



Australian
Competition &
Consumer
Commission

Issues paper:
Exemption assessments of
GrainCorp Operations Limited's
and Queensland Bulk Terminals'
bulk wheat terminals at the Port
of Brisbane

Exemptions under the Port Terminal
Access (Bulk Wheat) Code of Conduct

23 June 2015

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1. Summary

The Australian Competition and Consumer Commission (ACCC) is seeking views on whether it is appropriate for it to determine one or both of the following port terminal service providers (PTSPs) to be exempt service providers at their respective facilities at the Port of Brisbane:

- GrainCorp Operations Limited (GrainCorp)¹
- Queensland Bulk Terminals (QBT).

Exempt service providers are not required to comply with Parts 3 to 6 of the Port Terminal Access (Bulk Wheat) Code of Conduct (Code) in relation to port terminal services provided through specified port terminal facilities. Accordingly, exempt service providers are not required to, among other things:

- have their process for allocating access to their port terminal services approved by the ACCC
- allocate capacity according to the Code's non-discrimination and no hindering obligations
- publish information on expected port capacity, performance indicators, or stocks at port.

The Code states that in making a determination that a PTSP is an exempt service provider, the ACCC must have regard to the matters listed at subclause 5(3) of the Code. The ACCC will consider these matters in subclause 5(3), along with comments provided in response to this issues paper, prior to making determinations to exempt or not exempt.

GrainCorp and QBT have provided separate submissions in support of exempt service provider status at their respective port terminal facilities at the Port of Brisbane. Further details of these submissions are set out as relevant in Chapter 3 of this issues paper. Both submissions are available on the ACCC's website for interested parties to consider.

The ACCC invites comments in response to this issues paper by **5.00pm EST on Wednesday 15 July 2015**. The ACCC asks submitting parties to clearly identify whether their submission relates to GrainCorp and/or QBT.

Further information on the ACCC's exemption role is available at **Appendix A**.

¹ GrainCorp's terminal at the Port of Brisbane is also known as the Fisherman Islands Port Terminal.

2. Introduction

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

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

This section sets out why the ACCC has a role assessing whether PTSPs should be determined to be exempt service providers, what the assessment process will involve and how interested parties can participate in it.

2.1. How the ACCC determines exempt service provider status

The ACCC is assessing whether it is appropriate to determine GrainCorp and/or QBT to be exempt service providers for their respective terminal facilities located at the Port of Brisbane in Queensland.

As their terminal facilities at the Port of Brisbane appear to be in close proximity and may compete with each other, the ACCC considers it appropriate and practical to make these assessments at the same time.

In deciding whether or not to determine a PTSP to be an exempt service provider, the ACCC is required to consider 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 is conducting a public consultation process to inform its consideration of these matters. As part of this process, interested parties are invited to comment on specific questions and matters outlined in this issues paper about the appropriateness of GrainCorp and/or QBT receiving exempt service provider status at the Port of Brisbane.

Following a consideration of the matters listed at subclause 5(3) and the views expressed by interested parties during the course of the ACCC's public consultation process, the ACCC will make determinations on whether to exempt or not exempt.

2.2. What an exempt service provider determination means

PTSPs are required to comply with the entire Code (Parts 1 to 6), unless exempted. GrainCorp and QBT are both PTSPs at the Port of Brisbane.

Exempt service providers are only required to comply with Parts 1 and 2 of the Code in relation to port terminal services provided by means of the specified port terminal facility. For exempt service providers, obligations under the Code are therefore more limited and include requirements to publish certain information about how demand for port terminal capacity is managed and the current state of the shipping stem.

Exempt providers are not required to comply with Parts 3 to 6 of the Code and therefore will not be required to, among other things:

- provide access to port terminal services in accordance with the non-discrimination and no hindering obligations (Part 3)
- resolve disputes about access agreement negotiations through the Code-prescribed dispute resolution process, which includes arbitration (Part 3)
- have their capacity allocation system approved by the ACCC (Part 4)
- publish information regarding expected port capacity, performance indicators and stocks at port (Part 5).

Exempt service providers will still be required to comply with general competition law.

2.3. Consultation

Interested parties are invited to provide their views on whether it is appropriate for GrainCorp and/or QBT to receive exempt service provider status at the Port of Brisbane.

Chapter 3 of this issues paper contains what the ACCC considers to be key questions and issues relevant to the ACCC's assessment, as well as information provided by GrainCorp and QBT in support of exemption.

