Draft determinations: GrainCorp Operations Limited and Queensland Bulk Terminals at the Port of Brisbane

Exemption assessments of bulk wheat port terminal facilities under the Port Terminal Access (Bulk Wheat) Code of Conduct

27 August 2015

Contents

Summary

The Australian Competition and Consumer Commission (ACCC) has made draft determinations that Queensland Bulk Terminals (QBT) and GrainCorp Operations Limited (GrainCorp) should be exempt service providers of port terminal services provided by means of their respective port terminal facilities at the Port of Brisbane under the Port Terminal Access (Bulk Wheat) Code of Conduct (Code).

If the ACCC makes final determinations to exempt QBT and/or GrainCorp they will be subject to a lower level of regulation at their respective Brisbane port terminals, as Parts 3 to 6 of the Code would not apply to QBT and/or GrainCorp at those facilities.

In making these draft determination, the ACCC has had regard to the matters listed at subclause 5(3) of the Code and has formed the draft view that:

- QBT's Brisbane bulk wheat port terminal faces strong competition from GrainCorp's Brisbane bulk wheat facility, both located at the Port of Brisbane. QBT also faces significant competition from the large amount of containerised wheat exports also shipped out of the same port as well as competition from strong domestic demand for grain in southern Queensland.
- GrainCorp's Brisbane bulk wheat port terminal faces a level of competition from QBT's bulk export terminal, despite the fact that QBT's facility has a relatively lower level of capability. Additionally, GrainCorp faces significant competitive pressures from containerised wheat exports which are also shipped from the Port of Brisbane. GrainCorp also faces competition from strong domestic demand for grain.
- the competing Brisbane port terminals appear to have significant spare export capacity across peak and non-peak shipping times of the year which create incentives for both port operators to provide access to third party customers to increase the use of their facilities.

The ACCC's draft views are based on analysis of current and expected capacity constraints and usage of the two Brisbane facilities and the extent to which the Brisbane port terminals compete with each other. In doing so the ACCC has taken into account the capabilities of the two Brisbane facilities and the extent to which they can be substitute port terminals for exporters. The ACCC has also considered competitive constraints imposed by container exports in particular, as well as domestic demand for wheat.

The ACCC's assessments and reasons for making these draft determinations are set out in chapters 4 and 5 of this document.

ACCC monitoring

If the ACCC makes final determinations to exempt QBT and/or GrainCorp in relation to their Brisbane terminals, the ACCC considers that it would be appropriate for it to undertake monitoring of the two Brisbane bulk wheat port terminal services to continue to assess the level of competition at these facilities into the future.

In particular, the ACCC would be concerned if it saw evidence that there had been significant increases in market concentration in the grain export market that may reduce the level of competition for grain grown by Australian farmers.

The ACCC can monitor the level of shipping activity and market concentration at QBT and GrainCorp's Port of Brisbane terminals through examining daily ship loading statements provided to the ACCC. The ACCC also proposes to periodically consult with industry to seek information about exporters' ability to access port terminal services at the Port of Brisbane.

Consultation on these draft determinations

The ACCC invites public submissions on the draft determinations set out in this document. Submissions must be received before **5:00pm (AEST), 10 September 2015**. Further details about making a submission can be found in section 1.4 of this document.

1. Introduction

The Code was made under section 51AE of the *Competition and Consumer Act 2010* (Cth) (CCA). It commenced on 30 September 2014 and regulates the conduct of bulk wheat port terminal service providers (PTSPs).

Under the Code, the ACCC or the Minister for Agriculture may exempt a PTSP from the application of Parts 3 to 6 of the Code at a specified port terminal facility. Exempt service providers face a lower level of regulation and are only subject to Parts 1 and 2 of the Code. See the **Appendix** for more information on the Code and exemption processes.

1.1. Draft determinations

1.1.1. Legislative framework

In deciding whether or not to determine a PTSP an exempt service provider, the ACCC must have regard to the matters listed at subclause 5(3) of the Code:

(a) the legitimate business interests of the port terminal service provider;

(b) the public interest, including the public interest in having competition in markets;

(c) the interests of exporters who may require access to port terminal services;

(d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services;

(e) the promotion of the economically efficient operation and use of the port terminal facility;

(f) the promotion of efficient investment in port terminal facilities;

(g) the promotion of competition in upstream and downstream markets;

(h) whether the port terminal service provider is an exporter or an associated entity of an exporter;

(i) whether there is already an exempt service provider within the grain catchment area for the port concerned;

(j) any other matters the ACCC considers relevant.

The ACCC's assessments of whether QBT and/or GrainCorp should be granted exemptions at their Port of Brisbane facilities considering each of these matters are set out in chapters 4 and 5 of this document. Given these preliminary assessments, the ACCC has made the following draft determinations.

1.1.2. Queensland Bulk Terminals' terminal at the Port of Brisbane

The ACCC's draft determination is that QBT should be an exempt service provider of port terminal services provided by means of its Brisbane port terminal facility.

1.1.3. GrainCorp's terminal at the Port of Brisbane

The ACCC's draft determination is that GrainCorp should be an exempt service provider of port terminal services provided by means of its Brisbane (Fisherman Islands) port terminal facility.

1.2. Monitoring

Similar to the ACCC's approach to monitoring the level of competition following exemption determinations regarding port terminals in other port zones, the ACCC would also consider it appropriate for it to monitor the bulk wheat terminals at the Port of Brisbane after granting any exemptions. This is because the ACCC considers that it is important to examine the future competitive outcomes at this port, and related markets, following any exemptions granted to one or both bulk wheat PTSPs at the Port of Brisbane.

Under subclause 5(6) of the Code, the ACCC can revoke an exemption determination if, after having regard to the matters in subclause 5(3), it is satisfied that the reasons for granting the exemption no longer apply.

The ACCC would pursue two main monitoring activities, industry analysis and industry consultation.

1.2.1. Industry analysis

Industry analysis may include examining the shipping activity at each port terminal. From 1 October 2015, all PTSPs will have to publish and provide to the ACCC daily ship loading statements under Part 2 of the Code.

The ACCC would monitor the market concentration of exporters shipping wheat from the Port of Brisbane. As part of these monitoring activities, the ACCC would consider the market concentration of exporters shipping wheat from the two terminals at the Port of Brisbane. The ACCC would be concerned if the port terminals operators' associated export trading divisions, in the future, increase their export market shares at their respective port facilities at the expense of other exporters seeking access. Doing so may lead to a reduction in competition in the acquisition of grain for export and affect the ability for farmers to achieve adequate returns when selling their grain.

The ACCC does not consider that market shares are a sole determinant of the competitive situation in a port zone. However, it considers that this information would give some indication of whether third party exporters continue to be able to access the Port of Brisbane facilities.

The ACCC also notes that analysis of market shares and industry concentration do not replace the ACCC's obligation to consider the full range of matters under subclauses 5(3) and 5(6) of the Code.

1.2.2. Consultation with industry

Industry consultation may include periodically approaching industry participants, such as exporters and farmer groups, to gauge the effect of granting any exemptions. Industry participants would also be encouraged to approach the ACCC directly with any concerns they may have in securing fair and transparent access to Port of Brisbane bulk wheat port terminals.

If the ACCC's monitoring revealed that there is a reduction in the level of competition or there are concerns about the ability of third party exporters to access the facilities at the Port of Brisbane after any exemptions, the ACCC may conduct further market inquiries. The ACCC could also consider whether to conduct a public process to assess whether to revoke an exemption for the relevant port terminal facility.

1.3. ACCC exemption assessments timeline

The ACCC's Guidelines on the ACCC's process for making and revoking exemption determinations (Guidelines) set out that, when a PTSP submits an exemption application, the ACCC will seek to conduct its exemption assessment and decide whether to make an exemption determination within 12 weeks.

Each exemption assessment process may be different and may include requests for information, consultation with interested parties, and the release of a draft view before the ACCC makes any final determinations. The timeframe for assessment may vary where the ACCC consults on the exemption application, and/or requests information from the PTSP. Generally, the length of any consultation period(s) will extend the ACCC's timeframe for assessment. A timeline of the ACCC's assessment of GrainCorp's and QBT's exemption applications is shown in Table 1 below.

Table 1: ACCC assessment timeline for the Port of Brisbane

Date	Action
29 May 2015	QBT lodged an exemption application for its Brisbane terminal
1 June 2015	GrainCorp lodged an exemption application for its Brisbane terminal
23 June 2015	The ACCC published its Issues Paper and invited public submissions by 15 July 2015
3 August 2015	The ACCC published three public submissions on its website
27 August 2015	The ACCC published draft determinations on the exemption applications and invited public submissions on its draft views by 10 September 2015.

The ACCC is aiming to finalise its exemption assessments of GrainCorp's and QBT's exemption applications as soon as possible, although the actual timeframe may depend on the nature of comments received from industry in response to the ACCC's draft views.

1.3.1. GrainCorp's exemption application

On 1 June 2015 GrainCorp provided a submission in support of it being an exempt service provider at the Port of Brisbane. GrainCorp submits that, despite being vertically integrated, it has no market power and is commercially incentivised to maximise grain throughput at its terminal given:

- strong competition from competing domestic and container packing markets
- competition in the provision of port elevation services for bulk grain from the unregulated QBT facility
- excess country storage and packing capacity combined with excess port elevation capacity.[1]

GrainCorp also submits that an exemption for its Brisbane bulk wheat terminal will:

- place GrainCorp on a level playing field with competing alternative markets (the container export and domestic markets), neither of which are subject to regulation

[1] GrainCorp Operations Limited, Submission – Fisherman Islands (Brisbane): Exemption from Port Terminal Access (Bulk Wheat) Regulation (**GrainCorp, Submission in support**), June 2015, p. 3.

- place GrainCorp on a level playing field with QBT's competing bulk grain port terminal, which has not been subject to regulation
- promote grain industry competition by allowing GrainCorp to provide competitive services to exporters for bulk grain exports
- support investment and lower supply chain costs by allowing GrainCorp to more flexibly operate its port terminals and supporting supply chain.[2]

Further details of GrainCorp's exemption application are set out as relevant throughout this document. GrainCorp's full submission in support of its exemption application is available on the ACCC's website at: https://www.accc.gov.au/regulated-infrastructure/wheat-export/.

1.3.2. Queensland Bulk Terminals' exemption application

On 29 May 2015 QBT provided a submission in support of it being an exempt service provider at the Port of Brisbane. QBT submits that the ACCC should exempt it from Parts 3 to 6 of the Code because it has not previously been regulated and, despite having a degree of vertical integration with an affiliated exporter, its ability to influence the market is limited given:

- strong competition in the port zone from a large domestic consumer base and robust container packing market
- excess capacity at its facility and the bulk export market in general
- excess capacity in the container export market
- its disadvantage relative to GrainCorp due to its lack of upcountry storage facilities, inability to receive grain by rail, inability to load large Panamax vessels and limited upright storage.[3]

QBT submits that its activities to date have not been regulated and that the application of Parts 1 and 2 of the Code from 1 October 2015 will already impose more regulation on QBT than currently exists.[4] QBT also submits that an exemption will:

- ensure it maintains its current flexibility to react to competitive market influences (the container export and domestic markets and GrainCorp's competing terminal)
- maintain its competitive offering to bulk grain exporters
- ensure the Code does not impose unnecessary administrative burden and costs
- support its continued investment and optimisation of port services to minimise costs and ensure a competitive and efficient supply chain for the grain industry.[5]

Further details of QBT's exemption application are set out as relevant throughout this document. QBT's full submission in support of its exemption application is available on the ACCC's website at https://www.accc.gov.au/regulated-infrastructure/wheat-export/.

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[2] GrainCorp, Submission in support, p. 3.

[3] Queensland Bulk Terminals (QBT), Submission – Queensland Bulk Terminals application for continued exemption from the *Competition* and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, (**QBT, Submission in support**), 29 May 2015, pp. 2, 5-7, 10-11.

[4] QBT, Submission in support, p. 7.

[5] ibid, p. 3.

1.3.3. Public consultation process

The ACCC released an Issues Paper on 23 June 2015 seeking public submissions on GrainCorp's and QBT's exemption applications and related key issues. The ACCC received three public submissions from the following parties in response to its Issues Paper:

- Australian Grain Exporters Association (AGEA)
- Glencore Grain Pty Ltd (Glencore)
- Co-operative Bulk Handling Limited's (CBH).

Public submissions are available on the ACCC's website at: https://www.accc.gov.au/regulated-infrastructure/wheat-export/.

1.4. Public submissions on these draft determinations

The ACCC invites public submissions on the draft determinations set out in this document. Submitting parties should clearly identify the draft determination(s) that their submission relates to. Please include detailed reasons to support the views put forward in submissions.

Submissions should be addressed to:

General Manager
Infrastructure & Transport – Access & Pricing Branch
ACCC
GPO Box 520
Melbourne VIC 3001
Email: transport@accc.gov.au

The ACCC prefers that submissions be sent via email in Microsoft Word format (although other text readable document formats will be accepted).

Submissions must be received before **5pm (AEST)** on **10 September 2015**.

1.4.1. Confidentiality of information provided to the ACCC

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part. The ACCC will then conduct its assessment in the absence of that information.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC & AER Information Policy – collection and disclosure of information, available on the ACCC website.

1.4.2. Further information

If you have any queries about any matters raised in this document, please contact:

Mr Michael Eady
Director
Infrastructure & Transport - Access & Pricing Branch
ACCC
GPO Box 520
MELBOURNE VIC 3001
Ph: 03 9290 1945
Email: michael.eady@accc.gov.au

2. Port of Brisbane bulk wheat port terminal facilities

This chapter sets out the ACCC's draft views on the capacity, availability and demand for bulk wheat port terminal services at the Port of Brisbane. The ACCC has considered the characteristics of GrainCorp's and QBT's facilities and the extent to which there are likely to be capacity constraints.

The ACCC considers that the level of capacity constraint at the Port of Brisbane is a key factor in assessing the level of competition. As a general proposition, where demand for port terminal services exceeds supply (i.e. capacity is constrained), the ACCC considers that vertically integrated PTSPs such as GrainCorp will have stronger incentives to favour their own exporting business and exclude others.

On the other hand, where demand for port terminal services is below supply a PTSP will have some level of incentive to provide access on fair commercial terms, to drive utilisation of its infrastructure. The ACCC considers that the greater the oversupply of capacity and the greater the competition for grain export services (i.e. from other PTSPs as well as from the alternative sources such as domestic demand and container exports), the greater the incentive for a PTSP to provide access on fair terms.

The ACCC's consideration of the capacity, availability of and demand for port terminal services at the Port of Brisbane is relevant to the ACCC's assessment of the exemption applications, having regard to the matters specified in subclause 5(3) of the Code.

Stakeholder views from the ACCC's consultation process on the exemption applications are included as relevant throughout this chapter.

2.1. Port terminal facilities and capacity

2.1.1. Location and specifications

GrainCorp's Brisbane (Fisherman Islands) bulk wheat port terminal is located at the Port of Brisbane in Queensland, and includes the following facilities – road and rail intake/receival facility, grain storage facility, weighing facilities, and one ship loader.[6] The ACCC's analysis and draft exemption assessments throughout this document refer to this GrainCorp facility.

The wharf is owned by the Port of Brisbane and is available to other users on an as needs basis.[7]

QBT is the operator of the QBT bulk grain terminal located at 156 Colmslie Road, Murrarie in the Port of Brisbane in Queensland. QBT is a wholly owned subsidiary of Wilmar Gavilon Pty Ltd, which is in turn co-owned by Wilmar International Limited and Marubeni Corporation.[8]

Figure 1 shows the location of the GrainCorp's and QBT's bulk wheat port terminals at the Port of Brisbane.

GrainCorp also has a former grain port terminal at Pinkenba. According to GrainCorp this terminal is only used for the import and export of non-grain commodities such as sugar, meal and fertiliser, and stores barley for GrainCorp's Pinkenba malt house.[9] Accordingly, the ACCC is not considering GrainCorp's Pinkenba terminal and does not refer to this facility in the remainder of this document.

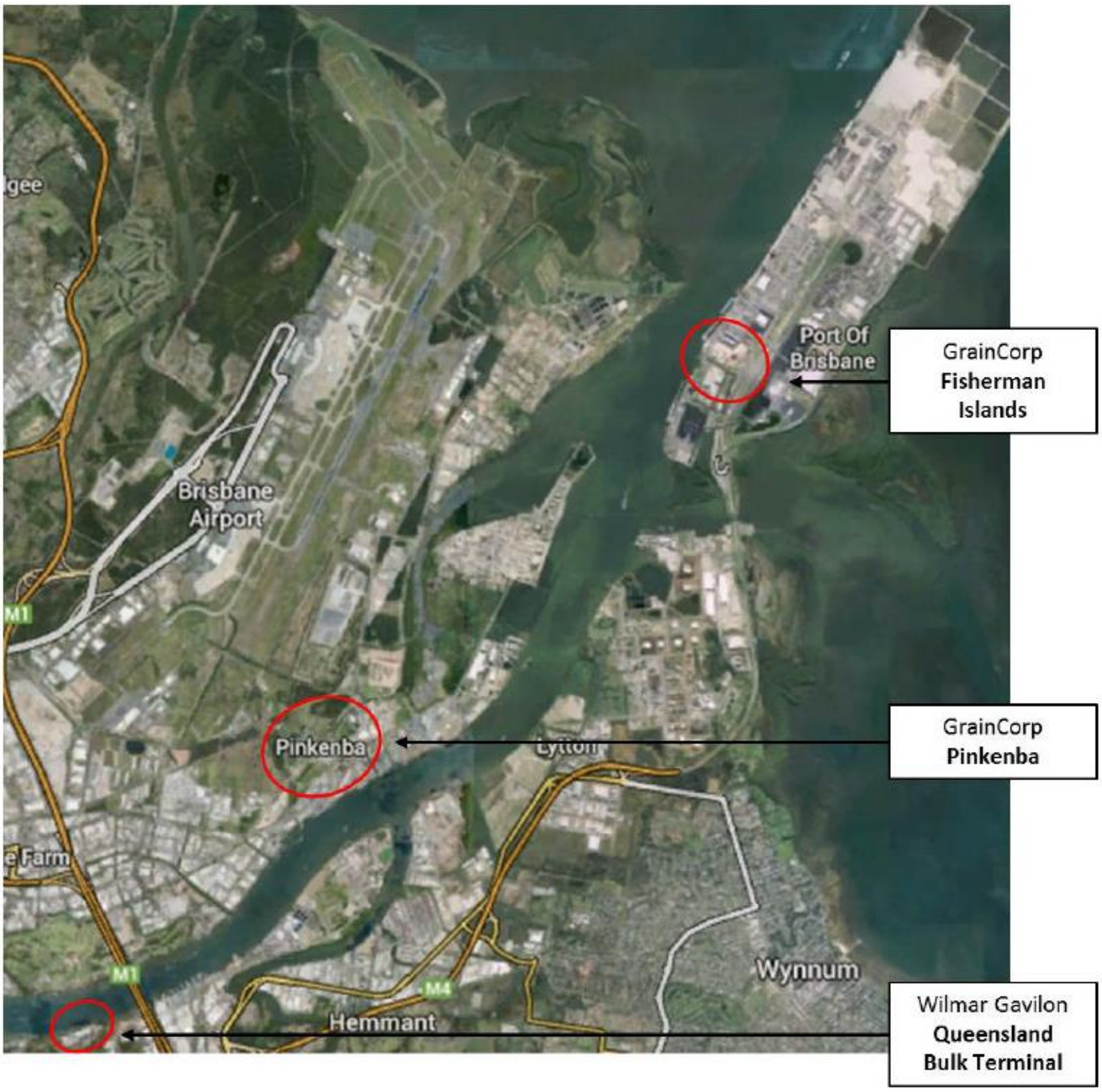
[6] GrainCorp, Submission in support, p. 8.

