC Code:	
GrainCorp Load Port:		2nd Port [1.]	

NOTE 1.: Separate Vessel Nomination Advices are required for each Port

VESSEL DETAILS			
Name: MV			
Destination		ETA	
Type		Laycan	
Flag		Draft	
LOA		DWT	
Beam		Grain Cubics	
Holds		Agents	
Hatches		Charterers	
Cranes		Latest Shipment	
Date Built			

CARGO ASSEMBLY PLAN (CAP) – *Including Quality Specifications*					
Commodity				Parcel Grade	
Tonnage				Load Grade/s [2.]	
Tonnage Tolerance	Min:		Max:	Season/s [2.]	
	% -		% +	Expected Lift	

Quality Specifications (per Grade or Specify)	Min	Max	Load Specs	Treatment (per Codex or Specify)	Max Residue Limits (MRL)	Weed Seed Type (per Grade or Specify)	Limit
Use Parcel Grade Specifications: Y/N				Codex: Y/N		Use Parcel Grade Specifications: Y/N	
Protein				PRF Y/N			
Moisture				Pest. Restricted Y/N			
Screenings				Chlorpyrifos-Methyl			
Test Weight				Deltamethrin			
Unmillable				Dichlorvos			
Falling Number				Fenitrothion			
Oil Content				Methoprene			
Impurities							
Foreign Material							

Phytosanitary Requirements:

Sampling Requirements:

Comments:

NOTE 2.: Specify Tonnes per Grade & Season if there are multiples of either

Completed forms are to be emailed to the relevant Port contacts via the listing on the GrainCorp website in the Ports section, under the Port Terminal Service Protocol. The website also contains all Terms and Conditions in the Storage and Handling Agreement and Pricing Schedules documents.

Vessel Acceptance: GrainCorp will reply in writing to the nominating Customer contact if acceptable or otherwise.

GraincCorp Operations Limited

Schedule 3 - Confidential - Draft Wheat Port Terminal Services Agreement

[Confidential]

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Schedule 4 - Other Participants in the Wheat Export Industry

Introduction

The following section provides background information on the major accredited wheat exporters in Australia who are likely to seek access to the Port Terminal Services under the proposed Access Undertaking.

Many of these wheat exporters are large multinational grain marketers who have a substantial degree of market power and who are able to substitute grain from Australia with grain from other countries if dissatisfied with services or grain products in Australia.

1 AWB (Australia) Limited

AWB Limited is one of Australia's leading agribusinesses and employs more than 2,200 people with a presence in Australia, India, Brazil, Switzerland, , New Zealand, Egypt, Japan, Singapore, China and Uruguay[20]. Approximately 40% of AWB revenue is generated outside Australia.

Prior to 1 July 2008, AWB operated the export grain monopoly arrangement known as the "single desk" and had the sole right to market export wheat. AWB therefore has a very substantial - if not unparalleled - level of experience and expertise in exporting bulk wheat from Australia.

AWB's client base extends to 110,000 customers, serviced by three core business streams[21]: Landmark Rural Services, Financial Services and Commodity Management.

AWB Commodity Management's geographic diversity enables the business to operate in global commodity markets from offices in Geneva (AWB Geneva), Delhi (AWB India), Sao Paulo (AWB Brazil) and Melbourne (AWB Australia). The primary revenue streams for the business include commodity trading, logistics and chartering and risk management.

AWB's Landmark Rural Services has operated for over 150 years in Australia and is the largest distributor of merchandise and fertiliser. Landmark offers customers a full range of agribusiness needs from merchandise, fertiliser, farm services, wool and livestock to finance, insurance and real estate. AWB is Australia's largest distributor of merchandise and fertiliser.

AWB's Financial Services business (including through AWB Harvest Finance Limited) provides an extensive range of financial services to growers that include seasonal and term loans, transactional accounts, VISA debit, interest bearing deposits, insurance, and wealth management solutions.[22]

[20] Presentation by Gordon Davis, Managing Director, Austock Agribusiness Conference, 18 March 2009

[21] AWB Annual Report 2008

[22] www.AWB.com.au

2 Elders Toepfer Grain Pty Ltd

Elders Toepfer Grain Pty Ltd is a joint venture between Elders and Toepfer that was formed to combine and expand their existing grain sourcing and trading businesses[23].

The Toepfer group, headquartered in Hamburg, trades in grain, oilseeds, and feedstuffs and has offices worldwide, with more than 2,000 employees. Toepfer has a sales volume of more than 42 million tonnes annually[24].

Elders offers grain growers services including the provision of agronomic advice, seed, fertilisers and agricultural chemicals. Elders has a qualified team of specialised grain staff with extensive experience in managing grain pools and forward contract options, grain trading and logistics, grower services and grain accumulation. Elders offers growers a full suite of grain marketing options for a range of commodities, including contracts, cash prices, pooling products, ex-farm and delivered end user options and on-farm storage products.