Interested parties are invited to respond to these questions, comment on the information provided by GrainCorp and QBT and provide any additional information they consider relevant to the ACCC's assessment.

2.3.1. Making a submission

Please address submissions to:

Mr Matthew Schroder
General Manager
Infrastructure & Transport - Access & Pricing Branch
ACCC
GPO Box 520
MELBOURNE VIC 3001
Email: transport@acc.gov.au

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

2.3.2. Due date for submissions

Submissions must be received before **5.00pm EST on Wednesday 15 July 2015**.

2.3.3. Confidentiality of information provided to the ACCC

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

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

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

2.3.4. 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@acc.gov.au

3. Matters for comment

The ACCC will consider whether to determine GrainCorp and/or QBT as exempt service providers at the Port of Brisbane having regard to the matters listed in subclause 5(3) of the Code. Interested parties are encouraged to reference these matters in their response.

3.1. Legitimate business interests of the service provider

In deciding whether to exempt or not exempt a PTSP, the ACCC is required under subclause 5(3) of the Code to consider that PTSP's legitimate business interests. Therefore, the ACCC is seeking views on how removing GrainCorp's and/or QBT's obligations to comply with Parts 3 to 6 of the Code would impact on their respective business interests.

GrainCorp

GrainCorp submits that:

Granting an exemption to GrainCorp's Brisbane Port Terminal would:

- Allow GrainCorp to compete commercially for the export of bulk grain;
- Support operational flexibility to improve service and reduce supply chain costs;
- Provide equity with competing export container packers that are not regulated;
- Provide equity with a competing bulk port terminal, QBT, that is not regulated; and
- Reduce the level of regulation and cost of compliance.²

QBT

QBT has been providing port terminal services at Brisbane since 2011, but was not previously subject to regulation under the *Wheat Export Marketing Act 2008* (Cth). Therefore, under clause 4(6) of the Code, the Code does not apply to QBT at the Port of Brisbane until 1 October 2015. QBT submits that:

It would be contrary to QBT's legitimate business interests to be subjected to regulatory burden and the related costs when there would be no benefit to the competition, grain exporters or growers, or the public from doing so.³

QBT submits that:

Unlike many of the major grain terminal providers, any costs of compliance imposed on QBT would be borne by a single-terminal operation and would have a disproportionate impact on its effective cost base per terminal.⁴

Additionally, QBT submits that its activities to date have not been regulated and that the application of Parts 1 and 2 of the Code from 1 October 2015 will already impose more regulation on QBT than currently exists.⁵ Therefore, it submits that:

² GrainCorp Operations Limited, 'Submission – Fisherman Islands (Brisbane): Exemption from Port Terminal Access (Bulk Wheat) Regulation', New South Wales, 2015, p. 3.

³ Queensland Bulk Terminals, 'Submission – Queensland Bulk Terminals application for continued exemption from the *Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014*', Queensland, 2015, p. 4.

⁴ QBT, p. 7.

⁵ QBT, p. 7

QBT's continued exemption from Parts 3 to 6 of the Code is therefore considered critically necessary to:

- ensure QBT maintains the current flexibility to react to competitive market influences, namely the large domestic consumptive market, container packing market and GrainCorp's competing port terminal;
- maintain QBT's competitive offering to bulk grain exporters;
- ensure that the Code does not impose unnecessary administrative burden and costs on QBT when it is already vigorously competing; and
- support the continued investment by QBT and optimisation of port services to minimise costs, and ensure a competitive and efficient supply chain for the Australian grain industry.⁶

Key questions and issues

1. How, and to what extent, do you think that the legitimate business interests of GrainCorp and/or QBT are affected by having to comply with Parts 3 to 6 of the Code when providing port terminal services at the Port of Brisbane?
2. In what ways would an exemption for GrainCorp and/or QBT impact on:
 - (a) the efficient operation and use of their respective port terminal facilities?
 - (b) the likelihood of efficient investment in their respective port terminal facilities?

3.2. Access to port terminal services

In making a decision to exempt or not exempt a PTSP, the ACCC is required under subclause 5(3) of the Code to consider whether the PTSP is an exporter or associated entity of an exporter and the interests of exporters who may require access to the relevant port terminal services. Where a PTSP is also an exporter or an associated entity of an exporter, there is a risk that, in providing port terminal services, the vertically integrated PTSP will have an incentive to favour its own export operations to the detriment of third party exporters.