[7] ibid, p. 8.

[8] QBT, Submission in support, pp. 2, 12.

[9] GrainCorp, Submission in support, p. 8.

Figure 1: Location of GrainCorp's and QBT's bulk wheat terminals at the Port of Brisbane



Source: GrainCorp, Submission in support, p. 7.

Table 2 shows the specifications of GrainCorp's and QBT's respective bulk wheat terminals.

Table 2: Overview of bulk wheat terminals at the Port of Brisbane

	GrainCorp terminal	QBT terminal
Road receival (tonnes per hour)	Up to 400	Up to 350
Rail receival (tonnes per hour)	Up to 2 200	Not available
Storage capacity (tonnes)	Vertical storage – 62 700 Horizontal sheds – 30 000 Bunker storage – 20 000	70 000
Ship loading rate (tonnes per hour)	Up to 2 200	Up to 1 200
Berth draft (metres)	Length – 285 Depth – 13	Length – 160 Draft 9.9 LAT
Vessel capacity (deadweight tonnage)	Up to 70 000	Up to 55 000
Vessel type	Up to Panamax (QBT's estimate)	Average Handymax
Shipping capacity (tonnes per year)	2 000 000	960 000

Sources: GrainCorp, Submission in support, p. 7; QBT, Submission in support, p. 12; QBT, http://www.qldbulkterminals.com/shipping.html.

A notable difference between the two Port of Brisbane bulk wheat terminals is that GrainCorp's facility has both rail and road receival capability, while the QBT facility can only receive grain by road.

Aside from this, both GrainCorp's and QBT's terminals are capable of providing similar types of services. GrainCorp's facility is, however, generally larger, and as such it is capable of servicing larger vessels up to 70 000 deadweight tonnes and is also capable of loading up to 2 200 tonnes per hour (tph) while QBT's ship loader is capable of loading 1 200 tph.

The ACCC notes that the operational specifications are just one of a number of factors that may contribute to an exporter's decision to use one of the two terminals at the Port of Brisbane. For instance, the location of grain production and where it is stored, as well as the quantity of available capacity (i.e. peak or non-peak) will also be considered.

The relationship between where grain is sourced and stored upcountry and access to port terminal capacity is discussed in chapter 3 of this document.

2.1.2. Export capacity

Assessing the likely level of capacity constraints at the two Port of Brisbane terminals requires an assessment of how much port capacity is likely to be supplied by GrainCorp and QBT in the future.

The ACCC considers that the most appropriate way to assess the likely amount of available capacity in the Port of Brisbane catchment area in the future is to consider a range of estimates of port capacity against historical export figures.

The ACCC notes that historical exports may not necessarily reflect a terminal's actual maximum capacity. However, where a PTSP has demonstrated its ability to export at or close to its stated maximum, it is reasonable to suggest it will maintain that ability in the future. Table 3 sets out estimates of export capacity for both GrainCorp's and QBT's bulk wheat terminals at the Port of Brisbane.

Table 3: Elevation capacity for GrainCorp and QBT at the Port of Brisbane (million tonnes per annum)

Facility	GrainCorp	QBT
Published available capacity	2.01	0.80
Estimated capacity submitted by service provider	2.00	0.96
Annualised maximum historical monthly throughput[10]	2.21	1.04

Source: GrainCorp, GrainCorp shipping stem for 2015/16 season opening, 26 June 2015, p. 1; GrainCorp, GrainCorp Long Term Agreement Capacity Allocations 1 October 2013 - 30 September 2016, GrainCorp, Submission in support, p. 7; QBT, Submission in support, p. 12; Data provided by GrainCorp and QBT.

Based on GrainCorp's and QBT's submissions, in total, there will be 2.96 million tonnes per annum (mtpa) total annual capacity between the two facilities (comprised of 2.00 mtpa at GrainCorp's facility and 0.96 mtpa at QBT's facility). GrainCorp's estimate is in line with its published capacity for the 2015-16 season.

If each port terminal were able to achieve its historical monthly maximum throughput in each month over the season, the total annual elevation capacity would be slightly higher, at around 3.25 mtpa. However, the high throughput levels demonstrated in individual months may not be achievable on an ongoing basis due to practical limitations. For example, regular maintenance activities and unavoidable closures or delays due to external circumstances (e.g. vessels failing survey) may not have impacted those particular maximum throughput months, but would affect longer term capacity. The ACCC notes that QBT's facility was not operational for an extended period in 2014 and early 2015.[11]

On the other hand, the maximum monthly throughput may increase if investments and expansions are undertaken by the PTSPs. The maximum capacity may also be affected by the number of segregations stored and exported through a port terminal. For example, a terminal may be able to achieve higher throughput if it is dealing with a fewer number of segregations/commodities as this will maximise use of the available storage space and reduce downtime for cleaning to ensure grades are appropriately separate. In practice, the ACCC considers current practical annual elevation capacity in across the two Brisbane terminals is currently likely to be lower than the theoretical annualised maximum historical monthly estimates.

The ACCC expects that actual elevation capacity of the two Brisbane facilities is somewhere in between the published available capacity figures and the annualised maximum historical monthly throughput figures.

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[10] For GrainCorp, the annualised maximum historical monthly throughput reflects the highest single month of exports at a port over the period from October 2010 to July 2015, multiplied by 12 months. For QBT, the highest single month of exports is taken from the period it commenced operations in June 2011 to July 2015.

[11] GrainCorp, Submission in support, p. 9.

The ACCC's view on how elevation capacity relates to demand for port terminal capacity is discussed further below.

2.2. Production, exports and exporters

The second step in assessing the level of capacity constraint at GrainCorp's and QBT's terminals at the Port of Brisbane is to determine the likely demand for capacity at these facilities.

GrainCorp has provided data on historical exports from Brisbane. The ACCC has also obtained historical data from Australian Crop Forecasters.

The ACCC considers that the likely demand for port terminal services at the Port of Brisbane requires the consideration of:

- Historical data on grain production in the Port of Brisbane catchment area (i.e. how much grain will various markets be competing for?)
- Historical data on the Port of Brisbane export task (i.e. what is the demonstrated history of bulk wheat export from the Port of Brisbane?)
- Historical data on market shares (i.e. how many exporters have been competing for port terminal services in the past?).

2.2.1. Grain production

Defining the amount of grain that GrainCorp and QBT will compete for will depend on how the relevant catchment area is defined.

GrainCorp submits that grain production in southern Queensland is relevant to the bulk wheat export terminals at the Port of Brisbane. GrainCorp submits:

> *Southern Queensland produces on average 2.2 Mt of grain per annum. Production is variable and has ranged from 0.9 Mt to 3.1 Mt over the last 10 years 90% of grain produced in southern Queensland is wheat and sorghum.*[12]

QBT submits that:

> *The availability of grain for export in the Brisbane Port Zone (Brisbane) is subject to large swings in production and robust demand from domestic end- users.*
>
> *The 10 year average for total grain (barley, wheat, sorghum) production in Brisbane is 2.2 million metric tonne (MMT) with production over the same period varying from a low of 0.9MMT to a high of 3.2MMT.* [13]

According to the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), an average of 3.2 million tonnes (mt) of wheat, barley and sorghum was produced in the whole of Queensland over the last five years.

[12] GrainCorp, Submission in support, p. 6.

[13] QBT, Submission in support, p. 7

Table 4: Wheat, barley and sorghum production in Queensland (thousands of tonnes)

Year	Wheat	Barley	Sorghum	Total
2012-13	1 614	170	1 475	3 259
2011-12	1 886	191	1 416	3 493
2010-11	1 524	146	1 183	2 853
2009-10	1 346	113	926	2 385
2008-09	2 016	173	1 771	3 960

Source: Australian Bureau of Agricultural and Resource Economics and Sciences, Agricultural commodity statistics 2014, pp. 28, 29, 208.

The grain catchment area for the terminals at the Port of Brisbane is discussed at section 3.2 below. In summary, the catchment area is mainly southern Queensland as well as a small part of northern NSW.

It is difficult to know the precise amount of grain produced in the Port of Brisbane catchment area. Further, the ACCC recognises that the size of the crop can fluctuate significantly year to year and is significantly reduced during times of drought.

The ACCC notes that the amount of grain produced in the Port of Brisbane catchment is likely less than the ABARES figures for the whole of Queensland (approximately 3.2 mtpa over the last five years). This is because some grain is grown in more northern parts of Queensland, regions which the ACCC considers fall outside the Brisbane port terminal's catchment areas.

This is broadly consistent with GrainCorp's and QBT's estimates that southern Queensland produces on average 2.2 mtpa of grain.[14]

The pool of available grain for bulk export via wheat port terminals is then reduced further by the amount that is sold for export via containers or sold to domestic users. This can have a significant impact on bulk exports from the East Coast of Australia, where both grain container exports and domestic demand for grain is strong. Container exports and domestic demand is discussed further in sections 3.3 and 3.4 respectively.

2.2.2. Exports and capacity utilisation

The ACCC considers that, while historical grain exports from the Port of Brisbane terminals might not necessarily be entirely reflective of future exports, past demand for bulk wheat port terminal capacity is one indicator of future demand. As such analysis of historical exports and capacity utilisation is a relevant consideration in assessing the likely level of capacity constraint.

The ACCC notes that analysis of the usage of port terminal capacity should also acknowledge the significance of available capacity at the peak shipping periods, where capacity is most highly valued by customers.

Considering the volume of grain exports from the two Brisbane port terminals over the period from October 2010 to July 2015, noting that QBT only commenced operations in June 2011, the peak shipping period appears to be from January to July, although large volumes of

[14] GrainCorp, Submission in support, p. 6; QBT, Submission in support, p. 7.

exports have occurred in other months (for instance, in October and August).[15] This is consistent with typical wheat production and exports in other parts of Australia.

The ACCC has considered the supply and demand of export capacity at the two Port of Brisbane bulk wheat terminals over both the entire year and during the peak shipping period.

Both GrainCorp and QBT submit that the bulk wheat export terminals at the Port of Brisbane have surplus export capacity.

GrainCorp submits that utilisation of bulk grain elevation capacity averages 25 per cent based on an average bulk export task of 0.7 mt, or 58 per cent based on a peak bulk export task of 1.6 mt, with utilisation ranging from 5 per cent to 60 per cent.[16]

QBT submits that the Brisbane terminals have an average capacity utilisation of 35 per cent and peak capacity utilisation of 64 per cent. QBT also submits that after accounting for the more opportunistic and sporadic chickpea and cottonseed export market, which can lessen available capacity by around 0.2 mt, then utilisation figures move to 39 and 70 per cent respectively, providing 800 000 tonnes of available capacity in peak periods.[17]

Capacity utilisation over the whole year

Table 5 provides a summary of annual exports and estimated utilisation rates at the two Port of Brisbane terminals based on GrainCorp's and QBT's estimated capacity.

As noted in section 2.1.1 above, there are various estimates of elevation capacity at the Port of Brisbane. The utilisation rates presented in table 5 are based on an average capacity estimates that fall in between GrainCorp's and QBT's published available capacity figures and the theoretical maximum capacities at each terminal based on an annualised maximum monthly historical throughput.

The estimated utilisation rates in Table 5 indicate significant amounts of spare capacity at both Brisbane terminals in low and average throughput years. Even in the highest throughput year considered in the table below (the 2011-12 season), there appears to be considerable spare capacity.

[15] Based on data provided by GrainCorp and QBT.

[16] GrainCorp, Submission in support, p. 10.

[17] QBT, Submission in support, p.9.

Table 5: Average annual exports and capacity utilisation estimates

Facility	GrainCorp *2010-11 to 2014-15*	QBT *2011-12 to 2012-13*
Average annual exports (mt)	0.66	0.46
Maximum annual exports (mt)	1.20	0.60
Minimum annual exports (mt)	0.08	0.31
Estimated capacity range (mtpa)	2.01 – 2.21	0.80 – 1.08
Capacity utilisation (average year)	31 %	50 %
Capacity utilisation (high throughput year)	57 %	65 %
Capacity utilisation (low throughput year)	4 %	34 %

Source: GrainCorp, Submission in support; QBT, Submission in support, Data provided by GrainCorp and QBT.

Notes: GrainCorp data is based on exports in seasons from 2010-11 to 2014-15 (October 2010 to July 2015). QBT data is based on exports only in seasons 2011-12 and 2012-13 (June 2011 to July 2013).

The ACCC notes that capacity utilisation estimates for QBT's facility are based only on exports in seasons 2011-12 and 2012-13. This is due to the shutdown of QBT's ship loader for a period during 2014 to early 2015 which meant that QBT's facility was not capable of loading bulk wheat for export in parts of the 2013-14 and 2014-15 seasons.

This has implications for the interpretation of some of QBT's capacity utilisation figures presented in Table 5 as the lowest throughput year experienced by GrainCorp over the last five years was 2013-14, and this year has been excluded from the analysis of QBT's facility. The ACCC considers this suggests that QBT's capacity utilisation in an average and low throughput year, as presented in Table 5, is likely to be somewhat overstated.

The ACCC also notes GrainCorp's submission that its Brisbane facility has handled a peak annual export task of 1.6 mt. This occurred during the 2008-09 season where GrainCorp's facility exported 0.82 mt of wheat and 0.75 mt of sorghum.[18] Considering this level of annual exports against the estimated capacity figures presented in Table 5 gives a utilisation rate of about 76 per cent, and suggests that GrainCorp's Brisbane facility still appears to have had spare capacity.

Capacity utilisation in peak periods

The ACCC notes that capacity during the peak shipping period is highly valued. It is therefore appropriate to assess the level of capacity utilisation specifically in this period. In the case of the Brisbane port terminals, the ACCC considers the peak shipping period to be between January and July.

Average exports during the peak period at both GrainCorp's and QBT's Brisbane terminals represent approximately 70 per cent of the average annual exports at the respective facilities. Table 6 estimates the level of capacity utilisation in the peak period at GrainCorp's and QBT's Brisbane facilities.

[18] GrainCorp, Submission in support, p. 8.

Table 6: Average exports and capacity utilisation during the peak period (January to July)

Facility	GrainCorp *2010-11 to 2014-15*	QBT *2011-12 to 2012-13*
Average exports (mt)	0.47	0.33
Maximum exports (mt)	0.75	0.46
Minimum exports (mt)	0.07	0.20
Estimated capacity range (mtpa)	1.17 – 1.29	0.47 – 0.61
Capacity utilisation (average period)	38 %	61 %
Capacity utilisation (high throughput period)	61 %	86 %
Capacity utilisation (low throughput period)	6 %	37 %

Source: GrainCorp, submission in support; QBT, submission in support, Data provided by GrainCorp and QBT.

Notes: GrainCorp data is based on exports in seasons from 2010-11 to 2014-15 (October 2010 to July 2015). QBT data is based on exports only in seasons 2011-12 and 2012-13 (June 2011 to July 2013).

As expected capacity utilisation at peak periods is higher relative to the whole year. However, there still appears to be spare capacity available in this key shipping window.

Based on data in Table 5 and Table 6, in an average year, capacity utilisation in the peak period relative to the whole year increases at both GrainCorp's and QBT's facilities, but not by a large amount and suggest a significant amount of spare capacity:

- GrainCorp's peak utilisation is 38 per cent compared to 31 per cent for the year
- QBT's peak utilisation is 61 per cent compared to 50 per cent for the year.

As noted above, given that QBT's facility was not operating during parts of the lowest throughput year experienced by GrainCorp (2013-14), QBT's average and low utilisation rates in peak periods may be overstated.

In a high throughput year such as 2011-12, however, there still appears to be spare capacity during the peak period:

- At GrainCorp's facility, utilisation in a high throughput peak period is 61 per cent, only slightly higher than the whole of year utilisation rate (57 per cent).
- At QBT's facility, there is more of an increase between the utilisation rate in a high throughput peak period (86 per cent) compared to the whole of year utilisation rate in a high throughput year (65 per cent).

As the ACCC has previously stated, it is unlikely to be economically efficient to have sufficient port terminal infrastructure to accommodate the entire export task within a three to six month window that goes un-utilised for the remainder of the year. Therefore, while exporters' preference may be to export the majority of grain within a peak period, spreading the export task into the non-peak period would represent an efficient use of infrastructure.

However, the ACCC recognises that exporting wheat during the peak period will generally provide the best returns for marketers. Where a number of grain marketers are able to access port terminal capacity during this period, the marketers will be competing to acquire grain, which would also provide increased returns for grain producers. A key concern from the ACCC's perspective when considering whether to exempt a PTSP is therefore the extent to which a vertically integrated service provider can discriminate in favour of its own trading business by allocating itself the majority of peak period capacity and allowing it to obtain the best prices.

Given the provision of port terminal services involves a high proportion of fixed infrastructure costs that do not vary based on throughput, a PTSP that faces competition would have an incentive to maximise throughput during both peak and non-peak periods where there is spare capacity.

If exporters have the option of shipping from more than one port terminal, each PTSP’s behaviour in allocating capacity during peak periods may also be constrained by its need to attract exporters to use its facility during non-peak periods. This is consistent with the approach taken by GrainCorp in its long term agreement arrangements to encourage spreading of capacity throughout the year by requiring long term agreement customers to book at least 30 000 tonnes of capacity each month for 10 months per year at one port.[19] Therefore, the extent to which capacity constraints in peak periods are a concern will depend on both the presence of competing ports and the overall level of spare capacity throughout the rest of the year.

Comparing the utilisation levels of the Brisbane facilities with that of port terminals in Victoria and Port Kembla suggests that, based on capacity utilisation in an average year, the Brisbane terminals have been among the least utilised (Table 7).

Table 7: Capacity utilisation of bulk wheat port terminals in Victoria, Port Kembla and Brisbane

Facility	Utilisation in an average year	
	Whole year	Peak period
GrainCorp Brisbane	31 %	38 %
QBT Brisbane	50 %	61 %
GrainCorp Port Kembla	49 %	62 %
GrainCorp Geelong	63 %	85 %
GrainCorp Portland	56 %	80 %
Emerald Melbourne	54 %	81 %

Sources: ACCC draft decisions, GrainCorp Operations Limited and Quattro Ports at Port Kembla, 30 July 2015, pp. 19, 20; ACCC Determinations, Exemptions in respect of Emerald’s Melbourne Port Terminal Facility, GrainCorp’s Geelong Port Terminal Facility, GrainCorp’s Portland Port Terminal Facility, 25 June 2015, pp. 23, 24.

In summary, the utilisation figures in Table 5, Table 6 and Table 7 indicate that there has been a significant degree of spare capacity at the Brisbane port terminals over the whole year, as well as spare capacity during the peak shipping periods of during average and high throughput years.

2.2.3. Exporters

A number of exporters have shipped out of the bulk wheat terminals at the Port of Brisbane over the last five years to July 2015.

[19] ACCC media release, *ACCC allows GrainCorp to introduce long-term port access agreements*, 30 November 2012.

