ACCC Determinations

Exemptions in respect of

Emerald's Melbourne Port Terminal Facility

GrainCorp's Geelong Port Terminal Facility

GrainCorp's Portland Port Terminal Facility

Date: 25 June 2015

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

Summary

Under the Port Terminal Access (Bulk Wheat) Code of Conduct (the Code), the ACCC has made final determinations that Emerald Logistics Pty Ltd (Emerald) and GrainCorp Operations Limited (GrainCorp) are exempt service providers of port terminal services provided by means of their respective bulk wheat terminals at Melbourne and Geelong.

Under these exemptions Emerald and GrainCorp will be subject to a lower level of regulation at their respective Melbourne and Geelong port terminals, as parts 3 to 6 of the Code will not apply to these facilities.

The ACCC has also made a final determination that GrainCorp should not be an exempt service provider in relation to the port terminal services offered at its Portland port terminal at this time.

All three final determinations are in line with the ACCC's draft determinations on these Victorian ports, released on 10 April 2015.

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

- Emerald's Melbourne Port Terminal (MPT) faces significant competition from GrainCorp's Geelong port terminal as well as from significant containerised grain exports from the Port of Melbourne.

- GrainCorp's Geelong port terminal faces competition from Emerald's MPT as well as from significant containerised grain exports from the Port of Melbourne and, to a lesser extent, the threat of new competing port terminals at the Port of Geelong.

- In contrast to MPT and GrainCorp's Geelong facility, there is not a directly competing port terminal facility which amounts to a significant competitive constraint at the Portland port terminal.

The ACCC's views are based on analysis of capacity constraints and usage at the three port terminal facilities and the extent to which each of the port terminals compete with each other for bulk wheat in overlapping catchment areas. The ACCC has also considered the extent of any competitive constraint imposed by container exports and domestic demand for wheat.

The ACCC's view is that exempting Emerald and GrainCorp from parts 3 to 6 of the Code in relation to port terminal services at Melbourne and Geelong respectively provides them with the opportunity to compete with each other on commercial terms, gives them the flexibility to better match competitor services and reduces their regulatory costs.

The ACCC considers that under the exemptions, exporters of bulk wheat will be likely to have fair and transparent access to port terminal services at GrainCorp's Geelong port terminal and Emerald's MPT. Competition between MPT and the Geelong terminal will also likely drive the more efficient operation and use of both facilities in the absence of full regulation under the Code.

The ACCC's full exemption assessments of the matters under subclause 5(3) of the Code regarding each port terminal are set out in chapters 5 to 7 of this document.

ACCC monitoring

In making these exemption determinations, the ACCC considers that it is appropriate for it to undertake monitoring of Victorian wheat port terminal services to continue to assess the level of competition for 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 is able to monitor the level of shipping activity and market concentration at Emerald's MPT and GrainCorp's Geelong port 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 in Victoria.

Contents

1 Introduction

The Port Terminal Access (Bulk Wheat) Code of Conduct (the Code) was made under section 51AE of the Competition and Consumer Act 2010 (CCA). It commenced on 30 September 2014 and regulates the conduct of bulk wheat port terminal service providers. The Code replaced the previous regulatory framework under the *Wheat Export Marketing Act 2008* (WEMA) where four port terminal service providers (including GrainCorp and Emerald) were subject to ACCC-approved access undertakings.

The purpose of the Code is to regulate the conduct of port terminal service providers (as defined in the Code) to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.[1]

1.1 The Code

The Code applies to port terminal service providers. A port terminal service provider is 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.

where:

> **port terminal service** means 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.

and:

> **port terminal facility** means 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.

The Code has six parts which apply to all port terminal service providers (in the absence of any exemption being granted):

- Part 1 of the Code contains general provisions about the Code and its application.
- Part 2 of the Code requires all port terminal service providers to deal with exporters in good faith, publish a port loading statement and policies and procedures for managing demand for their services, and make current standard terms and reference prices for each port terminal facility publically available on their website.

[1] Clause 1(2) of the Code

- Part 3 of the Code places a number of requirements on a port terminal service provider including:
    - 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 specified dispute resolution processes including mediation and arbitration.
- Part 4 of the Code requires a port terminal service provider to have, publish and comply with a port loading protocol which includes an ACCC approved capacity allocation system.
- Part 5 of the Code requires port terminal service providers to regularly publish expected capacity, stock information about various grains held onsite at a port terminal facility and key performance indicators.
    - Stocks information about grain held in upcountry storage sites is outside the scope of the Code, which provides no obligations on port terminal service providers in relation to non-port infrastructure.
- Part 6 of the Code sets out requirements relating to retaining records such as access agreements and variations to those agreements.

1.2 Exemption from the Code

The Code provides for processes whereby the ACCC or the Minister for Agriculture may exempt a port terminal service provider from parts 3 to 6 of the Code in relation to port terminal services provided by means of a specified port terminal facility. Exempt service providers face a lower level of regulation as they remain subject to only Parts 1 and 2 of the Code.

The exemption processes under the Code only provide for the ACCC or the Minister for Agriculture to grant an exemption from all of parts 3 to 6 of the Code. 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.

1.2.1 ACCC exemption

Under clause 5(2) of the Code, the ACCC may make a determination to exempt port terminal service providers in relation to port terminal services provided by means of specified port terminal facilities (an exemption determination). In doing so the ACCC must have regard to matters listed at subclause 5(3) of the Code (see section 1.5). The ACCC can also revoke an exemption determination under subclause 5(6) of the Code.

On 1 October 2014 the ACCC determined that GrainCorp is an exempt service provider in relation to its Carrington (Newcastle) Port Terminal Facility. The ACCC determined that although GrainCorp is vertically integrated as a port terminal service provider and an exporter, it would have limited ability to exercise market power at the Carrington facility due, in part, to effective competition in the provision of bulk grain port terminal services at the Port

of Newcastle.[2] This determination followed the ACCC's earlier decision, under the previous access undertakings regime, to reduce GrainCorp's regulatory obligations regarding its Carrington facility.[3]

1.2.2 Ministerial exemption

Clause 5(1) of the Code provides that the Minister for Agriculture may determine that a port terminal service provider is an exempt service provider of services supplied by means of a specified port terminal facility if the Minister is satisfied that the provider 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).

On 17 November 2014 the Minister for Agriculture found that Co-operative Bulk Handling Limited's (CBH) port terminal facilities located at Albany, Esperance, Geraldton and Kwinana satisfactorily meet the criteria for exemption under clause 5(1) of the Code. The Minister therefore determined that CBH is exempt from parts 3 to 6 of the Code in relation to services provided by means of those facilities.

1.3 GrainCorp's exemption application

GrainCorp's Geelong bulk wheat port terminal is located at the Port of Geelong in Victoria. The following facilities are located at the Geelong port terminal – intake/receival facility, grain storage facility, weighing facility, shipping belt and ship loader.

GrainCorp's Portland bulk wheat port terminal is located at K.S. Anderson Wharf in Portland, Victoria. The following facilities are located at the Portland port terminal – intake/receival facility, grain storage facility, weighing facility, shipping belt and ship loader.

Currently, parts 1 to 6 of the Code apply to GrainCorp's provision of port terminal services at its Geelong and Portland bulk wheat port terminal facilities.[4]

Prior to the Code commencing and from September 2009, access arrangements at GrainCorp's Geelong and Portland facilities were governed by an access undertaking. Under this regime, GrainCorp's Geelong and Portland facilities were subject to a range of provisions, some of which are similar to those contained in the Code. From 30 September

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

[3] ACCC, *Decision to accept: GrainCorp Operations Limited's Application to Vary the 2011 Port Terminal Services Access Undertaking*, 18 June 2014

[4] GrainCorp's bulk wheat port terminal facilities located Port Kembla, Brisbane, Gladstone and Mackay are also currently subject to Parts 1 to 6 of the Code. GrainCorp's Carrington (Newcastle) terminal has been exempted and is subject only to Parts 1 and 2 of the Code.

2014 the Code has applied to GrainCorp's provision of port terminal services at the Geelong and Portland facilities.[5]

On 5 December 2014 GrainCorp submitted an application to the ACCC seeking to be an exempt port terminal service provider in relation to services provide at its Geelong and Portland facilities.

GrainCorp submits that:

> GrainCorp is vertically integrated as a port service provider and an exporter of grain in Victoria. However, GrainCorp's, ability to exercise market power in Victoria is limited given:
>
> - Strong competition from competing alternative domestic and container packing markets, combined with excess country and packing capacity, for the majority of Victorian grain
> - Strong competition in the provision of port elevation services for bulk grain from Emerald's Melbourne Port Terminal and the planned Bunge Terminal at Geelong, combined with competition from Glencore port terminals in Adelaide
> - Excess port elevation capacity, and excess country storage capacity, where GrainCorp is commercially incentivised to maximise throughput at its Victorian port terminals.
>
> GrainCorp contends that granting an exemption for its Geelong and Portland port terminals will:
>
> - Place GrainCorp on a level playing field with alternative and competing markets that are not subject to regulation.
> - Promote grain industry competition by allowing GrainCorp to provide competitive services to exporters for bulk grain exports.
> - Support lower supply chain costs by allowing GrainCorp to operate its Victorian port terminals flexibly and invest in improving its port and supply chain infrastructure.[6]

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/victorian-wheat-ports-exemption-assessments.

1.4 Emerald's exemption application

Emerald's Melbourne Port Terminal is located in Victoria at the Port of Melbourne at Appleton Dock (Berth F).[7]

Parts 1 to 6 of the Code apply to Emerald's provision of port terminal services at MPT.

From September 2011 until the commencement of the Code, access arrangements for Emerald's MPT were governed by an ACCC approved access undertaking, which contained

[5] As GrainCorp had an access undertaking regarding its Geelong and Portland facilities in place immediately before the Code commenced, the transitional arrangements outlined in clause 4(6) of the Code do not apply these facilities. Clause 4(6) of the Code specifies that the Code does not apply until 1 October 2015 to those operators who were providing services before the Code commenced there was no undertaking in force in relation to those services provided by means of that facility.
[6] GrainCorp, Submission in support, p. 3
[7] Emerald Grain, Submission in support, p. 7

similar provisions to those in the Code. From 30 September 2014 the Code has applied to Emerald's MPT.[8]

On 28 November 2014 Emerald submitted an application to the ACCC seeking to be an exempt port terminal service provider in relation to services provided at its MPT facility.

Emerald submits that:

> MPT operates in a very competitive environment.
>
> Unlike New South Wales, the logistics network in Victoria allows not only for competition between port terminal operators at the same port, it also allows for competition between terminals located at different port. In particular grain in Victoria can readily flow either to the port of Melbourne or the port of Geelong.
>
> The requirement on Emerald under the Code to comply with Parts 3 - 6 is contrary to Emerald's legitimate commercial interests and … the interests of exporters and producers. Given the availability of a strong domestic market and viable alternative export paths in the Victorian catchment zone, this additional regulation of Emerald is unnecessary and counter-productive to competition and efficiency.
>
> Emerald's application represents an even more compelling argument for exemption than GrainCorp's port of Newcastle case because, while the same sort of competitive environment and surplus capacity issues apply in each case, Emerald's market power in the Victorian supply chain (port and up-country) is far weaker than GrainCorp's power in the Newcastle zone, and therefore there is a much lower risk that Emerald would be able to impose unilateral terms on exporters if an exemption were granted.[9]

Further details of Emerald's exemption application are set out as relevant throughout this document. Emerald'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/victorian-wheat-ports-exemption-assessments.

1.5 ACCC exemption assessment process

1.5.1 Legislative framework

In making an exemption determination under the Code, the ACCC must have regard to the matters specified in subclause 5(3) of the Code. These matters are:

(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

---

[8] The transitional arrangements under clause 4(6) of the Code do not apply to Emerald in respect of port terminal services provided at its MPT facility as there was an undertaking in force in relation to these services immediately before 30 September 2014,

[9] Emerald Grain, Submission in support, p. 3

(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.

1.5.2 Timeline for assessment

The ACCC's *Guidelines on the ACCC's process for making and revoking exemption determinations* (the Guidelines) set out that, when a port terminal service provider 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 a draft determination before the ACCC makes its final determination. The timeframe for assessment may vary where the ACCC consults on the exemption application, and/or requests information from the port terminal service provider. 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 and Emerald's exemption applications is shown in the table below. In this case the ACCC undertook a longer consultation process at the issues paper stage to allow sufficient time for interested parties to respond to the ACCC's Issues Paper over the New Year period. The ACCC also met with several stakeholders after issuing the draft determinations. These consultation periods have extended the timeframe for the ACCC's assessment of GrainCorp and Emerald's exemption applications.

Table 1: ACCC assessment

Date	Action
28 November 2014	Emerald lodged an exemption application for its MPT.
5 December 2014	GrainCorp lodged exemption applications for its Geelong and Portland port terminals.
12 December 2014	ACCC published its Issues Paper and invited public submissions by 30 January 2015.
9 February 2015	ACCC published seven public submissions received from interested parties.
10 March 2015	ACCC published supplementary submissions from Emerald and GrainCorp provided in response to stakeholder views.

10 April 2015	ACCC published draft determinations on the exemption applications and invited public submissions on its preliminary views by 24 April 2015.
5 May 2015	ACCC published seven public submissions received from interested parties in response to the draft determinations.
25 June 2015	ACCC published final determinations on the exemption applications.

1.6 Public consultation process

The ACCC released an Issues Paper on 12 December 2014 seeking public submissions on GrainCorp and Emerald's exemption applications and key issues relating to the ACCC's assessment.

The ACCC received seven public submissions from the following parties in response to its Issues Paper:

- Australian Grain Exporters Association (AGEA)
- GrainGrowers
- Agrex Australia Pty Ltd (Agrex)
- Cooperative Bulk Handling Ltd (CBH)
- Grain Industry Associations of Victoria (GIAV)
- Glencore Grain Pty Ltd and Viterra Ltd (Glencore/Viterra)
- Victorian Farmers Federation (VFF).

The ACCC also received supplementary submissions from Emerald and GrainCorp responding to issues raised in some public submissions.

On 10 April 2015 the ACCC released draft determinations on GrainCorp and Emerald's exemption applications. The ACCC's preliminary view was to grant an exemption to GrainCorp at its Geelong port terminal and Emerald at its MPT, but to not grant an exemption to GrainCorp at its Portland facility at this time.

The ACCC invited comments and any further information from interested parties on its draft determinations by 24 April 2015. Seven public submissions were provided by the following parties:

- GrainCorp
- Emerald
- AGEA
- GIAV
- VFF

- Grain Producers Australia (GPA)
- Profarmer Australia.

The ACCC also received other information from interested parties that was provided on a confidential basis.

The ACCC's draft and final determinations documents and all public submissions are available on the ACCC's website at https://www.accc.gov.au/regulated-infrastructure/wheat-export/victorian-wheat-ports-exemption-assessments.

1.7 ACCC approach to the exemption assessments

The ACCC's approach to exemption assessments is based on a competitive analysis having regard to the matters specified in subclause 5(3) of the Code.[10]

The ACCC has considered a number of key competition issues to inform its assessment of GrainCorp and Emerald's exemption applications. These key issues relate to the level of competition faced at each of the Victorian port terminals, and include:

- how the characteristics of the Victorian wheat port terminals compare to each other and an analysis of the capacity of each of the terminals and the demand for their services
    - Analysis of export capacity and demand which indicates whether there is spare capacity or capacity constraints at the port terminals, and to what extent this would facilitate fair and transparent access if parts 3 to 6 of the Code did not apply.
- the level of competition in upcountry storage and handling services, competitive pressures on each of the Victorian port terminals from alternative (competing) terminals, and competitive constraints on bulk wheat export from containerised grain exports and domestic demand for grain.
    - Analysis of these issues also informs the ACCC about whether a port terminal facility faces a sufficient degree of competitive constraint to promote fair and transparent access to port terminal services if parts 3 to 6 of the Code did not apply.

The ACCC considers an analysis of these issues indicates the extent of competition faced by the Victorian bulk wheat port terminals. This in turn allows the ACCC to assess the likely effect of this competition in an environment where the exemption applications were granted to GrainCorp and/or Emerald at their Victorian facilities.

Analysis of the level of competition also allows the ACCC to assess whether the application of parts 3 to 6 of the Code remains necessary, or if competition would serve to ensure appropriate outcomes for access to each of the Victorian port terminals if the exemptions were granted and parts 3 to 6 of the Code did not apply.

[10] Department of Agriculture, http://www.agriculture.gov.au/ag-farm-food/crops/wheat/port-access

1.8 Structure of this document

The following chapters of this document are as follows:

- Chapter 2 outlines stakeholder's response to the ACCC's draft determinations on GrainCorp and Emerald's exemption applications.
- Chapter 3 sets out the ACCC's analysis of the characteristics, capacity and use of the Victorian port terminals.
- Chapter 4 shows the ACCC's analyses of related upcountry storage and logistics services, the level of competition between the bulk wheat port terminals as well as competition from containerised grain exports and domestic demand for grain.
- Chapters 5 to 7 use the analysis and findings from chapters 3 and 4 to set out the ACCC's consideration of the matters in subclause 5(3) of the Code for each of GrainCorp and Emerald's Victorian port terminals.
- Chapter 8 provides the ACCC's final decisions regarding each of the Victorian port terminals.
- Chapter 9 provides information concerning the ACCC's ongoing monitoring of the Victorian port terminals.

1.9 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 Industry response to the ACCC's draft determinations

On 10 April 2015 the ACCC released draft determinations on GrainCorp and Emerald's exemption applications. The draft determinations proposed to:

- grant exemptions for GrainCorp at its Geelong port terminal and Emerald at its MPT
- not grant an exemption for GrainCorp at its Portland port terminal at this time.

GrainCorp and Emerald provided submissions on the ACCC's draft determinations. A number of interested parties also provided public submissions on the ACCC's draft findings.

2.1 GrainCorp and Emerald's views

GrainCorp submits that the exemption of its Geelong Port Terminal and Emerald's MPT will allow these two terminals to operate in a more flexible and commercial manner, improving the competitiveness of grain exported from Victoria.[11]

GrainCorp however disagrees with the ACCC's draft determination to not grant an exemption to GrainCop's Portland facility. GrainCorp submits:

> We note that the Draft Determination provides a strong basis on which to grant an exemption for Portland. In it the ACCC:
>
> - Acknowledges that GrainCorp is committed to open access and would "not likely foreclose access to its facility" given its need to "secure ... throughput from other marketers"
> - Notes that GrainCorp's Portland terminal is subject to competitive constraints:
>   - "GrainCorp would not be in a position to leverage market power from upcountry networks into the market for its Portland terminal services"
>   - "Containerised exports provide a level of constraint on the bulk export programme at Portland"
>   - There is evidence that grain from Western Victoria does move by rail to Melbourne – particularly in containers
>   - There is strong domestic demand for grain.
> - Recognises that there is flexibility in the transport of grain in Victoria, as "the significant use of roads in the transportation of grain across Victoria suggests that each of the port terminals' catchment areas is likely to exhibit a degree of flexibility and [is] not strictly linked to established rail lines"
> - Accepts there are opportunities for entry for new operators, including speculation that Quattro is planning to develop a new facility at Portland.
>
> GrainCorp also believes it is significant that the Draft Determination is at odds with feedback from a broad representation of industry participants and in particular, exporters.[12]

[11] GrainCorp, submission on the ACCC's draft determinations, p. 1
[12] Ibid, pp. 1, 2

GrainCorp's submission provides further information in support of an exemption for the Portland facility. GrainCorp's main arguments for an exemption for Portland are that:

- Freight differentials between Portland and other ports are not significant
- Portland faces significant competitive constraints
- Different application of the code in Victoria will impact efficiency at Portland
- Discriminatory application of the Code will disadvantage Portland.[13]

Specific details from GrainCorp's submission in relation its Portland facility are included as relevant throughout chapters 3 to 7 of this document. In particular:

- Freight differentials and competitive constraints are discussed in section 4.2 as well as throughout chapter 7
- the ACCC's views on the application of the Code and its assessment of the legitimate interests of the service provider are discussed in chapter 7.

Emerald submits that the ACCC's draft view to grant Emerald's application for exemption from the Code in respect of MPT, if affirmed, will allow Emerald to operate the port efficiently and cement an ongoing commitment to the Victorian grains industry.[14]

Emerald also provided support for an exemption of GrainCorp's Portland facility. Emerald submits that:

> There is more capacity in Victoria than there is exportable grain and in the near future there will be three competing port operators vying for exporters' business.
>
> Emerald is of the view that withdrawal of non-essential regulatory restrictions will encourage innovation in the industry, stimulate the development of commercial relationships and remove barriers to future investment.
>
> An important step in achieving this is the equal application of regulatory supervision on port operators in Victoria. Accordingly, Emerald is supportive of an exemption from the Code for GrainCorp's Portland facility.

2.2 Stakeholder views

Stakeholder views on the ACCC's draft determinations largely presented one of two broad positions:

- support for the ACCC to grant exemptions to all three Victorian port terminals, including GrainCorp's Portland port terminal, or
- a call for the ACCC to reassess its draft determinations and to not grant exemptions to any of the Victorian facilities.

[13] GrainCorp, submission on the ACCC's draft determinations, p. 2
[14] Emerald, submission on the ACCC's draft determinations, p. 1

2.2.1 Support for exemptions for all Victorian port terminals

AGEA and the GIAV support the ACCC's draft view to grant exemptions for Emerald at MPT and GrainCorp at its Geelong facility.[15] These stakeholders also called for the ACCC to also grant an exemption for GrainCorp at its Portland port terminal.

The GIAV submits that an exemption under the Code for GrainCorp at its Portland port terminal facility is justified due to the robust competition from other port operators and an array of other markets (including dairy demand in southwest Victoria and the growing container export market), which compete for wheat produced in the Portland zone.[16]

The GIAV also submits that:

- a hybrid system of both regulated and deregulated ports within Victoria may be difficult for wheat exporters to undertake two port loading of grain vessels which maximises the wheat exports from Victoria
- low supply chain costs may be threatened in the long term as the port operator may be restricted in undertaking long term agreements with customers at favourable access rates
- finally Victoria currently has an excess port capacity and therefore port operators are incentivised to attract exporters, both large and small, to their ports.[17]

ACCC response

The ACCC has considered submissions from GrainCorp and Emerald, as well as from stakeholders such as AGEA and the GIAV seeking GrainCorp to be granted an exemption at its Portland facility. The ACCC has addressed the specific arguments in support of granting an exemption at the Portland facility in chapters 3, 4 and 7 of this document.

2.2.2 Re-assessment of the exemption applications

Farming groups, the VFF and GPA, provided an alternative view and do not support granting exemptions at any of the Victorian port terminals.

The VFF submits that in the ACCC's draft determinations document it did not give appropriate weight to certain aspects of its analysis. In particular, the VFF submits that:

- There was undue weight given to the presence of domestic and container markets, as well as on-farm storage, which do not have an impact upon competition at bulk export terminals, as the Code is intended to regulate access to bulk export services
- The importance of the long-standing rail network for determining bulk export pathways was underestimated
- There is insufficient competition for bulk export services to warrant exemptions
- The consequences of the applicants' high level of vertical integration and up-country dominance were underestimated
- Capacity constraints, especially during the peak marketing window, were underestimated.[18]

[15] AGEA, submission of the ACCC's draft determinations, p. 1
[16] GIAV, submission on the ACCC's draft determinations, p. 1
[17] Ibid, p. 11

Additionally the VFF submits that the draft determinations to grant exemptions for GrainCorp at its Geelong port terminal and Emerald at its MPT are based on incomplete information and that they require re-assessment.[19] The VFF and GPA argue that the ACCC's analysis should include further consideration of certain other factors. The VFF submits that:

> The ACCC in its draft findings, have failed to:
>
> - Provide quantification of the costs of compliance, including the potential savings if exemptions are granted
> - Provide quantification of claimed efficiency gains
>
> In both their initial and supplementary submissions, the applicants have failed to demonstrate or quantify the regulatory costs of the system; nor have they articulated the proposed efficiency savings that will be passed back through to producers. It would help both the ACCC and the VFF if the applicants could truly quantify the proposed saving benefits on a dollar per tonne basis.[20]

Additionally, the GPA submitted that access to information (regarding stock levels throughout the grain supply grain) is a key problem in the industry and questioned the impact of exemptions to address this.[21]

ACCC response – competition factors

The ACCC's consideration of competition factors is presented throughout this document. These factors include aspects of the ACCC's competition assessment raised by the VFF in response to the draft determinations. The ACCC's views on each of these competitive aspects are included in chapters 3 to 7 of this document. In particular:

- export capacity constraints at the port terminals are discussed in section 3.2.
- the level of competition in relevant upcountry storage and handling services is presented in section 4.1.1
- use of rail and road transport networks in Victoria is set out in section 4.1.2
- the impacts of container exports and domestic demand on competition for bulk wheat exports are discussed in section 4.3

ACCC response – consideration of other factors

Regarding the farming groups' argument that the ACCC should consider certain other factors, the ACCC considers that it has addressed a broad range of competitive factors in its draft determinations document. As noted in section 1.7 of this document, the ACCC's approach to exemption assessments is based on an analysis of competition having regard to the relevant matters in clause 5 of the Code.