Therefore, the ACCC is seeking views on how removing GrainCorp and/or QBT's obligations to comply with Parts 3 to 6 of the Code would impact on the interests of access seekers, including their ability to secure fair and transparent access.

GrainCorp

GrainCorp is vertically integrated as both a PTSP and an exporter of grain in Queensland.⁷ Despite this, GrainCorp submits that it has:

...a commercial imperative to provide fair access to its Brisbane Port Terminal for all exporters, given:

1. Significant excess capacity: Brisbane has 2.7 [million tonnes] of annual bulk export elevation capacity for an average bulk grain export task of 0.7 [million tonnes]. Average utilisation is only 25%.

⁶ QBT, p. 3

⁷ GrainCorp, p. 3.

2. Alternative markets: Bulk grain export competes with the competitive domestic and containerised grain export markets. These alternative markets manage most (around 65%) of Southern Queensland's average grain production.⁸

QBT

QBT is a wholly owned subsidiary of Wilmar Gavilon Pty Ltd, which is in turn co-owned by Wilmar International Limited and Marubeni Corporation. QBT submits that there is a degree of vertical integration between QBT and Wilmar Gavilon's businesses, noting that Wilmar Gavilon have exported grain in Brisbane.⁹ However, QBT submits that it remains commercially incentivised to attract export volume from all grain exporters rather than favour its own or associated entity's (i.e. Wilmar Gavilon's) export trading arm due to:

- significant excess capacity at the Port of Brisbane
- the presence of a competing port terminal, operated by GrainCorp
- strong competition from alternative and competing markets (the container export and domestic markets)
- significant excess capacity in the bulk export market.¹⁰

QBT also submits that:

...QBT is reliant on continuing to be a multi-user facility, and given existing surplus capacity in the facility, is incentivised to compete vigorously to obtain a larger share of volumes from...marketers of grain.¹¹

Key questions and issues

3. If GrainCorp and/or QBT are not required to comply with Parts 3 to 6 of the Code (including the dispute resolution, non-discrimination and capacity allocation system approval obligations), would exporters still have the ability to negotiate access to port terminal services at the Port of Brisbane on reasonable commercial terms?
4. Given that GrainCorp is a vertically integrated firm and QBT has a degree of integration with Wilmar Gavilon's export operations, would GrainCorp and/or QBT still be likely to negotiate fair and transparent access arrangements with third party exporters without the full level of regulation under the Code? Why or why not?

3.3. Port of Brisbane grain catchment area

In deciding whether to exempt a PTSP, subclause 5(3) of the Code requires the ACCC to consider whether there is already an exempt service provider within the grain catchment area for the port concerned.

Identifying the grain catchment area is also important in assessing the level of competition between GrainCorp and QBT at the Port of Brisbane and the likelihood of fair and transparent access for exporters, which are also factors under subclause 5(3) of the Code.

⁸ GrainCorp, p. 4.

⁹ QBT, p. 2.

¹⁰ QBT, p. 6.

¹¹ QBT, p. 5

GrainCorp

GrainCorp submits that:

...the Brisbane Port Zone services Southern Queensland from the Darling Downs to Meandarra and Miles to the north west and Goondiwindi and Thallon to the west...

...Growers in Southern Queensland enjoy a range of substitutable demand alternatives, including large domestic and container packer markets. Depending on production and grain quality, grain from Northern NSW and Central Queensland regularly flows into Southern Queensland to service its large inland domestic market.¹²

Figure 1: the Port of Brisbane zone – GrainCorp submission



Source: GrainCorp submission, p. 5.

QBT

QBT submits that:

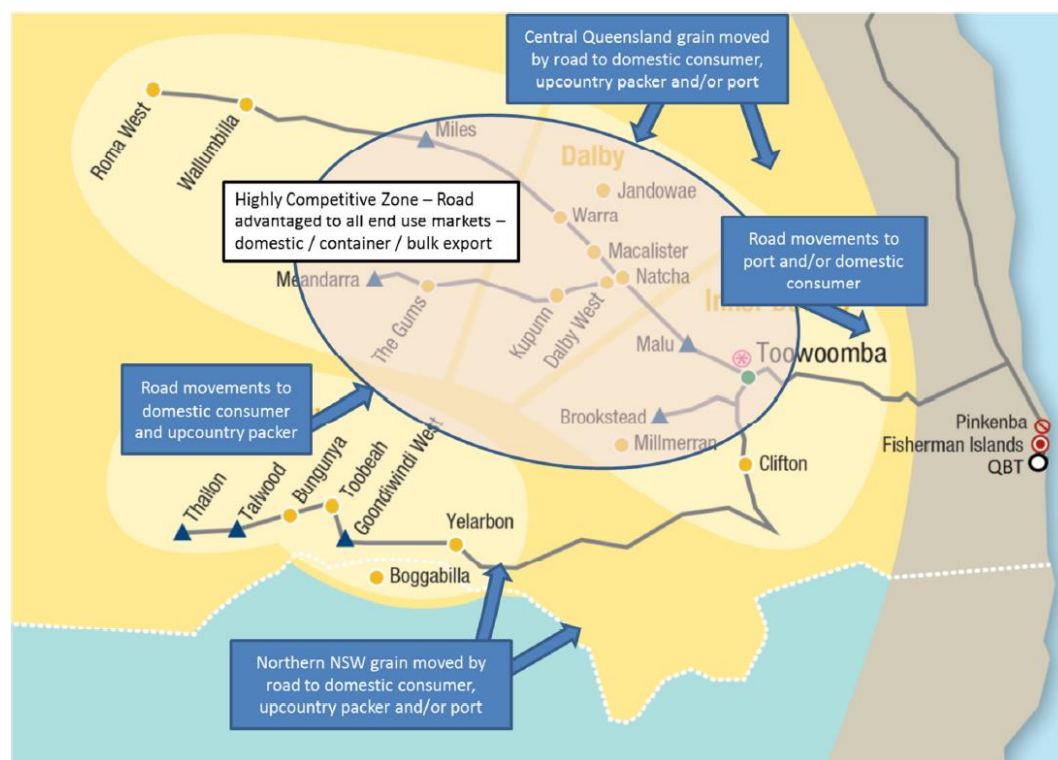
The Brisbane port zone is dominated by domestic end-users with demand requirements close to 100% of total Brisbane grain production...we also estimate the total amount of 'out of zone' grain delivered into the Brisbane port zone to be circa 1 [million tonnes].

These interstate grain movements come from a variety of sources with malt barley imported from southern states and the balance sourced from Northern New South Wales and Central Queensland (CQ) production regions. In dryer years where production of grain has been limited, feed grains and milling wheat has also been imported from VIC, SA and WA.¹³

¹² GrainCorp, p. 5.

¹³ QBT, p. 8.

Figure 2: the Port of Brisbane zone – QBT Submission



Source: QBT submission, p. 9

Key questions and issues

5. What regions should be considered part of the Port of Brisbane zone? That is, where is the bulk wheat that is exported from the Port of Brisbane typically sourced from?
6. Does grain from regions other than southern Queensland (e.g. northern NSW and central Queensland) impact on the supply of grain that is exported from the Port of Brisbane? How?

3.4. Competition in bulk wheat port terminal services

In deciding whether to exempt or not exempt GrainCorp and/or QBT at the Port of Brisbane, the ACCC intends to assess the current and reasonably anticipated levels of competition in terminal services at the Port of Brisbane. In particular, the ACCC is considering the total level of export capacity, demand and spare capacity at each of the Port of Brisbane facilities. The ACCC considers this relevant to its assessment of various matters under subclause 5(3) of the Code, including the public interest in having competition in markets.

3.4.1. Capacity

GrainCorp

GrainCorp submits that the Port of Brisbane has significant excess bulk export grain capacity:

...average utilisation of bulk grain elevation is only 25% based on an average bulk export task of 0.7 [million tonnes] or 58% based on a peak bulk export task of 1.6 [million tonnes].¹⁴

Table 1: Port of Brisbane bulk export capacity (tonnes) – GrainCorp submission

Port Terminal	Capacity	Portion	Avg Export / Capacity	Peak Export / Capacity
GNC Fisherman Islands	2,000,000	74%		
QBT Brisbane	700,000	26%		
Total Capacity	2,700,000	100%	25%	58%
Bulk Exports			671,161	1,574,502

Source: GrainCorp submission, p. 10.