GrainCorp submits that its Brisbane port terminal has serviced:

> *over 10 exporters where the largest five, with 85% of exports, are GrainCorp (30%), Cargill (21%), Glencore (13%), Agrex (13%) and Pentag (8%) The other exporters serviced are CB H, Riverina, ADM, Emerald and Touton.*[20]

Since QBT commenced operations in June 2011, it has also serviced a number of exporters including Wilmar Gavilon. QBT submits that:

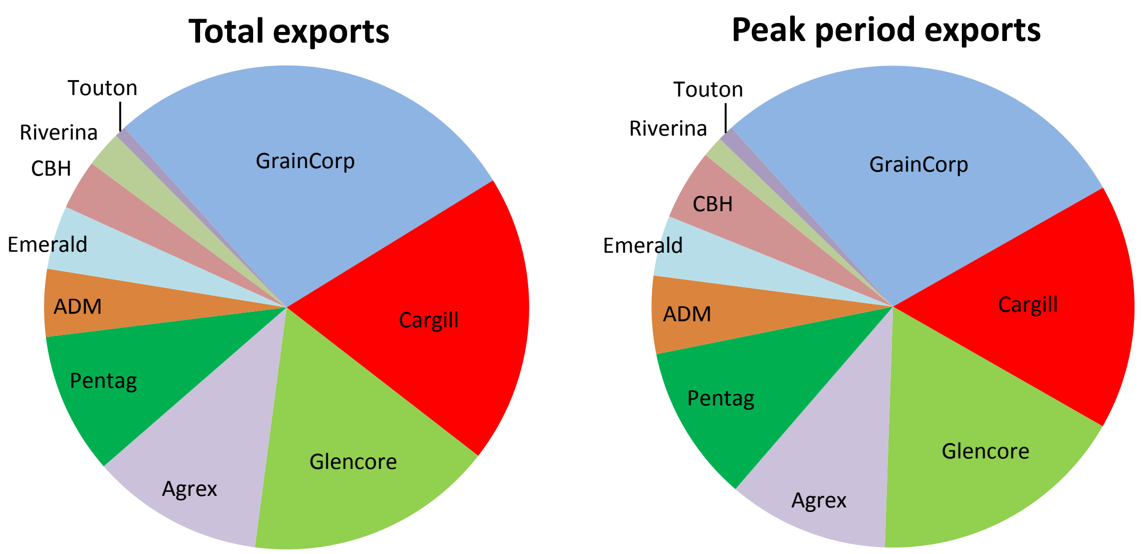
> *it is a wholly owned subsidiary of Wilmar Gavilon Pty Ltd (WG), which is ultimately 50% owned by each of Wilmar International Limited and Marubeni Corporation.*
>
> *WG is an exporter of grain in Brisbane, such that there is a degree of vertical integration.*[21]

QBT submits that all of its export customers have also utilised GrainCorp for export through Brisbane.[22] QBT also submits that:

> *QBT is reliant on continuing to be a multi-user facility, and given existing surplus capacity in the facility, is incentivised to compete vigorously to obtain a larger share of volumes from those and other marketers of grain*.[23]

Figure 2 and Figure 3 show the shares of exports at GrainCorp's and QBT's Brisbane port terminals for both total exports as well as for only exports that occurred in the peak period between January and July.

Figure 2: Shares of exports at GrainCorp's Port of Brisbane terminal



Source: Data provided by GrainCorp

Notes: Data is based on exports in seasons from 2010-11 to 2014-15 (October 2010 to July 2015).

Figure 2 shows that GrainCorp has the largest share of exports at its own terminal, followed by Cargill and Glencore. Other exporters also have sizable export share, both in terms of total exports, and during the peak period.

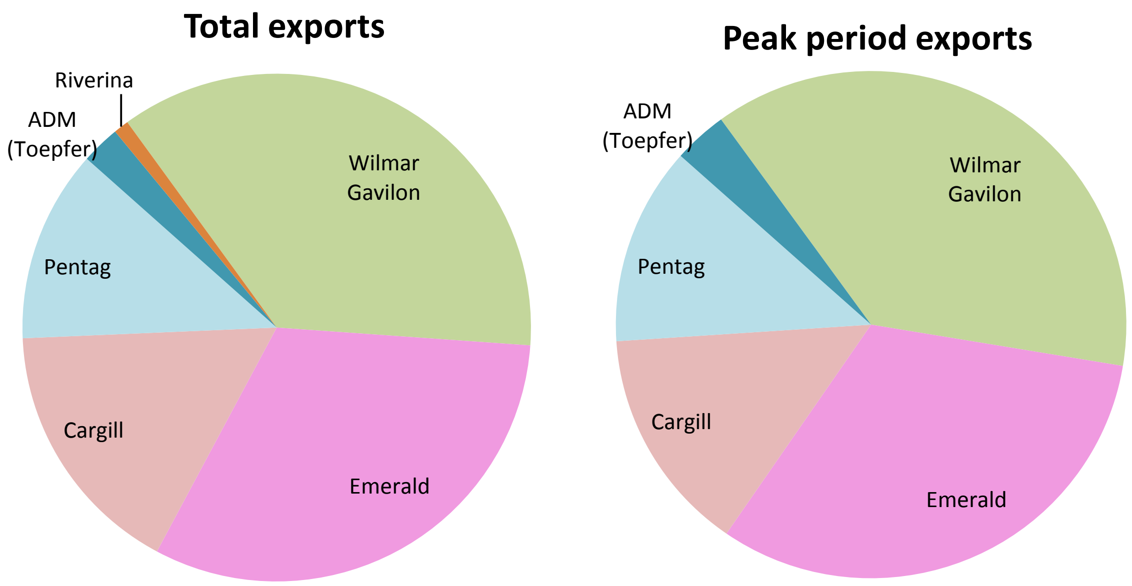
[20] GrainCorp, Submission in support, p. 8.

[21] QBT, Submission in support, p. 2.

[22] ibid, p. 5.

[23] ibid, p. 5.

Figure 3: Shares of exports at QBT's Port of Brisbane terminal



Source: Data provided by QBT

Notes: Data is based on exports only in seasons 2011-12 and 2012-13 (June 2011 to July 2013).

Figure 3 shows that Wilmar Gavilon and Emerald are the largest exporters from the QBT facility, with Cargill and Pentag also having significant export shares.

The data shown in Figure 2 and Figure 3 also indicate that for both GrainCorp's and QBT's Brisbane port terminals, export shares for almost all exporters during the peak shipping months are largely the same as their shares over the entire year.

Overall, based on the above analysis which shows a wide range of exporters using the Brisbane facilities in both peak and non-peak periods, the ACCC considers that there is currently a level of effective competition in the downstream market for bulk wheat exports. This is in the context of GrainCorp being regulated under the current system and QBT being unregulated.

Importantly, the ACCC's analysis of capacity utilisation in section 2.2.2 shows significant spare capacity at the two Brisbane port terminals, including in the peak period. Accordingly, it is likely that if any exporter wanted to execute more shipments at either terminal, capacity was available for them to do so.

The ACCC's views on the level of competition at both QBT's and GrainCorp's Brisbane port terminals are presented in chapters 4 and 5 of this document which set out the ACCC's assessments of each of the facilities against the matters in subclause 5(3) of the Code.

3. Competition across the bulk supply chain, container exports and domestic demand

This chapter sets out the ACCC's draft views on bulk wheat supply chain services upstream from the port such as upcountry storage and grain transportation services. In particular, the ACCC has considered the relevant grain catchment area for the two port terminals.

The ACCC considers that GrainCorp's and QBT's facilities have similar grain catchment areas as the two facilities are located at the same port. The ACCC recognises that the two terminals do not have equal transportation links, with QBT's facility not being able to receive grain by rail, and has considered this in its analysis of grain catchment areas for the two port terminals.

In this chapter, the ACCC also considers the extent to which the Port of Brisbane terminals draw grain from catchment areas that overlap with other ports, and therefore the extent to which the Port of Brisbane terminals compete with these port terminals for bulk wheat export volumes.

This chapter also discusses the competitive effect of container export services and the domestic demand for wheat. Where containerised exports and domestic demand are alternative options for grain marketers wishing to sell wheat, they may provide a competitive constraint on the bulk wheat PTSPs.

The ACCC's consideration of the extent to which the PTSPs compete with each other and are constrained by containerised exports and domestic demand is relevant to the ACCC's assessment of the exemption application, having regard to the matters under subclause 5(3) of the Code.

Stakeholder views from the ACCC's consultation process on the exemption applications are also included as relevant through this chapter.

3.1. Upcountry links to terminals at the Port of Brisbane

The upcountry environment relating to the Port of Brisbane terminals is a relevant consideration in the ACCC's assessment, particularly as GrainCorp has vertically integrated operations in the Port of Brisbane grain catchment area.

Whether a port operator is able to use its position in upcountry markets to limit the ability of competing exporters to access port terminal services is relevant to the ACCC's consideration of the exemption applications.

3.1.1. Upcountry storage and handling

The Productivity Commission (PC) addressed upcountry storage and handling and transport networks in its inquiry report into Wheat Export Marketing Arrangements in July 2010. The PC noted three findings relating to upcountry networks from its inquiry, specifically:

> *Greater competition can improve the efficiency of the grain supply chain. These efficiency improvements lower the costs of the supply chain, providing benefits to the industry, and particularly to growers.*
>
> *Up-country storage facilities do not exhibit natural monopoly characteristics. There is no case for specific third party access regulation. Specific access regulation is likely to hinder the development of efficient supply chains.*

> *Competition in the grain supply chain requires that participants have the ability to by-pass the bulk handling system.*[24]

The PC recommended in its review into the wheat export marketing arrangements that upcountry grain storage should not be regulated.[25] This view was adopted by government, and as a result, upcountry services have not been subject to access regulation.

The ACCC considers that the current state of competition in upcountry storage and handling facilities that have links to the Port of Brisbane is relevant to the ACCC's exemption assessments, particularly to the assessment of GrainCorp's exemption application. If there is a sufficient degree of competition in upcountry services, it will limit the ability for a port operator to leverage any market power from its upcountry networks to its port terminal services.

It is also relevant to consider whether granting an exemption to either or both of the Port of Brisbane terminals will promote competition in related markets, including the market for upcountry services.

GrainCorp's upcountry storage and handling network

GrainCorp submits that there is a large range of marketing options in southern Queensland that supports a substantial and competitive upcountry storage network. According to GrainCorp southern Queensland has significant excess upcountry storage capacity. GrainCorp estimates that southern Queensland has total storage capacity of around 5.5 million tonnes (mt), with average utilisation of only 40 per cent.[26]

GrainCorp submits that it has 22 upcountry silos within the Port of Brisbane zone.[27] GrainCorp also submits that it faces competition from around 13 major competing upcountry silos owned by competitors including major grain exporters such as Cargill, as well as other storage providers including Associated Grain, Woods and Thallon Grains. GrainCorp submits it also faces competition from on-farm storage. According to GrainCorp, southern Queensland is estimated to have around 1.8 mt of on-farm storage.[28]

QBT submits that it has no ownership in upcountry storage and handling facilities and is therefore at a relative disadvantage to GrainCorp's terminal.[29]

Based on Grain Trade Australia (GTA) freight differentials, there are approximately 40 upcountry storage and handling facilities in southern Queensland and northern NSW which are freight-advantaged to the Port of Brisbane.[30] GrainCorp owns around three quarters of these facilities (after site closures from GrainCorp's Project Regeneration), with the majority of GrainCorp's facilities located on rail lines (see Figure 4).

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[24] Productivity Commission, *Wheat Export Marketing Arrangements*, 1 July 2010, p. 31.

[25] The Parliament of the Commonwealth of Australia, House of Representatives, Wheat Export Marketing Bill 2008, Explanatory Memorandum, pp. 13, 14.

[26] GrainCorp, Submission in support, p. 13.

[27] ibid, p. 8.

[28] ibid, p. 13.

[29] QBT, Submission in support, p. 2.

[30] The GTA freight differentials are discussed in further detail at section 3.2.1 below.

Figure 4: GrainCorp's upcountry storage and handling network in southern Queensland and northern NSW

Source: GrainCorp website

Alternative storage and handling service providers

Cargill owns four storage and handling sites in southern Queensland, with three of these sites located on rail lines linking them to the Port of Brisbane (Figure 5).

Figure 5: Cargill's upcountry storage and handling network in southern Queensland

Source: GrainFlow website at http://www.grainflow.com.au/grainflow-sites/

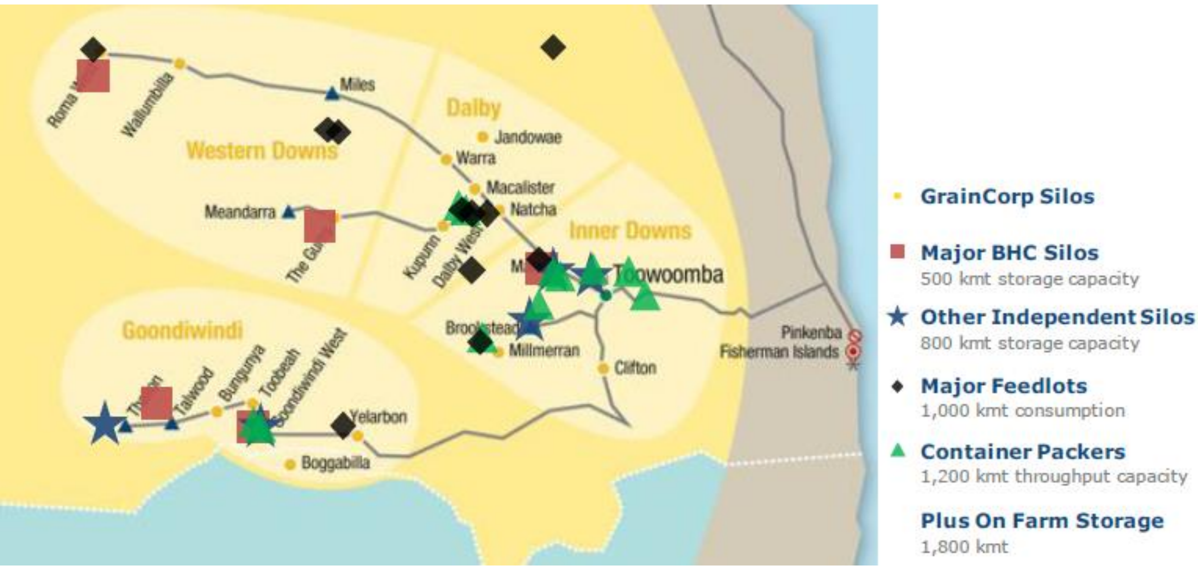
There are several storage and handling facilities which are freight-advantaged to the Port of Brisbane owned by other operators, including:

- Grainhart, based in Oakey (approximately 160 km from the Port of Brisbane), offers bulk storage and logistics, container packing and a weighbridge.[31]
- The Woods Group owns a grain processing and storage facility in Goondiwindi with transport services capable of delivering containers to the Port of Brisbane on a daily basis.[32]
- GrainX in Allora has bulk storage along with container packing facilities and a weighbridge. GrainX partners with Qube Logistics for grain transport to port.[33]
- AssociatedGrain is independently owned and operates three sites in Dalby processing and packing various types of grain.[34]
- Thallon Grains

The majority of these facilities are single site operations, but most offer a range of services including storage, transport logistics (primarily by road) and container packing.

Figure 6 below shows the location of various upcountry storage and handling sites in southern Queensland, as submitted by GrainCorp.

Figure 6: GrainCorp's depiction of competing upcountry storage and handling networks in southern Queensland



Source: GrainCorp, Submission in support, p. 14

The below table shows estimated shares of the upcountry storage facilities identified by GTA as being freight-advantaged to the Port of Brisbane.

[31] Grainhart, http://www.grainhart.com.au/grainhart-services.php, accessed 3 August 2015

[32] The Woods Group, http://www.woodsgroup.com.au/about-us/history-location/, accessed 3 August 2015

[33] GrainX, http://grainx.com.au/, accessed 3 August 2015

[34] AssociatedGrain, http://associatedgrain.com.au/, accessed 4 August 2015

Table 8: Number and ownership shares of upcountry storage and handling facilities in southern Queensland and northern NSW

Operator	GTA sites freight-advantaged to the Port of Brisbane
GrainCorp	31 (76%)
Cargill (GrainFlow)	4 (10%)
Cleveland	2 (5%)
Other (single site operators)	4 (8%)

Source: GTA freight differentials for 2014-15

Note: The ACCC understands that grain storage facilities including Grainhart, Woods Group and Associated Grain are not listed by GTA, and are therefore not included in this table.

On-farm storage

On-farm storage also contributes to total upcountry storage capability in southern Queensland. Recently there has been an increasing trend for on-farm storage, particularly in eastern Australia, as it allows producers to:

- sell direct to local buyers and assist in maximising their marketing opportunities
- avoid delays and associated costs at harvest due to slow off-site receival turnaround times[35]
- accumulate grain for transport to domestic users or for export via containers.

The PC considered on-farm storage in the course of its inquiry into Wheat Export Marketing Arrangements and noted that:

> *On-farm storage capacity also makes up a relatively greater proportion of the total storage in the eastern states than in Western Australian and South Australia which rely more heavily on bulk handlers for grain storage.*[36]

GrainCorp estimates that southern Queensland has around 1.8 mt of on-farm storage.[37]

Capacity of the upcountry storage and handling network

GrainCorp estimates total storage capacity for southern Queensland is around 5.5 mt, and submits that this is made up of 2.3 mt capacity at GrainCorp's own facilities, 1.3 mt storage capacity owned by other bulk handlers, plus around 1.8 mt of on-farm storage.[38]

GrainCorp submits that its southern Queensland silos receive on average 1.3 mt of grain, representing an average market share of 55 per cent against average grain production of 2.2 mt.[39] Based on its estimates of upcountry storage capacity and this average grain production, GrainCorp submits that average capacity utilisation of the total upcountry storage network is 40 per cent.[40]

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[35] AEGIC, *The cost of Australia's bulk grain export supply chains: An information paper*, January 2014,p. 6

[36] Productivity Commission, *Wheat Export Marketing Arrangements*, 1 July 2010, p. 68.

[37] GrainCorp, Submission in support, p. 13.

[38] ibid.

[39] ibid.

[40] ibid.

Competition in upcountry storage and handling

The ACCC understands that there are competing providers of upcountry storage and handling services across southern Queensland and northern NSW, including bulk handlers and other independent operators.

GrainCorp is the owner and operator of a substantial majority of the bulk (off-farm) storage and handling facilities in southern Queensland and northern NSW. Accordingly, the ACCC is of the view that GrainCorp is a dominant provider of grain storage and handling services in southern Queensland and northern NSW and has a strong market position. GrainCorp's upcountry position and share of upcountry facilities in southern Queensland and northern NSW is similar to its position in southern and central NSW.[41] In both locations GrainCorp's share is higher than its share of upcountry facilities in Victoria.

Cargill, via its subsidiary GrainFlow, is the second largest provider of upcountry storage services in southern Queensland and northern NSW, and there are a number of other (off-farm) sites offering storage and logistics services.

Given the fixed costs of upcountry grain storage facilities the ACCC considers that where there are other facilities in close geographic proximity, site operators are incentivised to compete with each other in order to attract customers and maximise throughput in the facility.

In some locations GrainCorp's facilities face direct competition from nearby facilities. For example:

- GrainCorp's facilities at both Talwood and The Gums compete with Cargill's GrainFlow facilities in the same locations
- the Woods Groups' storage facility in Goondiwindi provides an alternative to GrainCorp's Goondiwindi West facility
- Grainhart's Oakey facility provides an alternative to GrainCorp's facility at Malu
- GrainX's facility in Allora is located in close proximity to GrainCorp's Clifton site.