The VFF and GPA argue that the ACCC's assessment of the exemption applications should also quantify and consider the monetary costs of regulation and benefits (or savings) of exemption from the Code. Specifically, the farming groups seek for the monetary compliance costs imposed on the port operators from having to comply with the full regulations under the

---

[18] Ibid, p. 1
[19] VFF, submission on the ACCC's draft determinations, p. 1
[20] Ibid, pp. 6, 7
[21] GPA, submission on the draft determinations, p. 3

Code to be weighed against the likely dollar savings for the port operators, which could then be passed back to growers if an exemption were granted to the port operator/s.

While the ACCC understands the view put forward by the VFF and GPA, the ACCC does not consider that an analysis of the specific monetary costs from regulation and the benefits of exemption is practical or necessary when considering the exemption applications.

Although some costs associated with the obligation on a port operator to comply with the whole Code may be able to be appropriately quantified, other costs as well as many of the likely benefits may not. For instance, the full extent of the opportunity cost on a port operator from having to comply with the Code and the potential efficiency benefits from exemption from the Code may be unknown and not fully apparent until after an exemption is granted.

Accordingly, the ACCC considers that such a cost/benefit analysis is unlikely to provide an accurate representation of the complete costs and benefits of regulation or exemption under the Code.

Further, the ACCC considers that regulation is generally undesirable when there is a sufficient level of competition in an industry or geographic region.

Part of the ACCC's exemption assessment, based on a competitive analysis having regard to the matters specified in subclause 5(3) of the Code, seeks to identify the level of competition faced by a port terminal operator and the potential for regulatory costs to be reduced where a sufficient level of competition exists. The ACCC considers that it is not possible to prove a particular outcome in relation to the costs of using a port terminal or prices paid for grain in the market. This is particularly true given that the many external factors affecting price would make it unlikely that the particular outcomes of modelling (even if feasible) would be achieved. Rather, the ACCC will make its assessment by considering the matters specified under the Code.

The ACCC notes the GPA submission seeking more transparent access to information about the wheat industry, including information about stock levels throughout the supply chain. The ACCC understands that granting an exemption will remove some of the reporting obligations on GrainCorp to publish port stock and capacity information. However, it considers that a decision on exemption will not have an impact on the reporting of upcountry stocks information. As noted in chapter 1, stocks information about grain held in upcountry storage sites is outside the scope of the Code.

3 Victorian bulk wheat port terminal services

This chapter sets out the ACCC's views on the capacity, availability and demand for Victorian bulk wheat port terminal services. The ACCC has considered the characteristics of the three existing wheat port terminals facilities including the extent to which there are capacity constraints including in peak shipping periods. The ACCC has also considered additional proposed port terminals and the likely effect on capacity constraints.

The ACCC considers that, where there is spare export capacity, a port terminal service provider is likely to have an incentive to increase throughput and provide access to exporters. Conversely, where there are capacity constraints, the ACCC considers that a vertically integrated port terminal service provider may have an incentive to exclude other exporters and preference its own trading business.

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

This chapter includes views from submissions to the ACCC's December 2014 consultation paper as well as relevant views from interested parties in response to the ACCC's draft determinations.

3.1 Port terminal facilities and capacity

There are currently three operational bulk wheat port terminal facilities in Victoria: GrainCorp's two facilities at Portland and Geelong, and Emerald's MPT facility. These determinations relate to each of those three facilities. A map showing the locations of the three terminals is on page 42.

The ACCC is also aware of plans to build further port terminal facilities in Victoria, such as Bunge's proposed bulk grain export terminal at Geelong. Bunge has applied to the City of Greater Geelong for planning permission to construct a receival facility and three storage silos on land owned by Midway Limited. These facilities will connect to a current woodchip loader at Corio Quay North.[22] It is not yet clear exactly when the facility will become operational. However, the ACCC understands that Bunge is aiming to commence exporting in 2016-17.

The ACCC understands that there is media reporting that the Port of Portland is also in the early stages of planning for a new grains terminal which would be 'separate from the existing GrainCorp terminal'.[23] There has been no public information about the potential scale or timeframes for this development but GrainCorp notes that there is speculation that Quattro (backed by Noble, Cargill and Emerald) is exploring the option of building this new Portland facility.[24]

---

[22] Bunge 'New Grain Export Terminal for Geelong', accessed at http://www.bunge.com.au/news/39-new-grain-export-terminal-for-geelong on 3 March 2015.
[23] Bill Meldrum, 'Port keen to expand: Inquiry into developing further grains facilities', *Portland Observer*, 11 April 2014, accessed at http://www.parliament.vic.gov.au/images/stories/committees/rrc/IEGS/Media/20140411.Portland_Observer.Port_keen_to_expand.pdf on 3 March 2015.
[24] GrainCorp, Submission in support, p. 13.

Table 2 below provides an overview of the features of current and proposed bulk wheat port terminal facilities in Victoria.[25]

Table 2: Overview of current and proposed port terminal facilities in Victoria

Port terminal facility	GrainCorp's Geelong facility	GrainCorp's Portland facility	Emerald's Melbourne facility	Bunge's proposed Geelong facility
Location	Port of Geelong	Port of Portland	Appleton Dock (Berth F) at the Port of Melbourne	Port of Geelong
Rail receival	Dual gauge 2 000 TPH 4 hoppers	Standard gauge 1 000 TPH 1 hopper	Dual gauge 1 000 TPH 1 hopper	N/A
Road receival	8 000 T/day 5 hoppers	4 000 T/day 1 hopper	4 000 /day 2 hoppers	4 000 T/day
Storage capacity	140 000t Plus 852 000m^3 horizontal storage	60 000t Plus 80 000t horizontal storage	48 000t	22 500t (planned expansion to 48 000t)
Ship loader	< 2 500 TPH	< 1 400 TPH	< 1 500 TPH	< 1 000 TPH
Maximum berth depth	12.5m	13.0m	11.4m	N/A

Sources: GrainCorp submission 5 December 2014; Emerald Submission 28 November 2014; Emerald website at *http://emeraldgrain.com/home/industry-store-and-move-grain/shipping-at-melbourne-port-terminal/* accessed 2 March 2015; GrainCorp available capacity for 2014-15; Emerald available capacity for 2014-15.

3.1.1 Receivals

All three of the existing facilities in Victoria can receive grain via both road and rail transport. GrainCorp's Geelong facility has the highest intake capacity, with four rail receival hoppers and five road receival hoppers. The Portland and Melbourne facilities have similar level of rail receival capacity, while the Melbourne facility has an additional road hopper. Both Geelong and Melbourne have dual gauge access, reflecting their links to both broad and standard gauge networks, whereas Portland's rail receival is standard gauge. The ACCC understands that Bunge intends for its planned facility at Geelong to be serviced solely by road transport and not have rail access.

Upcountry transport network links for each port terminal facility are discussed below in section 4.1.2.

3.1.2 Storage

GrainCorp's Geelong and Portland facilities both have large vertical and horizontal storage facilities, in particular the Geelong facility which has 140 000 tonnes of vertical storage

[25] Excluding Portland given the limited available information about proposed capacity.

capacity. This storage is used for a variety of commodities, including wheat, barley and canola.[26]

By contrast, storage at MPT is more limited with only 48 000 tonnes capacity available. Consequently, Emerald operates a 'just-in-time' cargo accumulation system in order to maximise use of its limited storage capacity. Emerald's MPT manages a range of grains including wheat, barley, canola, and at times corn and rice.

Bunge's facility at Geelong is proposed to have an initial storage capacity of 24 000 tonnes, with plans to further expand this to 48 000 tonnes.

3.1.3 Ship loading capacity

GrainCorp's Geelong facility has the highest capacity ship loader of the three Victorian ports, capable of achieving up to 2 500 tonnes per hour. Ship loading capacity at the remaining current and planned Victorian facilities ranges from 1 000 to 1 500 tonnes per hour.

The maximum vessel size that can be loaded also varies between port terminals depending on berth size. Portland is the only port facility in Victoria with the capability to fully load Panamax vessels, and therefore has a competitive advantage over both Geelong and MPT as there are volume and cost efficiencies associated with larger cargoes.[27]

The VFF submits that:

> attributes such as port capacity, port berth draught, etc, mean that not all exporter's ships are immediately substitutable between shipping berths.[28]

The ACCC understands Portland is also used by exporters as a top-up port for both Geelong and MPT cargoes.

3.1.4 Elevation capacity

There are varying estimates of elevation capacity (that is, the capacity to receive, store and load grain onto a ship) across the three existing terminals in Victoria.

GrainCorp states that its Geelong facility has an elevation capacity of 3.4 million tonnes per annum (mtpa) and that its Portland facility has a total capacity of 1.5 mtpa.[29] However, the indicative available capacity figures published by GrainCorp for the 2014-15 season in accordance with clause 28 of the Code were lower than these estimates, totalling 2.65mtpa for Geelong and 0.99mtpa for Portland.[30]

Emerald submits that MPT's theoretical maximum capacity would be 2.1 mtpa, but that actual capacity is 1.5 mtpa due to 'limiting factors' such as competition and grain marketers' preference to ship at certain times.[31] The available capacity published by Emerald for the 2014-15 season was between these estimates and totalled 1.94mtpa.

---

[26] GrainCorp, Submission in support, pp. 10-11
[27] Emerald, Submission in support.
[28] VFF, submission on the ACCC's Issues Paper, p. 4
[29] GrainCorp, Submission in support.
[30] GrainCorp available capacity published 3 Feb 2015 http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping
[31] Emerald, Submission in support, p. 7

Based on maximum historic monthly throughput actually achieved at each terminal, the ACCC considers that the theoretical maximum capacity at each terminal could be even higher.

Table 3: Elevation capacity estimates at Victorian port terminal facilities

Port terminal facility	GrainCorp's Geelong facility	GrainCorp's Portland facility	Emerald's Melbourne facility	Bunge's proposed Geelong facility
2014-15 published available capacity (mtpa)	2.60	0.99	1.94	N/A
Maximum estimated by service provider (mtpa)	3.40	1.50	1.5-2.10	0.45
Annualised maximum historic monthly throughput (mtpa)	4.30	1.51	2.21	N/A

Sources: GrainCorp submission 5 December 2014; Emerald Submission 28 November 2014; Emerald website at *http://emeraldgrain.com/home/industry-store-and-move-grain/shipping-at-melbourne-port-terminal/* accessed 2 March 2015; GrainCorp available capacity for 2014-15; Emerald available capacity for 2014-15.

Determining the level of capacity available at each port terminal facility is relevant to assessing the relationship between supply and demand and identifying capacity constraints which, in the absence of a substitute facility, could lead to market power in the provision of port terminal services. Exporter demand for port terminal capacity in Victoria is discussed further in section 3.2 below.

Based on the maximum elevation capacity figures estimated by the port terminal service providers, the total elevation capacity in Victoria across the three existing terminals would be around 7 mtpa. If each port were able to achieve its historic monthly maximum throughput over the whole the year the total annual elevation capacity would be even higher, at just over 8 mtpa. However, the high throughput levels achieved during these 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. Also, limitations and delays in upcountry storage and logistics may impact delivery of grain and subsequent throughput at port.

On the other hand, the maximum monthly throughput will increase as investments and expansions are undertaken by the port terminal service provider. The maximum capacity may also be affected by the mix of commodities, particularly at the Melbourne facility given storage constraints. For example, a port may be able to achieve higher throughput if it is dealing with only a few commodities/grades 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 Victoria is currently likely to be lower than these theoretical maximum estimates.

Emerald and GrainCorp's estimates of total port capacity in Victoria (5.5 mtpa and 6.4 mtpa respectively) are broadly consistent with the available capacity figures published for 2014-15 which totalled 5.58 mtpa. These figures are lower than the theoretical maximum estimates discussed above. However, the available capacity figures may also reflect factors such as expected demand and closures for capacity expansion works, and may therefore underestimate the actual maximum capacity of the port terminals.

The ACCC expects that actual elevation capacity of the port terminal facilities in Victoria is somewhere in between the published available capacity figures and the annualised maximum historic monthly throughput figures. The ACCC's view on elevation capacity and how it relates to demand for port terminal capacity is discussed further at section 3.2 below.

Once operational, it is expected that Bunge's facility would provide an additional 0.45 mtpa elevation capacity in Victoria. GrainCorp's submission states that Bunge has sought approval to further expand its planned new terminal to 0.48 mtpa elevation capacity.[32] The elevation capacity of the proposed additional Portland facility is unknown. The ACCC understands that Emerald also plans to further expand the capacity of MPT from its stated practical maximum of 1.5 mtpa up to 2.4-3 mtpa.[33] Therefore, elevation capacity available to exporters in Victoria can be expected to increase in the near future.

3.2 Exports and exporters

GrainCorp and Emerald have provided data on historical exports from the three Victorian ports. GrainCorp submits that the average export task is 2.1 mtpa and the peak is 4.4 mtpa. Emerald submits that average export task is 2.4 mtpa and the historical maximum is 5.2 mtpa.[34] The ACCC has also obtained historical export data from Australian Crop Forecasters and has analysed shipping stem records.

The following sections discuss:

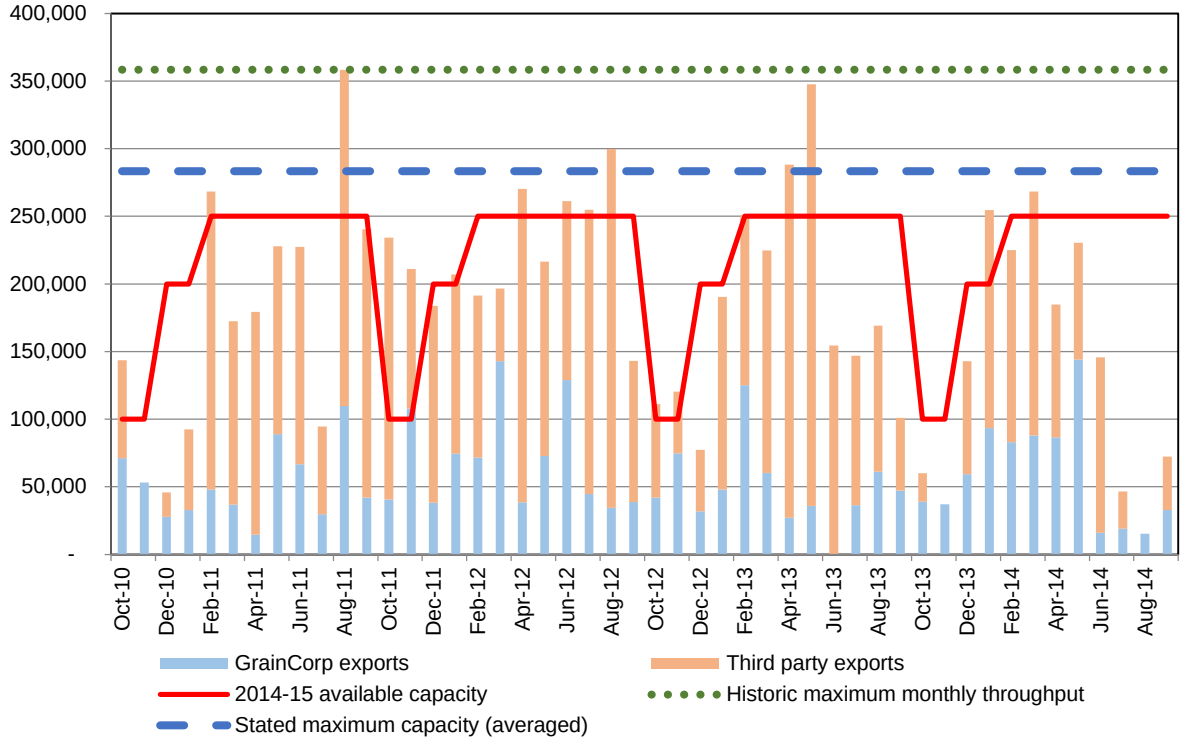
- exports and capacity utilisation levels at each of the Victorian ports
- relative market share of exporters using each of the ports.

3.2.1 Exports and capacity utilisation

Average exports from Victoria over the last two years have been approximately 3.78 mtpa, with around 80 per cent exported from Geelong and Melbourne. The following charts show exports at each port terminal compared with the various estimates of capacity discussed in section 2.1 above. The maximum annual capacity figures advised by GrainCorp and Emerald and the estimates based on maximum historic monthly throughput are both shown as an average constant amount across the year. The 2014-15 published available capacity varies from month to month.

[32] GrainCorp, Submission in support, p. 14
[33] GrainCorp, Submission in support, pp. 7, 13
[34] Emerald, Submission in support, p. 9

Figure 1: GrainCorp and third party exports from Geelong port terminal (monthly)



Sources: GrainCorp submission 5 December 2014; additional data provided by GrainCorp; GrainCorp shipping stem for 2014/15 season opening dated 3 February 2014, accessed at http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping .

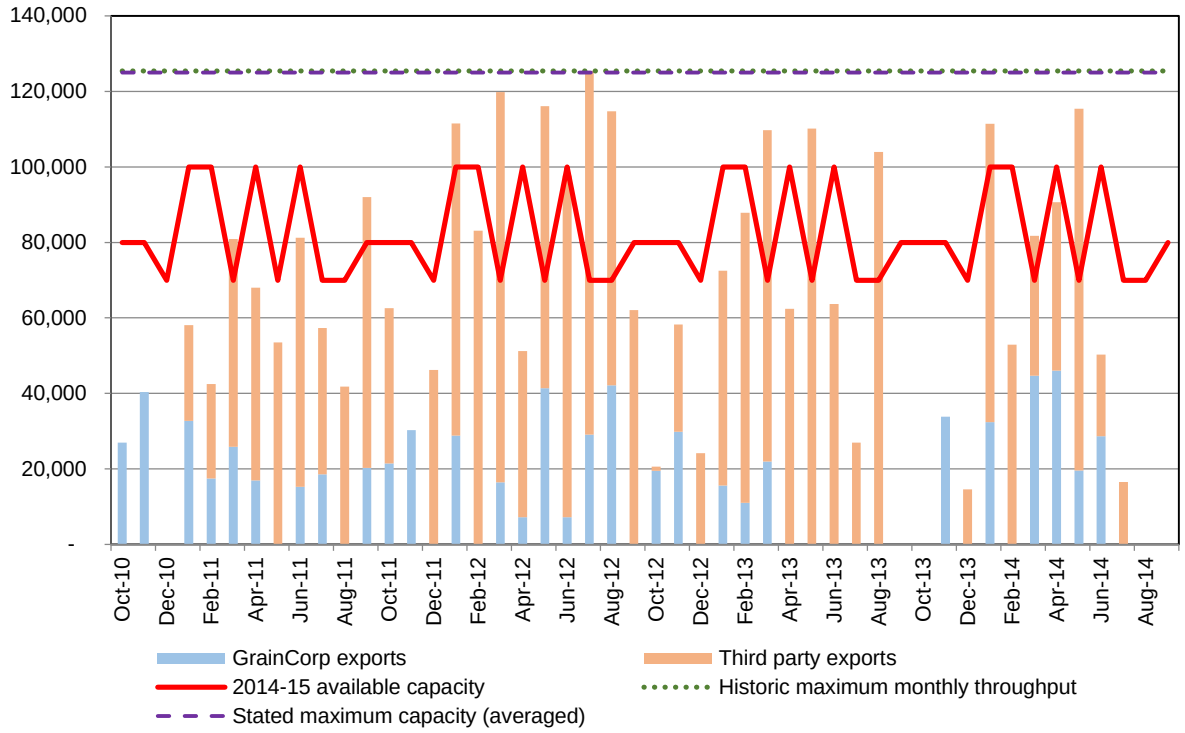
Figure 1 shows that for the majority of months each year the export task at Geelong is below both GrainCorp's current published available capacity and stated maximum capacity. There are several exceptions where monthly throughput has been particularly high during 'peak' periods, and has in some months exceeded both GrainCorp's available and stated maximum capacity estimates. Exports have generally been well below GrainCorp's historic maximum monthly throughput with exceptions in August 2011 and May 2013.

On an annual basis, exports have on average utilised 83 per cent of the current available capacity and 50 per cent of theoretical maximum capacity (based on maximum historic throughput) over the past four years. The 2011-12 shipping year was a particularly high throughput year, where the total exports of 2.67 million tonnes exceeded GrainCorp's current published available capacity but still fell below GrainCorp's stated maximum capacity. Annual exports have always been well below the theoretical maximum capacity.

Based on the available and maximum capacity figures provided by GrainCorp, there appears to be some degree of capacity constraint at Geelong port terminal, particularly in high demand months and in years where there has been an especially large harvest. However, in other years and in non-peak periods there is excess capacity.

Figures 2 and 3 similarly show monthly historical exports against the port terminal service provider's published available capacity and stated maximum capacity, as well as the theoretical maximum capacity, for the Portland and Melbourne port terminals respectively.

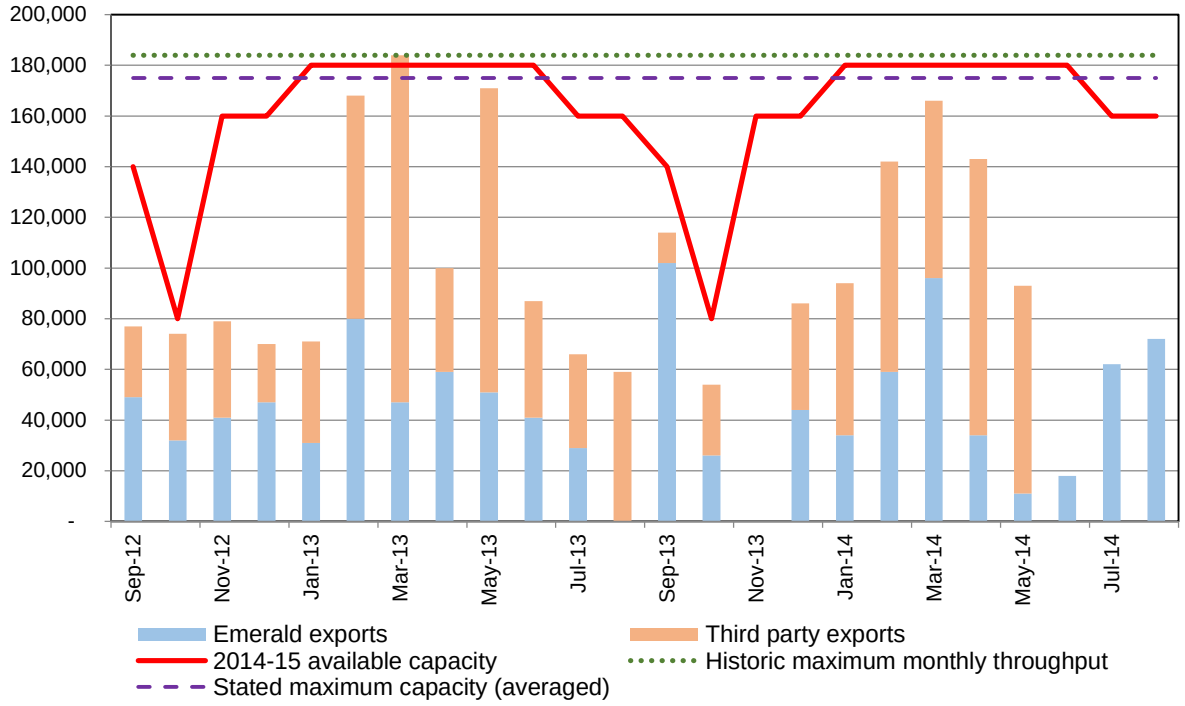
Figure 2: GrainCorp and third party exports from Portland port terminal (monthly)



Sources: GrainCorp submission 5 December 2014; additional data provided by GrainCorp; GrainCorp, GrainCorp shipping stem for 2014/15 season opening dated 3 February 2014, accessed at http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping.

Similar to Geelong, exports from Portland in peak periods have sometimes been higher than GrainCorp's current published available capacity (0.99 mtpa). However, this has generally only been the case for a few months each year, and for the remainder of the year there is a significant amount of capacity at Portland not being utilised. On an annual basis, exports from Portland have been well below both GrainCorp's current available capacity and stated maximum capacity estimates, with the exception of the 2011-12 season where exports from Portland were approximately 1.02 million tonnes.

Figure 3: Emerald and third party exports from MPT (monthly)



Sources: Emerald Submission 28 November 2014; Emerald Melbourne Port Terminal Capacity and Stem Changes updated 2nd March 2015, accessed at http://emeraldgrain.com/wp-content/uploads/2013/06/Melbourne-Port-Terminal-Capacity-and-Stem-Changes23.pdf.

Exports at Emerald's MPT have generally been below both indicative and theoretical maximum capacity even during peak periods, with one exception in March 2013. It is unclear whether this reflects greater spare capacity at Melbourne compared with Geelong and Portland or a less conservative approach to estimating total available capacity by Emerald compared with the approach taken by GrainCorp. In non-peak periods, and on an overall per annum basis, there is significant spare capacity available at Melbourne with annual utilisation rates between 50-58 per cent.