GrainCorp submits that surplus capacity at the Port of Brisbane is spread across the year:

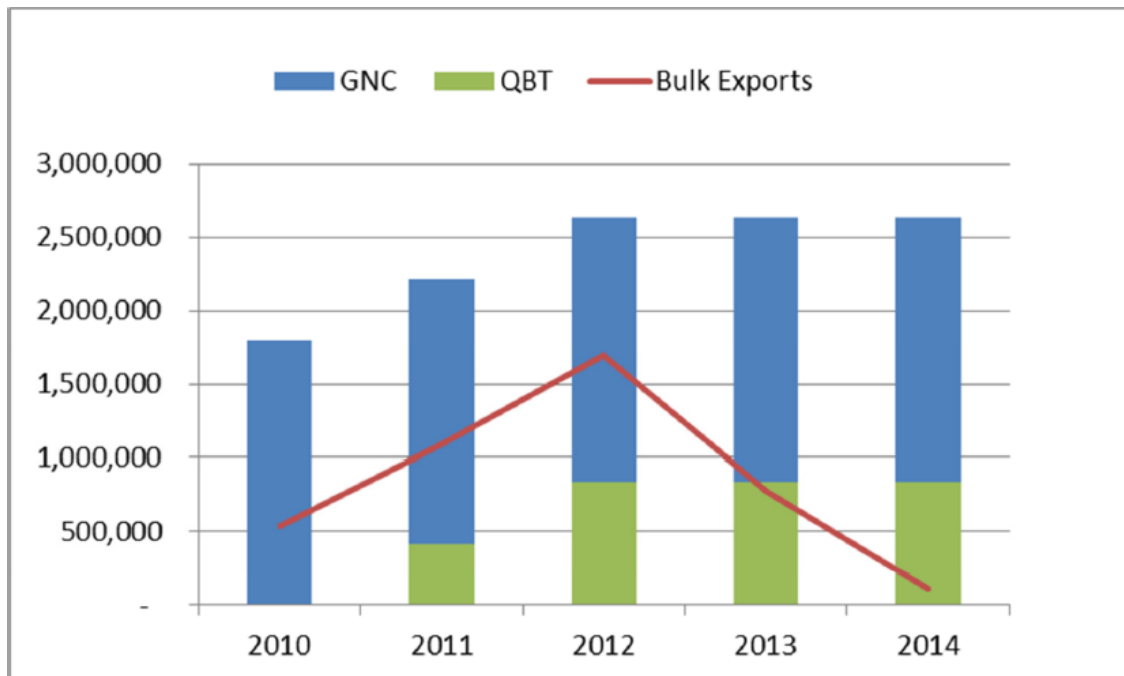
Average monthly utilisation averages 25% (ranging from 15%-45%). QBT with its monthly capacity of 70 [thousand tonnes], could handle 100% of the average 700 [thousand tonnes] export task. In 5 of the 12 average months the competing QBT had capacity to handle the variable export task.¹⁵

QBT

QBT submits that:

Brisbane has significant surplus export bulk grain capacity with average capacity utilisation at 35% and peak capacity utilisation 64%. Adjusting for the more opportunistic and sporadic chickpea and cottonseed export market, which can lessen available capacity circa 200,000 [tonnes], then utilisation figures move to 39% and 70% respectively. In real tonnage terms this [is] 800,000 [tonnes] of available capacity in peak periods.¹⁶

Figure 3: Port of Brisbane bulk exports and capacity (tonnes) – QBT submission



Source: QBT submission, p. 10.

¹⁴ GrainCorp, p. 10.

¹⁵ GrainCorp, p. 11.

¹⁶ QBT, p. 9.

3.4.2. Comparison of the GrainCorp and QBT port terminal facilities

The main differences between the GrainCorp and QBT terminals at the Port of Brisbane are:

- GrainCorp's terminal can receive grain by both road and rail, whereas QBT's terminal can only receive grain by road.
- GrainCorp's storage capacity is 112 700 tonnes, which is higher than QBT's storage capacity of 70 000 tonnes.
- GrainCorp can load vessels with capacity up to 70 000 deadweight tonnes, compared to QBT's vessel capacity of up to 55 000 deadweight tonnes.
- GrainCorp's road receipt and ship loading rates are higher than QBT's rates.