Additionally, some of GrainCorp's receival sites were established as early as 1918 and most of its infrastructure was established in the 1960s, meaning that GrainCorp will face additional pressure where competing facilities are newer and more efficient.[42]

While the ACCC notes that there are some specific locations where growers may have limited options outside of the GrainCorp upcountry network, the ACCC does not consider that it is necessary for there to be multiple competitors at every upcountry location for there to be a level of competition in upcountry storage.

In areas where there is only one local storage and handling provider, the option of on-farm storage may provide some further constraint on that provider's ability to exert market power. However, the ACCC understands that this constraint may be limited given that some on-farm storage facilities may be designed for short-term storage during harvest. Some on-farm storage may not have the capability to store grain over the longer term and may not be suitable for storing certain export quality grain.

There are a number of alternative sites with integrated operations offering storage together with container packing or transport services, or both. As such, in addition to the bulk wheat export market, these upcountry bulk storage sites can also serve the containerised grain

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[41] ACCC, Draft decisions: GrainCorp Operations Limited and Quattro Ports at Port Kembla, Exemption assessments of bulk wheat terminals under the Port Terminal Access (Bulk Wheat) Code of Conduct, 30 July 2015, p. 28

[42] AEGIC, *The cost of Australia's bulk grain export supply chains: A postscript*, Version 2014.1, p. 8.

export market (discussed in section 3.3) as well as domestic market for grain (discussed in section 3.4). These sites provide competitive options for exporters and farmers to use.

Considering average grain production levels, the ACCC considers that there appears to be surplus upcountry storage capacity in southern Queensland, which would provide an incentive for storage and handling providers to maximise throughput at their facilities.

While GrainCorp is the dominant provider of storage and handling services in the Port of Brisbane grain catchment area, storage facilities owned by other parties means that growers in a number of areas do have alternative options to deliver their grain, and exporters utilising the terminals at the Port of Brisbane could obtain grain outside of GrainCorp's upcountry network. Surplus storage capacity should also incentivise GrainCorp to attract customers to use its storage facilities.

The ACCC considers that there may be some specific geographic areas within the Port of Brisbane grain catchment area where GrainCorp may be able to exert market power in the provision of storage and handling services. However, other areas within the catchment area are competitive with alternative providers operating at various locations.

The ACCC's draft view is that although GrainCorp has a dominant upcountry position, there are key factors that would provide some constraint on GrainCorp's ability to leverage its upcountry position to exercise market power at its port.

- First, exporters have alternative upcountry options to using GrainCorp's network in a number of locations across the catchment area, although growers in particular locations may continue to have limited options for delivering their grain outside GrainCorp's network.
- As there is an alternative port terminal (QBT's terminal) at the Port of Brisbane, grain marketers and exporters have options to bypass using only GrainCorp's upcountry network and port terminal to facilitate grain storage, transport and export.
- Second, there is a level of surplus upcountry storage capacity that would encourage GrainCorp to attract customers to use its facilities given the presence of alternative storage options.

Additionally, as discussed in sections 3.3 and 3.4, container exports and domestic demand are likely to remain as significant competitive options to bulk export in the southern Queensland region.

The ACCC therefore considers that GrainCorp's position upcountry, while significant, is not likely to prevent exporters sourcing grain to export via the Port of Brisbane terminals.

3.1.2. Grain transport services

The use of rail and road networks to transport grain from storage facilities to port is a relevant consideration in examining the level of competition between various port terminals. Transport networks and the associated freight charges to move grain to port is a key factor for marketers in determining which port terminal to export grain from. In particular, port terminals would generally only be viable substitutes for each other where a sufficient number of marketers can transport grain to either port at a similar cost.

Therefore, the availability and cost of transport options will be a key factor in determining the grain catchment area of the two Port of Brisbane terminals and the extent to which the two terminals compete with each other.

The ACCC considers the use of transport options to move grain to the Port of Brisbane is particularly relevant in assessing GrainCorp's and QBT's exemption applications, and the degree to which they compete with each other, as each terminal has different receival capabilities:

- GrainCorp's port terminal is capable of receiving grain deliveries by rail and road
- QBT's port terminal can only receive grain by road.

According to the Australia Export Grains Innovation Centre (AEGIC), the average distance from up-country receival sites to port in Australia is about 250km. In Queensland, the average freight distances to port are slightly higher at 303km.[43] This compares with average distances from upcountry site to port of 273km in Victoria and 412km in NSW.

AEGIC estimates that the catchment area within which road transport is competitive with rail can be defined by a more than 200 km radius from port, depending on the season and subsequent road freight rates.[44]

Estimates of the proportion of grain transported to the Port of Brisbane by road and rail indicate that road is used to move the majority of grain in this zone:

- AEGIC indicates that the share of road transport used to transport grain to port in Queensland is the highest in the country, at around 54 per cent (with 46 per cent of grain being transported by rail).
- The Queensland Transport and Logistics Council (QTLC), a freight transport and logistics advisory body to government, indicated that 'In 2012, 1.7 million tonnes of grain and other cereals were exported through the Port of Brisbane. Of this amount, 65 per cent was transported by road and 35 per cent was transported by rail, from growing areas in southern Queensland and northern New South Wales'.[45]

This predominant use of road transport in southern Queensland is consistent with both GrainCorp's and QBT's submissions.[46]

Rail

Australia's grain freight rail networks are localised, with each state effectively operating its own separate network.[47] The grain rail network in Queensland is narrow gauge, which is different to the state and interstate rail lines in NSW (which are standard gauge).

Queensland's grain rail network presents a number of limitations compared to grain rail lines in some other states, as reported by the QTLC:

- Queensland rail systems used for grain transport are lower efficiency lines, with 15.75-18 tonnes limit of axle loads compared with the 22 tonnes axle loads on the interstate lines. As a result, Queensland's rail system carries lower net tonnes per grain train than interstate lines.
- Railway lines in Queensland have varying speed ratings and constraints, for example limited siding lengths on single-track rail. These constraints limit wagon capacity and train length, and therefore train capacity. Paths for grain trains are limited, and poor on-time performance (not only of grain trains) is common.
- Rail schedules are determined early in the year and are largely non-responsive to changes in demand such as a good season resulting in increased crop tonnages. Where trains are cancelled due to insufficient volumes, penalties may be incurred.

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[43] AEGIC, *The cost of Australia's bulk grain export supply chains*, Version 2014.1, p. 17.

[44] ibid.

[45] Queensland Transport and Logistics Council (QTLC), *Supply Chain Perspective - Grain*, p. 8.

[46] GrainCorp, Submission in support, p. 11, QBT, Submission in support, p. 10.

[47] QTLC, *Supply Chain Perspective - Grain*, p. 8.

- Higher volume road-based transport options have further impacted on the use of rail for grain transport.[48]

While GrainCorp's Brisbane port terminal has rail access, QBT's port terminal does not. GrainCorp submits that rail is used to transport bulk export grain that must travel long distances to the Port of Brisbane (about 400km to 650km), and that most grain grown closer to the port moves by road.[49]

GrainCorp submits that over the past decade, the portion of export grain moved by rail to GrainCorp's Brisbane terminal has declined from 100 per cent to around 40 per cent. GrainCorp submits that this decline in rail usage is due to:

- the high fixed 'take or pay' cost for rail, where in low production years, GrainCorp makes a 'loss' and cannot recoup this fixed cost.
- a larger increase in the variable rail cost compared to road transport from reduced government support for rail transport and low wagon productivity. The maximum payload for rail wagons in Queensland in 46.5 tonnes (compared to 55 tonnes in other states) which is comparable to the payload for the new larger road trucks.
- the growth of demand for coal transport, which has limited rail capacity for grain and increased the cost of contracting rail paths down the Toowoomba range.
- the move to B-Double and A-Triple road trucks, which has reduced the cost of road transport.[50]

According to AEGIC and GrainCorp, Aurizon provides rail services for grain in southern Queensland. GrainCorp contracts two trains for export grain and also subcontracts its rail transport to other exporters.[51]

QBT submits that:

> *rail is limited in use predominantly for the movement of grain to port for export with the majority from western Brisbane sites where rail has significant costs advantages over road shipment. For that reason, for growers in grain growing regions connected to rail, there are some barriers to QBT effectively competing with GrainCorp.*[52]

The ACCC recognises that rail has certain scale advantages compared to road transport and as a result (all else being equal) rail is likely to be the most efficient transport method to move grain. The ACCC also recognises that rail transport options are available and being used by at least some industry participants in southern Queensland, particularly to transport grain from the furthest western upcountry sites to port, and is therefore a relevant consideration.

However, the ACCC also notes that the current upcountry environment in southern Queensland provides for cost effective road transport options across the majority of the region which has implications on the extent of competition in the broader upcountry environment.

As the following section further explains, evidence shows that road transport options are a viable alternative to rail transport and are being taken up by a significant number of participants in southern Queensland.

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[48] QTLC, *Supply Chain Perspective - Grain*, pp. 8 - 10.

[49] GrainCorp, Submission in support, p. 5.

[50] ibid, p. 12.

[51] ibid, p. 11; AEGIC, *The cost of Australia's bulk grain export supply chains*, p. 18.

[52] QBT, Submission in support, p. 10.

Road

Both GrainCorp's and QBT's respective Brisbane port terminals can receive grain by road.

As noted above, road transport has become the main mode of transport to move grain to the Port of Brisbane, with estimates of between 54 to 65 per cent of grain being transported to the port by road in recent years.

The shift towards greater use of road transport reflects its relative advantages over rail transport in southern Queensland, in particular:

- Road transport has lower fixed costs compared to rail, and may become more cost-effective against rail transport, particularly where grain production is particularly volatile.[53]
- Road transport can move goods from the point of production to export, be mobilised quickly to respond to changes in demand and generally have access to alternative routes in the event of flooding.[54]
- Higher volume road-based transport options have made road a more attractive form of transport. As noted by the QTLC, although most road transport has been undertaken by B-Double vehicles, there is a growing trend to higher-volume vehicles such as A-Doubles. A-Double road trains are approved for transit to the Port of Brisbane under a special permit.[55]

QBT also submits that road is the preferred carrier and for a large majority of the production areas, is competitive versus rail.[56]

A number of companies offer trucking services in southern Queensland. These include Grainhart, the Woods Group and other companies noted in section 3.1.1, some of which offer integrated storage and road transport services. Various other companies noted in section 3.3 offer grain container packing services as well as road transport services.

The ACCC considers that, although QBT's facility has only road receival capability (not rail access), the significant use of road to transport grain to port in southern Queensland has implications on the degree to which GrainCorp's and QBT's Brisbane port terminals can effectively compete with each other. Specifically, the viability of road transport to move grain to port for a significant part of the production and catchment area, suggests that for a number of marketers the two Brisbane port terminals could be substitutes. Additionally, QBT's facility's estimated export capacity (of between 0.8 and 1.08 mtpa) provides significant capacity for it to service the relatively high proportion of grain delivered by road in the southern Queensland region.

The ACCC's view on the grain catchment areas for each port terminal which facilitate competition between the terminals for the export of grain is discussed in the following section.

3.2. Port of Brisbane grain catchment areas

In general, the ACCC's assessments of exemption applications will consider the extent to which port terminals can compete with each other. As such it is important to consider the relevant grain catchment areas for each port terminal and the extent to which these areas can supply grain to alternative terminals to facilitate competition.

[53] AEGIC, *The cost of Australia's bulk grain export supply chains*, p. 17.

[54] QTLC, *Supply Chain Perspective - Grain*, p. 10.

[55] ibid, p. 8.

[56] QBT, Submission in support, p. 10.

Port terminals may be in competition with each other if, for instance, grain from one area could practically move to either of the two (or more) terminals at a similar cost.

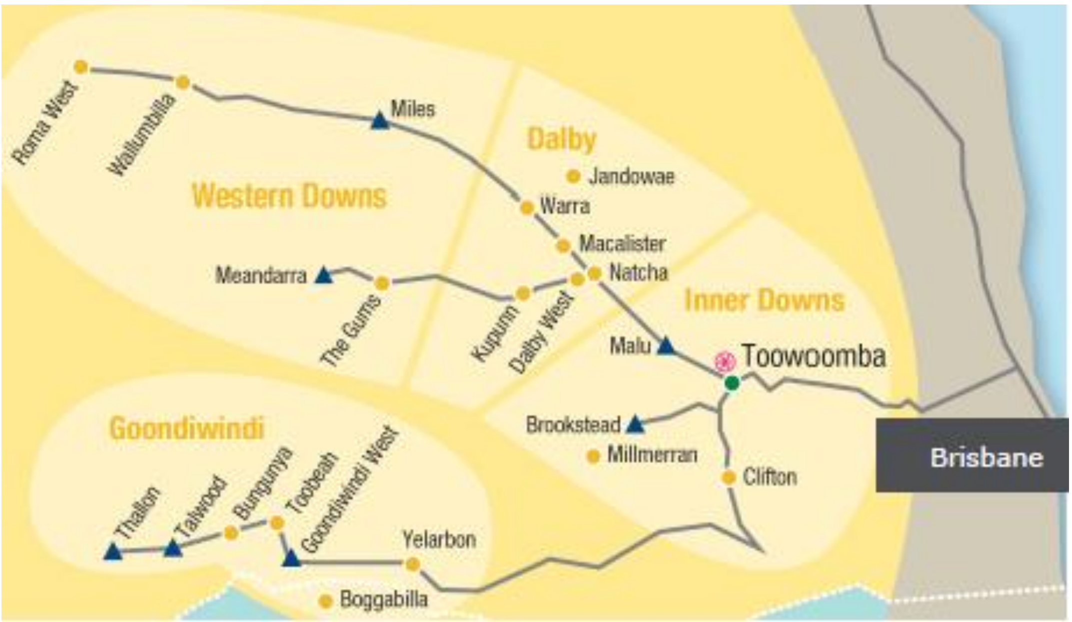
The relevant catchment areas for the two Port of Brisbane terminals is likely to be related to established transportation links to each port including rail networks and road pathways that connect the port terminals to growing regions and the associated upcountry storage infrastructure.

The ACCC considers that GrainCorp's and QBT's Brisbane facilities have a similar grain catchment area, as the two facilities are located approximately 16 km from each other at the same port.[57] This close proximity indicates that grain originating in the Port of Brisbane grain catchment area could supply either of the two Brisbane facilities, although the transport links of these two terminals are different in that the QBT facility does not have rail access.

This section considers the grain catchment areas for each of the two Brisbane terminals, as well as the extent to which these catchment areas overlap with the catchment areas of other ports in NSW.

GrainCorp provided the following illustration to show the grain catchment area of the Port of Brisbane.

Figure 7: GrainCorp's depiction of the Port of Brisbane grain catchment areas



Source: GrainCorp, Submission in support, p. 5.

GrainCorp submits that

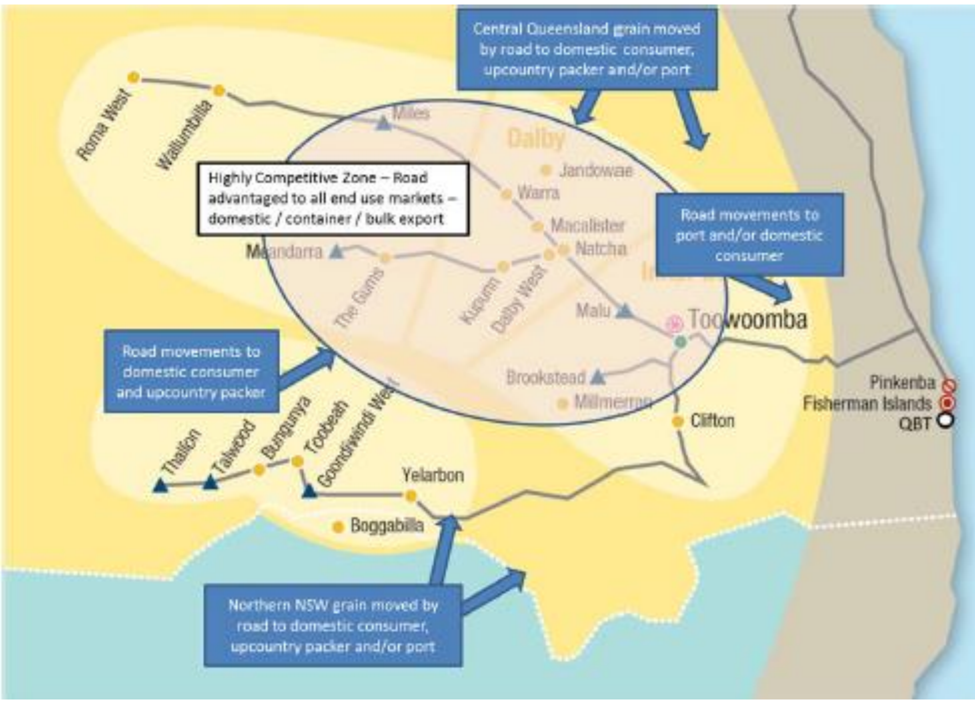
> *the Brisbane Port Zone services Southern Queensland from the Darling Downs to Meandarra and Miles to the north west and Goondiwindi and Thallon to the west.*[58]

QBT also provided an illustration of what it considers to be the grain catchment area for the Port of Brisbane (see Figure 8). QBT also noted a highly competitive zone whereby road transport is advantaged to various markets.

[57] QBT, Submission in support, p. 12.

[58] GrainCorp, Submission in support, p. 5.

Figure 8: QBT's depiction of the Port of Brisbane grain catchment area



Source: QBT, Submission in support, p. 9.

Consistent with GrainCorp's submission, QBT also indicates that southern Queensland is the main catchment area for the Port of Brisbane.

Both GrainCorp and QBT also submit that, depending on the level of production, grain grown in other regions flows into southern Queensland. GrainCorp submits that this inflow of grain from other regions is mainly to service the domestic market:

> *Depending on production and grain quality, grain from Northern NSW and Central Queensland regularly flows into Southern Queensland to service its large inland domestic market.*[59]

QBT submits that:

> *interstate grain movements come from a variety of sources with malt barley imported from southern states and the balance sourced from Northern New South Wales and Central Queensland (CQ) production regions. In dryer years where production of grain has been limited, feed grains and milling wheat has also been imported from VIC, SA and WA.*[60]

During the ACCC's market inquiries, several stakeholders also acknowledged that the grain catchment area for the Port of Brisbane was mainly southern Queensland, and some stakeholders also suggested that grain from northern NSW could move to the Port of Brisbane.

The QTLC also indicates that grain grown in northern NSW, from as far south as the Moree area, can be moved to the Port of Brisbane.[61]

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[59] GrainCorp, Submission in support, p. 5.

[60] QBT, Submission in support, p. 8.

[61] QTLC, Supply Chain Perspective - Grain, p. 8.

3.2.1. Potential differences between GrainCorp’s and QBT’s port terminals’ catchment areas

The ACCC notes that both GrainCorp and QBT submit that the Port of Brisbane’s grain catchment area consists of southern Queensland as well as certain areas of northern NSW and central Queensland.

However, the ACCC also considers it appropriate to consider each of GrainCorp’s and QBT’s Brisbane port terminals’ individual grain catchment areas, particularly given the different transport access arrangements at each terminal. GrainCorp’s facility can receive grain by rail while QBT’s facility cannot.

As noted in section 3.1.2, although evidence shows a significant proportion of grain being delivered to the Port of Brisbane by road, and is therefore able to be delivered to either GrainCorp’s or QBT’s facility, some grain is still transported to port by rail which must be delivered to GrainCorp’s facility. QBT submitted the following illustration to show the areas of southern Queensland where grain is transport from by road/rail to port.