This comparison of monthly export data also highlights issues with the various capacity estimates discussed in section 3.1.4. Given that in a number of months actual exports have exceeded both the port terminal service providers' published available capacity and stated maximum capacity estimates, it appears that both may be understating the true maximum capacity of the port terminals. On the other hand, while especially high throughput may be achievable in a particular month, it may not be sustainable over a full twelve month period. For example, at Portland many of the 'oversubscribed' months are preceded and/or followed by months which appear to have spare capacity. This may reflect that the monthly data reflects actual shipping dates, but accumulation, storage and testing of grain may have taken place in the preceding month(s).

This comparison supports the ACCC's view that actual elevation capacity is likely somewhere in between the theoretical maximum estimates (based on annualised maximum historic monthly throughput) and the port terminal service providers' published available and stated maximum capacity estimates. It also appears that the port terminal service providers have some flexibility to vary the available capacity throughout the year in order to accommodate demand in peak periods.

Noting the difficulties with estimating actual elevation capacity, table 4 provides a summary of estimated capacity utilisation rates in at the Victorian ports based on the last three years

of historic exports. These utilisation rates are based on an average capacity estimate that falls in between the port terminal service provider's published available capacity figures and the theoretical maximum capacity based on historic throughput.

Table 4: Average exports and capacity utilisation

Past three years	Geelong	Portland	Melbourne
Average annual exports (mt)	2.16	0.74	1.13
Maximum annual exports (mt)	2.67	1.02	1.21
Minimum annual exports (mt)	1.68	0.57	1.04
Estimated capacity (mt)	2.6-3.4	0.99-1.5	1.94-2.10
Capacity utilisation (average year)	63%	56%	54%
Capacity utilisation (high throughput year)	78%	77%	58%
Capacity utilisation (low throughput year)	49%	43%	50%

Sources: GrainCorp submission 5 December 2014; Emerald Submission 28 November 2014; data provided by GrainCorp; GrainCorp shipping stem for 2014/15 season opening dated 3 February 2014, accessed at http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping; Emerald Melbourne Port Terminal Capacity and Stem Changes updated 2nd March 2015, accessed at http://emeraldgrain.com/wp-content/uploads/2013/06/Melbourne-Port-Terminal-Capacity-and-Stem-Changes23.pdf.

Overall capacity utilisation appears to be:

- highest at GrainCorp's Geelong port terminal
- lowest at Emerald's MPT
- somewhere in between Geelong and MPT at GrainCorp's Portland facility.

On an annual basis, there appears to be some spare capacity at all ports even during a high throughput year. However, given the seasonal nature of bulk grain exports this includes varying degrees of capacity constraint at all port terminals during peak periods.

3.2.2 Capacity in peak periods

Capacity constraints during peak periods are experienced at the majority of bulk wheat ports in Australia. These periods occur when new season grain is available to be shipped and may

differ depending on harvest times in the production zones. Demand for shipping slots during these peak periods exceeds capacity to some extent even in poor harvest years.[35]

As indicated from the above graphs, the peak period at each Victorian port generally appears to fall between February and May each year. However, there are a number of exceptions. For example, in 2013 the fourth highest monthly exports were outside this period (August at Portland and September at Melbourne) and in 2012 the highest monthly exports at Portland and Geelong were in July and August respectively. While there is an annual peak period of demand, exporters can and do spread their capacity requirements over the other months of the year, and the timing of the peak period itself may vary from year to year depending on the harvest.

Table 5 provides a summary of estimated capacity utilisation rates at the Victorian ports during the peak period from February to May.

Table 5: Average exports and capacity utilisation during peak period (February to May)

Past two years (Feb-May)	Geelong	Portland	Melbourne
Average annual exports (mt)	1.01	0.36	0.58
Estimated capacity (mt)	1.00-1.43	0.34-0.50	0.70-0.73
Capacity utilisation (average year)	85%	80%	81%

Sources: GrainCorp submission 5 December 2014; Emerald Submission 28 November 2014; data provided by GrainCorp; GrainCorp shipping stem for 2014/15 season opening dated 3 February 2014, accessed at http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping; Emerald Melbourne Port Terminal Capacity and Stem Changes updated 2nd March 2015, accessed at http://emeraldgrain.com/wp-content/uploads/2013/06/Melbourne-Port-Terminal-Capacity-and-Stem-Changes23.pdf

As expected, utilisation rates during peak periods are much higher than over the whole year, and there is also less variation between the ports.

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 of the export task into the non-peak period would represent an efficient use of infrastructure. The ACCC has previously taken the view that the mere likelihood of excess demand at some points during the wheat export year is not sufficient to warrant requiring a specific approach to capacity allocation.[36]

However, the ACCC notes that excess capacity at certain times of the year may not be at the times that provide the best prices and return for the grain internationally (typically in the first half of the calendar year). On this point, the VFF argues that spreading the export task into non-peak periods is not practical and submits that:

> It is unrealistic to assess capacity as a 'straight line' and state that exporters should shift their business to less preferable times of year simply to make use of excess capacity at those times.

[35] ACCC, Final Decision on Viterra undertaking 2011, p. 49
[36] ACCC, Final decision on Viterra undertaking 2011, p. 49

> In practice exporters seek to access capacity in the front half of the year when the Northern Hemisphere does not have supply.[37]

The ACCC recognises that exporting wheat during the peak period (in the first half of the calendar year) will generally provide the best returns for marketers. A key concern from the ACCC's perspective when considering whether to exempt a port terminal service provider 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 port terminal service provider that faces competition would have an incentive to maximise throughput during non-peak periods where there is spare capacity. If exporters have the option of shipping from more than one port terminal, each port terminal service provider's behaviour in allocating capacity during peak periods may 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.[38] Therefore, the extent to which capacity constraints in peak periods are a concern will depend on the presence of competing ports and the overall level of spare capacity throughout the rest of the year.

In 2011 the ACCC formed the view that while GrainCorp's east coast ports are subject to capacity constraints at peak periods, port capacity on the east coast is adequate overall to meet the demands on it and is less constrained than in other wheat export regions.[39] Capacity constraints have been further reduced since 2011; for example, elevation capacity at Emerald's MPT has doubled (from an estimated 1 mtpa to a theoretical maximum of 2.2 mtpa). The estimated capacity utilisation rates at table 4 above support this conclusion.

Both Emerald and GrainCorp consider that even the lower capacity estimates represent 'significantly more capacity than required' to meet average bulk grain exports in Victoria.[40] GrainCorp submits that the excess elevation capacity in Victoria results in 'low levels of utilisation in an average production year'.[41]

Submissions from various stakeholders also note a degree of excess export capacity at Victorian port terminals. GrainGrowers consider there is 'significant excess capacity in most years' in Victoria, but recommends that exemptions be reserved until operations commence at Bunge's proposed new facility.[42] Submissions from the GIAV and Glencore/Viterra agree that there is currently excess port capacity in Victoria, with the GIAV stating that 'due to the excess capacity of bulk shipping terminals… wheat exporters would be able to negotiate and secure reasonable access to Victorian port terminal services'.[43]

---

[37] VFF, submission on the ACCC's draft determinations, p. 2
[38] https://www.accc.gov.au/media-release/accc-allows-graincorp-to-introduce-long-term-port-access-agreements
[39] ACCC, *GrainCorp Operations Lt Port Terminal Services Access Undertaking Decision to accept*, 22 June 2011, p. 25
[40] GrainCorp, Submission in support, p. 15; Emerald, Submission in support, p. 9
[41] GrainCorp, Submission in support, p. 16
[42] GrainGrowers, submission on the ACCC's Issues Paper, pp. 2, 3
[43] GIAV, submission on the ACCC's Issues Paper, pp. 3, 4; Glencore/Viterra submission on the ACCC's Issues Paper

The ACCC notes that regulation of bulk wheat port terminal services does not determine the amount of capacity available in total. However, it may affect the ability of access seekers to obtain capacity when they want it. The ACCC considers that there appears to be significant spare capacity at each Victorian port terminal on an annual basis. At all ports there appears to be a degree of capacity constraint in certain months of some peak periods. However, based on data over the last two years (table 5) there has still been some available capacity during the peak window at all ports on any measurement. This implies that access seekers would have been able to export additional wheat during this peak period.

In years with a large harvest there is likely to be spare capacity available in non-peak periods. In years with poor harvest capacity utilisation is likely to be fairly low (estimated between 43 and 50 per cent). Port terminal service providers will still face similar fixed costs in these years so will have an incentive to maximise use of capacity at their terminal relative to their competitors. The extent to which each of the port terminals compete with each other, as well as the domestic and container markets, is discussed in chapter 4.

The ACCC considers capacity constraints in peak periods are, in particular, less likely to be a concern at Emerald's MPT due to the relatively lower level of capacity utilisation and the presence of GrainCorp's Geelong facility which draws grain from an overlapping catchment area. The grain catchment areas for each port are discussed at section 4.2.

Capacity constraint in peak periods may be of some concern at GrainCorp's Portland and Geelong facility in the absence of regulation under the Code, as GrainCorp may have the ability and incentive to prevent other exporters gaining access during peak periods, thereby inhibiting competition in upstream and downstream markets.

However, this concern is mitigated to some extent by the significant level of spare capacity available, especially in non-peak periods and in average and lower harvest years. Further, the evidence of excess capacity at Emerald's MPT, even in peak times, would likely promote a reduction in capacity constraints at GrainCorp's Geelong port terminal given the two terminals have overlapping grain catchment areas. This would limit the ability of GrainCorp to exploit any market power it may have in peak periods. While noting the VFF's submission, the ACCC considers that there does appear to be some spare capacity in peak periods.

While Bunge's proposed Geelong facility is not yet operational, the entry of a new port terminal at the Port of Geelong also would reduce capacity constraints during peak periods at ports with overlapping grain catchment areas (i.e. the Geelong and Melbourne port terminals, and to a lesser degree the Portland terminal).

GrainCorp submits the plans for further developments and expansions demonstrate that there are low barriers to entry to develop and expand port terminal capacity in Victoria.[44] Submissions from CBH and Glencore/Viterra agree that barriers to entry are low.[45] Potential barriers to entry in the provision of port terminal services include high up-front capital costs that are largely sunk once spent, availability of land, and obtaining planning permits. However, the ACCC considers that the current plans by Bunge represent a credible threat of entry by competing facility operators, which is likely to also reduce incumbent port terminal service providers' incentive to discriminate in favour of its own trading business to the detriment of other exporters.

[44] GrainCorp, Submission in support, p. 13
[45] CBH, submission on the ACCC's Issues Paper, 30 January 2015, p. 2; Glencore/Viterra, submission on the ACCC's Issues Paper.

3.2.3 Exporters and bargaining power

Over the past three years there have been 16 exporters shipping grain out of the three Victorian ports. This includes the two vertically integrated port terminal service providers, GrainCorp and Emerald.

Emerald group's marketing arm buys and sells wheat, barley, sorghum and canola and exports to international customers, including via its own MPT and GrainCorp's Geelong and Portland terminals.

GrainCorp Marketing has exported 1.54 mtpa of bulk grain on average from its Victorian port terminals over the past five years. GrainCorp has not exported from Emerald's MPT.

Aside from GrainCorp and Emerald, the largest exporters from Victorian ports in the last three years have been: Cargill, Glencore, ADM, Noble, Olam and Bunge.

As noted above, Bunge is intending to build its own port terminal at Geelong and there is speculation that Noble, Emerald and Cargill, via Quattro, will invest in a port terminal facility at Portland.

Both Emerald and GrainCorp currently publish port loading protocols setting out their policies and procedures for managing demand as required by the Code. The Code requirement to publish these policies and procedures will continue to apply regardless whether an exemption is granted.[46] GrainCorp has operated an annual first-in-first-served capacity allocation model at its Victorian ports since 2009. Since 2013 it has also operated a longer term capacity allocation model where exporters can sign long term 'take or pay' agreements for port capacity over three years.[47]

Emerald has also operated an annual first-in-first-served capacity allocation model since 2011 but has yet to introduce long term agreements. Emerald submits that it is essential it be:

> …able to offer flexible and innovative supply chain solutions to its exporter customers, including but not limited to providing the security of long term access and tailored export programmes.[48]

Emerald and GrainCorp both consider their non-vertically integrated customers have significant bargaining power. Emerald submits that its key clients 'have exported out of both Melbourne and Geelong and have significant bargaining power'.[49]

The VFF, however, makes the argument that:

> …regardless of how 'significant' the bargaining power is perceived to be, GrainCorp and Emerald are currently the only port terminal service providers in Victoria, so all bulk exports

---

[46] Part 2 of the Code requires all port terminal service providers deal with exporters in good faith and publish a port loading statement and policies and procedures for managing demand for their services, and make current standard terms and reference prices for each port terminal facility publically available on their website.

[47] https://www.accc.gov.au/media-release/accc-allows-graincorp-to-introduce-long-term-port-access-agreements; GrainCorp Long Term Agreement Capacity Allocations 1 October 2013 – 30 September 2016, http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/ (viewed 17/03/2014).

[48] Emerald, Submission in support, p. 16

[49] Ibid, p. 17

must go through their facilities. Thus genuine fair and transparent access is required for these other exporters.[50]

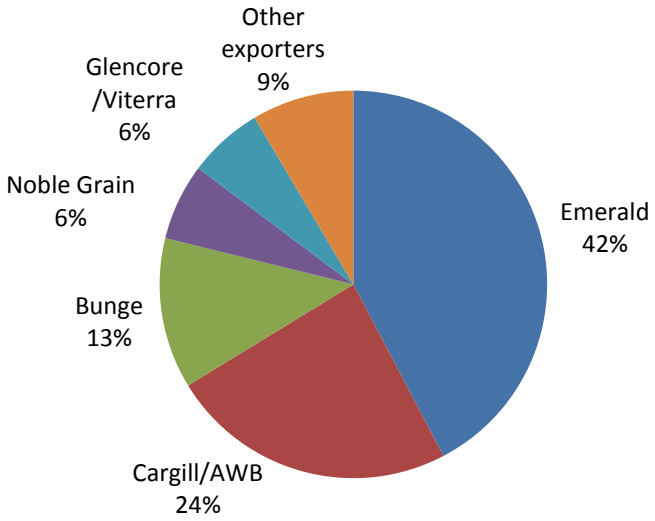
GrainCorp submits that its export customers:

> have access to alternative supply chains, where the major export customers (Glencore, Cargill and Emerald), representing 70% of non-GrainCorp Marketing export volume own and operate or have access to alternative country and export capacity.[51]

GrainCorp also notes that its 'major export customers are large multinational traders that are many times larger than GrainCorp with access to significant capital and overseas grain markets'.[52]

Figures 4 to 6 below set out the share of total bulk grain exports by the top five exporters at each terminal.

Figure 4: Share of exports at MPT over the past three years



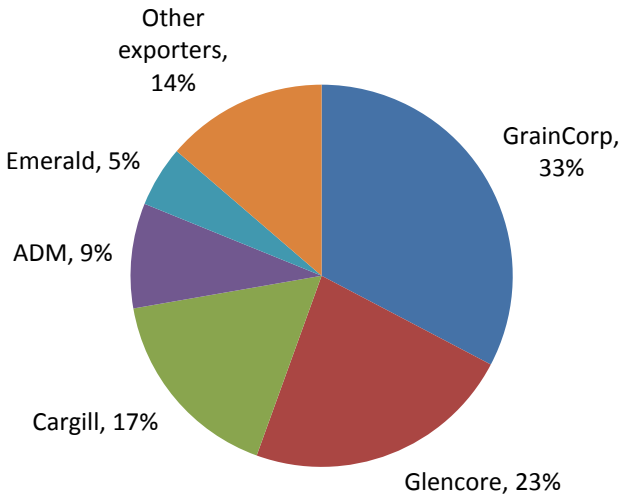
Source: Data provided by Emerald

Emerald has been the largest exporter out of its own port terminal facility with a share of 42 per cent on average over three years. The next four largest exporters using the Melbourne facility were Cargill, Bunge, Noble Grain and Glencore/Viterra. GrainCorp has not exported from MPT.

Figure 3 on page 22, which shows total estimated capacity and exports at MPT over the two year period to August 2014, indicates significant excess capacity at MPT where other exporters could have executed additional shipments.

[50] VFF, submission on the ACCC's draft determinations, p. 8
[51] GrainCorp, Submission in support, p. 4
[52] ibid, p. 5

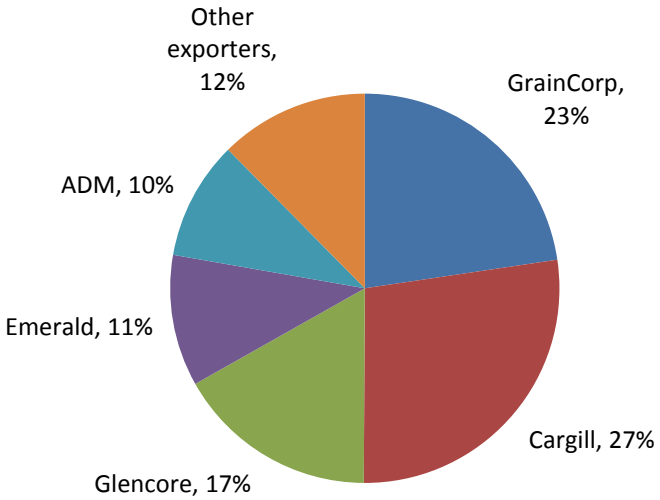
Figure 5: Share of exports at Geelong port terminal over the past three years



Source: Data provided by GrainCorp

GrainCorp has exported on average 33 per cent of total exports from its Geelong port terminal. The next four largest exporters from Geelong were Glencore, Cargill, ADM and Emerald.

Figure 6: Share of exports at Portland port terminal over the past three years



Source: Data provided by GrainCorp
Note: Shares corrected from the equivalent chart presented in the ACCC's draft determination

At GrainCorp's Portland facility, Cargill has been the largest exporter on average over the past three years with around 27 per cent of the total exports. GrainCorp was the second largest with 23 per cent. The next three largest exporters were Glencore, Emerald and ADM. Smaller exporters have represented 12 per cent of total exports at the Portland facility compared with around 14 per cent at Geelong and 9 per cent at Melbourne.

The VFF argues that:

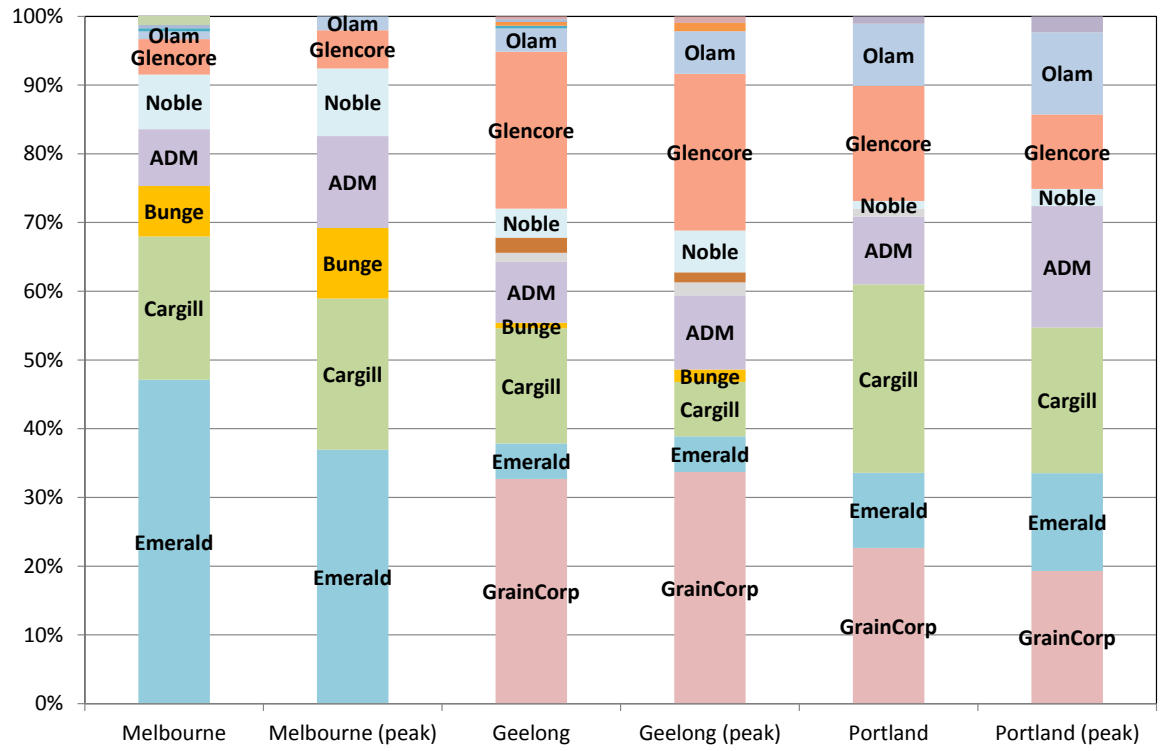
> GrainCorp's long-term capacity allocation system has potential to advantage its own marketing arm and disadvantage smaller exporters, which together make up only 14% of throughput at the Geelong terminal. As a result, competition is discouraged.[53]

The ACCC considers that, in summary, under the current regulated system, GrainCorp and Emerald face significant competition in downstream exports from large players such as Cargill, Glencore and ADM. GrainCorp is the largest exporter from Victoria with 22 per cent of total Victorian exports over the past three years, the majority being from its Geelong facility. However, the second largest exporter, Cargill, is not far behind with 21 per cent of total Victorian exports. While Emerald is easily the largest exporter at its own port terminal, it is the fourth largest exporter from Victoria as a whole. These larger exporters also face competition from a number of smaller players which in total represent around 16 per cent of bulk grain exports from Victoria.

In light of the preceding discussion regarding peak capacity in section 3.2.2, the ACCC has also considered the relative share of exports during peak periods compared with non-peak periods.

Figure 7 shows the share of total exports over the whole year compared with just the peak period (February to May).

Figure 7: Share of exports annually and during peak periods



Notes: Data for Melbourne port terminal is average exports over two years (2012-13 and 2013-14). Data for the Geelong and Portland port terminals is average exports over three years to 2013-14

Source: Emerald loading statement dated 23 December 2014 and data provided by GrainCorp.

[53] VFF, submission on the ACCC's draft determinations, p. 8

There does not appear to be a significant difference between the share of exports during peak periods compared with the year as a whole.

Importantly, exporters other than GrainCorp and Emerald have been able to access similar levels of capacity during peak periods. At Portland, GrainCorp's share of exports is actually lower during peak periods compared with the year as a whole.

Additionally, the ACCC's analysis of capacity utilisation in sections 3.2.1 and 3.2.2 shows a significant degree of spare capacity at Emerald's MPT, including in peak periods. Accordingly, it would seem likely that if other exporters wanted to execute more shipments, capacity was available to enable them to do so.

Based on the above analysis, the ACCC considers that there is currently some level of effective competition in the downstream market for bulk wheat exports.

Regarding the impact of the Code on this level of competition, stakeholders have expressed differing views. The VFF submits that an exemption would restrict competition and that:

> the Code encourages competition and promotes efficiency in the market by driving volume through ports through providing provisions for all exporters to not be excluded or priced out of a market service provision.[54]

Conversely, AGEA submits that:

> the exemptions will assist to promote competition, flexibility and supply chain efficiencies and that the industry will be best served by moving to a fully deregulated market.[55]

The ACCC has considered whether the current level of competition is likely to be maintained if one or more of the Victorian port terminal service providers are granted an exemption under the Code. This depends in part on the reasons behind the current level of competition for bulk exports in Victoria, which include consideration of the presence and impact of capacity constraints (discussed above) and competition in the upcountry supply chain and competition from containerised grain exports and domestic demand (discussed in chapter 4).

The ACCC considers there may be a risk that port terminal operators would favour larger exporters, who are more likely to have greater bargaining power in negotiating the terms of access given that their volumes would be needed to maximise throughput. This is particularly the case for exporters who are building or may be able to build their own port terminal (such as Bunge at Geelong, and potentially Cargill and Noble at Portland). It is therefore possible that if the exemptions were granted so that parts 3 to 6 of the Code did not apply, smaller exporters would have a reduced ability to negotiate terms of access and may be unable to obtain capacity (particularly during peak times) at an exempt port terminal.

The ACCC notes that risk of an exempt port operator favouring larger exporters at the expense of smaller exporters is somewhat mitigated by the circumstances in Victoria, where there appears to be available export capacity and the threat of entry of new port terminals (for example, the proposed Bunge terminal in Geelong).

The ACCC's views of the extent to which these concerns apply to each of the Victorian port terminal facilities are set out in the assessments of each of the facilities in chapters 5 to 7 of this document.

---

[54] VFF, Submission on the ACCC's Issues Paper, p. 2
[55] AGEA, Submission on the ACCC's Issues Paper, p. 1

4 Competition across the bulk wheat supply chain, container exports and domestic demand

This chapter sets out the ACCC's 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 extent to which each of the port terminals draw grain from overlapping catchment areas, and therefore the extent to which the port terminals compete with each other for bulk wheat export volumes.