3 Cargill Australia Limited

Cargill is an international provider of food, agricultural and risk management products and services. Cargill Australia Limited is a wholly-owned subsidiary of Cargill Incorporated, which has over 149,000 employees in 64 countries.

Cargill Australia Limited is a diverse agribusiness employing more than 1,900 workers in Australia. Total investments in Australia amount to US$250 million with an annual turnover of approximately US$860 million[25].

Cargill established a presence in Australia in 1967 primarily to service the country's large grain exports and has since extended its involvement in the grain supply chain by engaging in grain and cotton trading and grain handling and storage.

Cargill sources its grain through a joint venture - the Australian Grain Accumulation Services Pty Ltd (AGA)[26] - that has an extensive field origination network with 19 regional offices spread throughout Queensland, New South Wales, Victoria, South Australia and Western Australia. AGA acts as the buying agent for Allied Mills, GrainCorp and Cargill for their grain and oilseeds

Cargill owns three storage and handling facilities through joint venture arrangements at Henty, Red Bend and Temora in New South Wales. Cargill's extensive network of international trading offices provides access to world markets for Australian grain.

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[23] Elders Toepfer Grain (2009) http://cropping.elders.com.au/grain

[24] Toepfer International (2009) http://www.acti.de/e_frameset.html

[25] Cargill Australia Limited (2009)http://www.cargill.com.au/australia/en/home/index.jsp

[26] Cargill Australia Limited (2009)http://www.cargill.com.au/australia/en/home/products/grain-oilseeds/index.jsp

4 Glencore Grain Pty Ltd

Glencore International AG is one of the world's largest suppliers of a wide range of commodities and raw materials to industrial consumers. Glencore is a privately held Swiss company owned by its management and employees. Headquartered in Baar, Switzerland, Glencore's trading operations directly or indirectly employ over 2,000 people worldwide in some 50 offices in over 40 countries. Glencore's industrial operations directly or indirectly employ over 60,000 people in 17 plants in 12 countries[27].

Together with its subsidiaries, Glencore is a diversified natural resources group with worldwide activity in sourcing and trading on a global basis commodities including mining, smelting, refining, processing and trading of metals and minerals, energy products and agricultural products. Glencore also provides financing, logistics, marketing and purchasing services to producers and consumers of commodities.

Glencore Grain Pty Ltd is a 100% owned subsidiary of Glencore International AG[28], and operates throughout Australia servicing both domestic and export customers.

Glencore and its subsidiaries process handle and market wheat, corn, barley, rice, oilseeds, meals, edible oils and biodiesel. They are a leading exporter of grain from the European Union, Russia, the Ukraine, Kazakhstan, Argentina and Australia.

5 Louis Dreyfus Commodities

Louis Dreyfus Commodities (**LDC**), is an international commodity merchant and processor of agricultural products. LDC has merchandised and traded bulk commodities in international markets since 1851. LDC's origination and distribution network is present in over 53 countries[29] and its aggregate average annual gross sales in recent years have exceeded $20 billion. LDC provides full supply chain solutions for grain in certain locations.

LDC operates from five major regions (Argentina, Brazil, North America, Europe and Asia).

LDC is an affiliate of the Louis Dreyfus Group, an organization of diversified companies privately owned by the Louis-Dreyfus family. The Group has traded bulk agricultural commodities in international markets since its founding. Products traded today include grains, oilseeds, corn, coffee, orange juice, rubber, rice and sugar. It has a major origination presence in all of the primary production regions around the world.

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[27] Glencore International AG (2009) http://www.glencore.com/pages/company_overview.htm

[28] Glencore Grain (2009) http://www.glencoregrain.com.au/content.asp?page=58

[29] Louis Dreyfus Commodities (2009) http://www.ldcommodities.com/index.php?id=1410

Louis Dreyfus Australia is a subsidiary of LD Commodities and is the oldest continually operating grain trading company in Australia[30], The company became a major wheat exporter in the earliest days of the Australian grain industry, prior to the single desk.

Throughout the past 95 years Louis Dreyfus has maintained a presence in all aspects of Australian agriculture marketing including interests in feed mills, land, livestock, meat, wool and dairy.

Louis Dreyfus is a marketer and buyer of wheat, barley with a focus on trading and exporting a significant proportion of Australian grain and oilseed production. The head office includes a fully supported grain trading and shipping team based in Melbourne, with regional representatives situated in key production areas. Louis Dreyfus Australia offers a range of grain trading options designed to complement grain producer's needs in a competitive grain trading environment.