Figure 9: QBT's depiction of freight movements by road and rail in southern Queensland and northern NSW

Source: QBT, Submission in support, p. 11

To the extent that there are regions within the Port of Brisbane grain catchment area where it is more cost-effective to transport grain by rail to port, the ACCC considers that this may have an impact on the catchment area of QBT’s facility compared to that of GrainCorp’s facility.

In practice, QBT’s facility’s grain catchment area in southern Queensland may not extend as far west as GrainCorp’s facility’s grain catchment area due to the established rail lines which likely provide more cost-effective rail transport options from far western sites for grain to be delivered by rail to GrainCorp’s facility.

The ACCC, however, acknowledges that QBT's and GrainCorp's facilities' grain catchment areas overlap across most of the grain growing regions of southern Queensland and certain parts of northern NSW.

3.2.2. Freight charges to other port terminals

To further assist in determining the appropriate grain catchment areas for the Brisbane terminals, the ACCC has considered the relevant transportation costs to move grain from upcountry locations to the Brisbane terminals and to potential alternatives such as Newcastle in NSW.

This allows the ACCC to identify the grain catchment areas for each terminal where the transport costs are lowest. This then provides the ACCC with an indication of where these grain catchment areas overlap with catchment areas of other ports and allow grain to be transported to alternative (or substitute) terminals at a similar transport cost which would facilitate competition between the terminals.

While noting the potential difference in the grain catchment areas of GrainCorp's and QBT's Brisbane facilities discussed in the previous section (3.2.1), in this section the ACCC has considered the degree of any overlap between the broader Port of Brisbane grain catchment area and catchment areas of terminals located at other ports.

Grain Trade Australia (GTA) produces 'Location Differentials' to value upcountry grain on a port basis.[62] A Location Differential is a value attributed to an upcountry grain bulk storage and handling facility.[63] These values are representative of transport costs to move grain from and upcountry site to a port terminal facility for export.

GTA notes that its Location Differentials are not actual freight rates from storage facilities to port, but are widely used by the Australian grain industry to price 'port based' contracts.[64] GrainCorp uses GTA Location Differentials to assist in in calculating some of its road freight charges[65] and AEGIC notes that:

> *Industry sources have indicated while GTA freight differentials are not the actual freight rates charged by GrainCorp, they are close approximations and it would be reasonable to use them as an indication of actual rates. They are more likely to be used by traders who will on sell based on track prices without intending to physically shift the grain to an end user.*[66]

The ACCC considers that the Locational Differentials provide an indication of the costs to move grain from a specific upcountry site to port and are expressed as indicative costs on a dollars per tonne basis.

For the majority (27 of the 29 upcountry sites listed by the GTA as being located in southern Queensland) GTA does not provide Location Differentials that compare indicative transport costs to multiple ports. For these 27 sites, Locations Differentials are only provided for the Port of Brisbane.

For a smaller number of upcountry sites, including two upcountry sites located in Noondoo and Thallon (in south-west Queensland) as well as for 12 sites located in northern NSW,

[62] GTA was formed in 1991 to formalise commodity trading standards, develop and publish the trade rules and standardise grain contracts across the Australian grain industry. GTA's role today is to ensure the efficient facilitation of commercial activities across the grain supply chain.

[63] GTA, *Explanatory memorandum: GTA Location Differentials 2014/2015 Season*, p. 1

[64] ibid, p. 1.

[65] GrainCorp, 2014/15 Grower Warehousing Agreement, p. 19.

[66] AEGIC, The cost of Australia's bulk grain export supply chains: An information paper, January 2014, p. 19.

GTA provides Location Differentials for both the Port of Brisbane and the Port of Newcastle. These are presented in Table 9.

The GTA Location Differentials for these sites indicate that:

- there are 12 upcountry sites in northern NSW where the indicative freight cost to the Port of Brisbane is lower than to the Port of Newcastle.
- there are four sites in northern NSW, all located in and around Moree, where the indicative difference between transporting grain to the Port of Brisbane and Port of Newcastle is less than $5 per tonne. For most sites located north of Moree, the differences between the Location Differentials to Brisbane and Newcastle are larger.

Table 9: Various GTA Location Differentials to Brisbane and Newcastle (indicative $ per tonne)

Region	Site and site operator	Brisbane	Newcastle	Differential	Rail access
Southern Queensland	Noondoo (Cleveland)	57.00	66.5	9.50	
	Thallon (Thallon Grains)	50.00	62.25	12.25	
Northern NSW	Boggabilla (GrainCorp)	36.50	58.25	21.75	
	North Star (GrainCorp)	39.00	52.75	13.75	Yes
	Croppa Creek (GrainCorp)	43.00	54.00	11.00	Yes
	Moree (Agripak)	45.75	47.75	2.00	
	Moree Haddad (GrainCorp)	45.75	47.75	2.00	
	Moree Sub (GrainCorp)	45.75	47.75	2.00	Yes
	Crooble (GrainCorp)	46.00	53.00	7.00	Yes
	Garah (GrainCorp)	46.00	52.25	6.25	Yes
	Milguy (GrainCorp)	46.75	52.00	5.25	Yes
	Biniguy (GrainCorp)	48.25	50.00	1.75	
	Weemelah (GrainCorp)	48.75	56.00	7.25	Yes
	Cleveland (Cleveland Ag)	53.25	59.00	5.75	

Source: GTA 2014/2015 Location Differentials

While GTA Location Differentials provide an indication of freight rates to each port, they are not actual charges paid, and as such, observations from these indicators should be appropriately caveated. GTA notes that negotiated freight rates may vary significantly from the gazetted Location Differentials.[67]

The ACCC considers transport costs are particularly relevant to determining the degree of geographic substitutability between the Port of Brisbane terminals and other port terminals. Relative transport costs will affect the extent to which a particular port can raise its prices (due to being closer to growers) before it will lose business to another port terminal. Where the increase in price leads to another port terminal becoming a cheaper alternative, the alternative terminal would appear to be a substitute and provide competitive constraint.

[67] GTA, http://www.graintrade.org.au/location_differential_tables

Additionally, AEGIC notes that GTA Location Differentials in Australia's eastern States are a direct function of distance to port and do not account for loading efficiencies across different sites.[68]

The ACCC understands that, similar to other parts of Australia, upcountry sites across southern Queensland and northern NSW differ in their loading capabilities with some being able to service trains while others only have road access. Table 9 indicates those upcountry sites in northern NSW that have rail access. Loading rates also differ by site with some sites able to load vehicles faster than others.

Considering the transport options available at various sites, the ACCC considers that while the GTA Locational Differentials indicate a number of northern NSW sites are freight-advantaged to the Port of Brisbane, some of these sites may be able to access more comparable rail freight rates to the port terminals at Newcastle.

As noted in section 3.1.2, rail lines in NSW are more efficient and can carry higher payloads compared to rail lines in southern Queensland which is likely to make rail transport to Newcastle a viable option from certain sites located in northern NSW. Additionally, GrainCorp has previously submitted that grain sourced from Moree to North Star in northern NSW can be sold for export via Newcastle or Brisbane or sold to large feedlots in southern NSW.[69]

Overall, analysis of the GTA Location Differentials suggests that of the 41 upcountry sites (29 located in southern Queensland and 12 in northern NSW) where the indicative freight cost is considered to be lowest to the Port of Brisbane:

- the 29 sites located in southern Queensland and 5 sites located in northern New South Wales (together, over 80 per cent of all sites) are freight advantaged to the Port of Brisbane, and do not have direct rail links to the Newcastle terminals
- the 7 other sites located in northern NSW, while also freight advantaged to the Port of Brisbane based on the Location Differentials, may also have access to comparable rail freight rates to Newcastle.

The ACCC therefore considers that the southern Queensland upcountry sites appear to clearly fall within only the Port of Brisbane grain catchment area, while a small number of northern NSW sites may fall within both the Brisbane and the Newcastle port terminals catchment areas.

The ACCC does not consider that any overlap between the Brisbane and the Newcastle port terminals catchment areas has a material impact on GrainCorp's and QBT's operation of their respective Brisbane port terminals given that the area of overlap is in northern NSW where rail lines do not run to the Port of Brisbane.

In summary, the ACCC notes that in practice exporters may choose to shift grain from sites in the Port of Brisbane catchment area to other ports for a range of commercial reasons. The ACCC understands that this does currently occur in practice. The ACCC also notes that it is relevant to consider the freight charges, and differences in freight charges, in the context of overall supply chain costs. With average supply chain costs in the order of $50-70 per tonne, differences in freight rates in the order of magnitude shown at Table 9 above may in some circumstances be outweighed by other factors, such as obtaining a higher FOB price at particular port or accumulating grain to a particular specification.[70]

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[68] AEGIC, p. 20.

[69] GrainCorp, *Supporting submission to proposed variations to Port Terminal Services Access Undertaking*, November 2013, p. 6.

[70] AEGIC, *The cost of Australia's bulk grain export supply chains*, p. 5; VFF, *Response to ACCC draft determinations*, 24 April 2015, p. 7.

The ACCC also recognises that the movement of grain is to some extent shaped by the level of production and the demands of domestic users.

However, all else being equal, the ACCC considers that the degree of substitutability between the Port of Brisbane and the Newcastle terminals appears to be limited.

The ACCC's draft view is that while the Port of Brisbane terminals' grain catchment area has a small degree of overlap the Newcastle terminals, these options are only likely to provide a limited competitive constraint on the two port operators at the Port of Brisbane.

3.3. Container exports

The extent to which the containerised wheat exports compete with bulk wheat exports is relevant to the ACCC's assessment of the level of competition faced by PTSPs at the Port of Brisbane.

GrainCorp submits that the unregulated container export market is a major competitor to bulk wheat and other grains across eastern Australia.[71] Similarly, QBT submits that the Port of Brisbane zone is subject to strong competition from alternative markets for grain such as the robust container packing market.[72]

Data on container wheat exports shows that all ports in Queensland – specifically, the ports in Brisbane, Mackay, Gladstone and Townsville – have the ability to ship containerised grain.[73] However, the majority of container wheat exports in Queensland are from the Port of Brisbane. In the 2008-09 to 2013-14 seasons, the average annual volume of container wheat exports from all Queensland ports was approximately 287 000 tonnes.[74] Consistent with GrainCorp's estimate, the average annual percentage of total wheat exports attributable to container exports was 35 per cent.[75]

For the Port of Brisbane, Figure 10 shows the total volume of bulk and container wheat exports over the last four seasons. Table 10 shows the ratio of bulk and container wheat exports as a percentage of total wheat exports at this port. Note that data for the 2014-15 season is only available to August 2015.

[71] GrainCorp, Submission in support, p. 12.

[72] QBT, Submission in support, p. 2.

[73] ACF, *ABS Export Report* (ACF, August Export Report), 5 August 2015, p. 4.

[74] ibid.

[75] ibid.

Figure 10: Total volumes of wheat exports from the Port of Brisbane (tonnes)

Source: Australian Crop Forecasters, 5 August 2015, 'ABS Export Report' p. 4.

Table 10: Ratio of bulk and container wheat exports at the Port of Brisbane (Percentage of total exports)

	2010-11	2011-12	2012-13	2013-14	2014-15 (to Aug)	2010-11 to 2013-14 average
Bulk exports	70	77	77	36	14	65
Container exports	30	23	23	64	86	35

Source: Australian Crop Forecasters, 5 August 2015, 'ABS Export Report' p. 4.

As seen in Figure 10 above, compared to the fluctuations and recent decline in the volume of bulk wheat exports, the volume of container wheat exports at the Port of Brisbane has remained relatively stable over the last few seasons. In the 2013-14 season, bulk wheat exports decreased significantly while container wheat exports increased slightly. This supports GrainCorp's submission that 'containerised grain is more resilient than bulk grain as evidenced by more stable supply'.[76]

GrainCorp further submits that there has been strong growth in container exports, driven by demand from processors in China and south east Asia who prefer smaller parcels of grain, the availability of empty containers in eastern Australia, low container shipping rates and relatively low barriers to entry. It also considers that deregulation of the container export market in 2004 allowed the industry to grow substantially before the removal of the single desk for bulk wheat exports in 2008.[77]

Grain can be packed into containers at various locations along the supply chain and is usually packed at port or at upcountry storage sites with appropriate packing facilities.

[76] GrainCorp, Submission in support, p. 12.

[77] ibid.

GrainCorp submits that, in southern Queensland, it faces competition from 11 major container packers that have an estimated total packing capacity of approximately 1.2 mt.[78]

GrainCorp's Port of Brisbane facility is able to pack bulk grain and other commodities into containers at a rate of up to six containers per hour.[79] QBT's facility is able to pack up to eight containers per hour, which is over 1 000 tonnes of containerised grain per day. Its eight container packing silos each have 650 tonnes capacity, with flexible segregation options and independent fumigation capacity.[80]

There are also a number of upcountry container packing facilities located in the Port of Brisbane grain catchment area, including major facilities such as:

- Woods Grain's facility at Goondiwindi, which can pack and export up to 300 000 tonnes of containerised grain a year.[81] Woods Grain is a division of the Woods Group, which also provides production, processing, marketing, distribution and export services in seeds, pulses, stockfeeds and food products.[82]
- Namoi Cotton Alliance's facility at Goondiwindi, which offers grain services such as container packing, fumigation, AQIS approvals and delivery to port via its supply chain network.[83] It also offers cotton ginning and cotton and cotton seed marketing.[84]
- Gehrke Grains & Transport's facility at Hatton Vale, which can store, dry, fumigate, machine dress and containerise bulk grain. The facility also has a public weighbridge and sells grain to the public. Bulk and general logistics services are also available.[85]
- Grainhart's facility in Oakey, which offers storage, packing and logistics services for bulk grain and containers. It also deals with cotton seed and operates a public weighbridge.[86]

Other container packing facilities in the Port of Brisbane grain catchment area include those operated by A&B Grains, Agrifoods Australia, Associated Grain and Broadbent Grain.[87]

All containerised grain in Queensland is transported by road, which can offer certain freight advantages over rail.[88] This is because one A-Double truck, with regulation gross vehicle mass limits of about 79 tonnes, can carry two 20 foot containers (each container is restricted to about 22 tonnes). In contrast, Queensland's rail systems for grain have axle load limits of about 15 tonnes, meaning one rail wagon can only carry one 20 foot container.[89]

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[78] ibid.

[79] GrainCorp, *Containers*, 2014, viewed 5 August 2015, http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/containers.

[80] QBT, *Shipping berth*, 2013, viewed 5 August 2015, http://www.qldbulkterminals.com/shipping.html.

[81] Woods Grain, *Commodities Available*, viewed 5 August 2015, http://www.woodsgroup.com.au/woods-divisions/grain/commodities-available/.

[82] Woods Group, *Products & Services*, viewed 5 August 2015, http://www.woodsgroup.com.au/about-us/products-services/.

[83] Namoi Cotton, *Commodity Packing Services*, 2015, viewed 5 August 2015, http://namoicotton.com.au/operations-and-services/cotton-packing-services.aspx.

[84] Namoi Cotton, *Namoi Cotton Co-Operative Ltd*, 2015, viewed 5 August 2015, http://namoicotton.com.au/.

[85] Gehrke Grains & Transport Pty Ltd, *Gehrke Grains & Transport – Grain Transport*, 2014, viewed 5 August 2-15, http://www.graintransport.com.au/.

[86] Grainhart, *Grainhart Services*, 2015, viewed 5 August 2015, http://www.grainhart.com.au/grainhart-services.php.

[87] A&B Grains, *A&B Grains*, viewed 6 August 2015, http://www.abgrains.com.au/; Agrifoods Australia, *Grade*, 2014, viewed 6 August 2015, http://www.agrifoodsaustralia.com.au/grade/; Associated Grain, *Australian Pulse Specialists*, viewed 6 August 2015, http://associatedgrain.com.au/; Broadbent Grain, *Toowoomba – Broadbent Bulk Services*, viewed 6 August 2015, http://broadbentgrain.com.au/storage-facilities/toowoomba-broadbent-grain/**.**

[88] Queensland Transport and Logistics Council (QTLC), *Queensland Parliament Inquiry into Rail Freight Use by the Agriculture and Livestock Industries*, February 2014, pp. 6-7.

[89] QTLC, *Supply Chain Perspective – Grain*, 2013, p. 8; ibid.

As discussed in the section below, a significant portion of wheat produced in Queensland is consumed domestically. Therefore, container wheat exports only compete with bulk wheat exports for the exportable surplus.

Overall, given that container wheat exports accounted for an average of 35 per cent of total wheat exports over the last four seasons, the ACCC considers that container wheat exports at the Port of Brisbane provide a significant alternative pathway to bulk wheat exports.

Total volumes of container wheat exports from the Port of Brisbane also remained relatively stable over this time and the requisite port and upcountry packing infrastructure already exists. The ACCC therefore expects container wheat exports to remain a viable competitor to bulk wheat exports in the future. The ACCC's draft view is that this competition from container wheat exports is directly relevant to its Port of Brisbane exemption assessments.

3.4. Domestic demand

The extent to which the domestic demand for wheat competes with the bulk wheat export market is also relevant to the ACCC's assessment of the level of competition faced by PTSPs at the Port of Brisbane.

According to AEGIC, in regions with strong domestic consumption supply chains must accommodate both domestic and export customers, with export grain traders competing with domestic millers and feedlots for grain.[90] A report by JCS Solutions Pty Ltd (JCS report) noted that in drought years, the exportable wheat surplus is reduced after domestic needs are met.[91]

GrainCorp submits that it faces strong demand from domestic end users in the Port of Brisbane zone, limiting the amount of surplus grain for export.[92] Similarly, QBT submits that this zone is subject to strong competition from alternative markets for grain, such as the large domestic consumer base. It also submits that in most years, the Port of Brisbane zone is a net importer of grain for domestic consumption. [93]

As data on domestic demand for grain specifically in the Port of Brisbane terminals' catchment areas is not readily available, the majority of the ACCC's analysis of domestic demand focuses on domestic demand across the whole of Queensland.

Data from the ABS from 1985 to 2014 suggests that average grain production in Queensland during this period was approximately 2.7 mt.[94]

The JCS report notes that from 2007 to 2012, average grain production in southern Queensland was 2.8 mt.[95] GrainCorp estimates that southern Queensland produces an average of 2.2 mt of grain per year, with 90 per cent of production being wheat and sorghum.[96] Similarly, QBT estimates that the 10 year average for total grain production in Brisbane, comprising of wheat, sorghum and barley, is 2.2 mt.[97]

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[90] AEGIC, *The cost of Australia's bulk grain export supply chains*, January 2014, p. 9.

[91] JCS Solutions, *Australian Feed Grain Supply and Demand Report 2013/14*, July 2014, p. 27.

[92] GrainCorp, Submission in support, pp. 3, 6.

[93] QBT, Submission in support, p. 2.

[94] http://www.qgso.qld.gov.au/products/tables/agriculture-production-main-crop-qld/index.php. The grains included in this figure are wheat, barley, sorghum, maize, oats, millet, rice and triticale.