This chapter also discusses the competitive effect of container export services and the domestic demand for wheat. In particular, containerised exports and domestic demand are alternative options for grain marketers wishing to sell wheat, and therefore potentially provide a competitive constraint on the bulk wheat port terminal service providers.

The ACCC's consideration of the extent to which the port terminal service providers 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 and views in response to the ACCC's draft determinations are included as relevant through this chapter.

4.1 Victorian port terminals' upcountry links

The upcountry environment relating to the Victorian port terminals is a relevant consideration in the ACCC's assessment as both GrainCorp and Emerald have vertically integrated operations in Victoria. Whether either of the port operators 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.

GrainCorp and Emerald have identified the broad geographic areas which produce grain that can be exported through their Victorian port terminals. Emerald's website states that its upcountry facilities in Victoria and southern New South Wales feed its MPT (and Emerald's new joint venture terminal at Port Kembla which is due for completion October 2015).[56] Emerald submits that:

> Victoria's key catchment areas include the Melbourne, Loddon, Goulburn, Ovens-Murray, Gippsland, East Gippsland, Central Highlands, Barwon, Western District, Wimmera and Mallee statistical divisions.[57]
>
> Grain produced in Victoria is consumed domestically or exported through Melbourne port terminal or its competitor ports, primarily Geelong and Portland but also Port Kembla and Port Adelaide.[58]

GrainCorp submits that Victoria operates as one port zone, whereby Victorian grain can feed ports in Melbourne, Geelong, Portland and Adelaide.[59]

---

[56] Emerald Grain, http://emeraldgrain.com/home/about/
[57] Emerald Grain, Submission in support, p. 5
[58] ibid, p. 6
[59] GrainCorp, Submission in support, p. 6

Total grain production in Victoria has varied over the last ten years. According to data from the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), winter grain production in Victoria ranged significantly from a low of 1.7 million tonnes in 2006-07 to 7.6 million tonnes in 2010-11.[60] In three out of the last four years to 2013-14, Victorian grain production exceeded 7 million tonnes.

Wheat is Victoria's largest crop, followed by barley, canola, oats and lentils.[61]

4.1.1 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.[62]

The PC recommended in its review into the wheat export marketing arrangements that upcountry grain storage should not be regulated.[63] 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 across Victoria and southern NSW is relevant to the assessments of GrainCorp and Emerald's exemption applications. If there is a sufficient degree of competition in upcountry services, it would limit the ability for a port operator to leverage market power from its upcountry networks to its port terminal services.

Emerald and GrainCorp submit that there is excess upcountry storage capacity in Victoria. Emerald submits that:

> The competitive landscape exhibits a storage and handling network with greater capacity then the volume of grain produced.
>
> GrainCorp has a significantly larger and more geographically diversified upcountry storage and handling network than Emerald. This assists GrainCorp in providing more competitive pricing around its upcountry silos. In doing so GrainCorp draws grain that is naturally freight advantaged to Melbourne into its upcountry silos, and then uses a less efficient pathway to move that grain through bulk export out of Geelong. [64]

---

[60] ABARES, Agricultural commodity statistics 2014, December 2014, p. 25
[61] Victorian Department of Environment and Primary Industries, http://www.depi.vic.gov.au/agriculture-and-food/grains-and-other-crops
[62] Productivity Commission, Wheat Export Marketing Arrangements, 1 July 2010, p. 31
[63] The Parliament of the Commonwealth of Australia, House of Representatives, Wheat Export Marketing Bill 2008, Explanatory Memorandum, pp. 13, 14
[64] Emerald Grain, Submission in support, p. 6, 12

GrainCorp submits that:

> The large range of marketing options in Victoria has supported the construction and operation of a substantial and competitive country storage network. Various storage providers can readily supply wheat and other grains into alternative local and exports channels, depending on the market price and supply chain cost for grain.
>
> Victoria has significant excess country storage capacity. GrainCorp estimates that Victoria has total storage capacity of 14Mt. Average utilisation of country storage is only 39% based on an average grain production of 5.3Mt or 59% based on peak grain production.[65]

Several other public submissions made comments regarding the upcountry storage and handling facilities in Victoria and southern NSW.

GrainGrowers submits that:

> Emerald, compared to GrainCorp, has very minimal influence on upstream markets, and this is diminished by the strong domestic market, competing storage and container trade.
>
> GrainCorp faces excess country and packing capacity for the majority of Victorian grain. [66]

The GIAV submits that it agrees with the supporting submissions made by GrainCorp and Emerald in relation to upcountry storage and handling.[67]

The VFF presents an alternative view and submits that the vertically integrated assets of GrainCorp and Emerald largely dominate the Victorian storage, handling, port and export markets:

> The degree of vertical integration held by these providers is significant, as noted by the providers in their own submissions to the ACCC, and it provides a significant advantage at port as well.[68]

Emerald submitted that it disagrees with the VFF's views regarding the influence of Emerald's operations on the market. In Emerald's supplementary submission it notes that:

> Emerald's share of the up-country storage market is relatively minor compared to the shares of GrainCorp, Cargill/GrainFlow, private stores and on-farm storage. While it is true that Emerald is a vertically integration operation, this is for reasons of efficiency and Emerald certainly does not have the power to leverage its structure to control the market.[69]

Following the ACCC's draft determinations, the VFF reiterated its view that GrainCorp and Emerald have a dominant presence upcountry, and that the port operators have a significant degree of vertical integration upcountry.[70]

There are a range of upcountry grain storage and handling facilities located across Victoria and southern NSW. GrainCorp operates the largest number of these facilities and submits that it operates 50 country sites with a total storage capacity of 5 mt and has average

---

[65] GrainCorp, submission in support, p. 18
[66] GrainGrowers, Submission on the ACCC's Issues Paper, p. 5
[67] GIAV, Submission on the ACCC's Issues Paper, p. 2
[68] VFF, Submission on the ACCC's Issues Paper, p. 5
[69] Emerald Grain, Supplementary submission, p. 2
[70] VFF, submission on the ACCC's draft determination. pp. 13, 14

receivals of 2.4 mt of grain each year.[71] GrainCorp's upcountry facilities are located across almost all grain growing parts of Victoria and most sites are situated along rail corridors throughout the region. GrainCorp submits that grain bypassing GrainCorp sites ranges between 1.2 and 4.8 mt.[72]

Emerald operates seven storage facilities in Victoria with estimated future annual receivals of 500,000 tonnes, and an approximate total storage capacity of 600,000 tonnes. Most of Emerald's sites are located in the north and western parts of Victoria. All of these sites are accessible by road and two are also accessible by rail. Emerald operates a further facility in Tocumwal NSW, close to the Victoria/NSW boarder, which has storage capacity of 230,000 tonnes and also has rail access.[73]

Other major exporters also operate storage and handling facilities in the region:

- Cargill operates four Victorian facilities through its wholly owned subsidiary GrainFlow. Victorian GrainFlow sites are located in Sea Lake, Birchip, Charlton and Dimboola and have substantial storage capacity and rail access. There is a further GrainFlow site in Oaklands in southern NSW.

- Viterra operates a storage site in Dooen in western Victoria with storage capacity of 200 000 tonnes rail access and container packing capability.[74]

Both GrainCorp and Emerald submit that apart from each other and other major grain exporters, there are around 20 other commercial storage facilities operating in Victoria.[75] Other companies that operate storage facilities in the region include Riordan Grains, Wilken Group, Broadbent Grain, Moulamein Grain Cooperative and Moore Bulk Storage. Some can provide integrated services including container packing and/or grain transport services:

- Riordan Grains has access to up to 400,000 tonnes of accumulation and upcountry storage capacity at multiple sites across Victoria and southern NSW. Riordan Grains also offer container packing and trucking services.[76]

- Wilken Group offers storage services in Warracknabeal Victoria, has the ability to receive, store and outload over 100,000 tonnes of grain annually.[77]

- Broadbent Grain owns a grain receival facility at Lakaput in the western district of Victoria and offers road transport of bulk commodities and containerisation of grain including packing and delivery to port.[78]

- Moulamein Grain Co-operative operates multiple grain storage sites in southern NSW and is associated with other cooperative owned storage facilities in Boort, Nandaly and Berriwillock Victoria.[79]

---

[71] GrainCorp, Submission in support, p. 19
[72] GrainCorp, Submission in support, p. 19
[73] Emerald Grain, http://emeraldgrain.com/home/grower-services/store-and-move-grain/our-network/
[74] Viterra, http://www.viterra.com.au/packing-and-processing
[75] Emerald Grain, Submission in support, p. 6
[76] Riordan Grains, http://riordangrains.com.au/grain-storage/
[77] Wilken, http://www.wilkens.com.au/index.php/storage
[78] Broadbent Grain, http://broadbentgrain.com.au/
[79] Moulamein Grain Co-operative, http://www.moulameingrain.com.au/index.php/about-moulamein

- Moore Bulk Storage is a commercial grain and hay storage situated at Horsham and services the west of Victoria. Operations include receival, storage, cleaning, container packing and outturn of grain to areas interstate and intrastate.[80]

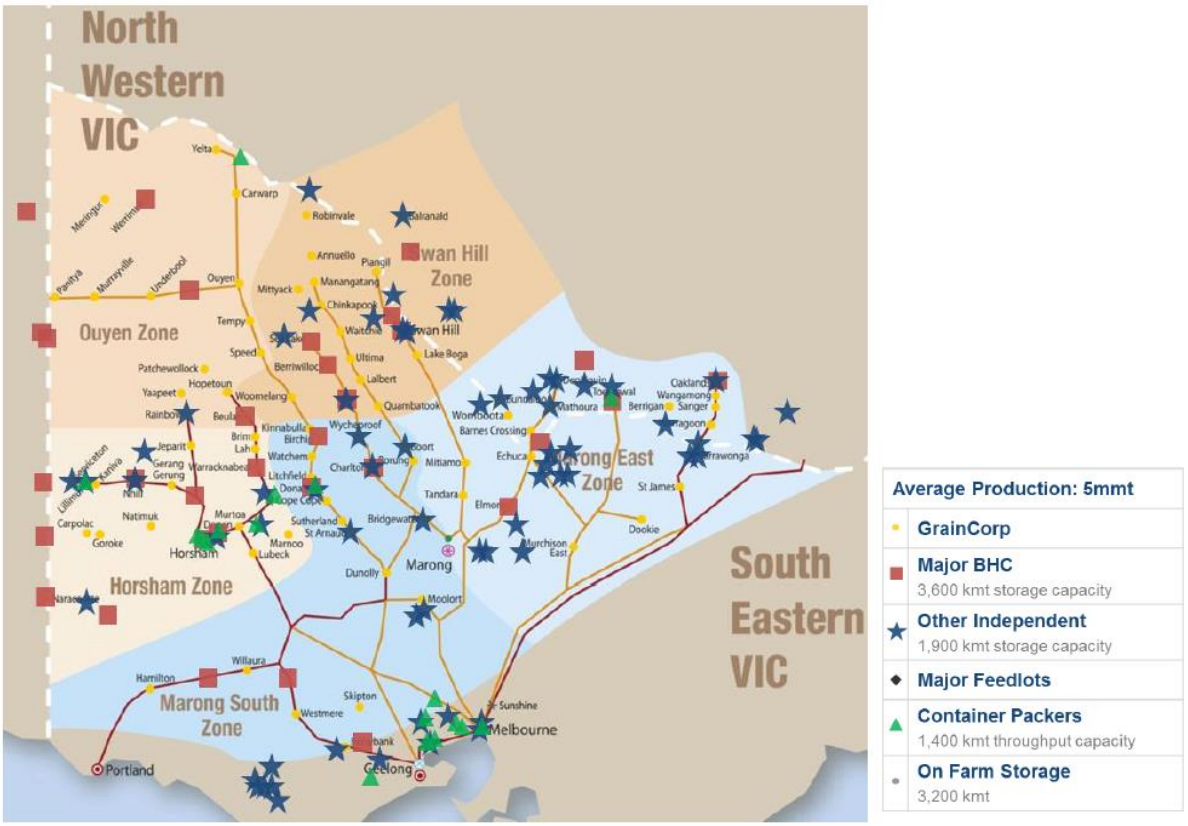
- Kelly Grains has a storage facility in Tocumwal (southern NSW) with capacity for 240,000 tonnes and container packing capabilities.[81]

- Pearsons Group own grain storage facilities at Kyalite, Koraleigh, Tooleybuc, Murray Downs and Woorinen (all near the Victorian/NSW boarder) and offers regular trucking services.[82]

GrainCorp submits that competing facilities have a total estimated capacity of 5.5 mt.[83]

Figure 8 is an illustration provided by GrainCorp presenting the locations of GrainCorp and other grain handlers' storage facilities throughout Victoria and southern NSW.

Figure 8: GrainCorp's depiction of the upcountry storage and handling network in Victoria and southern NSW



Source: GrainCorp, Submission in support, p. 19

Figure 8 shows that storage sites are distributed across many regions of Victoria and southern parts of NSW. In particular, larger concentrations of sites appear to be in the

[80] Moore Bulk Storage, http://www.moorestorage.com.au/index.htm
[81] Kelly Grains, http://www.kellygrains.com.au/storage
[82] Pearsons Group, http://pearsonsgroup.com.au/storage.php
[83] GrainCorp, Submission in support, p.19

central, north and some western parts of Victoria with relatively fewer sites in the north-western corner and no sites in south-eastern parts of Victoria.

On-farm storage facilities also contribute to the total Victorian upcountry storage capabilities. Recently there has been an increasing trend for on-farm storage in eastern Australia. On-farm storage in Victoria provides some growers with opportunities 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 [84]
- accumulate grain for transport to domestic users and possibly for export via containers.

The PC also 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.[85]

Victoria ranks second behind NSW in terms of the total amount of on-farm storage capacity. Recent estimates suggest there is between 3.2 and 3.5 mt of on-farm storage capacity in Victoria.[86]

The ACCC understands that a variety of upcountry bulk (off-farm) storage and handling facilities operate across Victoria and southern NSW, with a number of competing operators including GrainCorp, Emerald and various other larger, medium and smaller operators.

GrainCorp operates the largest number of storage sites in Victoria. However, this is not a substantial majority and has reduced from historic levels and may reduce further if GrainCorp opts to close more of its Victorian sites under Project Regeneration.[87] Additionally, GrainCorp's group of storage facilities face certain pressures from newer and more efficient sites owned by its competitors. Some of GrainCorp's receival sites were established as early as 1918 and most of its infrastructure was established in the 1960s.[88]

The ACCC recognises that as the operator of the largest number of storage sites, GrainCorp remains in a strong market position. As such, it is necessary to consider alternative options for marketers in Victoria.

Emerald is the second largest upcountry player in terms of the number of sites, but its storage capacity is only marginally larger than various other storage providers. Cargill, Viterra, Riordan Grains and Wilken Group all offer significant storage capacity, as well as a number of other companies.

---

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

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

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

AEGIC, The cost of Australia's bulk grain export supply chains: An information paper, January 2014, p. 11

[87] GrainCorp, Project Regeneration Site list

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

Upcountry bulk storage sites are able to service both the bulk wheat export market and the relatively large Victorian domestic market for grain (discussed in section 4.4). Some sites can also serve Victoria's growing containerised grain export market (discussed in section 4.3). Given the fixed costs of upcountry grain storage facilities, and the large number of options for storage in Victoria with a number of sites set up to accommodate bulk exports, the ACCC considers that site operators are incentivised to compete with each other in order to attract customers and maximise throughput in the facility.

The VFF and PGA remain concerned about the degree of vertical integration held by GrainCorp and Emerald. While the ACCC accepts that both operators are vertically integrated, evidence shows that vertical integration of itself does not appear to be a major impediment to competition in this case. For instance, aside from GrainCorp and Emerald, a number of other companies have integrated operations offering storage together with container packing or transport services, or both. The ACCC's market inquiries suggest that these sites are competitive options for exporters and farmers to use. Although many sites have road only transport access, road transport is a viable option and is being used to transport a large proportion of grain in Victoria (as discussed in section 4.1.2).

Furthermore, the ACCC understands that bulk (off-farm) storage sites, other than those owned by Emerald and GrainCorp, are viable alternatives and are currently being utilised by exporters and farmers. Moore Bulk Storage, for example, lists exporters ADM, Agrex and Quadra as well as domestic miller JK Milling as a few of its current clients storing grain at its facility.[89] Additionally, Bunge is proposing to build a new port facility in Geelong but does not own an upcountry storage network, suggesting that Bunge would utilise storage facilities owned by other companies to support its proposed port terminal operations.

A number of competing sites are located relatively close to each other, including to the sites of GrainCorp and Emerald. In some cases competing sites are located in the same town and some are even situated in adjacent blocks to a GrainCorp or Emerald site. In Boort, Victoria, for example, Moulamein Grain Co-operative's storage site neighbours GrainCorp's site. In Tocumwal in southern NSW, at least three operators including Emerald, Kelly Grains and GrainCorp each operate their own storage sites.

While competing storage sites operate across a number of locations in Victoria, there may not be a competitor in every single location. The ACCC does not consider that it is necessary for there to be multiple competitors at every alternative location upcountry for there to be a level of competition in upcountry storage, although there may be limited competition in particular geographic regions.

Overall, given that there are a large number of competing bulk storage sites in the region which service a number of markets and provide significant capacity, storage companies have an incentive to compete and draw grain through their own facilities. While GrainCorp has a stronger presence than Emerald and other storage providers, this does not necessarily equate to GrainCorp (or Emerald) being able to exercise market power, particularly in such a region where there are a large number of viable competitors who are currently attracting business.

The ACCC's view is that given the wide range of options of upcountry storage across Victoria which are currently being used by bulk exporters and other marketers, the upcountry storage and handling environment does not appear to be a factor limiting competition at port.

[89] Moore Bulk Storage, http://www.moorestorage.com.au/index.htm

4.1.2 Grain transport services

The use of rail and/or road networks to transport grain from storage facilities to port is a relevant consideration in examining the level of competition between various Victorian 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.

AEGIC notes that, for port zones across Australia, there is a significant catchment area, upwards of a 200 km radius from port depending on the season and subsequent road freight, where road transport costs are competitive with rail costs.[90] In a smaller state such as Victoria, a 200 to 300 km radius from the port terminals covers a large proportion of the State. For example, Echuca (on the Victoria/NSW boarder) is around 215km from Melbourne and Horsham is about the same distance from Portland. Wycheproof is about 280 km from Melbourne and about 300 km from Geelong.

In Victoria, large amounts of grain are transported by both rail and road. AEGIC indicates that around 53 per cent of grain is transported by rail, with the remainder arriving at port by road.[91]

GrainCorp submits that:

> Victoria is a geographically compact State with relatively short hauls for grain to both the domestic and export markets. Rail's transport role is generally limited to the longer hauls of over 400kms for export grain from north west Victoria. Rail efficiency and the ability to use rail resources efficiently is restrained by Victoria having two rail track gauges and weight restrictions from most grain lines.
>
> Road has become the primary means of transport to port, as most grain is located within distances of 250-350km, where road is more competitive.[92]

Rail

Rail in Victoria is complicated by the presence of multiple rail gauge configurations running across the different parts of the State.

GrainCorp's Geelong port terminal can receive rail deliveries from upcountry through both broad and standard gauge rail networks. It is connected to broad gauge lines running from north west and northern Victoria and southern NSW. Emerald's MPT also has rail access from almost all these same broad gauge lines. A separate standard gauge rail network runs from western Victoria to GrainCorp's Geelong port terminal, and then subsequently links to MPT.

The standard gauge network also connects GrainCorp's Portland terminal to growing regions in western Victorian by rail. Additionally, the Australia Rail Track Corporation's (ARTC) interstate rail line allows certain sites in western Victoria access to port terminals in Adelaide. GrainCorp submits that:

> Portland terminal has poor rail access compared to the other ports, as the line is:
>
> - Weight restricted;

[90] AEGIC, The cost of Australia's bulk grain export supply chains: A postscript, Version 2014.1, p. 17
[91] AEGIC, The cost of Australia's bulk grain export supply chains: A postscript, Version 2014.1, p. 17
[92] GrainCorp, Submission in support, pp. 8, 9

- Routed a longer distance than road, as all trains must travel via Ararat, which is towards Melbourne; and
- Standard gauge rail only, which excludes the port from drawing grain by rail from north western Victoria.

> The Victorian standard gauge network from western Victoria has access to the higher standard ARTC interstate track that can efficiently move grain into either Geelong/Melbourne or Adelaide Port Terminals.[93]

GrainCorp also submit that Portland only has access to a smaller proportion of the Victorian crop via the smaller standard gauge rail network.[94]

Grain marketers engage rail providers such as Pacific National and Qube to operate trains and transport grain to port under fixed volume take or pay contractual arrangements.[95] The ACCC understands that larger exporters of grain such as GrainCorp, Cargill, Emerald and Viterra have typically engaged rail providers to varying degrees.

While rail services appear to be accessible to those exporters who wish to use them, some marketers choose to avoid the risks associated with take or pay contracts combined with the uncertainty of harvest, and prefer to utilise trucks to transport grain to port.

The VFF submits that rail networks continue to play a significant role in export pathways and that:

> the increased use of road transport in recent years is a reflection of both the lack of investment in the rail network and the higher cost of storing grain in upcountry bulk handling service providers.[96]

The ACCC understands that rail is likely to be the most efficient transport method to move grain to port over longer distances in particular, due to its scale advantages compared to road transport. The ACCC also recognises that rail transport options are available and being used by some industry participants in Victoria and is therefore a relevant consideration.

However, the ACCC notes that it does not consider that it is necessary that rail is always used for the transport of grain if exporters wish to use alternatives, and that it is open to the ACCC to consider other modes of transport in its competition assessment. The ACCC considers that there are alternative transport options which are also relevant. The current upcountry environment in Victoria provides for cost effective road transport options across many locations in Victoria. As the following section notes, evidence shows that road transport options are being taken up by a significant number of participants which has implications on the extent of competition in the broader upcountry environment.

Road

The three Victorian port terminals can and do receive grain by road. Given the relatively short distances from some Victorian growing regions to the various port terminals, road transport represents a significant proportion of grain receivals at each port:

- GrainCorp submits that in 2013-14 its Geelong terminal received around 50 per cent of receivals via road. GrainCorp submits that grain moved to Geelong by road have

[93] GrainCorp, Submission in support, p. 7
[94] GrainCorp, Submission on the ACCC's draft determinations, p. 5
[95] Emerald Grain, Submission in support, p. 14
[96] VFF, Submission on the ACCC's draft determinations, p. 5

access to relatively lower freight rates due to fertiliser back-loading business where Geelong is the largest source of fertiliser and other farm inputs in the area.[97]

- GrainCorp submits that the proportion of grain intake by road at its Portland facility generally increased over the last 5 years and in 2013-14 it received around 80 per cent of its grain receivals via road.[98] This is despite a large proportion of grain (78 per cent) being received at major upcountry silos in the Portland catchment area which have access to railway lines.[99]

- Emerald's MPT also receives grain via road transport, and has recently increased its terminal's road receivals capability.

There are a number of trucking companies operating in Victoria. Many of these companies are noted in section 4.1.1 as some of them also offer integrated services with transport, storage and handling and some also offer container packing services. Additionally, other companies such as Brooks Logistics and Porthaul also offer grain transport services in Victoria.

The ACCC considers that the relatively shorter distances from upcountry storage sites to port in Victoria, and the significant current use of road to transport grain from many parts of the State, clearly demonstrate that road is a viable transport option. Further, in the current environment road is the preferred form of transport by a number of industry participants.

The ability to access fertilizer and other back-loading markets, particularly at Geelong, may provide an additional incentive for marketers to use road transport in Victoria and supports the use of trucks to transport grain to certain ports.[100]

The implications of the significant use of road transport suggest that each port terminal's grain catchment area is likely to have a degree of flexibility and not be limited to certain boundaries or rail paths. The ACCC's view on the grain catchment areas for each port terminal which can facilitate competition between the terminals for the export of grain is discussed further in the following section.

4.2 Grain catchment areas by port

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.

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) other terminals.

The relevant catchment area for each Victorian port terminal 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.

---

[97] GrainCorp, Submission on the ACCC's draft determination, p. 4
[98] GrainCorp, Submission in support, p. 9
[99] GrainCorp, Submission on the ACCC's draft determination, pp. 4, 5
[100] Bunge, http://www.bunge.com.au/news/39-new-grain-export-terminal-for-geelong

Emerald submits that MPT's catchment area could be considered as the region which should be freight advantaged to Melbourne under normal circumstances.[101] Emerald notes that there is a significant amount of grain considered contestable between MPT and other ports/port zones, and submits that:

> Geelong already exports grain from locations that would most efficiently flow to Melbourne. Notwithstanding freight cost differentials, grain often flows to either Melbourne or Geelong from Victorian sites.[102]

The following illustration was provided in Emerald's supporting submission which indicates that the northern and central parts of Victoria and southern parts of NSW are part of both the MPT and Geelong port terminals' catchment areas.

Figure 9: Emerald's depiction of the grain draw to MPT and Geelong port terminal

Source: Emerald Grain, Submission in support, p. 6

The relatively close proximity of MPT and the Geelong facility and the established rail and road networks suggests that grain originating in a number of areas in Victoria could supply either port.

