



Australian
Competition &
Consumer
Commission

Final determinations: GrainCorp Operations Limited and Quattro Ports at Port Kembla

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

1 April 2016

Summary

The Australian Competition and Consumer Commission (ACCC) has determined that Quattro Ports (Quattro) and GrainCorp Operations Limited (GrainCorp) are exempt service providers with respect to their bulk wheat port terminal facilities at Port Kembla. This means that both Quattro and GrainCorp are subject to a lower level of regulation under the Port Terminal Access (Bulk Wheat) Code of Conduct (the Code) from 30 March 2016.

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

Under the Code, the ACCC or the Minister for Agriculture may exempt a PTSP from the application of Parts 3 to 6 of the Code at a specified port terminal facility. Exempt service providers face a lower level of regulation and are only subject to Parts 1 and 2 of the Code.¹ The ACCC published a final position paper in relation to this assessment on 1 October 2015. Following consideration of the matters listed at subclause 5(3) of the Code, the ACCC formed the view in this final position paper that:

it is appropriate that these exemptions for GrainCorp and Quattro at Port Kembla be granted concurrently at the time Quattro becomes a port terminal service provider as defined by the Code (that is, when Quattro's ship loader is capable of handling bulk wheat).²

The ACCC's views were based on analysis of current and expected capacity constraints and usage at Port Kembla and the extent to which port terminals at Port Kembla would compete with other port terminals for bulk wheat in overlapping catchment areas. The ACCC also considered the impact of containerised exports and the domestic demand for wheat. The ACCC also had regard to industry submissions received during two public consultation processes conducted prior to publishing its final position.

The ACCC's full assessments of the matters under subclause 5(3) of the Code are set out in chapters 2 and 3 of its 1 October 2015 final position paper.

On 14 March 2016, Quattro wrote to the ACCC advising of its plans to load a bulk wheat export vessel at Port Kembla 'on or about the 29th of March 2016'. The ACCC is satisfied that Quattro is now a port terminal service provider as defined by the Code.

As Quattro's facility was still in development when it submitted its application in support of exemption (24 April 2015), the ACCC sought confirmation from Quattro that the information it provided in that application remained current. In its 14 March 2016 letter, Quattro confirmed that there had been no change to the information provided in its previous submission. On 23 March 2016, GrainCorp wrote to the ACCC confirming that there had been no change to the information it provided in support of exemption.

The ACCC considers that there has been no material change to the circumstances underpinning its 1 October 2015 final position. Consequently the ACCC considers it is appropriate to grant the exemptions to GrainCorp and Quattro at this time.

Documents relevant to this assessment, including the ACCC's issues paper, draft decisions, final position and public submissions by interested parties are available on the ACCC's website at: <https://www.accc.gov.au/regulated-infrastructure/wheat-export/>.

¹ The ACCC's final position contains more information regarding the Code and exemption processes at Appendix, available at <https://www.accc.gov.au/regulated-infrastructure/wheat-export/>.

² ACCC, *ACCC final position – GrainCorp Operations Limited and Quattro Ports at Port Kembla* 1 Oct 2015, p. 1.

ACCC determinations

Consistent with the ACCC's final position released on 1 October 2015, the ACCC has made the following final determinations regarding Quattro's and GrainCorp's Port Kembla facilities.

Quattro's Port Kembla port terminal facility

The ACCC's final determination is that Quattro is an exempt service provider of port terminal services provided by means of its port terminal facility located at Berth 104, Port Kembla.

GrainCorp's Port Kembla port terminal facility

The ACCC's final determination is that GrainCorp is an exempt service provider of port terminal services provided by means of its port terminal facility located at Berth 103, Port Kembla.

ACCC monitoring

As noted in the final position paper, the ACCC intends to undertake monitoring of Port Kembla bulk wheat port terminal services to continue to assess the level of competition at these facilities into the future.

The ACCC will remain able to monitor the level of shipping activity and market concentration at Quattro and GrainCorp's Port Kembla terminals through examining daily ship loading statements provided to the ACCC.

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

Further information

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

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Background

Legislative framework

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

- (a) the legitimate business interests of the port terminal service provider;
- (b) the public interest, including the public interest in having competition in markets;
- (c) the interests of exporters who may require access to port terminal services;
- (d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services;
- (e) the promotion of the economically efficient operation and use of the port terminal facility;
- (f) the promotion of efficient investment in port terminal facilities;
- (g) the promotion of competition in upstream and downstream markets;
- (h) whether the port terminal service provider is an exporter or an associated entity of an exporter;
- (i) whether there is already an exempt service provider within the grain catchment area for the port concerned;
- (j) any other matters the ACCC considers relevant.

The ACCC's consideration of these matters in the context of the GrainCorp and Quattro applications is set out in chapters 2 and 3 of its 1 October 2015 final position document.

ACCC Port Kembla exemption assessments timeline

Table 1 sets out the timeline of the ACCC's assessment of GrainCorp and Quattro's exemption applications.

Table 1: ACCC assessment

Date	Action
14 April 2015	GrainCorp lodged an exemption application for its Port Kembla terminal
24 April 2015	Quattro lodged an exemption application for its Port Kembla terminal
7 May 2015	The ACCC published its issues paper and invited public submissions by 29 May 2015
15 May – 13 June 2015	Submissions received from interested parties
18 June 2015	The ACCC published three public submissions on its website
30 July 2015	The ACCC published draft decisions on the exemption applications and invited public submissions on its draft views by 14 August 2015
1 September 2015	The ACCC published two public submissions in response to its draft decisions on its website

Date	Action
7 September 2015	The ACCC published one further public submission received from Quattro on its website
1 October 2015	The ACCC published a final position paper on the exemption applications
14 March 2016	Quattro advised the ACCC that it intended to load a bulk wheat vessel via its Port Kembla port terminal facility on or about 29 March 2016, and that there had been no change to the information Quattro provided in support of exemption
23 March 2016	GrainCorp confirmed that there had been no change to the information GrainCorp provided in support of exemption
1 April 2016	The ACCC published final determinations on the exemption applications