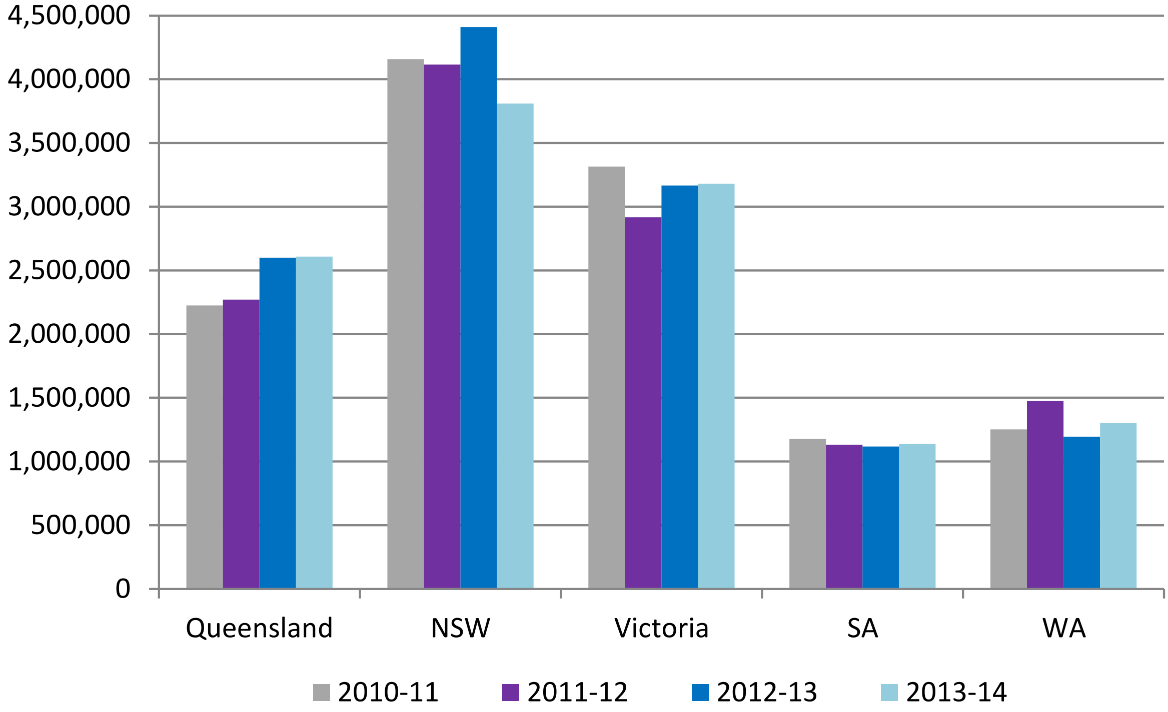
[95] JCS Solutions, p. 55.

[96] GrainCorp, Submission in support, p. 6.

[97] QBT, Submission in support, p. 7.

Figure 11 shows the volume of domestic demand for wheat, sorghum, barley and canola in the last four seasons across Australia.[98] Table 11 shows the percentage of wheat, barley and sorghum that was produced and consumed in Queensland.

Figure 11: Domestic demand for wheat, sorghum, barley and canola (tonnes)



Source: Australian Crop Forecasters.

Table 11: Queensland's domestic demand for wheat, sorghum and barley (Percentage of Queensland production)

	2010-11	2011-12	2012-13	2013-14	2010-11 to 2013-14 average
Domestic demand	78	65	80	126	87

Source: Australian Crop Forecasters; ABS.

Figure 11 indicates that domestic demand for wheat, sorghum and barley across all of Queensland increased from 2010-11 to 2013-14, averaging about 2.4 mt. Table 11 shows that, during this time, domestic demand represented an average of 87 per cent of Queensland production for these grains. ABS data shows that wheat, sorghum and barley make up almost all of Queensland's grain production. [99] As such it is still relevant to make comparisons across data on wheat, sorghum and barley and GrainCorp's and QBT's production estimates for total grain production in Queensland.

In southern Queensland, GrainCorp estimates that an average 1.1 mt of grain is consumed domestically in Brisbane per year, which is about 45 per cent of grain production in the area. GrainCorp also estimates that, depending on production and grain quality, on average an

[98] Australian Crop Forecasters did not report any domestic demand for canola in Queensland.
[99] http://www.qgso.qld.gov.au/products/tables/agriculture-production-main-crop-qld/index.php

additional 0.4 mt of grain is moved from other growing regions in northern NSW and central Queensland to serve the large domestic market in southern Queensland.[100]

QBT estimates that an average 2 mt of grain was consumed domestically per year, which it submits is almost 100 per cent of grain production in the Port of Brisbane zone.[101] QBT also submits that in dry years with low grain production, grains for the domestic market have been sourced from central Queensland, northern NSW, South Australia, Western Australia and Victoria.[102] QBT estimates that the amount of 'out-of-zone' grain delivered into the Port of Brisbane zone is about 1 mt.[103]

The relatively high percentages of domestic demand as a proportion of production in Table 11, particularly for the 2013-14 season, suggest that in certain seasons, grain consumed domestically in Queensland is likely to be sourced from other growing regions. The JCS report states that the southern Queensland region draws grain from central Queensland and northern NSW.[104] The report also notes South Australia and Western Australia as potential sources of grain in low production years in Queensland.[105]

QBT submits that, given the large domestic demand and the relatively short distances, road transport from northern NSW and central Queensland to domestic users in the Port of Brisbane zone is competitive when compared to the export markets in the port zones closer to northern NSW and central Queensland.[106]

Taking into account the potential inflow of grain from other states into Queensland to service some of Queensland's domestic grain demand, the ACCC considers that the actual proportion of grain produced in Queensland that is consumed domestically is likely to be lower than the numbers presented in Table 11. AEGIC and the Queensland government's Department of Primary Industries and Fisheries estimate that about 50 per cent of Queensland grain production is consumed domestically.[107]

Key domestic uses for grain produced in Queensland include feed for livestock and flour milling. The JCS report states that, due to strong demand for beef feedlot rotations, Queensland has the second largest feed demand in Australia (behind Victoria) and has the largest share of cattle on feed.[108] Specifically, the southern Queensland region reportedly uses the largest amount of feed grain in Australia, about 2 mt annually with 1.4 million for beef cattle alone. The JCS report also notes that surplus volumes of wheat and barley are used in Brisbane and Toowoomba for flour milling and malt production.[109]

There are a number of businesses operating in the Port of Brisbane zone that receive and process grain for domestic use, including:

- AACo, a provider of beef and agricultural products, which runs a feedlot at Dalby.[110]
- Teys Australia, a 50/50 partnership between the Teys family and Cargill, which processes and exports beef and operates a feedlot at Condamine.[111]

[100] GrainCorp, Submission in support, pp. 5-6, 10.

[101] QBT, Submission in support, p. 8.

[102] ibid.

[103] ibid.

[104] JCS Solutions, p. 61.

[105] ibid.

[106] QBT, Submission in support, p. 10.

[107] Department of Primary Industries and Fisheries, Queensland Government, *Wheat quality and markets in Queensland*, 2009, viewed 7 August 2015, https://www.daf.qld.gov.au/plants/field-crops-and-pastures/broadacre-field-crops/wheat/harvesting-information/wheat-quality-and-markets; AEGIC, 2014, p. 9.

[108] JCS Solutions, pp. 31, 36.

[109] ibid, p. 60.

[110] http://www.aaco.com.au/operations/properties/

- Australian Country Choice, a provider of beef and agricultural products, which operates feedlots at Brisbane Valley and Roma as part of its vertically integrated supply chain.[112]
- Mort & Co, a cattle feeding, management and marketing business, which operates feedlots at Grassdale and Pinegrove in southern Queensland.[113]
- Allora Grain & Milling, which provides grains and products for general purpose stock and pet feeding and operates a mill at Allora.[114]

In Queensland, domestic supply chains are mainly handled by road transport from on-farm and upcountry storage sites to feedlots and flour mills on a daily basis to meet relatively steady demand, which is driven by domestic food demand.[115]

Based on the above analysis, domestic demand accounts for a significant proportion of grain produced in Queensland (at least 50 per cent of production). Specifically, domestic demand in southern Queensland appears to represent a market that attracts grain produced both locally and in other regions. As such, the ACCC considers that the domestic market for wheat in Queensland, including the Port of Brisbane grain catchment area, provides a significant alternative pathway to bulk wheat exports.

As domestic demand for grain in Queensland has remained stable over the four years to 2013-14 and actually increased in 2012, the ACCC expects domestic demand for wheat to remain a viable alternative to bulk wheat exports in the future. Therefore, the ACCC's draft view is that this competition from the domestic market is directly relevant to its Port of Brisbane exemption assessments.

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[111] http://www.teysaust.com.au/facilities/

[112] http://www.accbeef.net.au/about-us/our-history/

[113] http://www.mortco.com.au/about-us/our-company.html

[114] http://www.alloragrain.com.au/index.php/company-information

[115] QTLC, *Supply Chain Perspective – Grain*, 2013, p. 7.

4. ACCC exemption assessment of QBT's terminal at the Port of Brisbane

This chapter sets out the ACCC's assessment of whether it should determine QBT to be an exempt service provider at its Port of Brisbane facility. The assessment is set out against the matters in subclause 5(3) of the Code, which the ACCC must have regard to in assessing an exemption application.

4.1. Legitimate business interests

Subclause 5(3)(a) of the Code requires the ACCC to have regard to the PTSP's legitimate business interests in deciding whether to grant an exemption.

The ACCC considers that assessing whether an exemption will be in a PTSPs legitimate business interests should be considered against the reasons for a PTSP to be subject to all of the Code's obligations. For example, obligations in the Code intended to prevent a PTSP exercising market power may not be necessary where competition already provides sufficient constraint on the PTSP's ability to exercise market power.

The ACCC considers when having regard to the legitimate business interests of the PTSP (as required under subclause 5(3)(a) of the Code), the following may be relevant:

- the ongoing commercial viability of services provided from the relevant port terminal facility
- the likely impact that obligations to comply with Parts 3 to 6 of the Code may have on any investment decisions made by the PTSP
- the likely impact of the costs incurred by the service provider if it were subject to the requirements of Parts 3 to 6 of the Code, including any opportunity costs arising from having to comply with these Parts of the Code
- the likely impact of greater regulation (through the application of Parts 3 to 6 of the Code) on the service provider's ability to compete in the provision of port terminal services or other upstream and downstream markets.

As QBT's Brisbane port terminal is currently unregulated, QBT submits that compliance with Parts 3 to 6 of the Code will unnecessarily impede its flexibility and impose higher costs. QBT submits that:

> *QBT is currently exempt under the Code through to 1 October 2015 (and was not regulated under the previous grain access regime under the Wheat Export Marketing Act 2008 (Cth)).This application is merely seeking to maintain that status quo.*[116]

QBT further submits that:

> *A continuation of QBT's exemption will allow QBT to dynamically compete for bulk export tonnes on sound commercial terms, to ensure that investment capital is optimised in order to reduce supply chain costs and to ensure the QBT terminal remains competitive with the nearby GrainCorp terminal and internationally competitive more generally. As a relatively new entrant, QBT needs the flexibility to compete as vigorously as possible to attract volumes away from the GrainCorp terminal.*

[116] QBT, Submission in support, p. 7.

> *It would be contrary to QBT's legitimate business interests to be subjected to regulatory burden and the related costs when there would be no benefit to competition, grain exporters or growers, or the public from doing so.*[117]

4.1.1. Operational flexibility

The ACCC notes that parties are able to exercise a degree of flexibility in operating port terminal services even where they must comply with all requirements in the Code. Non-exempt service providers are able to set prices, terms and conditions through their standard terms, and negotiate access agreements with exporters that are different to their standard terms.

Non-exempt service providers are also able to (subject to ACCC approval processes) select their method of capacity allocation and length of time that it is allocated for. For instance, in November 2012 the ACCC decided that it was appropriate for GrainCorp to move from a single year allocation method to long-term arrangements for all its East Coast ports, which had the potential benefits of providing greater certainty for users in planning their long-term grain export programs and assist in supply-chain planning.[118]

The ACCC acknowledges, however, that while there is scope for flexibility in providing port terminal services where the entire Code applies, a service provider will have greater operational flexibility if only Parts 1 and 2 apply to them.

If QBT is not required to comply with Parts 3 to 6 of the Code, as is presently the case, it would be able to continue to engage freely in direct commercial negotiations and vary operational rules as it considers necessary for particular exporters. For example, exempt service providers have the flexibility to facilitate slot trades and reorder the priority with which vessels will be berthed and loaded without having to comply with notification timeframes and potential requirements of approved port loading protocols, making them more responsive to the needs of their customers.

4.1.2. Compliance costs

Regarding the impact that complying with Parts 3 to 6 of the Code would have on QBT's costs, the ACCC acknowledges that parties subject to a higher level of regulation will likely have a higher level of compliance costs. These costs are generally at their highest prior to and during the initial phase of regulation, where compliance documents and procedures need to be developed. The ACCC acknowledges that PTSPs would understandably like to limit their costs.

In QBT's circumstances, the ACCC notes that as QBT is not currently regulated under the Code it would be required to develop an entirely new compliance program.

The ACCC considers that compliance costs may be particularly significant for a smaller player only operating a single port terminal facility, given that they will be proportionately higher compared to overall costs and revenue. A larger player operating multiple port terminal facilities may be able to spread compliance costs over its facilities.

Conclusion

As a general proposition, the ACCC considers that it is in a PTSP's legitimate business interests to reduce (or not impose additional) regulatory compliance costs and maintain operational flexibility. As such it is the ACCC's draft view that because an exemption for QBT

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[117] QBT, Submission in support, p. 4.

[118] ACCC media release, *ACCC allows GrainCorp to introduce long-term port access agreements*, 30 November 2012.

would allow it to continue operating with flexibility and not impose additional compliance costs it will likely be consistent with their legitimate business interests.

As noted above, the ACCC considers that the legitimate business interests of QBT should be considered against the reasons for having regulation in place and the level of competitive constraint faced by QBT. These factors are considered below in the ACCC's assessments against other matters in subclause 5(3) of the Code.

4.2. The public interest and competition in markets

The ACCC considers that subclauses 5(3)(b) and (g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as for upstream, downstream and related markets.

Relevant upstream markets include the grain acquisition market, where grain is acquired prior to it being exported or on-sold, as well as other markets discussed in chapter 3 such as grain storage and handling services and the transport of grain to port. Related markets are also discussed in chapter 3 and mainly include container grain exports and domestic demand for grain.

The following issues are relevant when having regard to subclauses 5(3)(b) and (g) of the Code:

- Whether there is sufficient competition in the market for bulk wheat export port terminal services, such that the full application of the Code may not be required to promote competition for those services or in upstream and downstream markets (such as the grain acquisition market).
- Whether reducing regulation will allow the PTSP to better compete in upstream or downstream markets such that it would also promote competition. This consideration overlaps with the ACCC's consideration of legitimate business interest (subclause 5(3)(a) of the Code, discussed above).
- Whether the competitive situation in upstream and downstream markets would allow a vertically integrated PTSP to exercise market power in the provision of services at port in the absence of Parts 3 to 6 of the Code applying, and whether that competitive situation would change as a result of an exemption.

These considerations (in particular considerations around the effect in the grain acquisition market) overlap with the ACCC's consideration below of clauses 5(3)(c) and 5(3)(d) of the Code concerning access seekers.

4.2.1. Competition in bulk wheat export operations

The ACCC notes from its analysis of port terminal services in chapter 2, and its consideration of upcountry and related markets in chapter 3, that QBT faces significant competition from GrainCorp's Brisbane port terminal. Specifically:

- QBT's and GrainCorp's Brisbane terminals are located at the same port. QBT's terminal provides similar services to GrainCorp's Brisbane facility, but in comparison, the QBT terminal has certain limitations. GrainCorp's facility can accommodate slightly larger vessels and has both rail and road access, as opposed to QBT's road only access.
- The ACCC considers that the grain catchment areas for the two Brisbane terminals are similar, however the QBT terminal's catchment area is likely to be slightly smaller as it is more limited to locations where road transport is competitive.

- Based on historical exports at both Brisbane terminals it is likely that there will be significant spare capacity available between both terminals, including a degree of spare capacity at peak times of the year. This significant level of spare capacity suggests that QBT will continue to face commercial incentives to compete with GrainCorp's facility, as it does in the current environment, to maximise throughput volumes at its facility.

Accordingly, the ACCC considers competition between and on the Brisbane port terminals will continue to ensure that third party exporters will to be able to obtain capacity at both peak and non-peak times of the year at QBT's currently open access facility (and/or GrainCorp's Brisbane facility), if QBT is exempt.

4.2.2. Competition in upstream and downstream markets

The ACCC has also considered the nature of competition in upstream and downstream markets. The ACCC has considered whether the competitive situation in the upcountry storage and handling, and transport markets, might provide QBT with market power that could be leveraged into its port services, if an exemption is granted, to limit the ability of exporters to participate in the upstream grain acquisition market. For example, a PTSP with upstream market power may provide more favourable terms and conditions to users who utilise both its port and upcountry facilities. Equally, the ACCC must consider the effect on those markets of granting the exemption at port.

The ACCC also considers that related markets, such as container exports and domestic demand, can also affect the promotion of competition in bulk wheat port terminal services as well as upstream and downstream markets.

Based on its analysis of upcountry and related markets in chapter 3, the ACCC considers that:

- QBT does not own upcountry assets such as storage and handling facilities in its catchment area, and as such has no ability to leverage an upstream position into its port services. As noted in chapter 3, there is a level of competition in upcountry services.

- Road transport is used by a large number of marketers to move grain to port in Brisbane and there are a range of options available to marketers to transport grain to QBT's Brisbane facility. GrainCorp's facility can receive both road and rail deliveries of grain, providing a direct and strong competitive constraint on QBT's terminal.

- Containerised grain exports from the Port of Brisbane are significant, with wheat exports via containers representing around 35 per cent of total wheat exports from Queensland.[119] This is higher than the proportion of container wheat exports in Victoria (approximately 30 per cent). The ACCC considers that containerised exports represent a viable alternative export path for a large amount of grain produced in the QBT terminal's catchment area. Containerised exports will therefore continue to provide a further competitive constraint on QBT's bulk export operations in Brisbane.

- There is strong and consistent demand for grain in southern Queensland from domestic users, particularly for stock feed businesses.[120] Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay growers an amount that is at least equivalent to the export parity price. The level of constraint that domestic users place on bulk and container exports is generally

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[119] Data from Australian Crop Forecasters.

[120] See section 3.4 of this report.

restricted by the size of domestic demand, which is relatively consistent over time and generally does not encompass the entire crop, although there have been seasons where domestic demand has made up an very large proportion of grain production in Queensland, leaving little available for export.

The ACCC considers that QBT faces strong competition from GrainCorp's Brisbane port terminal, as well as from the presence of significant container wheat exports at the Port of Brisbane, and faces the relative disadvantage of not owning upcountry assets. As such the ACCC considers that if an exemption were granted to QBT, and QBT were permitted to continue to operate without the full regulations of the Code as it currently does, it would not be to the detriment of current levels of competition in the grain acquisition market, or to upcountry and related markets.

Being subject to the lower level of regulation under the Code would also enable QBT to compete more effectively with GrainCorp in the provision of port terminal services.

Conclusion

In light of the above factors, the ACCC's draft view is that there will be significant constraints on QBT such that competition at port and upcountry will not be reduced if the ACCC grants QBT an exemption. The ACCC considers that QBT faces a strong competitor in GrainCorp's Brisbane port terminal given the relative advantages GrainCorp's terminal has over QBT as well as the existence of GrainCorp's port terminal and upcountry supply chain infrastructure.

Additionally, QBT will continue to face competition from the significant container exports and domestic demand in southern Queensland.