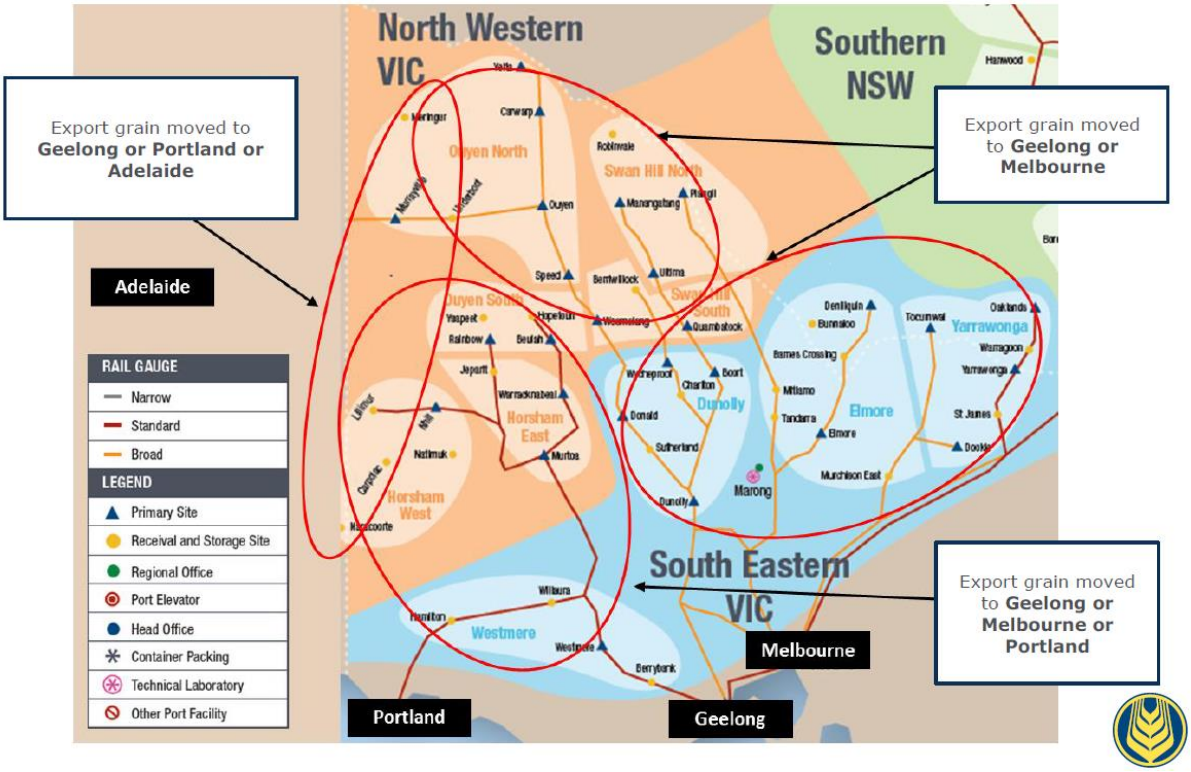
In contrast, GrainCorp's Portland port terminal is positioned in a more geographically isolated location relative to other terminals.

GrainCorp also provided an illustration of what it believed to be the relevant catchment areas for all three Victorian port terminals (see figure 10). Similar to Emerald's submission, GrainCorp also views the northern, central, and north eastern parts of Victoria to be part of both MPT and the Geelong terminals' catchment areas.

---

[101] Emerald Grain, Submission in support, p. 5
[102] ibid, p. 6

Figure 10: GrainCorp's depiction of the grain draw to Victorian port terminals



Source: GrainCorp, Submission in support, p. 6

Figure 10 also shows GrainCorp's interpretation of the catchment areas for its Portland port terminal. According to GrainCorp, the catchments areas for its Portland terminal include north western and western parts of Victoria where north western regions are likely to access the Portland terminal primarily via road.

GrainCorp submits that western Victoria also forms part of the catchment areas for its Geelong terminal and Emerald's MPT. GrainCorp also considers that north western Victorian grain forms part of its Geelong terminal and Viterra's Adelaide terminals' catchment areas.[103]

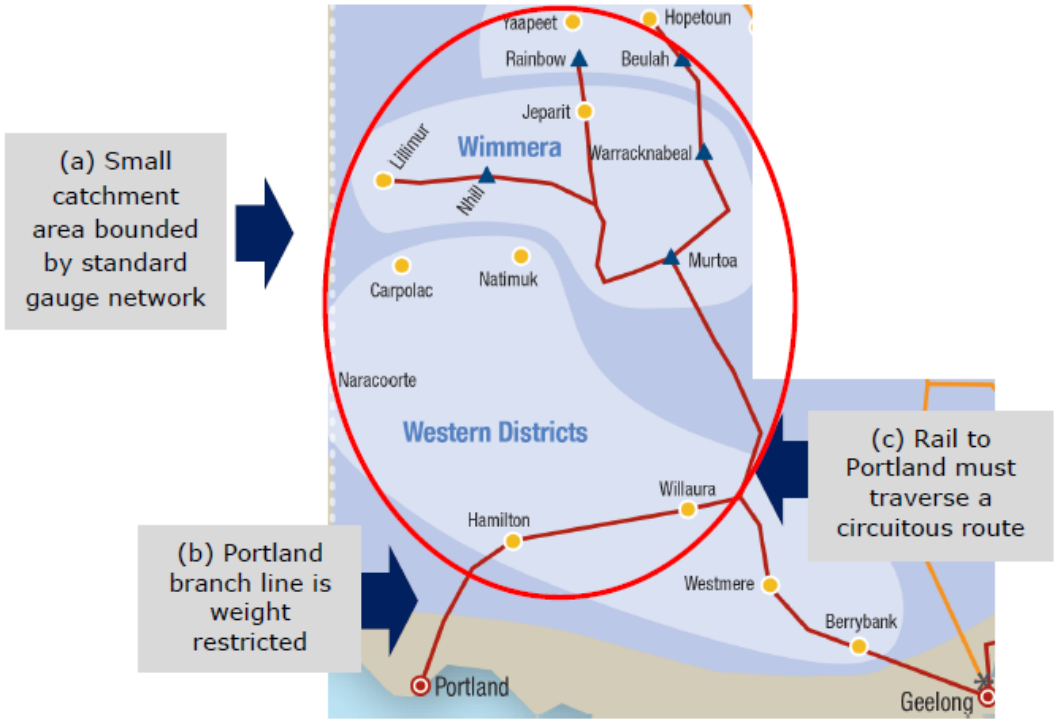
GrainCorp submits that:

> The road and rail distance (and therefore cost) to sell export grain through Melbourne and Geelong Port Terminals or Melbourne / Geelong and Portland Port Terminal or Portland and Adelaide Port Terminals is comparable.[104]

In its response to the ACCC's draft determination, GrainCorp provided further details on its Portland facility's catchment area (see figure 11).

[103] GrainCorp, Submission in support, p. 6
[104] ibid, p. 6

Figure 11: GrainCorp's depiction of the Portland port terminal's grain catchment area



Source: GrainCorp, Submission on the ACCC's draft determination, p. 5

GrainCorp submits in relation to its Portland facility that:

> Portland only services a small catchment area, determined by the standard gauge rail network. The catchment area includes 14 GrainCorp country sites and four major competitor sites, supplemented by substantial on-farm and merchant storage capacity.[105]

Some stakeholders made submissions that addressed Emerald and GrainCorp's representation of the catchment areas for the Victorian ports terminals.

GrainGrowers submits that 'there will likely be sufficient competition in the grain catchment area in question'.[106]

The Grain Industry Association of Victoria (GIAV) submits:

> Currently port terminal operators have a strong vested interest to maintain fair access arrangements with third party exporters. This is due to the:
>
> - Direct and viable competition between GrainCorp's Geelong and Emerald's Melbourne terminals
> - The less direct yet still viable competition between GrainCorp's Portland and Emerald's Melbourne terminals

The Victorian Farmers Federation (VFF), however, has an alternative view of the catchment areas applicable to each port terminal. While both GrainCorp and Emerald suggest that the

[105] GrainCorp, Submission on the ACCC's draft determination, p. 5
[106] GrainGrowers, Submission on the ACCC's Issues Paper, p. 3

Victorian ports catchment areas overlap with each other to some extent, the VFF suggests that there are separate catchment areas for each of the three Victorian port terminals. Specifically, the VFF submits that:

> Historically rail lines and silo networks delivered to a particular port with the least cost – that is the Natural Terminal Port (NTP) for that catchment area. For example, Portland zone silos would deliver to Portland because it has the lowest freight cost, or NTP freight. Ports will all have a port zone, or catchment area, of silos with the least cost NTP freight pathway. i.e. the freight advantage to that port. Freight differentials between port zones are published by Grain Trade Australia.
>
> This is a critical point as having acquired grain in the Portland zone an exporter may have no economic alternative other than exporting from the single port facility at Portland, for example. Especially where the only physically viable alternative is owned by the same port provider, potentially at an economic (freight) disadvantage.
>
> There are only two applicants with 3 separate port terminals in 3 distinct NTP port zones or catchment areas.[107]

The VFF reiterated its view on distinct natural terminal ports in response to the ACCC's draft determination to exempt GrainCorp's Geelong facility and Emerald's MPT.[108]

In response to the VFF's view of distinct catchment areas for the three Victorian terminals Emerald submits that:

> There is a strong overlap in the catchment area of Melbourne and Geelong. The GrainCorp sites that compete up-country with Emerald sites, due to proximity, direct their grain through Geelong whereas the clients at Emerald sites direct their grain to either Geelong or Melbourne or sometimes both.
>
> The freight differential between the two ports is relatively minor, the physical attributes of the two ports are similar and none of the other public submissions received by the ACCC questioned the fact that the two port terminals compete with each other.[109]

GrainCorp's supplementary submission notes that:

> The state's smaller geographic area and shorter distances between production and port mean grain can and does move to alternative ports by either rail or road transport. This is driven by the following:
>
> - The rail distance between western Victoria's country sites and Geelong is only ~70km more than Portland and Melbourne is only ~140km more than Portland.
> - Melbourne and Geelong have access to the higher standard ARTC interstate line, allowing lower cost and higher payload wagons.
> - The Western Victoria and Oaklands lines have been standardised, with Geelong (and Melbourne) port terminal now having dual rail gauge access.
> - Western Victoria's country sites can readily access Adelaide (the new Outer Harbour port terminal) by the ARTC interstate line.

[107] VFF, submission on the ACCC's Issues Paper, p. 3
[108] VFF, submission on the ACCC's draft determination, p. 5
[109] Emerald Grain, Supplementary submission, p. 1

- The difference in rail and road rates is not significant in Victoria given the short distances and access to fertiliser backload business. This has led to the use of road transport for around 50% of Victorian grain exports.

Consequently, exporters frequently substitute export channels for their cargos depending on other considerations, making the concept of a "Natural Terminal Port" for silos redundant.[110]

4.2.1 Freight charges to port terminals

To assist in determining the relevant grain catchment areas for each port terminal, the ACCC considers it appropriate to examine the relevant transportation costs to move grain from upcountry locations to each of the Victorian port terminals.

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 each other and allow grain to be transported to alternative (or substitute) terminals at a similar transport cost which would facilitate competition between the terminals.

Grain Trade Australia (GTA) produces 'Location Differentials' to value upcountry grain on a port basis.[111] A Location Differential is a value attributed to an upcountry grain bulk storage and handling facility.[112] 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.[113] GrainCorp uses GTA Location Differentials to assist in in calculating some of its road freight charges[114] and the Australia Export Grains Innovation Centre (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.[115]

The ACCC also received and has considered some actual freight rates to transport grain from upcountry sites to port.

Table 6 presents various GTA Location Differentials from upcountry sites across parts of Victoria and southern NSW to the Victorian port terminals. 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.

---

[110] GrainCorp, Supplementary submission, pp. 1, 2
[111] 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.
[112] GTA, Explanatory memorandum: GTA Location Differentials 2014/2015 Season, p. 1
[113] ibid, p. 1
[114] GrainCorp, 2014/15 Grower Warehousing Agreement, p. 19
[115] AEGIC, The cost of Australia's bulk grain export supply chains: An information paper, January 2014, p. 19

Table 6: Various GTA Location Differentials to Victorian port terminals (indicative dollars per tonne)

Region, site and site operator	Geelong	Melbourne	Portland	Adelaide (Outer Harbor)
North western Victoria				
Carwarp (GrainCorp)	48.5	48.5		41.5
Ouyen (GrainCorp)	43.5	42.75		38.75
Central Victoria				
Woomelang (GrainCorp)	36	36.25		
Boort (Boort Co-op)	30.25	27.75		
Mitiamo (GrainCorp)	29.25	24.5		
Western Victoria				
Warracknabeal (Wilken, GrainCorp)	33.5	34.5	28.75	
Rainbow (GrainCorp)	38	40	32.75	42
Nhill (GrainCorp)	36.25	37	27.25	36.5
Southern NSW				
Oaklands (AWB, Brooks, GrainCorp)	40.25	33.75		
Tocumwal (Emerald)	34	29		

Source: GTA 2014/2015 Location Differentials

GTA's Location Differentials suggests that there are upcountry sites within the Victorian and southern NSW region where the difference in indicative freight costs to either MPT or the Geelong port terminal are small.

- In north west Victoria, for example, the Location Differential from the Carwarp site is the same to both the Geelong and MPT. The Location Differential for this site is lowest to Viterra's Outer Harbour terminal in Adelaide.
- For sites in central Victoria the Location Differentials appear to be slightly lower to MPT than to Geelong.
- For sites in western Victoria the Location Differentials are lowest to Portland port terminal. In contrast to the differences between MPT and Geelong, the differences are noticeably higher between Portland and other port terminals such as MPT and Outer Harbor in Adelaide.

The ACCC considers transport costs are particularly relevant to determining the degree of geographic substitutability between each of the Victorian 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 switching occurs, the alternative terminal would appear to be a substitute and provide competitive constraint.

To assess the degree of substitutability, the ACCC has used the GTA Location Differentials to consider the likely effect of a five per cent increase in storage and elevation charges at each of the Victorian facilities in turn. The results suggest that such an increase will lead to some substitution between MPT and Geelong but very little elsewhere (for example, between Portland and the other port terminals).

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.[116]

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.[117] In practice, some sites across Victoria do differ in their loading capabilities with some being able to load trains faster than others. As the Locational Differentials are based on distance, they more likely to be representative of road transport costs than rail costs.

GrainCorp also provided examples of actual rail freight rates from certain upcountry storage sites to port. GrainCorp submits that:

> Grain can readily move to alternative ports for only a small freight difference that is, in the case of rail transport, less than $3 per tonne. Examples of selected actual rail costs from different parts of Victoria [are]:
>
> - Rail from Dimboola (Western Victoria) to Portland is only ~$0.24/tonne lower than to Geelong and $2.84/tonne lower to Melbourne.
> - Rail from Dooen (Western Victoria) to Adelaide is $0.98/tonne lower than to Portland and $1.22/tonne lower to Geelong.
> - Rail from Worineen (North West Victoria) to Melbourne is $1.02/tonne lower than to Geelong.
> - Rail from Oaklands (North East Victoria) to Melbourne is $1.02/tonne lower than to Geelong.[118]

MPT and Geelong port terminal

The ACCC's draft determinations in relation to Emerald's MPT and GrainCorp's Geelong port terminal considered actual rail freight rates as well as the GTA Location Differentials.

The ACCC's preliminary findings were that the catchment areas of Emerald's MPT and GrainCorp's Geelong port terminal overlap as grain could flow from several areas in the north and northeast of Victoria to either the Emerald's MPT or GrainCorp's Geelong port terminal at a similar freight rate.[119]

The VFF disagrees with the ACCC's preliminary assessment that the MPT and Geelong port terminals' catchment areas overlap and argues that the two facilities have distinct port zones. In particular, the VFF submits that:

> there is significant evidence that these are distinct zones that are based around long-term fixed infrastructure such as rail lines, and GTA's location differentials reflect this.[120]
>
> There is only one site in Victoria where the location differential is the same for Melbourne and Geelong (Carwarp), and there is a difference of more than 5% in location differential pricing

[116] GTA, http://www.graintrade.org.au/location_differential_tables
[117] ibid, p. 20
[118] GrainCorp, Supplementary submission, pp. 1, 2
[119] ACCC, Draft determinations: Exemptions in respect of Emerald's Melbourne Port Terminal Facility, GrainCorp's Geelong and Portland Port Terminal Facilities, pp. 40, 41
[120] VFF, submission on the ACCC's draft determinations, p. 2

> between Melbourne and Geelong for almost two thirds of the sites [noted by the VFF as having a Geelong or Melbourne 'natural terminal port'] [121]

The ACCC's preliminary view considered both rail freight rates in combination with the GTA's Location Differentials (which are more indicative of road freight rates).

As noted in the previous section, the ACCC considers that the significant use of road to transport grain to port in Victoria suggests that each of the port terminal's catchment areas is likely to exhibit a degree of flexibility and is not strictly linked to established rail lines.

The GTA Locational Differentials provided by the VFF also indicate that for around a third of Victorian sites defined by the VFF, there is a difference of less than 5 per cent between transporting grain to either MPT or Geelong. Furthermore, for around two thirds of these sites, there is a difference of less than 9 per cent. Overall, there is not a lot of difference in terms of indicative freight pricing for a large number of sites.

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. For instance, the VFF submits that average supply chain costs paid by grain producers are around $50 per tonne, and for over half of the sites defined by the VFF the difference in GTA Locational Differentials between transporting grain to either MPT or Geelong is $2 or less.[122]

Additionally, the actual rail rates provided by GrainCorp show that the difference in freight costs to either MPT or Geelong are similar.

Evidence of both rail and road freight costs, and the significant use of both methods to transport grain to Geelong and Melbourne, support the ACCC's preliminary finding that transport costs to move grain from a number of upcountry locations to either MPT or Geelong are similar.

Accordingly, the ACCC considers that indications from a range of freight rates suggest that there is overlap of the grain catchment areas for GrainCorp's Geelong and Emerald's MPT which would facilitate competition between the two port terminals.

Portland port terminal and other terminals

Western Victoria represents the core catchment area for the Portland terminal.

The ACCC's draft determinations presented evidence suggesting that there is also some overlap of the catchment areas for GrainCorp's Portland terminal and other port terminals. The overlap however appeared to be less pronounced than the overlap between MPT and Geelong.

The ACCC considered both rail and indicative road freight rates (GTA Location Differentials) to determine the extent of overlap between Portland and other port terminals' catchment areas. The ACCC's preliminary view was that the freight costs from western Victoria to Emerald's MPT appeared to be distinctly higher than from western Victoria to Portland. In addition, the ACCC noted significant differences in the order of $5 or $10 dollars per tonne in the Location Differentials for western Victorian sites to Portland compared to Melbourne or Geelong.

---

[121] Ibid, p. 10
[122] VFF, Submission on the ACCC's draft determination, p. 7

The ACCC also noted some potential alternatives for marketers in western Victorian to transport grain to the Melbourne or Adelaide ports, either by moving containerised grain from western Victoria to the Port of Melbourne, or by moving bulk grain to the Outer Harbor port in Adelaide. However these appeared to be limited options for marketers in western Victoria as the ACCC considered the ability to move grain to an alternative port to Portland would likely depend on factors like the specific location of sites and the willingness to enter into certain rail arrangements.

Further, while GrainCorp's other terminal in Geelong is the closest geographic alternative to Portland and may be accessible at a similar transport cost from some upcountry locations, the ACCC's preliminary view was that it does not consider there to be any significant competitive constraint directly between the existing Portland and Geelong ports given that they are both owned by GrainCorp.

Accordingly, the ACCC's draft findings concluded that while the Portland terminal's grain catchment area had some overlap with the Geelong terminal's, and there were some specific options to move grain from western Victoria to the Melbourne or Adelaide ports, these options provided a limited competitive constraint on the Portland facility.

In response to the ACCC's draft view GrainCorp provided further evidence of actual freight charges from upcountry sites in western Victoria to the Portland and other port terminals. In doing so, GrainCorp also noted the amount of grain that is typically stored at certain upcountry sites in the Portland catchment area and subsequently transported to and exported from Portland.

GrainCorp submits that:

> Portland does not have a material freight advantage over Melbourne (for rail) and Bunge (for road) for most grain received into country silos within its catchment area. In fact, the weighted average freight difference is only $1.50 per tonne.
>
> While the nominal variable train rates for Portland are lower than Melbourne, the actual rail cost per tonne is significantly less for country sites that are located on the main ARTC rail line. This takes into account:
>
> - The Portland branch line weight limit is 19 tonnes per axle, making the best wagon carrying capacity 55 tonnes (i.e. 76 tonnes gross, less 21 tonne tare).
> - The Melbourne (and Geelong) main line weight limit is 23 tonnes per axle, making the best wagon carrying capacity for the newer wagons (as currently used by Cargill, Qube and others) around 68 tonnes (i.e. 92 tonnes gross, less 24 tonne tare).
>
> Taking these payload benefits into account, the weighted average difference in actual rail cost between Portland and MPT is only $0.85 per tonne. It is less than $1 per tonne (and in many cases can be cost favourable) for 64% of average grain receivals at major silos.
>
> Grain moved to Geelong by road have access to relatively lower freight rates given fertiliser back-loading, as Geelong is the largest source of fertiliser and other farm inputs into this area. The weighted average difference in road cost between Portland and Geelong Bunge port terminal is $3.83 per tonne. It is less than $2 per tonne for almost half (48%) of average grain receivals at major silos.
>
> In aggregate, the majority (around 55%) of the grain in the Portland's catchment can access either Melbourne (rail) or Bunge Geelong (road) for a freight differential of less than

> $1 per tonne compared to Portland. And around 90% of the grain in the Portland's catchment has a freight differential of less than $3 per tonne to a competing port terminal.[123]

The ACCC has considered the additional information provided by GrainCorp in relation to both rail and road freight costs from upcountry sites in western Victorian to Portland and other port terminals.

- Evidence provided by GrainCorp shows that certain upcountry sites in western Victorian located on the ARTC rail line (which runs through western Victoria towards Melbourne) can access rail freight rates to MPT that are comparable with rail rates to Portland. The ACCC understands that these are some of the larger sites in western Victoria.

  GrainCorp also submits that the sites with access to the ARTC rail line receive a significant proportion (on average, around 50 per cent) of grain in western Victorian.

  While this may indicate that around half of the grain in the western Victorian catchment area can access the associated rail freight rates to MPT as noted by GrainCorp, other information provided to the ACCC does not suggest that a significant proportion of grain has been moved to MPT from these sites over the last three years.

- The ACCC considers that road transport is an important factor, particularly in the case of Portland. GrainCorp notes that Portland received around 80 per cent of grain by road in 2013-14 (see section 4.1.2). The ACCC has seen data showing that road transport dominates over rail transport from the large number of sites in western Victoria that are not located on the ARTC train line.

- The evidence GrainCorp provided in relation to road freight rates to move grain from western Victorian sites to a terminal other than Portland suggested that most comparable road rates were to truck grain to Geelong (to the proposed Bunge port terminal). GrainCorp submits that the weighted average difference in road cost between Portland and Geelong Bunge port terminal is $3.83 per tonne.

The ACCC's view that it is difficult to consider the proposed Bunge port terminal as a current destination for export grain delivery given that the facility is not yet operational and is still some time before potentially taking road delivery of grain. Accordingly the ACCC considers it necessary to examine freight costs to a port other than Portland that is currently operational.

GrainCorp's Geelong port terminal represents the closest alternative for most western Victorian sites. However, as noted in the ACCC's draft determinations, the ACCC considers that this option only represented a limited competitive constraint given that both it and the Portland facility are owned by the same port operator.

In terms of other alternative port destinations, evidence provided by GrainCorp indicates that the road freight rates to move grain from western Victorian sites to Emerald's MPT via road are markedly higher than the rates to Geelong. Road rates to Geelong are based on trucking companies also accessing lower total freight costs by back loading fertiliser at the Port of Geelong. However the ACCC notes that not every road delivery of grain to port would necessarily be back filled and able to take advantage of a lower freight cost.

[123] GrainCorp, Submission on the ACCC's draft determination, pp. 3, 4

Emerald's MPT (and the Port of Melbourne) does not offer a comparable fertiliser back loading opportunity and the degree of lower road freight rates associated with it. As noted in the ACCC's draft determination, the indicative road freight costs from western Victoria to Emerald's MPT are in the order of $5 or $10 dollars per tonne more compared to the rates to the Portland facility.

Additionally, when considering the GTA Location Differentials in relation to Portland and other port terminals, the difference in indicative freight costs to move grain from western Victorian sites to a port other than Portland is upwards of 10 per cent for almost all of these sites.

Given the above, the ACCC maintains its preliminary view regarding the catchment area of the Portland facility. The ACCC considers that while the Portland terminal's grain catchment area has some overlap with GrainCorp's Geelong terminal's as well as some specific rail options to move grain via the ARTC train line from western Victoria to the Melbourne or Adelaide ports, the ACCC's view is that these options provide a limited competitive constraint on the Portland facility. In particular, for the storage facilities not located on the ARTC train line, which utilise road to transport a lot of grain to port, viable alternative port options appear to be limited.