6 Bunge Agribusiness Australia Pty Ltd

Bunge Agribusiness Australia Pty Ltd is the Australian subsidiary of Bunge Agribusiness Pty Ltd (Bunge). Bunge has over 25,000 employees, operating over 450 facilities in over 30 countries with net sales of $37.8 billion (2006) and handling over 137 million metric tons of products per year[31]. Bunge has elevators and plants in the Western Corn Belt of the U.S., Brazil and the Santa Fe province of Argentina. These sites are connected by transport links to strategically located port facilities on the Mississippi and Paraná Rivers, the St. Lawrence Seaway and various points on the coast of Brazil. Bunge operates port terminals in Turkey and Latvia, and destination crush plants in Spain, China and other countries[32].

Bunge's activities include

- originating oilseeds and grains from the world's primary growing regions and transporting them to customers worldwide;
- manufacturing fertilizer and animal feed for farmers;
- crushing oilseeds to make meal for the livestock industry and oil for the food processing, food service and biofuel industries;
- producing bottled oils, mayonnaise, margarines and other food products for consumers; and
- milling wheat and corn for food processors, bakeries, brewers and other commercial customers.

[30] Louis Dreyfus Commodities Pty Ltd http://www.louisdreyfus.com.au/index.php?id=1569

[31] Bunge Limited (2009) http://www.bunge.com/about-bunge/key-facts.html

[32] Bunge Limited (2009) http://www.bunge.com/about-bunge/agribusiness/location.html

7 Noble Resources Australia Pty Ltd

Noble Resources Australia Pty Ltd is the Australian subsidiary of global Noble Group. Noble Group manages the global supply chain of over 4000 customers in a range of agricultural, industrial and energy products through 3000 employees in 80 offices in over 35 countries across five continents[33]. The Group reached $36.1 billion in revenue in 2008[34] and is also involved in technical ship management, trade finance and coal mining among others.

8 Emerald Group Australia

Emerald Group Australia ("**Emerald**") is a commodity management, investment and advisory company.

Emerald operates nationally, servicing grain growers in all major grain producing states and receives grain into over 700[35] grain receival points across Australia. Headquartered in Melbourne, Emerald maintains regional and joint venture offices in Ballarat in Victoria, South Australia's Eyre Peninsula and Fremantle in Western Australia. Emerald is further represented regionally through in excess of 40 country located agency offices[36] in Western Australia and NSW.

Emerald offers grain management services including grain trading pools for wheat, barley and canola, fixed price contracts, structured products and other innovative solutions and offers a range of grain based financial products and advice.

A complete list of the 23 Accredited Wheat Exporters under WEMA is set out in Attachment 3.

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[33] Noble Group (2009) http://www.thisisnoble.com/index.php?option=com_content&view=article&id=29&Itemid=50&lang=en

[34] Noble Group (2009) http://www.thisisnoble.com/index.php?option=com_content&view=article&id=30&Itemid=51&lang=en

[35] Emerald Group Australia Pty Ltd (2009) http://www.emerald-group.com.au/emerald_contents.php?id=72

[36] Emerald Group Australia Pty Ltd (2009) http://www.emerald-group.com.au/emerald_contents.php?id=50

GrainCorp Operations Limited

Schedule 5 - Existing Contracts

[Confidential]

Schedule 6 - Accredited Wheat Exporters

ABB Grain Ltd ACN 084 962 130

AWB (Australia) Limited ACN 081 890 502

AWB Harvest Finance Limited ACN 102 469 303

Bunge Agribusiness Australia Pty Ltd ACN 097 843 528

Cargill Australia Limited ACN 004 684 173

Concordia Agritrading (Australia) Pty Ltd ACN 003 979 002

Elders Toepfer Grain Pty Ltd ACN 126 806 979

Emerald Group Australia Pty Ltd ACN 109 203 054

Glencore Grain Pty Ltd ACN 106 378 885

Goodman Fielder Consumer Foods Pty Limited ACN 000 024 546

GrainCorp Limited ACN 057 186 035

GrainCorp Operations Limited ACN 003 875 401

Grain Pool Pty Ltd ACN 089 394 883

J.K. International Pty. Ltd. ACN 010 127 750

Lempriere Grain Pty Ltd ACN 105 942 078

Louis Dreyfus Australia Pty Ltd ACN 004 088 000

Marubeni Australia Ltd ACN 000 329 699

Noble Resources Australia Pty Ltd ACN 001 069 423

OzEpulse Pty Ltd ACN 100 282 095

Pentag Commodities Pty Limited ACN 113 005 753

Queensland Cotton Corporation Pty Ltd ACN 010 944 591

Riverina (Australia) Pty Limited ACN 010 755 254

Sumitomo Australia Pty Ltd ACN 000 371 497

Source: www.wea.gov.au