4.3. Interests of exporters and access to port terminal services

Subclause 5(3)(c) and (d) of the Code requires the ACCC to have regard to the interests of exporters who may require access to port terminal services and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

The ACCC generally considers that granting an exemption will not be detrimental to the interests of exporters requiring access to port terminal services if they can still compete in the grain export market on their relative merits. As noted above, this consideration overlaps with considerations discussed above concerning the public interest and promotion of competition in upstream and downstream markets.

Competition on the relative merits of exporters would be hindered if terms and conditions of access favour one or more exporters (and in particular the port operator's own trading arm) on a basis other than their merits, thereby distorting the competitive process.

The ACCC will also consider the bargaining power of exporters and whether exporters have a viable alternative to export or market grain.

Public submissions received from the exporter association AGEA as well as exporters Glencore and CBH supported granting an exemption to QBT's Brisbane port terminal.

As submitted by QBT, it has a degree of vertical integration in wheat exporting:

> *QBT is a wholly owned subsidiary of Wilmar Gavilon Pty Ltd (WG), which is ultimately 50% owned by each of Wilmar International Limited and Marubeni Corporation. WG is an exporter of grain in Brisbane, such that there is a degree of vertical integration.*[121]

[121] QBT, Submission in support, p. 2.

QBT therefore may have some incentive to favour the Wilmar Gavilon exporting arm over other exporters at its Brisbane facility.

However, based on the analysis in chapter 2, the ACCC considers that there is also likely to be a significant amount of available capacity across both QBT and GrainCorp's Brisbane port terminals, with QBT facing strong competition from GrainCorp's terminal as well as from containerised exports and domestic demand. Therefore, the ACCC considers that QBT will continue to have strong incentives to allow other parties to access capacity at its terminal in order to maximise throughput and compete with the GrainCorp facility, as is currently the case.

In particular, the ACCC's analysis in chapter 2 of port terminal services and the exporters using these services, and analysis of container grain exports in chapter 3 indicates that:

- Wilmar Gavilon (including its owner companies) has been one of the largest exporters from QBT's facility. However, QBT also allows a number of other third party exporters to use the facility, including in peak times. In an environment where QBT competes with GrainCorp's Brisbane port terminal, there has also been a significant amount of spare capacity at both peak and non-peak times allowing further user to access the facility if they wished to do so.

- QBT has been an unregulated facility since it began operating in June 2011. During this time QBT has demonstrated that it allows third party exporters access to the facility and has spare capacity to accommodate further exports and/or exporters.

- Historical export data suggests that a significant level of spare capacity is expected to be available at GrainCorp's facility at the same port, placing a strong and direct competitive discipline on QBT's Brisbane terminal.

- Containerised exports represent a further alternative pathway to export grain from the QBT terminal's catchment area, and have been used to export around 35 per cent of total wheat exports in the region.

In light of the above factors, the ACCC's draft view is that granting the exemption would not be detrimental to the interests of exporters requiring access to port terminal services at QBT's Brisbane terminal. The ACCC considers that QBT will continue to have incentives to provide access to its facility on reasonable terms in order to maximise throughput, and that additional regulation on QBT under the full application of the Code is not necessary to ensure fair and transparent access to QBT's facility.

4.4. Economically efficient operation and efficient investment

Subclauses 5(3)(e) and 5(3)(f) of the Code require the ACCC to have regard to the promotion of the efficient operation and use of a facility, and the efficient investment in port terminal facilities when deciding whether to grant an exemption.

The ACCC considers that when having regard to the matters listed at subclauses 5(3)(e) and (f) of the Code, the following will be relevant:

- whether competition among PTSPs will drive efficient operation and use of the port terminal facility in the absence of full regulation under the Code

- whether a requirement to comply with Parts 3 to 6 of the Code would result in lesser uptake of the port terminal service than would otherwise be efficient

- whether efficient investment in port terminal facilities will be influenced by a reduction in regulation.

4.4.1. Promotion of the efficient operation and use of QBT's facility

Regarding the impact of an exemption for QBT on the efficient operation and use of its facility, QBT submits:

> *given the strong competition QBT faces from various parts of the supply chain the ability to offer flexible and innovative port terminal services to all exporters will drive efficient (and increased) utilisation of QBT and associated supply chain assets in the delivery of port terminal services.*[122]

Glencore also submits that an exemption will promote the efficient use of facilities in Brisbane:

> *In circumstances where they face competitive constraints, exemption from Parts 3 - 6 of the Code will assist infrastructure owners to engage commercially and flexibly with third party exporters. This, in turn, facilitates the efficient allocation and use of port terminal infrastructure with reduced potential for regulatory distortions.*[123]

As outlined under the above discussion of subclauses 5(3)(b) and (g) of the Code, the ACCC's draft view is that the significant competition that QBT faces from GrainCorp's competing Brisbane terminal and from containerised exports and domestic demand, will continue to drive the efficient operation and use of QBT's facility in the absence of obligations to comply with Parts 3 to 6 of the Code.

As noted in the discussion of subclause 5(3)(a) of the Code, exempting QBT from having to comply with Parts 3 to 6 of the Code will continue to provide it with flexibility in the way it allocates capacity. Also, as noted in the discussion of subclauses 5(3)(c) and (d) of the Code, the ACCC's draft view is that QBT will continue to have incentives to provide access to its facility on reasonable terms in order to maximise throughput. The ACCC therefore considers that the ability for QBT to operate flexibly, and its incentives to increase use of its facility, will promote the efficient operation of the facility.

4.4.2. Promotion of efficient investment in port terminal facilities

The ACCC considers that an exemption for QBT's Brisbane facility would not be detrimental to the promotion of efficient investment in port terminal facilities.

QBT submits:

> *Investment in port terminal facilities will ultimately be driven by financial returns. Given the high level of competition in Brisbane, QBT strongly favours continuation of the exemption to allow flexible and innovative supply chain offerings and responsive pricing that will help to drive higher utilisation and/or lower costs supporting future port and supply chain investment.*[124]

As QBT's Brisbane terminal is currently unregulated, a determination to exempt QBT's facility may not substantially change the way QBT operates and the level of investment it makes. However, the ACCC considers that not exempting QBT, and allowing an increased level of regulation to be applied on QBT at its Brisbane facility from the introduction of Parts 3 to 6 of the Code, may be detrimental to efficient investment in QBT's facility. This is particularly relevant in a competitive environment as discussed in the above discussion of subclauses 5(3)(b) and (g) of the Code.

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[122] QBT, Submission in support, p. 6.

[123] Glencore, Submission in response to Issues Paper, p. 2.

[124] QBT, Submission in support, p. 6.

Further, containerised exports shipped out of Queensland are no longer regulated, and make up around 35 per cent of total wheat exports. This unregulated export alternative will continue to place a constraint on QBT's bulk export programme which could impact the efficient investment in the facility if QBT is not granted an exemption.

Conclusion

The ACCC's draft view is that an exemption for QBT will:

- allow it to continue to provide flexible services and meet the demands of its customers, promoting the efficient operation and use of QBT's facility
- not introduce unnecessary regulation which may impede the level of efficient investment in a competitive environment
- allow QBT to continue to operate on a more level playing field with the container and domestic markets, which are not regulated, further promoting efficient investment in port terminal facilities.

Accordingly, the ACCC considers that exemption will promote the efficient operation and use of QBT's terminal, and not be detrimental to efficient future investment in port terminal facilities.

4.5. Exporter or associated entity of an exporter

Subclause 5(3)(h) of the Code requires the ACCC to have regard to whether the PTSP is an exporter or an associated entity of an exporter. The extent to which a vertically integrated operator favours, or is likely to favour, its own trading division will influence the ACCC's decision on whether it is appropriate that the provider should be exempt from having to comply with Parts 3 to 6 of the Code in providing access to its services.

QBT submits that there is a degree of vertical integration between QBT and Wilmar Gavilon's businesses.[125]

The ACCC acknowledges that QBT's first motivation would likely be to satisfy the export requirements of its associated exporter, Wilmar Gavilon (including its owner companies), and would therefore likely provide preferential access to Wilmar Gavilon.

The ACCC however notes that Wilmar Gavilon (including its owner companies) must compete with numerous other exporters in the grain acquisition and export market and that there are two competing bulk wheat port terminals at the Port of Brisbane, both of which have a history of having spare capacity across the year.

QBT has demonstrated that, since beginning operations in June 2011, it has allowed third party exporters access to its facility in both peak and non-peak times of the year. This access has been provided on commercial terms.

The ACCC considers that QBT will continue to have strong commercial incentives to attract third-party exporters in order to drive utilisation of its facilities and increase profits.

The ACCC's draft view is that although QBT is to some degree integrated with Wilmar Gavilon as an exporter, who may secure preferential access to QBT's facility, Wilmar Gavilon competes with many other exporters in the bulk export and grain acquisition markets. QBT has strong commercial incentives to continue to attract and offer reasonable terms and conditions to these other third-party customers due to the level of spare capacity

[125] QBT, Submission in support, p. 2.

at its terminal and the direct competition from GrainCorp's Brisbane facility as well as from alternative grain markets.

Accordingly the ACCC does not consider that QBT's level of vertical integration requires it to be subject to Parts 3 to 6 of the Code.

4.6. PTSP already exempt in the grain catchment area

Subclause 5(3)(i) of the Code requires the ACCC to have regard to whether there is already an exempt service provider within the grain catchment area for the port concerned.

The ACCC generally considers that, where there is already an exempt service provider within a grain catchment area, or where the Code does not otherwise apply to a service provider in a catchment area, this may support an exemption. The ACCC will, however, consider this matter on a case by case basis, taking into account the full extent of competitive constraint affecting each facility.

The ACCC discusses the relevant grain catchment area for QBT's Brisbane terminal in chapter 3 and considers that the area spans across most of the grain growing regions of southern Queensland and certain parts of northern NSW. The ACCC considers that the catchment area for GrainCorp's Brisbane terminal is similar to QBT's but is likely to span into certain western parts of south Queensland and encompasses areas where established rail lines provide cost-effective rail transport options to allow grain to be delivered by rail to GrainCorp's facility.

The ACCC considers there to be limited overlap between these catchment areas and the catchment areas for the Newcastle port terminals. Therefore, while there are currently exempt service providers at Newcastle, the ACCC considers that these ports provide a very limited degree of competition on the Brisbane port terminals.

Currently there are no bulk wheat port terminal service providers servicing the Brisbane catchment areas that are exempt under the Code.

The ACCC is, however, concurrently assessing an exemption application for GrainCorp's Brisbane facility (see chapter 5). Based on its draft assessment, the ACCC's draft view is that it would be appropriate to exempt GrainCorp's Brisbane terminal.

The ACCC is seeking industry views on its draft views on GrainCorp's Brisbane terminal. Should that facility be granted an exemption, the ACCC considers that it would support granting an exemption for QBT's Brisbane terminal given the degree of overlap and substitution between the two facilities, as outlined in the above assessment.

Even in the absence of such an exemption for GrainCorp, the ACCC considers that there are a number of reasons that support an exemption of QBT's Brisbane terminal as discussed in this chapter.

4.7. Other matters

QBT submits that:

> *Unlike many of the major grain terminal providers, any costs of compliance imposed on QBT would be borne by a single-terminal operation and would have a disproportionate impact on its effective cost base per terminal.*[126]

[126] QBT, Submission in support, p. 7.

The ACCC considers that being a single terminal operator may not necessarily support an exemption decision, as other factors such as the level of vertical integration, competition and the amount of export capacity at the facility are all significant factors, and are discussed above.

The ACCC does not consider that there are any other matters relevant to its assessment of QBT's Brisbane port terminal exemption application.

5. ACCC exemption assessment of GrainCorp's terminal at the Port of Brisbane

This chapter sets out the ACCC's draft assessment of whether it should, pursuant to clause 5(2) of the Code, determine that GrainCorp is an exempt service provider of port terminal services provided by means of its Brisbane facility. The ACCC's assessment is set out against the matters in subclause 5(3) of the Code, which the ACCC must have regard to in assessing an exemption application.

5.1. Legitimate business interests

Subclause 5(3)(a) of the Code requires the ACCC to have regard to the PTSP's legitimate business interests in deciding whether to grant an exemption.

GrainCorp submits that granting an exemption to GrainCorp's Brisbane Port Terminal would be in its legitimate business interests as it would:

- allow GrainCorp to compete commercially for the export of bulk grain;
- support operational flexibility to improve service and reduce supply chain costs;
- provide equity with competing export container packers that are not regulated;
- provide equity with a competing bulk port terminal, QBT, that is not regulated; and
- reduce the level of regulation and cost of compliance.[127]

As noted in the ACCC's discussion of whether an exemption would be in QBT's legitimate business interests (see pages 44 to 46), the ACCC considers that while there is scope for flexibility in providing port terminal services where the entire Code applies, exemption will generally increase a service provider's operational flexibility, and reduce its compliance costs.

The ACCC also noted in that discussion that assessing whether an exemption will be in a PTSPs legitimate business interests should be considered against the reasons for a PTSP to be subject to all of the Code's obligations. For example, it would be in a PTSP's legitimate business interests to reduce regulatory requirements where competition already provides sufficient constraint on a PTSP's ability to exercise market power.

The ACCC notes that GrainCorp is currently subject to all of the Code's obligations at Brisbane and certain other ports and therefore has an established compliance regime. GrainCorp will be required to continue its existing compliance processes unless and until the ACCC makes a final determination to exempt GrainCorp. In the short term, GrainCorp's incremental costs of continuing to comply with the obligations in Parts 3 to 6 of the Code are unlikely to be high, as GrainCorp already has processes in place to facilitate compliance and has operated under similar regulations for some time. However, an exemption could be expected to reduce GrainCorp's ongoing regulatory compliance costs.

In 2013 GrainCorp signed long term agreements for 0.4 mtpa capacity at its Brisbane port terminal for three years. These agreements run until 30 September 2016. If GrainCorp were granted an exemption prior to renegotiating these agreements, it would have a greater degree of flexibility in these negotiations. Allowing this flexibility would be consistent with its legitimate business interests.

[127] GrainCorp, Submission in support, p. 3.

Conclusion

It is the ACCC's draft view that an exemption for GrainCorp would increase its operational flexibility and decrease its Code compliance costs, and therefore be consistent with its legitimate business interests.

As noted above, the ACCC considers that the legitimate business interests of GrainCorp should be considered alongside reasons for having regulation in place and the level of competitive constraint faced by GrainCorp at its Brisbane facility. These factors are considered below in the ACCC's assessments against other matters in subclause 5(3) of the Code.

5.2. The public interest and competition in markets

The ACCC considers that subclauses 5(3)(b) and (g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as upstream, downstream and related markets.

Relevant upstream markets include the grain acquisition market, where grain is acquired prior to it being exported or on-sold, as well as other markets discussed in chapter 3 such as grain storage and handling services and the transport of grain to port. Other related markets are also discussed in chapter 3 including container grain exports and domestic demand for grain.

The ACCC also notes that its consideration of these markets (in particular considerations around the effect in the grain acquisition market) overlaps with the ACCC's consideration below of clauses 5(3)(c) and 5(3)(d) of the Code concerning access seekers.

5.2.1. Competition in bulk wheat export operations

The ACCC considers that GrainCorp's Brisbane terminal currently faces a level of competition from QBT's terminal at the same port. In particular:

- GrainCorp's and QBT's Brisbane terminals provides similar services. GrainCorp's Brisbane facility however is larger than QBT's, with the substantive differences being the GrainCorp facility being able to accommodate slightly larger vessels and being able to receive grain by both rail and road, compared to QBT's road only access.

- The ACCC considers that the grain catchment areas for the two Brisbane terminals overlap to a large extent. However the GrainCorp terminal's catchment area is likely to be slightly larger as it extends into certain western parts of southern Queensland where rail lines run to the Port of Brisbane, and road transport is less competitive.

- Based on historical exports at both Brisbane terminals it is likely that there will be significant spare capacity available between the two competing port terminals in Brisbane, including a degree of spare capacity at peak times of the year.

- GrainCorp's Brisbane terminal in particular is likely to have a large amount of spare capacity. Over the last five years data shows that GrainCorp's facility has an average utilisation rate of around 31 per cent, and only 38 per cent during the peak months between January and July. Even in the highest throughput year during the same period, GrainCorp's facility had an annual utilisation rate of 57 per cent and a peak utilisation rate of 61 per cent.

The ACCC acknowledges the differences in capability of the two Brisbane port terminals, in particular the lower level of capability of QBT's terminal relative to GrainCorp's terminal. The ACCC however notes that there are a number of features of the southern Queensland region that the ACCC considers mitigate the impact of these capability differences for many exporters. The features include:

- The significant use of road transport to move grain to port, which is the only way QBT's terminal can receive grain. Estimates indicate that between 54 to 65 per cent of grain has been transported to the Port of Brisbane by road in recent years.
- The size of the vessels being loaded at GrainCorp's Brisbane port terminal are mostly vessels that could be loaded at QBT's facility. GrainCorp submits that 95 per cent of vessels loaded at its Brisbane facility are less than 35 000 tonnes.[128] QBT submits that with the recent upgrade of its shiploader its facility can load vessels up to 50 000 deadweight tonnes subject to draft restrictions.[129]

Taking the above points into account, the ACCC considers that the two Brisbane port terminals, although having different capabilities, are likely to be substitutes for a number of marketers.

As such, the ACCC considers that the significant level of spare capacity, particularly at GrainCorp's Brisbane port terminal, suggests that GrainCorp would face commercial incentives to increase and maximise throughput of its own terminal wherever it can and, for a number of marketers, would continue to compete with QBT's nearby facility.

5.2.2. Competition in upstream and downstream markets

The ACCC has also considered the nature of competition in upstream and downstream markets. The ACCC has considered whether the competitive situation in the upcountry storage and handling, and transport markets, might provide GrainCorp with market power that could be leveraged into its port services, if an exemption was granted, to limit the ability of exporters to participate in the upstream grain acquisition market. For example, a PTSP with upstream market power may provide more favourable terms and conditions to users who utilise both its port and upcountry facilities. Equally, the ACCC must consider the effect on those markets of granting the exemption at port.

The ACCC also considers that related markets, such as container exports and domestic demand, can also affect the promotion of competition in bulk wheat port terminal services as well as upstream and downstream markets.

Based on its analysis of upcountry and related markets in chapter 3, the ACCC considers that GrainCorp has a significant presence in the provision of storage and handling services across southern Queensland and northern NSW. Based on sites identified by GTA, GrainCorp operates around 76 per cent of sites in its terminal's catchment area.

There are however, a number of competitive features of the southern Queensland region that place a level of competition on GrainCorp's upcountry position. In particular:

- There are some alternative upcountry storage options in these regions, particularly from facilities owned by GrainFlow, a subsidiary of Cargill, which provides both road and rail access. Additionally, there are several other single site operators with integrated storage and handling services in the catchment area that offer container packing or road transport services, or both. Some growers however, in certain locations may continue to have limited options for delivering their grain outside of GrainCorp's network.
- As noted above, with a large proportion of road transport being used to transport grain to the Port of Brisbane for export, the alternative storage options, which can

[128] GrainCorp, Submission in support, p. 12.

[129] QBT, Submission in support, p. 12.

only accommodate road transport, are likely to be viable alternatives options for a number of marketers.