4.3 Containerised exports

The degree to which containerised grain exports provides a competitive constraint on bulk exports is relevant to the ACCC's competition analysis of the level of competition faced by the Victorian port terminals.

Grain exports via containers has expanded as a competing path to bulk export across eastern Australia. The growth in grain container exports is particularly significant for Victoria, where the Port of Melbourne, Victoria's only container port, is Australia's largest container shipping port, handling around 36 per cent of Australia's container trade.[124]

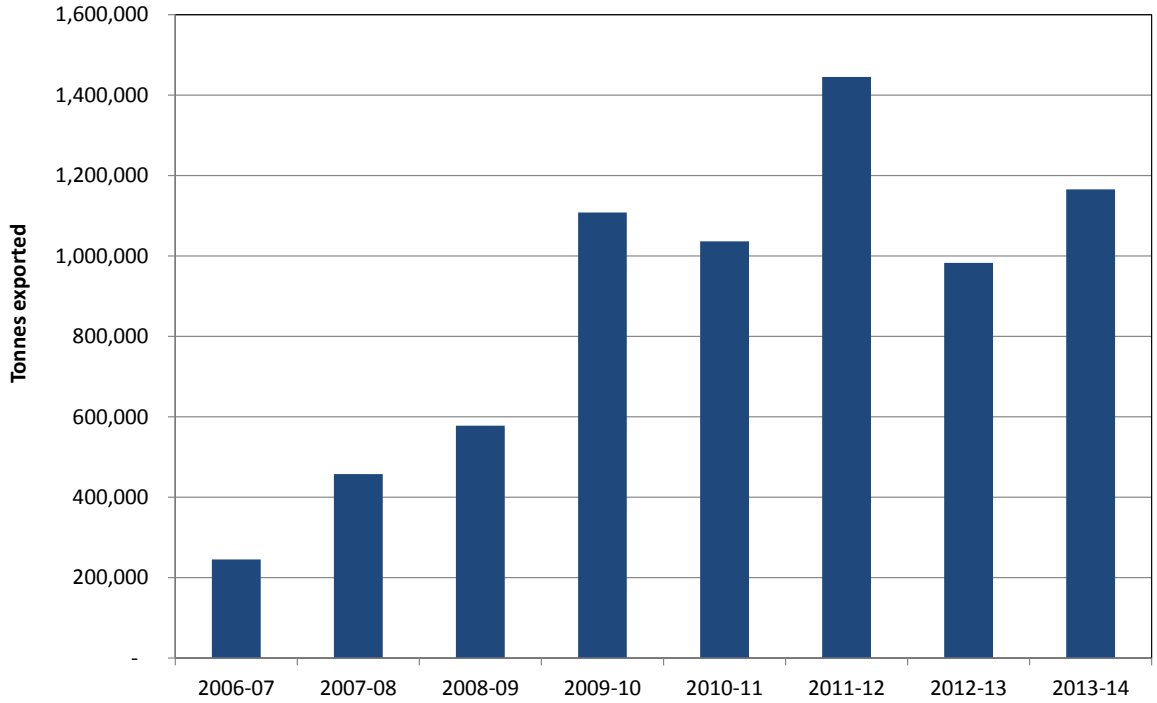
In contrast to bulk grain export, containerised exports use different infrastructure, are shipped in smaller quantities and are not subject to the regulations under the Code.

In Victoria, the use of containers as a means of exporting grain has grown significantly from 215,528 tonnes in 2001 to 2,232,000 tonnes in 2011.[125] Emerald submits that over the five years to 2014, there has been on average 1 mt of wheat shipped out of the Port of Melbourne via containers each year.[126]

Data from the Victorian government and from Australian Crop Forecasters shows that wheat exports through containers increased from less than 300,000 tonnes in 2006-07 to over 1 million tonnes in 2009-10. Container wheat exports from Victoria continued to represent around a minimum of 1 million tonnes of over the five years to 2013-14 (see figure 11).

[124] Victorian Department of Economic Development, Jobs, Transport & Resources, Victoria's Containerised Grain Industry, p. 2
[125] ibid, p. 2
[126] Emerald Grain, Submission in support, p. 15

Figure 11: Containerised wheat exports from Victoria



Source: Victorian Department of Economic Development, Jobs, Transport & Resources, Victoria's Containerised Grain Industry, p. 5 (data for 2006-07 and 2007-08) and Australian Crop Forecasters (data from 2008-09 to 2013-14).

On average, when compared to the harvests from 2006-07 to 2013-14, wheat container exports from Victoria represented about 30 per cent of Victorian wheat production. The Victorian Department of Economic Development, Jobs, Transport & Resources estimated that containerised grain exports represent around 30 per cent of all grain exports from the Port or Melbourne.[127]

The significant increase in containerised grain exports is attributed to a range of factors. The majority of containerised grain exports are destined for Asia, where demand for container exports has increased due various reasons such as to the availability of destination port infrastructure, better long term storage and availability of containers. Australia is a net importer of packed containers from Asia and net exporter of unpacked containers making exporting grains in containers to Asia more attractive.[128]

Grain for export via containers is sourced from the same Victorian growing regions that supply bulk wheat, as well as from some regions in southern NSW and South Australia.[129] In its supplementary submission GrainCorp notes that wheat for export containers is sourced from all over Victoria, including Dooen in the west, Mildura in the north west and Tocumwal in the north.[130]

---

[127] Victorian Department of Economic Development, Jobs, Transport & Resources, Victoria's Containerised Grain Industry, p. 2
[128] ibid, p. 4
[129] ibid, p. 2
[130] GrainCorp, Supplementary submission, p. 3

Grain can be packed into containers at a variety of locations along the supply chain and is most commonly packed either at port or at upcountry storage sites that have packing facilities. The majority of containerised grain is transported by road to the Port of Melbourne, however some companies do utilise rail transport to move containers to Melbourne, including from western Victoria.[131]

Emerald's MPT and GrainCorp's Geelong terminal have container packing facilities. Other packing facilities are located across upcountry Victoria and southern NSW, and are operated by a range of other companies:

- Viterra has a container packing plant in Laverton with capacity to pack 10,000 containers per annum.[132] Viterra also has container packing facilities at its grain storage and handling site in western Victoria.

- Riordan Grains has three Victorian container packing sites at Laverton, Lara and Balliang and can pack up to 250,000 mt per annum of all grains, oilseeds and pulses.[133]

- Agripak offers container packing services to exporters, with its facilities located in Ballan.[134]

- Mahonys Transport offers a domestic and import and export container packing service at its Brooklyn site near Melbourne wharf.[135]

A number of other companies offer container packing facilities including Kelly Grains at Tocumwal, Moore Bulk Storage at Horsham and Broadbent Grain at Lakaput, all of which can also provide storage and logistics services.

Emerald submits that the major exporters of containerised grain from the Port of Melbourne are Agripak, Viterra, GrainCorp, Emerald Grain, Riordan Grains and Kelly Grains. Emerald submits that it has historically exported around 10 per cent of containerised grain from Melbourne.[136]

GrainCorp and Emerald submit that containerised exports are a major competitor for bulk wheat, particularly in Victoria. Containerised exports are not subject to regulation and public submissions from GrainGrowers and the GIAV also suggest that the containerised exports provide grain marketers with an alternative to bulk export.

The ACCC considers that the container export market represents a continuing pathway to export grain from Victoria. Following significant growth in containerised grain exports over the five years to 2010-11, container exports have consistently remained a significant proportion of total Victorian grain exports indicating that it is an ongoing alternative to bulk grain export. Given the various factors driving demand for containerised grain, it is likely that demand from Asia will remain and the significant upcountry storage and container packing facilities set up across Victoria will allow continued containerised grain exports from the State.

---

[131] Victorian Department of Economic Development, Jobs, Transport & Resources, Victoria's Containerised Grain Industry, p. 2; The Wimmera Mail-Times, http://www.mailtimes.com.au/story/2013484/wimmera-intermodal-freight-terminal-up-and-running/
[132] Viterra, http://www.viterra.com.au/packing-and-processing
[133] Riordan Grains, http://riordangrains.com.au/grain-storage/
[134] Agripak, http://www.agripak.com.au/services
[135] Mahoneys Transport, http://www.mahonystransport.com.au/services.php?id=8
[136] Emerald Grain, Submission in support, p. 15

The VFF submits that the ACCC gave undue weight to the presence of containerised grain exports in its draft determinations to grant exemptions for Emerald's MPT and GrainCorp's Geelong port terminal.[137] The VFF argues that the exemptions from the Code should only involve an assessment of a competitive market between bulk port terminal service providers.

The ACCC disagrees with the VFF on the consideration of containerised grain exports. The ACCC's exemption assessments consider the level of competition faced by bulk port terminal service providers, including from other bulk terminals as well as any other sources of competition. The significant size of containerised exports from Victoria demonstrates that it is a source of competition to bulk export (even if not a perfect substitute). The ACCC considers that it would be unrealistic to ignore such a significant and growing alternative for the export of grain.

In Victoria, container grain exports compete with bulk exports for the exportable surplus of grain. Wheat exports via containers have grown significantly in recent years and represented around 1 million tonnes (that is, 30 per cent of wheat production in Victoria) over the five years to 2013-14.

Given that containerised grain exports are a viable export alternative for exporters in Victoria (including GrainCorp, Emerald and a number of other exporters) the ACCC's view is that competition from containerised grain exports is directly relevant to the ACCC's exemptions assessments.

4.4 Domestic demand for grain

Domestic demand for grain is also a consideration in the ACCC's exemption assessment in that domestic users compete for grain that could be exported as bulk wheat.

Domestic users represent a significant level of consumption of grain across eastern Australia. AEGIC estimates that over the past 10 years the domestic demand has consumed approximately half of the grain produced in the eastern States.[138] Like containerised exports, the domestic demand for grain is not subject to regulation.

In Victoria, grain is used by the dairy, intensive livestock, malting, oilseed crushing and milling sectors.[139] Demand for grain to feed Victoria's mature dairy industry is significant, with around two-thirds of Australia's dairy herd being in Victoria.[140]

According to the Victorian government's Department of Environment and Primary Industries, the State's domestic grain consumption averages around 3 mt.[141] GrainCorp estimates that, over the past 10 years to 2013-14, the domestic market has consumed an average of 2.4 mt per year, representing between 35 and 45 per cent of annual grain production.[142]

---

[137] VFF, submission on the ACCC's draft determinations, p. 1
[138] AEGIC, The cost of Australia's bulk grain export supply chains: An information paper, January 2014, p. 9
[139] Victorian Department of Economic Development, Jobs, Transport & Resources, Grain Industry Profile, December 2014, p. 4
[140] Victorian Department of Primary Industries, http://www.depi.vic.gov.au/agriculture-and-food/dairy
[141] Victorian Department of Economic Development, Jobs, Transport & Resources, Grain Industry Profile, December 2014, p. 4
[142] GrainCorp, Submission in support, p. 15

Both GrainCorp and Emerald submit that their Victorian port terminals face competition for grain from the domestic market.[143] GrainCorp submits that its port terminals at Geelong and Portland faces strong demand from domestic end-users, limiting surplus grain for export.

Emerald submits that:

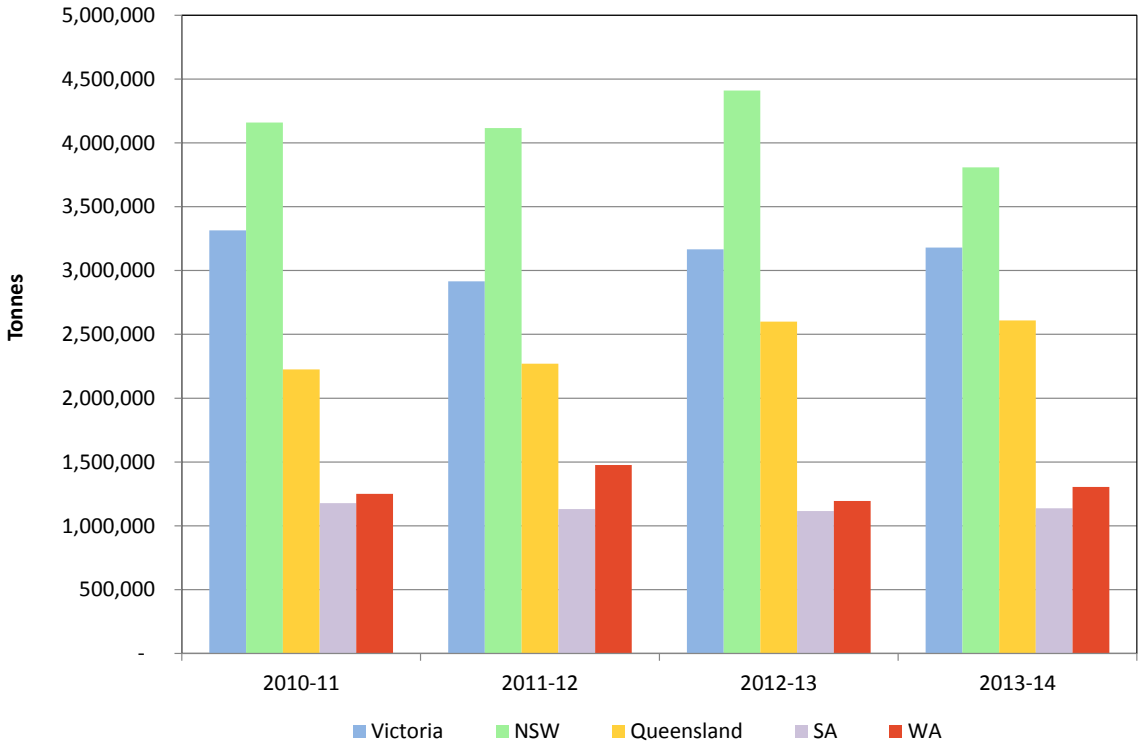
> there are a number of large domestic consumers such as Allied Mills, Westons, Barrett Burston and Riverland with other consumers including Laucke, Malteurop and Cargill.[144]

GrainCorp also submits that domestic users have the ability to pay a higher price for grain than bulk export due to less supply chain infrastructure and access to back loading road rates. According to GrainCorp, almost all domestic grain is transported by road.[145]

Public submissions from GrainGrowers and the GIAV also suggest that GrainCorp and Emerald face competition from the domestic demand for grain. The VFF acknowledges the significance of domestic demand for grain, and submits that the price for grain in Australia is based on 'export parity price' or the international price, which is largely the case with all internationally traded commodities.

A large proportion of grain produced in Victoria is used domestically. According to data from Australian Crop Forecasters of Australia's states and territories, domestic demand for grain is highest in Victoria and NSW (see figure 12).

Figure 12: Domestic demand for grain across Australia



Source: Australian Crop Forecasters

[143] GrainCorp, Submission in support, p. 4
[144] Emerald Grain, Submission in support, p. 14
[145] GrainCorp, Submission in support, pp. 5, 9

Domestic demand offers Victorian growers a reliable source of demand for grain. Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay Victorian growers an amount that is at least equivalent to the export parity price.

Domestic demand is, however, relatively stable over time with growth occurring generally slowly. Domestic demand is rarely large enough to absorb all Victorian grain production and generally leaves an exportable surplus.

The ACCC accordingly considers that the extent to which domestic demand competes with an exportable surplus is relevant, but is somewhat limited, given that domestic demand cannot readily expand to consume the exportable surplus.

The ACCC however considers that the exportable surplus of grain can be exported by either bulk or containers. The previous section (4.3) notes the significant containerised exports in Victoria.

5 ACCC exemption assessment of Emerald's Melbourne Port Terminal

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

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

The ACCC considers when having regard to the legitimate business interests of the port terminal service provider (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 greater regulation (through the application of parts 3 to 6 of the Code) may have on any investment decisions made by the port terminal service provider
- 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.

The ACCC notes Emerald's submission that the requirement to comply with parts 3 to 6 of the Code is contrary to Emerald's legitimate commercial interests, impedes Emerald in its operations and effective capacity allocation procedures, and that the requirement adds a compliance cost to Emerald.[146]

The Code requires Emerald to allocate port capacity using an ACCC approved system. Currently, Emerald allocates capacity at MPT using an annual first-in-first-served system which Emerald submits does not provide sufficient incentives for investment in storage and rail assets.[147] Emerald also submits that MPT is not being fully utilised despite mandated open access regulation and that it needs to be able to offer flexible and more open arrangements to exporters to grow patronage.[148]

The ACCC considers that Emerald has an inherent level of flexibility to manage its legitimate business interests even under the existing regulatory arrangements. For example, Emerald can set prices, and terms and conditions for elevation from MPT, and negotiate non-standard terms for different exporters. Emerald may also seek to use a range of mechanisms to allocate capacity, although there is a formal process to go through for these mechanisms to be changed.

---

[146] Emerald Grain, Submission in support, pp. 3, 16
[147] ibid, p. 16
[148] Emerald Grain, Supplementary submission, p. 2

The ACCC has, however, previously recognised that in particular more flexible capacity allocation arrangements can provide a number of potential benefits to both port terminal service providers and access seekers, and that these types of arrangements may be appropriate in some cases. Potential benefits can include greater certainty for users in planning their long-term grain export programs and assist in supply-chain planning.[149] It may also allow the port operator to provide access to port capacity outside of the requirements of the approved capacity allocation system, such as strict notification requirements. Emerald could seek to change its capacity allocation system while remaining under the oversight of parts 3 to 6 of the Code. However, this process may not necessarily lead to a significant change in the level of flexibility, as there is some time required for an approval to take place.

The ACCC's consideration of subclauses 5(3)(b) and (g) (see below) notes that Emerald's MPT faces competition from GrainCorp's Geelong port terminal as both terminals share a similar grain catchment area and despite some differences in the features of the two terminals, they provide broadly similar port terminal services. Additionally the ACCC considers that Emerald's bulk export programme faces competition from the significant container exports and, to a lesser degree, from domestic demand for grain in Victoria.

As an exempt port terminal services provider, in addition to allowing Emerald to use more flexible capacity allocation systems, Emerald could also engage more freely in direct commercial negotiations, vary operational rules for commercial reasons and tailor access agreements for certain customers. In an environment where Emerald faces significant competition, these flexibilities could allow Emerald to compete more vigorously for exportable grain.

The ACCC also recognises that regulation does impose some cost on the regulated business, and that it would be efficient to reduce that cost where regulation is not necessary, such as where there are sufficient competitive constraints. Given the degree of competition that Emerald's MPT faces, and the potential to reduce regulatory costs on Emerald, the ACCC's view is that granting an exemption to Emerald's MPT is in Emerald's legitimate business interests.

The ACCC notes submissions from the VFF that the ACCC needs to quantify the dollar value of benefits that will result from granting an exemption. For the reasons noted in Chapter 2 of this decision, the ACCC does not consider that this is necessary or appropriate.

(b) the public interest, including the public interest in having competition in markets; and (g) the promotion of competition in upstream and downstream markets

The ACCC considers that subclauses 5(3)(b) and (g) 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 4 such as grain storage and handling services and the transport of grain to port. Related markets are also discussed in chapter 4 and include container grain exports and domestic demand for grain.

[149] ACCC media release, ACCC allows GrainCorp to introduce long-term port access agreements

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

- Whether there is a 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 port terminal service provider 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) discussed above).

- Whether the competitive situation in upstream and downstream markets would allow a vertically integrated port terminal service provider 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) will overlap with the ACCC's consideration below of clauses 5(3)(c) and 5(3)(d) concerning access seekers.

Competition in bulk wheat export operations

The ACCC has previously recognised a degree of competition between Emerald's MPT facilities and GrainCorp's Geelong port terminal. In the ACCC's assessment of Emerald's (previously Australian Bulk Alliance) 2011 access undertaking, the ACCC noted that:

> The ACCC considers that Australian Bulk Alliance (ABA) has a lesser degree of market power than other port terminal operators. In this regard the ACCC notes that ABA provides a small proportion of total up-country storage in Victoria and New South Wales relative to that provided by upcountry competitors GrainCorp and Grainflow. There is also competition in the provision of Port Terminal Services in Victoria, particularly between ABA's MPT and GrainCorp's Geelong port terminal.[150]

The ACCC's final view is consistent with its previous views that there is a level of competition in the provision of port terminal services between Emerald's MPT and GrainCorp's Geelong port terminal. In particular, the ACCC notes from its analysis of the port terminal services in chapter 3, and its consideration of upcountry and related markets in chapter 4, that:

- Emerald's MPT and GrainCorp's Geelong facility provide broadly similar services. For instance, both port terminals have a comparable loading capacity, a similar draft and can accommodate similar size vessels. Both terminals also have similar road and rail access.

- Analysis of the relevant catchment areas in chapter 4 indicates that there is overlap in the grain catchment areas for MPT and GrainCorp's Geelong port terminal. The indicative GTA freight charges are comparable to transport grain from various sites to either port. Additionally, the significant use of road transport provides a degree of flexibility in grain transport options in Victoria, particularly given the short distance between the Melbourne and Geelong terminals. This suggests that a significant number of marketers have the option of substituting between Melbourne and

[150] ACCC, Australian Bulk Alliance Pty Ltd - Port Terminal Services Access Undertaking: Decision to accept, 28 September 2011, p. 29

Geelong port terminals to export bulk wheat.

While the ACCC notes submissions from the VFF in relation to rail being the driver of bulk export pathways, the ACCC considers that the use of other transport networks is a relevant consideration. Given that there is evidence of significant road transport use to move grain to port in Victoria, the ACCC considers that this should affect its analysis of the level of competition between the Melbourne and Geelong terminals.

- There appears to be significant spare capacity available at Emerald's Melbourne terminal. This has occurred on an annual basis as well as during non-peak shipping periods. In general, there has also been spare capacity at peak times, with the exception of one or two months over a two year period. The significant spare capacity at MPT, suggests that Emerald would be commercially incentivised to compete for greater volume throughput throughout the year.

  Accordingly, the ACCC considers that data suggests that third party exporters will be able to obtain capacity at peak times of year, and will not be required to shift all capacity to a time not conducive to obtaining a good price for grain internationally.

- While the ACCC notes that certain new port developments are still some time from operation, there are plans to develop further bulk wheat port terminals in Victoria, in particular Bunge's proposed Geelong facility. This proposal is planned to link to complimentary infrastructure currently uploading woodchips, a strategy which has been successfully implemented at Bunge's Bunbury terminal in Western Australia. Given that the facility is not yet operational, the ACCC considers that the extent of competitive pressure is somewhat limited. However, the proven ability for companies to implement such facilities suggests that the barriers to enter the bulk wheat port terminal services market are not prohibitively high in some cases. The ACCC considers that Bunge's proposal represents a credible threat of new entry/expansion in Geelong, which provides a further constraint on Emerald. Additionally, Bunge has been a client of both Emerald's MPT and GrainCorp's Geelong facility.

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 Emerald 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. 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 4, the ACCC considers that:

- Upcountry storage facilities in Victoria are run by companies with large, medium and smaller operations. In addition to Emerald, a number of other companies have integrated storage operations also offering container packing or transport services, or both. While Emerald is the second largest upcountry player in terms of the number of sites, its storage capacity is only marginally larger than many other storage providers. The ACCC considers that this allows exporters to consider storage options outside of the operation of the Emerald (and GrainCorp) networks.

- Both road and rail options are available to many marketers to transport grain to Emerald's MPT. The relatively shorter distances to port in Victoria promote the significant use of road transport as a viable alternative to rail and Emerald has recently increased its road receival capability. There are numerous providers of road transport services, together with a number of options for storage, handling and logistics. Accordingly, consistent with the ACCC's previous views, the ACCC considers that Emerald faces a degree of competition upcountry and does not appear to have the ability to exercise market power in upcountry markets. As such the ACCC considers that Emerald would not be (and has not been) in a position to leverage market power from upcountry networks into its provision of port terminal services.

- Containerised grain exports in Victoria are significant, as shown by its growth and its consistent presence as a significant proportion of grain exports, with wheat exports via containers representing around 30 per cent of wheat production in Victoria. As such, container exports represent an alternative and viable export path for grain. Containerised exports out of the Port of Melbourne therefore provide a further competitive constraint on the bulk export programme at MPT.

- There is strong and consistent demand for grain in Victoria to support the large dairy, stockfeed and malt industries in Victoria. Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay Victorian growers an amount that is at least equivalent to the export parity price. Although domestic demand is one option for grain growers to sell wheat, the size of domestic demand is generally limited in any one season. As such the level of constraint that domestic users place on bulk and container exports is generally restricted by the size of domestic demand.

Due to the competitive constraints noted above in relation to port terminal services, the ACCC considers that if an exemption were granted to Emerald, it would not be to the detriment of current levels of competition in the grain acquisition market, or to upcountry and related markets.

A lower level of regulation could also enable Emerald to compete more effectively in the provision of port terminal services. This may promote competition between GrainCorp, Emerald, other exporters of bulk and containerised grain and other storage and upcountry service providers.