- There is a level of surplus upcountry storage capacity that should encourage GrainCorp, as well as other storage providers to attract and service customers wanting to use its upcountry facilities given the presence of both alternative storage options as well as an alternative port terminal in QBT's facility also at the Port of Brisbane. Additionally, both of these port terminals have spare export capacity.
- Containerised grain exports are significant, with wheat exports via containers representing around 35 per cent of total wheat exports from Queensland, with the majority being exported through the Port of Brisbane.[130] Additionally, the number and variety of upcountry container packing facilities and the ability to move containers to port by road further make containerised exports an alternative export option to bulk for a large amount of grain produced in the catchment area, providing a competitive constraint on GrainCorp's bulk export operations in Brisbane.
- There is strong and consistent demand for grain in southern Queensland for domestic consumption, particularly from stock feed businesses.[131] Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay growers an amount that is at least equivalent to the export parity price. The level of constraint that domestic users place on bulk and container exports is generally restricted by the size of domestic demand, which is relatively consistent over time and generally does not encompass the entire crop, although there has been seasons where domestic demand has made up a very large proportion grain production in Queensland, leaving little available for export.

Conclusion

In light of the factors outlined above, the ACCC's view is that there is a sufficient amount of competition on GrainCorp's Brisbane port terminal, and that there is a level of competition in upcountry storage and handling.

The ACCC considers that many exporters have an alternative to GrainCorp's Brisbane port terminal (i.e. QBT's port terminal) as well as some viable alternative upcountry options to GrainCorp's significant network. Additionally, the presence of the significant and consistent containerised wheat exports from the Port of Brisbane places added competitive pressures on GrainCorp's port terminal.

Together, these competitive pressures should allow exporters to continue to participate in the grain acquisition market if an exemption is granted. Furthermore, the ACCC considers that the competitive situation in upcountry storage and handling should not be diminished by granting the exemption.

5.3. Interests of exporters and access to port terminal services

Subclause 5(3)(c) and (d) of the Code requires the ACCC to have regard to the interests of exporters who may require access to port terminal services and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

If an exemption were granted to GrainCorp at its Brisbane terminal, the interests of exporters requiring access to port terminal services are unlikely to be adversely affected if they can still compete in the grain export market on their relative merits. The ACCC considers that competition provides a strong incentive for a firm to act fairly and reasonably with its

[130] Data from Australian Crop Forecasters.

[131] See section 3.4 of this report.

customers and to provide fair and transparent access to services. As noted above, this consideration overlaps with considerations above concerning the public interest and promotion of competition in upstream and downstream markets.

As a vertically integrated terminal operator and exporter, GrainCorp has an incentive to favour its own trading arm over other exporters at its Brisbane facility. This is discussed further below in the ACCC's consideration of subclause 5(3)(h) of the Code. It is important for the ACCC to consider the likelihood of this occurring, and exporters being unable to negotiate on fair terms if Parts 3 to 6 of the Code did not apply at GrainCorp's Brisbane facility.

Public submissions received from the exporter association AGEA as well as exporters Glencore and CBH supported granting an exemption to GrainCorp's Brisbane port terminal.

The ACCC's views on the incentives for GrainCorp to not to favour its own trading arm over third party exporters at its Brisbane facility draw on the analysis in chapters 2 and 3. Relevant findings from this chapter include:

- Over the last five years GrainCorp's trading arm has been the largest exporter through its Brisbane terminal, exporting around 30 per cent of total volumes on average. A number of other exporters have been able to access capacity under the regulated regime, such as Cargill (exporting around 20 per cent), Glencore (17 per cent), Agrex (11 per cent) and Pentag (9 per cent). Five other exporters have shipped smaller quantities of grain from GrainCorp's Brisbane terminal during this period. All of these export proportions, including GrainCorp's are similar during the peak period, indicating that to date GrainCorp has not prevented its competitors gaining access to its Brisbane terminal during peak times. However, this access has been obtained while the facility has been subject to access regulation.

- Data indicates that GrainCorp's Brisbane facility has been underutilised over a number of years, including in low, average and high production years. GrainCorp's Brisbane facility also appears to have spare capacity during the peak times in high productions years. When compared to the utilisation of certain other port terminals on the East Coast, GrainCorp's Brisbane facility appears to be utilised the lowest (see Table 7 on page 18).

- As third party exporters have represented around 70 per cent of total exports from GrainCorp's Brisbane terminal, and as there appears to be significant spare capacity at all times of the year, GrainCorp appears to rely on third party customers to provide throughput. As such, GrainCorp would be unlikely to completely foreclose third party access as this would result in it having significantly less throughput at its already underutilised terminal or having to make up a disproportionately large degree of throughput through its own grain network. This is particularly relevant given the presence of QBT's competing bulk export terminal located at the same port, which despite its relatively lower capabilities, appears to be a viable substitute port terminal for a number of marketers.

- If GrainCorp did seek to increase its exports at the expense of servicing some third party exporters, those third party exporters could seek access to shipping slots at QBT's competing Brisbane terminal. Although QBT has a lower level of capability, it has significant spare capacity across most of the year and would be incentivised to increase the use and customer base of its facility. Also, a number of exporters currently utilising GrainCorp's terminal have also used QBT's facility, suggesting that either facility can be used to execute at least some bulk exports.

- Containerised exports through the Port of Brisbane represent an alternative pathway to export some grain from the Brisbane catchment area, and have been used to export around 35 per cent of total wheat exports in recent years. Container exports therefore provide a further level of competitive constraint on GrainCorp's bulk export operations at Brisbane.

Considering all of the above factors, the ACCC's draft view is that, overall, granting the exemption would not likely be detrimental to the interests of exporters requiring access to GrainCorp's Brisbane port terminal.

The ACCC considers that GrainCorp should have incentives to provide access to its facility on reasonable terms in order to increase and maximise throughput, and the full application of the Code is unlikely to be necessary to ensure fair and transparent access to GrainCorp's facility.

5.4. Economically efficient operation and efficient investment

Subclauses 5(3)(e) and 5(3)(f) of the Code require the ACCC to have regard to the promotion of the efficient operation and use of a facility, and the efficient investment in port terminal facilities when deciding whether to grant an exemption.

5.4.1. Promotion of the efficient operation and use of GrainCorp's facility

GrainCorp submits that exemption for its Brisbane port terminal would:

> *Support lower supply chain costs by allowing GrainCorp to operate its Port Terminals flexibly.*[132]

As outlined under the above discussion of subclauses 5(3)(b) and (g) of the Code, the ACCC's draft view is that there is a level of competition on GrainCorp's Brisbane facility from QBT's nearby bulk export terminal, as well as from the significant containerised exports from the Port of Brisbane and domestic demand. The ACCC also considers that this competition should drive the efficient operation and use of GrainCorp's currently underutilised Brisbane facility in the absence of obligations to comply with Parts 3 to 6 of the Code.

As noted in the discussion of subclause 5(3)(a) of the Code, exempting GrainCorp from having to comply with Parts 3 to 6 of the Code will provide it with flexibility in the way it allocates capacity. For example, GrainCorp would be able to facilitate slot trades as well as additions and changes to its shipping stem at short notice. This flexibility makes it more likely that GrainCorp will be able to meet the different needs of its customers and therefore is likely to drive higher utilisation.

The ACCC also noted in the discussion of subclauses 5(3)(c) and (d) of the Code that GrainCorp will have incentives to provide access to its facility on reasonable terms in order to increase throughput at its underutilised facility, and that the full level of regulation under the Code is unlikely to be necessary to ensure fair and transparent access to GrainCorp's Brisbane facility.

5.4.2. Promotion of efficient investment in port terminal facilities

As noted in the ACCC's draft views on an exemption's impact on GrainCorp's legitimate business interests, the ACCC considers that an exemption would improve GrainCorp's flexibility and reduce its compliance costs.

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[132] GrainCorp, Submission in support, p. 3.

The ACCC considers that exemption may promote GrainCorp's investment in its port terminal facilities, with the strength of the incentive tied to the extent of competitive pressures from either a competing bulk service provider or alternative markets. On the competing bulk service providers and alternative markets, GrainCorp submits that it faces:

- *Strong demand from domestic end-users for 50% or production, limiting grain for export.*

- *Strong demand from container packers for 35% of exports, limiting grain for bulk export*

- *Increasing competition from QBT for 25% of bulk exports.*[133]

The ACCC considers that containerised exports in particular, as well as domestic demand, represent a competitive constraint on GrainCorp's bulk export business. The ACCC notes that these alternative avenues to market grain are significant in southern Queensland and are not subject to regulation. An exemption would therefore place GrainCorp's bulk export services on a more level playing field with those other avenues to market, and may promote further investment in bulk wheat facilities.

Conclusion

The ACCC's draft view is that an exemption for GrainCorp would:

- allow it to provide flexible services and meet the demands of its customers, promoting the efficient operation and use of GrainCorp's facility

- allow GrainCorp to continue to operate on a more level playing field with the container and domestic markets, which are not regulated, further promoting efficient investment in port terminal facilities.

Accordingly, the ACCC considers that exemption would promote the efficient operation and use of GrainCorp's terminal.

5.5. Exporter or associated entity of an exporter

Subclause 5(3)(h) of the Code requires the ACCC to have regard to whether the PTSP is an exporter or an associated entity of an exporter. The extent to which a vertically integrated operator favours, or is likely to favour, its own trading division will influence the ACCC's decision on whether it is appropriate that the provider should be exempt from having to comply with Parts 3 to 6 of the Code in providing access to its services.

The ACCC notes that the significance of GrainCorp's status as a vertically integrated service provider depends on the level of capacity constraint at its facility and the level of competition it faces for business.

On its vertical integration status and its implications for competition, GrainCorp submits:

> *GrainCorp is vertically integrated as a port service provider and an exporter of grain in Queensland. However GrainCorp has no market power, and is commercially incentivised to maximise grain throughput at its Port Terminals, given:*
>
> - *Strong competition from competing domestic and container packing markets*

[133] GrainCorp, Submission in support, p. 3.

- *Competition in the provision of port elevation services for bulk grain export from the unregulated Wilmar Gavilon's Queensland Bulk Terminals at Brisbane*
- *Excess country and packing capacity combined with excess port elevation capacity.*[134]

The ACCC notes that GrainCorp's vertical integration creates incentives for it to favour its own trading division. The ACCC however notes that GrainCorp must compete with numerous other exporters in the grain acquisition and export market and that there are two competing bulk wheat port terminals at the Port of Brisbane, both of which have a history of having spare export capacity across the year. As noted previously, the ACCC considers that while the two bulk export terminals differ in their capabilities, a number of features of the southern Queensland region such as the significant use of road transport to move grain to port, and the relatively smaller sized vessels being loaded at GrainCorp's Brisbane facility, suggest that for a number of marketers the two port terminals can be substitutes.

The ACCC took the level of vertical integration into account when considering subclauses 5(3)(c) and (d) above, where the ACCC noted that GrainCorp should have incentives to provide third parties with access to its facility on reasonable terms in order to increase and maximise throughput without the application of Parts 3 to 6 of the Code.

Also, as noted under consideration of subclauses 5(3)(b) and (g), the ACCC's analysis indicates that there is a sufficient amount of competition on GrainCorp's Brisbane facility and that competition in upcountry storage and transport services should not be diminished if an exemption were granted to GrainCorp's Brisbane facility. Additionally, the ACCC notes that the significant containerised wheat exports from the Port of Brisbane places further competitive pressures on GrainCorp's port terminal.

Overall, the ACCC considers that GrainCorp's ability to favour its own trading arm at its Brisbane facility are limited by a number of competitive pressures, which together amount to a sufficient level of competition on GrainCorp's Brisbane facility.

Accordingly the ACCC's draft view is that it does not consider that GrainCorp's level of vertical integration at its Brisbane port terminal requires it to be subject to Parts 3 to 6 of the Code.

5.6. PTSP already exempt in the grain catchment area

Subclause 5(3)(i) of the Code requires the ACCC to have regard to whether there is already an exempt service provider within the grain catchment area for the port concerned.

The ACCC generally considers that, where there is already an exempt service provider within a grain catchment area, or where the Code does not otherwise apply to a service provider in a catchment area, this may support an exemption. The ACCC will, however, consider this matter on a case by case basis, taking into account the full extent of competitive constraint affecting each facility.

The ACCC discusses the relevant grain catchment area for GrainCorp's Brisbane terminal in chapter 3 and considers that the area spans across most of the grain growing regions of southern Queensland and certain parts of northern NSW.

The ACCC considers GrainCorp's Brisbane terminal's catchment area and QBT's Brisbane facility's catchment area are similar and overlap across most of the grain growing regions of southern Queensland and certain parts of northern NSW. The ACCC however considers that

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[134] GrainCorp, Submission in support, p. 3.

QBT’s catchment area is likely to be slightly smaller as it is more limited to locations where road transport is competitive, whereas GrainCorp’s catchment area is likely to span into certain western parts of southern Queensland and encompass areas with established rail lines providing cost-effective rail transport options for grain to move to GrainCorp’s facility.

The ACCC considers there to be limited overlap between these catchment areas and the catchment areas for the Newcastle port terminals. Therefore, while there are currently exempt service providers at Newcastle, the ACCC considers that these ports provide a very limited degree of competition on the Brisbane port terminals.

Currently there are no bulk wheat port terminal service providers servicing the Brisbane terminal’s catchment areas that are exempt under the Code.

The ACCC is, however, concurrently assessing an exemption application for QBT’s Brisbane facility (see chapter 4). Based on its draft assessment, the ACCC’s draft view is that it would be appropriate to exempt’s QBT Brisbane terminal.

The ACCC is seeking industry views on its draft exemption assessment of QBT’s Brisbane terminal. Should that facility be granted an exemption, the ACCC considers that it may support granting an exemption for GrainCorp’s Brisbane terminal given the degree of overlap and substitution between the two facilities, as outlined in the above assessment.

5.7. Other matters

The ACCC does not consider that there are any other matters relevant to its assessment of GrainCorp’s Brisbane port terminal exemption application.

Appendix: The Code

The Port Terminal Access (Bulk Wheat) Code of Conduct (Code) was made under section 51AE of the *Competition and Consumer Act 2010* (CCA) and commenced on 30 September 2014. It replaced the previous regulatory framework under the *Wheat Export Marketing Act 2008,* which required vertically integrated port terminal service providers (PTSPs), including GrainCorp, to provide the ACCC with access undertakings.

The purpose of the Code is 'to regulate the conduct of port terminal service providers to ensure that exporters of bulk wheat have fair and transparent access to port terminal services'.[135]

The Code applies to a port terminal service provider

The Code applies to a **PTSP**, defined as 'the owner or operator of a port terminal facility that is used, or is to be used, to provide a port terminal service'.[136]

A **port terminal service** is defined as 'a service (within the meaning of Part IIIA of the [CCA]) provided by means of a port terminal facility, and includes the use of a port terminal facility'.[137] A **port terminal facility** is defined as:

> a ship loader that is:
>
> (a) at a port; and
>
> (b) capable of handling bulk wheat;
>
> and includes any of the following facilities, situated at the port and associated with the ship loader, that are capable of handling bulk wheat:
>
> (c) an intake/receival facility;
>
> (d) a grain storage facility;
>
> (e) a weighing facility;
>
> (f) a shipping belt.[138]

Obligations on a port terminal service provider

A PTSP must comply with all six Parts of the Code. However, a PTSP that is determined by the ACCC or the Minister for Agriculture to be an exempt service provider need not comply with Parts 3 to 6 of the Code.

Part 1 of the Code contains general provisions about the Code.

Part 2 of the Code requires a PTSP to:

- deal with exporters in good faith
- publish a port loading statement and policies and procedures for managing demand for their services
- make current standard terms and reference prices for each port terminal facility publically available on their website.

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[135] Port Terminal Access (Bulk Wheat) Code of Conduct, cl. 2.

[136] Ibid, cl. 3.

[137] Ibid.

[138] Ibid.

Part 3 of the Code requires a PTSP:

- not to discriminate in favour of itself or its trading business or hinder third party exporters' access to port terminal services
- to enter into an access agreement or negotiate the terms of an access agreement with an exporter to provide services if an exporter has applied to enter into an access agreement and certain criteria are satisfied
- to deal with disputes during negotiation via a specified dispute resolution processes including mediation and arbitration.

Part 4 of the Code requires a PTSP to have, publish and comply with a port loading protocol which includes an ACCC approved capacity allocation system if the system allocates capacity more than 6 months into the future.

Part 5 of the Code requires a PTSP to regularly publish expected capacity, stock information and key performance indicators.

Part 6 of the Code requires a PTSP to keep records of documents such as access agreements and variations to those agreements.

Exempting a port terminal service provider

The Code allows the ACCC or the Minister for Agriculture to exempt a PTSP from Parts 3 to 6 of the Code in relation to port terminal services provided by means of a specified port terminal facility. An exemption cannot be granted from individual parts of the Code, for example, it would not be possible to only grant an exemption from Part 4 of the Code. Exempt PTSPs must still comply with Parts 1 and 2 of the Code.

Exemptions by the ACCC

Under subclause 5(2) of the Code, the ACCC can determine a PTSP to be an exempt service provider of port terminal services. Subclause 5(3) of the Codes states that the ACCC must have regard to a list of matters in making a determination. Under subclause 5(6) of the Code, the ACCC can subsequently revoke an exemption determination if it is satisfied that the reasons for granting the exemption no longer apply.

On 1 October 2014 the ACCC determined GrainCorp to be an exempt service provider at its bulk wheat port terminal at the Port of Newcastle.[139]

On 25 June 2015 the ACCC released final determinations to:

- make Emerald Grain Pty Ltd an exempt service provider at the Port of Melbourne
- make GrainCorp Operation Limited an exempt service provider at the Port of Geelong
- not make GrainCorp an exempt service provider at the Port of Portland.[140]

On 30 July 2015 the ACCC determined Newcastle Agri Terminal Pty Ltd and Qube Holdings Ltd to be exempt service providers at their respective bulk wheat port terminals at the Port of Newcastle.[141]

[139] ACCC, *Determination: Exemption in respect of GrainCorp's Carrington (Newcastle) Port Terminal Facility*, 1 October 2014.

[140] ACCC, *Determinations: Exemptions in respect of Emerald's Melbourne Port Terminal Facility, GrainCorp's Geelong Port Terminal Facility, GrainCorp's Portland Port Terminal Facility*, 25 June 2015.

[141] ACCC, *Final determinations: Newcastle Agri Terminal Pty Ltd and Qube Holdings Limited at the Port of Newcastle*, 30 July 2015.

On 30 July 2015 the ACCC also issued draft decisions proposing that:

- Quattro Ports should be an exempt service provider at its bulk wheat port terminal at Port Kembla from the date that it becomes subject to regulation under the Code
- GrainCorp should be an exempt service provider at its bulk wheat port terminal at Port Kembla at the same time that Quattro becomes subject to regulation under the Code and is determined to be an exempt service provider.[142]

Exemptions by the Minister for Agriculture

Under subclause 5(1) of the Code, the Minister for Agriculture may determine that a PTSP is an exempt service provider if the Minister is satisfied that it is a cooperative that has:

(a) grain-producer members who represent at least a two-thirds majority of grain-producers within the grain catchment area for the port concerned; and

(b) sound governance arrangements that ensure the business functions efficiently and that allow its members to influence the management decisions of the cooperative.

The ACCC does not have any role in exemptions under subclause 5(1) of the Code.

On 17 November 2014 the Minister for Agriculture found that Co-operative Bulk Handling Limited’s (CBH) port terminal facilities located at the ports of Albany, Esperance, Geraldton and Kwinana satisfactorily met the criteria for exemption under subclause 5(1) of the Code. Therefore, the Minister determined CBH to be an exempt service provider at those facilities. Accordingly, CBH is not required to comply with Parts 3 to 6 of the Code when providing port terminal services from those facilities.

[142] ACCC, *Draft decisions: GrainCorp Operations Limited and Quattro Ports at Port Kembla*, 30 July 2015.