The ACCC notes concerns raised by farming groups about the vertical integration of Emerald into both port infrastructure and upcountry storage and handling. The ACCC recognises the potential incentive of Emerald to use its vertical integration to favour its own export operations. However, in light of the ACCC's conclusions about the competitive pressures in upstream markets and the level of spare capacity at port, the ACCC does not consider that the granting of the exemption at port would allow Emerald to use its upcountry assets to limit the ability of exporters to participate in the grain export market. Accordingly, the ACCC.considers that vertical integration in this case, should not of itself create detrimental outcomes at port if an exemption is granted for Emerald's MPT.

The ACCC also notes the concern raised about a lack of choice for certain growers about the upcountry sites that they can deliver grain to.[151] While the ACCC recognises that particular growers may face this problem, the ACCC does not consider that a decision to grant or not grant the exemption would result in any change to the fact that particular

[151] VFF submission in response to draft decision, p. 15.

growers may have limited upcountry options due to their location, and would not lead to a detrimental impact on competition in upcountry storage and handling.

Conclusion

In light of the above factors, the ACCC's view is that there are significant constraints on Emerald such that competition at port and upcountry will not be reduced if an exemption were granted to MPT. The ACCC considers that exporters should have sufficient alternative options to Emerald's MPT and upcountry assets to continue to participate in the grain acquisition market if an exemption is granted. Furthermore, the competitive situation in upcountry storage and handling will not be diminished by granting the exemption.

(c) the interests of exporters who may require access to port terminal services; and (d) 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 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) over others, 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 exporters during the ACCC's consultation process did not object to granting an exemption to Emerald's MPT.

As a vertically integrated terminal operator and exporter, Emerald has an incentive to favour itself over other exporters at MPT. However, the ACCC's view is that due to the amount of available capacity at MPT, the degree of competition faced by MPT from other terminals as well as from container exports and the threat of entry from new port facilities in Victoria, Emerald is sufficiently incentivised to allow third party exporters fair access to its MPT rather than offer unfair terms of access, or refuse access. In particular, the ACCC's analysis in chapter 3 of port terminal services and the exporters using these services indicates that:

- Emerald's MPT appears to have significant spare capacity at non-peak times, as well as a level of spare capacity at peak times, and is the least utilised bulk port terminal in Victoria.

- Emerald's largest customers (Bunge, and to a lesser extent Cargill and Noble) may be in a good position to bargain with Emerald. Not only have these customers provided Emerald with significant throughput at MPT over the last three years, but these companies are all exploring options of building their own competing terminals in Victoria. Bunge, in particular, is proposing to build a terminal in Geelong similar to the facility it built in Bunbury WA, although the ACCC notes that this facility is still some time from operation. There is speculation that Quattro (including Cargill and Noble) is considering a new facility in Portland. However, there is limited information about the size and scale of such a facility, which would be further away from being a

potential functioning facility and is less of a constraint in any case due to the geographic separation.

- With the current available capacity at MPT and at GrainCorp's Geelong port terminal, as well as the threat of proposed future capacity coming online, smaller exporters are likely to be able to negotiate sufficient access at Emerald's MPT. Potentially there may not always be available capacity during all of the peak periods of all years, but MPT appears to have spare capacity available for exporters at almost all times, and significant spare capacity over much of the year. Alternatively, exporters could seek access at GrainCorp's Geelong facility which competes with MPT for a similar catchment area.

- Additionally, containerised exports represent a further alternative pathway to export grain from Victoria.

In light of the above factors, the ACCC's view is that granting the exemption would not be detrimental to the interests of exporters requiring access to Emerald's MPT facility, and that the greater regulation under the Code is not necessary to ensure fair and transparent access to these facilities.

The ACCC notes the GPA submission and views from the VFF seeking more transparent access to information about the wheat industry, including information about stock upcountry levels.[152] The ACCC understands that granting an exemption will remove some of the reporting obligations on Emerald to publish port stock and capacity information. The ACCC, however, considers that in a competitive environment, market participants would be likely to obtain sufficient information to make informed decisions.

The ACCC notes that a decision on exemption has no impact on the reporting of upcountry stocks information. As noted in chapter 1, stocks information about grain held in upcountry storage sites is outside the scope of the Code.

(e) the promotion of the economically efficient operation and use of the port terminal facility; and (f) the promotion of efficient investment in port terminal facilities

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 port terminal service providers 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.

The ACCC's view is that the degree of competition faced by Emerald's MPT and competition in upstream and downstream markets (as outlined under the above discussion of subclauses

[152] GPA, submission on the ACCC's draft determination, p. 3

(b) and (g)) will drive efficient operation and use of the port terminal facility in the absence of full regulation under the Code.

As noted under the discussion of subclause 5(3)(a), if parts 3 to 6 of the Code do not apply, Emerald could have greater flexibility in the way it allocates capacity and would not be required to allocate capacity in accordance with the strict timings and rules as it currently has to. This greater flexibility could provide more efficient use and stronger uptake of the terminal's services. The ACCC's analysis in chapter 3 indicates that Emerald's MPT is the least utilised of the three established Victorian ports.

Containerised exports shipped out of Victoria are no longer regulated, and have grown in size over the last ten years to represent a significant proportion of grain exports from Victoria. This significant constraint on Emerald's MPT bulk export programme may have the potential to distort the level of efficient investment in Emerald's bulk wheat infrastructure, as large quantities of wheat have been drawn into containers for export. If Emerald's MPT was no longer subject to parts 3 to 6 of the Code, but remained subject to parts 1 and 2, it would place MPT on a more level playing field with container export, as well as with domestic industries, and may promote further efficient investment in its bulk wheat facilities.

The ACCC notes submissions from the VFF arguing that the regulations under the Code do not deter investment. The VFF notes that plans to build the proposed Bunge Geelong port terminal in the current environment is evidence that investment is being undertaken and that this investment may not be efficient as there is already excess export capacity in Victoria.[153]

The ACCC however, notes that it is not necessarily appropriate to conclude that all additional investment is inefficient and that a variety of reasons may influence investment decisions, including increased access to capacity at peak times.

The ACCC's view is that the above factors support granting the exemption.

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

Under subclause 5(3)(h) the ACCC will generally consider the degree to which the port terminal service provider is vertically integrated in grain exportation. The extent to which a vertically integrated operator favours, or is likely to favour, its own trading arm will influence the ACCC's decision on whether it is necessary for the full of the Code to apply or whether an exemption should be granted.

Emerald acknowledges that it is vertically integrated across bulk grain export operations and port terminal services at MPT.[154]

The ACCC has taken the level of vertical integration into account when considering subclause 5(3)(c) and (d) matters. While Emerald's vertical integration creates an incentive to favour its own trading arm, competition in the provision of port terminal services, particularly competition with GrainCorp's Geelong facility, as well as the evident spare capacity, alternative container export options and the threat of new port entrants in Victoria together limit Emerald's ability and incentive to favour itself to the detriment of its other customers. The ACCC notes that Emerald utilises about 42 per cent of capacity through its port terminal under the current system and has significant spare capacity.

---

[153] VFF, submission on the ACCC's draft determinations, p. 16
[154] Emerald Grain, Submission in support, p. 19

Also, as noted under consideration of subclauses 5(3)(b) and (g), the ACCC considers that the degree of competition in upcountry storage and logistics place significant competitive pressures on Emerald that limits the ability that Emerald may have to favour its own integrated operations in practice.

The ACCC notes that vertical integration into upcountry storage and handling, and transport, is discussed above in the consideration of matters (b) and (g) under the Code.

(i) 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 Emerald's MPT in chapter 4 and considers that the area largely includes northern and central Victoria as well as parts of southern NSW. The ACCC also considers that the catchment area for Emerald's MPT overlaps with GrainCorp's Geelong port terminal, and to a lesser degree with GrainCorp's Portland facility.

Prior to making the determinations in this document relating to exemptions for the Victorian port terminals, no bulk wheat terminal services provider in the relevant catchment was exempt under the Code.

The ACCC has however, determined that an exemption should be granted for GrainCorp's Geelong port terminal (see chapter 6). The ACCC considers that exempting GrainCorp's Geelong port terminal from the full application of the Code supports also granting an exemption for Emerald's MPT, particularly given the level of competition the ACCC considers there to be between the two port terminals.

(j) any other matters the ACCC considers relevant

The ACCC does not consider that there are any other matters relevant to its assessment of Emerald's MPT exemption application.

6 ACCC exemption assessment of GrainCorp's Geelong port terminal

This chapter sets out the ACCC's exemption assessment of GrainCorp's Geelong port terminal, having regard to matters (a) to (j) of subclause 5(3) of the Code.

The considerations that the ACCC may find relevant when having regard to each of subclause 5(3) matters, (a) to (j) are summarised throughout this chapter but can be found in fuller detail throughout chapter 5 in the assessment of Emerald's MPT.

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

The ACCC notes GrainCorp's submission that granting an exemption to GrainCorp's Geelong port terminal would be in GrainCorp's legitimate business interests by:

- allowing GrainCorp to compete commercially for the export of bulk grain
- supporting operational flexibility to improve service and reduce supply chain costs
- providing equity with the competing export container packers that are not regulated and
- reducing the level of regulation and cost of compliance.[155]

The ACCC considers that GrainCorp has an inherent level of flexibility to manage its legitimate business interests even under the existing regulatory arrangements. Similar to Emerald, GrainCorp can also set prices, terms and conditions for elevation from its Geelong terminal and can negotiate non-standard terms for different exporters. GrainCorp may also seek to use a range of mechanisms to allocate capacity with the approval of the ACCC. In 2012, the ACCC did not object to GrainCorp varying its capacity allocation arrangements to offer long term agreements for up to 60 per cent of its port capacity.[156] GrainCorp also has operational flexibility under the terms of the existing capacity allocation protocols, although these are limited to specific circumstances and reasons. As noted above in relation to Emerald, more flexible arrangements can provide benefits to both port operators and to exporters seeking to use the facility.

The ACCC's consideration of subclauses 5(3)(b) and (g) (see below) notes that GrainCorp's Geelong port terminal faces competition from Emerald's MPT as both terminals share a similar grain catchment area and, despite some differences in the features of the two terminals, they provide broadly similar port terminal services that can be utilised by gran marketers to export grain. Additionally the ACCC considers that GrainCorp's Geelong bulk export programme faces competition from significant container exports as well as, to a lesser degree, from domestic demand for grain in Victoria.

As an exempt port terminal services provider, GrainCorp could engage more freely in commercial negotiations and tailor access agreements for certain customers for its Geelong terminal in order to compete with MPT as well as with container exports at the Port of Melbourne. As discussed further in this assessment, these factors place a degree of competitive constraint on GrainCorp's Geelong port terminal and a greater ability for

[155] GrainCorp, Submission in support, p. 4
[156] ACCC, https://www.accc.gov.au/media-release/accc-allows-graincorp-to-introduce-long-term-port-access-agreements

GrainCorp to negotiate with its customers could allow it to compete more vigorously for exportable grain.

In addition, as a publically listed company GrainCorp has an incentive to minimise costs and maximise the use of its infrastructure to provide returns to its shareholders. The ACCC recognises that regulation does impose some cost on the regulated business, and that it would be efficient to reduce that cost where regulation is not necessary, such as where there are sufficient competitive constraints.

As such the ACCC's view is that granting an exemption to GrainCorp's Geelong facility and reducing the regulatory and opportunity costs would be in GrainCorp's legitimate business interests. In forming this view the ACCC notes the competitive constraints on the Geelong facility, largely by way of Emerald's MPT, significant container exports from Victoria and, to a lesser degree, domestic demand for grain.

The ACCC notes submissions from the VFF that the ACCC needs to quantify the dollar value of benefits that will result from granting an exemption. For the reasons noted in Chapter 2 of this decision, the ACCC does not consider that this is necessary or appropriate.

(b) the public interest, including the public interest in having competition in markets; and (g) the promotion of competition in upstream and downstream markets

The ACCC considers that the matters at subclauses 5(3)(b) and (g) 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 4 such as grain storage and handling services and the transport of grain to port. Related markets are also discussed in chapter 4 and include 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) concerning access seekers.

Competition in bulk wheat export operations

The ACCC has previously recognised there to be a degree of competition between GrainCorp's Geelong port terminal and Emerald's MPT.[157]

Overall, the ACCC's view is that GrainCorp faces a significant competitive pressure on its provision of port terminal services at its Geelong port terminal. This competitive pressure comes from Emerald's established MPT, containerised exports and domestic demand for grain. Low barriers to entry in Geelong and possible future entry also increase the level of competition faced by GrainCorp in respect of its Geelong port terminal.

The ACCC's view is based its analysis of the port terminal services markets in chapter 3, and its consideration of the broader supply chain, container exports and domestic demand in chapter 4, which indicate the following:

---

[157] ACCC, Australian Bulk Alliance Pty Ltd - Port Terminal Services Access Undertaking: Decision to accept, 28 September 2011, p. 29

- GrainCorp's Geelong port terminal and Emerald's MPT are similar facilities providing a similar range of services. Both port terminals have a comparable loading capacity, a similar draft and can accommodate similar size vessels. Both terminals also have equivalent road and rail access. The ACCC notes that, while GrainCorp's Geelong facility has certain advantages over MPT such having greater receivals and storage capacity, MPT is located closer, by distance, to more upcountry storage and handling facilities.

- Analysis of the relevant catchment areas in chapter 4 indicates that there is overlap in the grain catchment areas for GrainCorp's Geelong port terminal and Emerald's MPT. The indicative freight charges are comparable to transport grain from various sites to either port. Additionally the significant use of road transport provides a degree of flexibility in grain transport options in Victoria, particularly for delivering grain to either the Geelong or Melbourne port terminals. Together, this suggests that a significant number of marketers have the option of substituting between Geelong and MPT to export bulk wheat.

  While the ACCC notes submissions from the VFF in relation to rail being the driver of bulk export pathways, the ACCC considers that use of other transport networks is a relevant consideration. Given that there is evidence of significant road transport use to move grain to port in Victoria, the ACCC considers that this should affect its analysis of the level of competition between the Melbourne and Geelong terminals.

- GrainCorp's Portland facility may also provide some marketers from more western districts of Victoria with an alternative option to the Geelong terminal. However, given that both terminals are operated by GrainCorp the ACCC does not consider there to be any significant competitive constraint directly between these two port terminals.

- On average, there appears to be spare capacity available at GrainCorp's Geelong terminal over on an annual basis. There appears to be some degree of capacity constraint in certain high demand months during an especially large harvest year, which may raise some concerns about the ability of other exporters to access capacity if the terminal was unregulated. However, the ACCC notes that, in other years and in non-peak periods there is excess capacity. There may be a concern that exporters may not be able to gain sufficient access to capacity during periods of peak demand. This is discussed further in the ACCC's consideration of subclauses 5(3)(c) and (d).

- While the ACCC notes that proposed new port developments are still some time from operation, there are plans to develop further bulk wheat port terminals in Victoria, in particular Bunge's proposed Geelong facility. This proposal is planned to link to complimentary infrastructure currently uploading woodchips, a strategy which has been successfully implemented at Bunge's Bunbury terminal in Western Australia. Given that the facility is not yet operational, the ACCC considers that the extent of competitive pressure is somewhat limited. However, the proven ability for companies to implement such facilities suggests that the barriers to enter the bulk wheat port terminal services market are not prohibitively high in some cases. The ACCC considers that Bunge's proposal represents a credible threat of new entry/expansion at the Port of Geelong, which provides an additional constraint on GrainCorp's Geelong facility. Additionally, Bunge has been a client of both GrainCorp's Geelong and Emerald's MPT facility.

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. 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 the upcountry environment in chapter 4, the ACCC considers that:

- GrainCorp has a stronger presence than other storage providers across Victoria and southern NSW, although its site numbers have reduced from historic levels and may reduce further under its Project Regeneration. In Victoria, however, GrainCorp faces competition from a number of established competing storage operators including Cargill, Viterra, Riordan Grains, Moulamein Grain and Emerald, which have multiple sites of their own and have the ability to store significant quantities of grain. There are also other storage providers with substantial operations in Victoria. Evidence has also shown that competing storage facilities are being utilised by a number of exporters and other grain marketers.

  Additionally, some alternative storage providers operate newer and more efficient sites. For example, some of the newer facilities have more efficient balloon loop rail loading facilities rather than the more time consuming processes of using rail sidings which might require trains to be shunted and split.

  The ACCC therefore considers that the presence of these alternative storage facilities in Victoria allows exporters to consider storage options outside of the operation of the GrainCorp network.

- Transport options in Victoria have a degree of flexibility that is not available in some other parts of Australia. The relatively shorter distances to port in Victoria promote road transport as a viable alternative to rail. There are numerous providers of road transport services in Victoria. Rail also appears accessible for those marketers who wish to use it. The number and scale of options for storage and handling, as well as transport, indicate that GrainCorp's position in upcountry networks faces degrees of competition from several sources. Accordingly, the ACCC's view is that there are competitive pressures on GrainCorp's storage,handling and transport services in Victoria. As such the ACCC considers that although GrainCorp has a stronger presence upcountry than its competitors, the large number and scale of competing storage and logistics operators limits the ability for GrainCorp's to leverage market power from upcountry networks into its port terminal services at Geelong.

- Containerised grain exports in Victoria are significant, as shown by its growth and its consistent presence as a viable alternative export path for grain over the past ten years. Over the five years to 2013-14, wheat exports via containers represented around 30 per cent of wheat production in Victoria. As such, the ACCC considers container exports represent a further and direct competitive constraint on the bulk export programme at GrainCorp's Geelong facility. Grain can be packed into containers at various upcountry sites and moved directly to the Port of Melbourne for

export. Grain is also packed into containers at the Geelong facility and then transported to the Port of Melbourne for export.

- There is strong and consistent domestic demand for grain in Victoria to support the large dairy, stockfeed and malt industries in Victoria. Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay Victorian growers an amount that is at least equivalent to the export parity price. Although domestic demand is one option for grain growers to sell wheat, the size of domestic demand is generally limited in any one season. As such the level of constraint that domestic users place on bulk and container exports is generally restricted by the size of domestic demand.

The ACCC notes concerns raised by farming groups about the vertical integration of GrainCorp into both port infrastructure and upcountry storage and handling as well as the potential incentive for GrainCorp to use its vertical integration to favour its own export operations.

The ACCC however considers that the competitive pressures outlined above place a constraint on the impact of GrainCorp's vertical integration. In particular, given the competition in upstream markets and the level of spare capacity at Melbourne and Geelong, the ACCC considers that vertical integration of itself, in this case, should not create detrimental outcomes at port if an exemption is granted for GrainCorp's Geelong port terminal.

The ACCC also notes the concern raised about a lack of choice for certain growers about the upcountry sites that they can deliver grain to. While the ACCC recognises that particular growers may face this limitation, the ACCC does not consider that a decision to grant or not grant the exemption would result in any change to the fact that particular growers may have limited upcountry options.

Due to the competitive constraints noted above in relation to port terminal services at GrainCorp's Geelong facility, the ACCC considers that if an exemption were granted, it would not be to the detriment of current levels of competition in the grain acquisition market, or to upcountry and related markets.

To the extent that the lower level of regulation enabled GrainCorp to compete more effectively in the provision of port terminal services at Geelong, this may promote competition between GrainCorp, Emerald and other upcountry service providers.

Conclusion

In light of the above factors, the ACCC's view is that, overall, there are sufficient competitive constraints on GrainCorp's Geelong facility in both bulk port terminals services and in upstream storage and transport services, in addition to the constraints from container exports and domestic demand, such that competition at port and upcountry should be maintained if an exemption were granted to GrainCorp's Geelong facility.

The ACCC considers that exporters should have sufficient alternative options to GrainCorp's Geelong port terminal and upcountry assets to continue to participate in the grain acquisition market if an exemption is granted. Furthermore, the competitive situation in upcountry storage and handling will not be diminished by granting the exemption.

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

If the exemption were granted, the interests of exporters requiring access to port terminal services will not be affected if they can still compete in the grain export market on their relative merits. 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 itself over other exporters at its Geelong facility. The ACCC is considering the likelihood of this occurring, and whether exporters will be unable to negotiate on fair terms, if parts 3 to 6 of the Code did not apply to the Geelong facility.

Public submissions received from exporters during the ACCC's consultation processes did not object to granting an exemption to GrainCorp's Geelong port terminal.

Chapter 3 presents the ACCC's analysis of port terminal services and the exporters using these services. The ACCC's key findings from this analysis suggest that:

- There appears to be spare capacity at GrainCorp's Geelong facility, particularly during average and low harvest years, and during non-peak times of all years. During peak times of larger harvests there may be times where capacity is constrained at Geelong. However historic export data has shown that exporters can and do spread their capacity requirements over certain other months of the year. The significant spare capacity at MPT, including at peak times where Geelong may have been at capacity, supports the concept that exporters have a viable alternative to bulk exporting at Geelong. The ACCC also notes that it appears that port operators have some flexibility to vary the available capacity to accommodate demand in peak periods.

- GrainCorp's largest customers (Glencore, Cargill and ADM) represent a significant proportion of throughput at the Geelong facility suggesting that they will have ability to negotiate with GrainCorp for fair access to sufficient port capacity.

- Smaller exporters would appear able to access capacity at least during non-peak times where there appears to be significant spare capacity. Some exporters, particularly Bunge, would appear to have better bargaining power given the potential for it to build its own port facilities.

- Other smaller exports however may face some difficulties in accessing shipping slots, particularly in peak shipping months and especially in a large harvest year. This may be a concern in the absence of full regulation under the Code. As a viable alternative however, exporters could seek access shipping slots at Emerald's competing MPT which appears to have significant spare capacity across most of the year and would be incentivised to increase the use and customer base of its MPT.

- A further alternative for exporters is the container export facilities at the Port of Melbourne which has been utilised to export grain from Victorian by a wide range of exporters in recent years.

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

The ACCC notes the GPA submission and views from the VFF seeking more transparent access to information about the wheat industry, including information about stock upcountry levels.[158] The ACCC understands that granting an exemption will remove some of the reporting obligations on Emerald to publish port stock and capacity information. The ACCC, however, considers that in a competitive environment, market participants would be likely to obtain sufficient information to make informed decisions.

The ACCC notes that a decision on exemption has no impact on the reporting of upcountry stocks information. As noted in chapter 1, stocks information about grain held in upcountry storage sites is outside the scope of the Code.

(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

The ACCC's view is that the degree of competition faced by GrainCorp's Geelong facility and competition is sufficient in upstream and downstream markets (as outlined under subclauses (b) and (g)) and will drive efficient operation and use of the port terminal facility in the absence of full regulation under the Code.

As noted under the subclause 5(3)(a) discussion, GrainCorp submits that granting an exemption to its Geelong facility would assist GrainCorp to compete commercially in the bulk and container exports and assist to reduce supply chain costs. The ACCC considers that this would in turn promote investment in supply chain infrastructure.

Containerised exports shipped out of Victoria are no longer regulated. Container grain exports have grown in size over the last ten years and now represent a significant proportion of grain exports from Victoria. This is a significant constraint on GrainCorp's Geelong bulk export programme and may have the potential to distort the level of efficient investment in GrainCorp's bulk wheat infrastructure if larger quantities of wheat are drawn into containers for export. If GrainCorp's Geelong facility was no longer subject to parts 3 to 6 of the Code, but remained subject to parts 1 and 2, it would place the Geelong bulk export programme on a more level playing field with containers, as well as domestic industries, and may promote further efficient investment in bulk wheat facilities.

The ACCC notes submissions from the VFF arguing that the regulations under the Code do not deter investment. The VFF notes that plans to build the proposed Bunge Geelong port terminal in the current environment is evidence that investment is being undertaken and that this investment may not be efficient as there is already excess export capacity in Victoria.

The ACCC however, notes that it is not necessarily appropriate to conclude that all additional investment is inefficient and that a variety of reasons may influence investment decisions, including increased access to capacity at peak times.

The ACCC's view is that the above factors support granting the exemption.

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

This matter refers to the extent of vertical integration and the ability and incentive for a port terminals service provider to favour its own trading arm. The extent to which vertically integrated operator favours, or is likely to favour its own trading arm will influence the

[158] GPA, submission on the ACCC's draft determination, p. 3

ACCC's decision on whether it is necessary for the full Code to apply or whether an exemption should be granted.

GrainCorp acknowledges that it is vertically integrated as a port terminal service provider at its Geelong port terminals and an exporter of grain.[159]

The ACCC has taken the level of vertical integration into account when considering subclause 5(3)(c) and (d) matters. GrainCorp's vertical integration will create incentives for GrainCorp to favour its own trading arm. However the ACCC considers that competition between GrainCorp and Emerald in the provision of bulk wheat port terminal services in Geelong and Melbourne, given a degree of available capacity across both terminals as well as the alternative container export pathway and the threat of new entry in Victoria, suggests that it is likely that GrainCorp would not act in a way that disadvantages port customers who are competing wheat marketers.

Also, as noted under consideration of subclauses 5(3)(b) and (g), the ACCC considers that the degree of competition in upcountry storage and logistics in Victoria is sufficient to limit GrainCorp's ability to favour its own integrated operations through its Geelong terminal.

As the ACCC considers that GrainCorp's ability to favour its own trading arm at its Geelong facility are limited by a number of competitive pressures. The ACCC considers that these pressures together support granting an exemption to GrainCorp's Geelong port terminal.

The ACCC notes that vertical integration into upcountry storage and handling, and transport, was discussed above in the consideration of matters (b) and (g) under the Code.

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

The ACCC discusses the relevant grain catchment area for GrainCorp's Geelong port terminal in chapter 4 and considers that the area largely includes northern and central Victoria as well as parts of southern NSW. The ACCC also considers that the catchment area for GrainCorp's Geelong facility overlaps to a large degree with Emerald's MPT, and to a lesser degree with GrainCorp's Portland facility.

Prior to making the determinations in this document relating to exemptions for the Victorian port terminals, no bulk wheat terminal services provider in the relevant catchment was exempt under the Code.

The ACCC has however, in this document, determined that an exemption should be granted for Emerald's MPT (see chapter 5). The ACCC considers that exempting Emerald's MPT from the full application of the Code supports also granting an exemption for GrainCorp's Geelong port terminal, particularly given the level of competition the ACCC considers there to be between the two port terminals.

(j) any other matters the ACCC considers relevant

The ACCC does not consider that there are any other matters relevant to its assessment of GrainCorp's Geelong port terminal.

---

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

7 ACCC exemption assessment of GrainCorp's Portland port terminal

This chapter sets out the ACCC's exemption assessment of GrainCorp's Portland port terminal, having regard to matters (a) to (j) of subclause 5(3) of the Code.

The considerations that the ACCC may address in regards to each matter, (a) to (j) are summarised throughout this chapter but can be found in fuller detail throughout chapter 5 in the assessment of Emerald's MPT.

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

The ACCC notes GrainCorp's submission that, similar to its Geelong port terminal, granting an exemption to GrainCorp's Portland port terminal would also be in GrainCorp's legitimate business interests by:

- allowing GrainCorp to compete commercially for the export of bulk grain
- supporting operational flexibility to improve service and reduce supply chain costs
- providing equity with the competing export container packers that are not regulated and
- reducing the level of regulation and cost of compliance.

Similar to its GrainCorp's Geelong port terminal, GrainCorp has an inherit level of flexibility to manage its legitimate business interests in relation to its Portland terminal under the existing regulatory arrangements. GrainCorp can set prices, terms and conditions for elevation from its Geelong terminal and can negotiate non-standard terms for different exporters. GrainCorp may also seek to use a range of mechanisms to allocate capacity with the approval of the ACCC. In 2012, the ACCC did not object to GrainCorp varying its capacity allocation arrangements to offer a specific format of long term agreements for up to 60 per cent of its port capacity.[160]

GrainCorp however submits that necessary approved capacity allocation systems under the Code would limit its ability to provide effective port services, particularly top-up shipments, and that it is imperative that GrainCorp is able to offer all customers a flexible and timely port elevation service.[161]

The ACCC notes that GrainCorp has often provided top-up services at Portland under the existing regulatory arrangements. The existing arrangements, where GrainCorp operates long term capacity arrangements as well as first-in first-served capacity allocation procedures at each of its ports, means that the allocation processes at its Portland, Geelong and other port terminals are not directly linked. Accordingly, as is currently the case, the ACCC considers that separate capacity allocation procedures applying to different ports do not prohibit a port terminal service provider executing top-up shipment services.

[160] ACCC, https://www.accc.gov.au/media-release/accc-allows-graincorp-to-introduce-long-term-port-access-agreements

[161] GrainCorp, submission on the ACCC's draft determinations, p. 9

To the extent that being exempt from the full application of the Code would allow GrainCorp to provide better top-up services to its customers, the ACCC accepts that this may be in the legitimate business interests of the port terminal service provider.

As a publically listed company GrainCorp has an incentive to minimise costs and maximise the use of its infrastructure to provide returns to its shareholders. The ACCC recognises that regulation does impose some cost on the regulated business, and that it would be efficient to reduce that cost where regulation is not necessary, such as where there are sufficient competitive constraints.

Given the above factors, the ACCC is satisfied that an exemption for GrainCorp's Portland facility would be in the legitimate business interests of GrainCorp due to a reduction in regulatory costs and the extent to which GrainCorp could provide more competitive port terminal services (including through top-up shipments).

The exemption assessment of GrainCorp's Portland terminal, however, also depends on the consideration of other matters under subclause 5(3) of the Code, including matters related to the degree of competitive constraint faced by GrainCorp's Portland facility. This is discussed below in the ACCC's consideration of subclauses 5(3)(b) and (g).

(b) the public interest, including the public interest in having competition in markets; and (g) the promotion of competition in upstream and downstream markets

The ACCC considers that subclauses 5(3)(b) and (g) 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 4 such as grain storage and handling services and the transport of grain to port. Related markets are also discussed in chapter 4 and include 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) concerning access seekers.

Competition in bulk wheat export operations

The ACCC considers that GrainCorp's Portland terminal is subject to a degree of competition from other port terminals in Victoria and South Australia. However, at this time the ACCC considers the level of competitive constraint to be somewhat limited, largely due to the absence of an alternative bulk terminal facility which provides a sufficient level of direct competition on the Portland facility. In contrast to the competition the ACCC considers there to be between Emerald's MPT and GrainCorp's Geelong facility, there is less evidence that the Portland facility is in direct competition with another port terminal.

The ACCC's views on the level of competitive constraint placed on GrainCorp's Portland terminal draws from its analysis of the port terminal services markets in chapter 3, and its consideration of the broader supply chain and the container export and domestic markets in chapter 4. Key findings from these chapters indicate that:

- GrainCorp's Portland port terminal shares a number of similar characteristics with the other bulk wheat port terminals in Victoria. For instance, it has broadly similar ship

loading capabilities to MPT, can store significant volumes of grain and can receive both rail and road deliveries. There are some key differences which make it both less and more attractive for exporters. On the one hand rail access is via standard gauge only, and is less efficient than rail to the other two Victorian ports. This is likely to have contributed to a large proportion of grain being delivered to Portland by road in recent seasons. On the other hand, the Portland facility has the deepest berth and is the only port facility in Victoria that can fully load a Panamax vessel. Portland is therefore often used as a top-up terminal for shipments that are partially loaded at other port terminals.

- Analysis of the catchment areas in chapter 4 suggests that GrainCorp's Portland port terminal appears to largely service western Victoria. In general, from this part of Victoria, distances to port terminals other than Portland are longer by road and rail, meaning that freight costs to other terminals can be more expensive, and in a number of cases, is currently a substantial increase. There appear to be some exceptions to this:

    - For marketers closer to central Victoria there appears to be scope to move grain to either Portland or Geelong at a similar cost, although both of these terminals are operated by GrainCorp.

    - There is also evidence of some containerised grain moving from western Victoria to the Port of Melbourne.

    - GrainCorp also submits that grain could also move from western Victoria to Emerald's MPT by rail on the ARTC train line, as well as to Outer Harbor in Adelaide.

  The ACCC considers however that these exceptions are only viable for certain marketers and sites, and do not appear to apply to other marketers and many other sites in the area. For instance, marketers whose grain is not located on the ARTC rail line are likely to depend more on road freight to transport grain to port. Evidence provided to the ACCC suggests that the road freight rates from western Victoria to a current competing port, such as Emerald's Melbourne port facility, remain significantly higher than road freight rates to Portland.

- GrainCorp's Portland terminal is the second most utilised port in Victoria. Generally there appears to be spare capacity particularly in the non-peak times of the year, and similar to GrainCorp's Geelong terminal, significant demand for shipping slots during peak times of the year. As with GrainCorp's Geelong terminal, there may be a concern that exporters may not be able to gain sufficient access to capacity during periods of peak demand. The difference in the case of the Portland terminal is the lack of a clear substitute port which could service a range of marketers from the same area that services Portland. The likely impact of this on exporters is discussed further in the ACCC's consideration of subclauses 5(3)(c) and (d).

- As noted in the above assessments, plans to develop further bulk wheat port terminals in Victoria, in particular Bunge's proposed Geelong facility, may place a degree of constraint on existing ports through the threat of entry. The ACCC considers that the current level of constraint from Bunge's proposed port is somewhat limited given that the Bunge facility is still some time from being constructed. In the case of GrainCorp's Portland terminal, the ACCC considers the planned Bunge facility may place a lesser threat on GrainCorp's Portland terminal compared to the other existing Geelong and Melbourne ports given their respective geographic locations. Due to the proposed location of the Bunge facility at Geelong it

may have less overlap with Portland in terms of catchment areas compared to its potential overlap with GrainCorp's Geelong facility and Emerald's MPT.

In the absence of this facility being operational at this time, the ACCC does not consider that it should give considerable weight to the freight rates for moving grain from Western Victoria to Geelong at this time.

- According to submissions from the existing port operators, there is speculation that Quattro, backed by Noble, Cargill and Emerald, is planning to develop a new port terminal facility at the Port of Portland that would be separate from the existing GrainCorp terminal. Media commentary suggests that this development is in its early stages and there is no public information about its potential scale or timeframes for its possible development. While the concept of a developing port may suggest the threat of entry, it is difficult for the ACCC to give significant weight to the prospect of a new terminal at Portland in the absence of any details about its capacity or expected construction date.

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. 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.

Similar to its assessment of GrainCorp's Geelong facility, the ACCC's view is that there is competition in provision of upcountry storage and transport services across Victoria and southern NSW.

Based on its analysis of the broader supply chain as well as container exports and domestic demand in chapter 4, the ACCC considers that:

- GrainCorp has a stronger presence than other storage providers across Victoria and southern NSW, although its site numbers have reduced from historic levels and may reduce further as GrainCorp closes more of its Victorian sites under its Project Regeneration. In the current environment GrainCorp faces competition from a number of competing storage operators, some with multiple sites of a relatively large scale and with their own integrated operations, including across the western districts of Victoria. Emerald in particular has a number of storage and handling sites throughout western Victoria.

- The relatively shorter distances to port in Victoria promotes road transport as a viable alternative to rail, particularly from areas in western Victoria to GrainCorp's Portland terminal. The relative inefficiencies of the current rail network to the Portland terminal further promote the use of road transport in this part of Victoria. Road receivals reportedly account for about 80 per cent of receivals at the Portland terminal.[162]

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

- The ACCC's analysis indicates that the number and scale of options for storage and handling as well as providers of transport services in western Victoria indicates that GrainCorp's upcountry networks face sufficient competition in this region. Accordingly, the ACCC's view is that GrainCorp is limited in its ability to exercise market power in storage and handling and transport services in western Victoria. As such the ACCC considers that GrainCorp would not be in a position whereby it could leverage any significant market power from upcountry networks into the market for its Portland bulk wheat terminal services.

- Containerised grain exports from Victoria are significant, as shown by its growth and its consistent presence as a viable alternative export path for grain over the past ten years. The ACCC considers that containerised exports provide a level of constraint on the bulk export programme at Portland. The ACCC understands that there are a number of container packing companies operating in western Victoria, which mostly export containers through the Port of Melbourne.

- There is strong and consistent demand for grain in Victoria to support the large dairy, stockfeed and malt industries in Victoria. Domestic users of grain face lower supply chain costs compared to the export markets and are able to pay Victorian growers an amount that is at least equivalent to the export parity price. Although domestic demand is one option for grain growers to sell wheat, the size of domestic demand is generally limited each season. As such the level of constraint that domestic users place on bulk and container exports is generally restricted by the size of domestic demand.

Conclusion

Overall, the ACCC considers that some competitive constraints exist in relation to bulk wheat export port terminal services at GrainCorp's Portland facility.While there is a level of competition in upcountry storage and the related container export programme, it is unclear that this places sufficient competitive constraint on GrainCorp's port terminal services at Portland in the absence of a clear competing port terminal facility at this time. In particular, the differences in transportation costs between Portland and other ports suggest that other ports will not generally constrain the behaviour of GrainCorp in respect of its Portland facility. It is therefore possible that granting an exemption may allow GrainCorp to leverage its monopoly position at the Portland port facility to the detriment of some or all of its upcountry storage provider competitors.

The ACCC considers that in an environment where there is a lack of effective competition, and in this case, the absence at this time of a direct competing facility that is accessible for similar freight rates, GrainCorp may have an incentive to increase prices or decrease the quality of service to access seekers at the Portland facility.

Accordingly, in the absence of a competing port terminal facility, competition may not be promoted if GrainCorp were granted an exemption at its Portland facility, and having regard to subclause 5(3)(b), an exemption at GrainCrop's Portland facility may not be appropriate if there is not sufficient competition in markets.

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

If the exemption were granted, the interests of exporters requiring access to port terminal services will not be affected if they can still compete in the grain export market on their relative merits. 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 itself over other exporters at its Portland facility. The ACCC is considering 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 the Portland facility.

The ACCC notes that public submissions from exporters do not oppose granting an exemption to GrainCorp's Portland facility.

The ACCC's considers that competition provides a strong incentive for a firm to act fairly and reasonably with its customers and to provide fair and transparent access to services. In the absence of competition, incentives exist for a firm to favour its own trading arm over third party customers.

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

- Over the last three years GrainCorp's trading arm has not been the largest user of the Portland terminal. Cargill has been the largest exporter with around 27 per cent of total exports. Other exporters appear to also have been able to access significant capacity, including during the peak months. Additionally, the Portland terminal appears to have been underutilised, especially during average and lower harvest years, and during non-peak times of the year. Given this, GrainCorp would be likely to be incentivised to increase throughput at its Portland terminal during these times.

- During peak times, where there appear to be some capacity constraints at Portland, GrainCorp may have an incentive to favour itself in order to provide its own trading arm with the opportunity to obtain the best possible prices for grain in downstream markets. On the other hand, it may be inclined to facilitate third party access as it currently does. GrainCorp's third party customer base consists of a number of companies which together represent around 80 per cent of total throughput, both during peak and non-peak times. Based on this current reliance on third party customers to provide throughput, GrainCorp may be unlikely to choose to foreclose third party access and settle for significantly less throughput at its terminal, or to make up such a significant degree of throughput through its own grain network.

- GrainCorp's largest customers (Glencore, Cargill and ADM) represent a significant proportion of throughput at the Portland facility suggesting that, should GrainCorp wish to maintain their respective throughput, these customers should have the ability to negotiate with GrainCorp for access to sufficient port capacity. Other exporters who have larger resources to potentially build their own port facility may also have better bargaining power.

- Smaller exporters would appear able to be able access spare capacity at least during non-peak times. During peak times, it is possible that some smaller exports may face difficulties in accessing highly demanded peak shipping slots, especially in a large harvest year. If GrainCorp could increase grain through its networks to the Portland terminal, it would seem likely that these smaller exporters would be the most vulnerable in terms of gaining access to sufficient capacity.

- Given the need for GrainCorp to secure some throughput from other marketers, GrainCorp would not likely foreclose access to its facility. However, given the lack of

a clear substitute port which could service a significant number of marketers from the same area that services Portland, GrainCorp may however have an incentive to alter the terms and conditions of access for third party exporters to maximise profits.

Based on the factors outlined above, the ACCC's view is that granting the exemption may lead to some risk of detriment to the interests of exporters requiring access to GrainCorp's Portland port terminal.

As noted in the ACCC's consideration of subclauses 5(3)(b) and (g), due to the lack of a direct competing facility at this time, there may be risks that GrainCorp could alter the terms and conditions of access with some exporters not having an alternative pathway for export. However, the ACCC notes that there are some incentives on GrainCorp to keep obtaining throughput for its facility.

(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

As outlined under the discussion of subclauses (b) and (g) above, the ACCC's view is that the lack of a direct competing facility at this time limits the competitive constraint placed on GrainCorp's port terminals services at Portland. As a result in an environment where there is a lack of competition in key services there may be a lack of incentive to invest to an efficient level.

As noted under subclause 5(3)(a), GrainCorp submits that granting an exemption to its Portland facility would assist GrainCorp to compete commercially in the bulk and container grain markets and go to reducing supply chain costs.

As noted above, containerised grain exports shipped out of Victoria places some constraint on GrainCorp's Portland bulk export programme, as a certain number of containers appear to move from the Portland terminals grain catchment area to the Port of Melbourne for export. As such container exports may have the potential to distort the level of efficient investment in GrainCorp's bulk wheat infrastructure, if larger quantities of wheat are drawn into containers for export. If GrainCorp's Portland facility was no longer subject to parts 3 to 6 of the Code, but remained subject to parts 1 and 2, it would place the Portland bulk export programme on a more level playing field with containers, as well as domestic industries, and may promote further efficient investment in bulk wheat facilities.

Overall, the ACCC considers that there may be some incentives for GrainCorp to invest and operate an efficient Portland facility, but in an environment without a clear competing facility, there are risks that the level of investment may not reach an efficient level .

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

This matter refers to the extent of vertical integration and the ability and incentive for a port terminals service provider to favour its own trading arm. The extent to which a vertically integrated operator favours, or is likely to favour its own trading arm will influence the ACCC's decision on whether it is necessary for the full regulation under the Code to apply or whether an exemption should be granted.

GrainCorp acknowledges that it is vertically integrated as a port terminal service provider at its Portland port terminals and an exporter of grain through those terminals.[163]

The ACCC has taken the level of vertical integration into account when considering subclause 5(3)(c) and (d) matters. While GrainCorp's vertical integration may create some incentive to favour its own trading arm, in the case of its Portland port terminal, where there is currently a significant reliance on other users of the facility for throughput, it would seem unlikely that GrainCorp would act in a way that would totally exclude access by wheat marketers who are of sufficient scale. However, in the absence of parts 3 to 6 of the Code applying to GrainCorp's Portland terminal, GrainCorp could more easily alter the terms and conditions of access for some or all third party exporters, increase prices or decrease the quality of service.

Accordingly, the ACCC considers that there would be some risks to smaller exporters in particular if an exemption were granted to the Portland facility at this time.

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

The ACCC discusses the relevant grain catchment area for GrainCorp's Portland port terminal in chapter 4 as well as in its consideration of subclauses 5(3)(b) and (g). The ACCC considers that the catchment area for GrainCorp's Portland facility overlaps only to a limited degree with other existing port terminals, and is to a significant extent separate from other ports' catchment areas given the associated freight transport costs.

Prior to making the determinations in this document relating to exemptions for the Victorian port terminals, no bulk wheat terminal services provider in the relevant catchment was exempt under the Code.

However, the ACCC has determined that an exemption should be granted to Emerald at its MPT (see chapter 5) and GrainCorp at its Geelong port terminal (chapter 6). The ACCC noted in its assessments of these ports that their catchment areas have some limited overlap with Portland's catchment area.

GrainCorp submits that, if it is not granted an exemption at its Portland facility, while exemptions are granted at other Victorian port terminals, then the Portland terminal would face disadvantage. Specifically, GrainCorp notes that 'Portland would be placed at a further disadvantage as regulation will be discriminatorily applied to GrainCorp's Portland facility but not to other bulk ports and containers in Victoria, including a planned new operator at Portland'.[164]

The ACCC, however, does not consider that this argument supports an exemption for the Portland facility.

Analysis in chapter 4 indicates that the Portland facility is in a somewhat separate grain catchment area to the Geelong and Melbourne terminals, and as such faces limited competitive constraints from these port terminals. Additionally, at this stage there has only been speculation about a planned new operator at Portland. The ACCC considers that it is difficult to give significant weight to the prospect of a new terminal at Portland at this time.

---

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

[164] GrainCorp, submission on the ACCC's draft determinations, p. 9

Accordingly, the ACCC considers that exempting Emerald's MPT and GrainCorp's Geelong port terminal from the full application of the Code provides only limited support for an exemption of GrainCorp's Portland terminal.

(j) any other matters the ACCC considers relevant

The ACCC does not consider that there are any other matters relevant to its assessment of GrainCorp's Portland port terminal.

8 ACCC final determinations

Given the above assessments of subclause 5(3) matters, the ACCC has made the following decisions.

Emerald's Melbourne Port Terminal

The ACCC has determined that Emerald is an exempt service provider of port terminal services provided by means of its MPT facility.

GrainCorp's Geelong port terminal

The ACCC has determined that GrainCorp is an exempt service provider of port terminal services provided by means of its Geelong port terminal facility.

GrainCorp's Portland port terminal

The ACCC has determined that, at this time, GrainCorp is not an exempt service provider of port terminal services provided by means of its Portland port terminal facility.

9 ACCC monitoring and future assessments

While the ACCC has determined that Emerald's MPT and GrainCorp's Geelong port terminals are subject to a sufficient level of competition to be exempt from parts 3 to 6 of the Code, but that GrainCorp's Portland facility is not, the ACCC recognises that it is not possible to ensure particular market outcomes following an exemption decision.

The ACCC therefore considers that it is appropriate for it to monitor the Victorian wheat port terminals after making the exemption determinations.

The ACCC considers that it will be important to examine the competitive outcomes at these facilities, and in upstream and downstream markets, that result for these facilities and the associated port zone in the future.

In particular, the ACCC's monitoring will consider the market concentration of exporters shipping wheat from Emerald's MPT and GrainCorp's Geelong terminal. The ACCC would be concerned if, in future, either of the port operators significantly increased their export market shares at their respective port facilities at the expense of third party exporters. 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 has the ability under the Code to revoke exemptions once granted. Similar to the process for granting an exemption, the ACCC may revoke an exemption determination after having regard to the matters to matters (a) to (j) of subclause 5(3) of the Code, if it is satisfied that the reasons for granting the exemptions no longer apply. If the ACCC considers from its monitoring that competitive outcomes have not resulted after the exemptions, it may conduct an inquiry into whether either exemption should be revoked.

Equally, the ACCC may also decide to re-examine its determination not to exempt GrainCorp at its Portland port terminal facility if relevant circumstances change (for example, if a competing port terminal facility were developed at Portland).

Finally, the ACCC may also, in the future, consider whether other port terminal service providers operating in Victoria should be granted an exemption. For example, the ACCC may consider an exemption for Bunge's proposed Geelong port terminal facility in the event that it becomes operational.

9.1 Monitoring

The ACCC's monitoring of Victorian wheat port terminal services may include a number of aspects. In particular, the ACCC intends to pursue two main monitoring activities.

9.1.1 Industry analysis

The ACCC is provided with the shipping activity at port terminals under the Code. Part 2 of the Code requires port terminal service providers to, among other things, provide daily ship loading statements to the ACCC. Both exempt and non-exempt port terminal operators must report this information to the ACCC (and publish it on their website) on a daily basis.

Through port loading statements, the ACCC is able to examine:

- the number and frequency of exporters using a port terminal
- the quantity and type of grain being exported

- the timing of shipments by exporters.

This information allows the ACCC to understand the nature and concentration of shipping activity and exporters' market shares throughout the year, and to compare these over time. In particular, the ACCC will be able to examine changes in the use of the facilities in a deregulated environment, and contrast it to the levels of market concentration and the outcomes achieved under the Code and the previous undertaking regime.

The ACCC notes that, from 1 October 2015, this loading statement information will also be required to be provided by any competing facilities such as the potential Bunge facility at Geelong, or any competing facility at Portland. Accordingly the ACCC will be receiving data from all bulk export facilities in Victoria (and across Australia) that will allow it to examine the industry in a thorough way. The ACCC can also utilise other industry data and information to assess the level of shipping activity at a particular port terminal.

While the ACCC does not consider that market shares are determinative of the competitive situation in a port zone, it considers that examining this information will give some indication of whether other third party exporters continue to be able to access the Geelong and Melbourne facilities. As noted above, the ACCC would be concerned by evidence that GrainCorp and Emerald were respectively taking a much larger or growing proportion of export capacity at the two ports at the expense of other exporters and potentially limit the competition for grain grown by Australian farmers. The ACCC would also be concerned by evidence of an increased concentration in Victoria of exports among a small group of exporters, particularly those who are vertically-integrated in other parts of Australia, to the exclusion of other exporters.

In examining this data, the ACCC may utilise tools such as x-firm concentration ratios or the Herfindahl-Hirschmann Index (HHI), or calculate changes in such measures, to provide an indication of whether there are competition concerns. The ACCC will need to consider the appropriate methods of calculation for such measures, such as how to account for spare capacity and alternative export paths.

The ACCC notes that tools such as the HHI do not replace the ACCC's obligation to consider the full range of matters under clause 5(3) and 5(6) of the Code.

9.1.2 Consultation with industry

The ACCC also intends to periodically approach exporters in Victoria to seek information about their ability to access port terminal services at Emerald's MPT and GrainCorp's Geelong port terminal in an environment subject to a lower level of regulation under the Code. This may include regularly scheduled meetings with other industry participants in upstream and downstream markets, such as farmers groups, to gauge the effect of granting the exemptions.

The ACCC also encourages industry participants to approach the ACCC directly with any concerns they may have in regards to securing fair and transparent access to Emerald's MPT and GrainCorp's Geelong port terminal services.

If significant concerns are raised by industry (in any forum) about the ability of third party exporters to access one or both of the two facilities, the ACCC may conduct further market inquiries, or could consider a public process to assess whether to revoke an exemption for the relevant port terminal facility.