Table 2: Comparison of the Port of Brisbane terminals

	GrainCorp terminal	QBT terminal
Road receipt (tonnes per hour)	Up to 400	Up to 350
Rail receipt (tonnes per hour)	Up to 2 200	Unavailable
Storage capacity (tonnes)	Vertical storage – 62 700 Horizontal sheds – 30 000 Bunker storage – 20 000	70 000
Ship loading rate (tonnes per hour)	Up to 2 200	Up to 1 200
Berth draft (metres)	Length – 285 Depth – 13	Length – 160 Draft 9.9 LAT
Vessel capacity (deadweight tonnage)	Up to 70 000	Up to 55 000
Vessel type	Up to Panamax (QBT's estimate)	Average Handymax
Shipping capacity (tonnes per year)	2 000 000	960 000

Source: GrainCorp submission, p. 7; QBT submission, p. 12; QBT, <http://www.qldbultterminals.com/shipping.html>.

GrainCorp

GrainCorp submits that it faces:

[i]ncreasing competition from QBT for 25% of bulk exports.¹⁷

GrainCorp further submits that:

GrainCorp Fisherman Islands [Brisbane] Port Terminal, unlike QBT, has the ability to receive grain by rail transport and to load vessels with more than 35,000 tonnes.¹⁸

However, GrainCorp asserts that it does not have a 'significant advantage' over QBT because:

- Road dominates the movement of grain from Southern Queensland.¹⁹
- In the last decade, the share of export grain transported by rail to its facility has declined from 100% to around 40%.²⁰
- 95% of vessels and 90% of tonnage loaded from GrainCorp's Port of Brisbane facility are less than 35 000 tonnes, meaning that QBT's facility would have been able to load these ships (assuming 35 000 tonnes is the maximum load at QBT).²¹
- QBT has operated for three years without regulation, giving it an unfair advantage to negotiate flexible terms and offer flexible services to exporters.²²

GrainCorp also submits that:

All GrainCorp's major export customers are large multinational traders that are many times larger than GrainCorp with access to significant capital and overseas grain markets. They have demonstrated their financial ability, despite excess port capacity, to build and invest in new port terminals such as QBT in Brisbane and terminals at other ports. This demonstrates that the barriers to entry for the new port terminal elevation capacity are low.²³

QBT

QBT submits that the GrainCorp facility has a number of advantages over the QBT facility, such as:

- rail receival capability
- a large upcountry storage network to support rail transport
- a deep water berth that can serve Panamax vessels and provides freight efficiencies
- a significant amount of upright storage, providing greater segregation capability.²⁴

QBT further submits that:

All of QBT's export customers have also utilised GrainCorp for export through Brisbane over the same time period.²⁵

¹⁷ GrainCorp, p. 3.

¹⁸ GrainCorp, p. 11.

¹⁹ GrainCorp, p. 11.

²⁰ GrainCorp, p. 11.

²¹ GrainCorp, p. 12.

²² GrainCorp, p. 4.

²³ GrainCorp, p. 4.

²⁴ QBT, p. 11.

²⁵ QBT, p. 5.

Key questions and issues

7. Are there capacity constraints at the Port of Brisbane? Alternatively, is there sufficient or excess capacity? If capacity is constrained, when and how often does this occur and what factors affect this?
8. (a) To what extent will the port terminal services provided by GrainCorp represent a viable competitive alternative to the services offered at QBT's facility, and vice versa?
 - (b) Do port terminals located elsewhere (e.g. in NSW or further north in Queensland) provide an alternative export pathway for grain sourced in the Port of Brisbane grain catchment area?
 - (c) To what extent is investment in new wheat port terminal facilities likely at the Port of Brisbane or other ports that could provide an alternative export path to the existing Brisbane terminals?
9. What characteristics or factors are relevant in comparing the services provided at GrainCorp and QBT's respective port terminal facilities? How do these characteristics or factors affect the level of competition between the port terminal facilities?

3.5. Competition in upstream, downstream and related markets

In deciding whether to exempt or not exempt a PTSP, the ACCC is required under subclause 5(3) of the Code to consider the public interest, including the public interest in having competition in markets and the promotion of competition in upstream and downstream markets.

Therefore, the ACCC considers that it is relevant to assess the level of competition in the following areas and examine the extent to which these impact on the level of competition between PTSPs at the Port of Brisbane:

- the container export and domestic markets for wheat
- the bulk export supply chain.

3.5.1. Container export and domestic markets for wheat

The ACCC considers that, to varying degrees, the container export and domestic markets for wheat compete with the bulk export market for wheat. Accordingly, the ACCC considers that the extent of competition between these markets and the bulk export market is relevant to its assessment of the level of competition faced by PTSPs at the Port of Brisbane.

GrainCorp

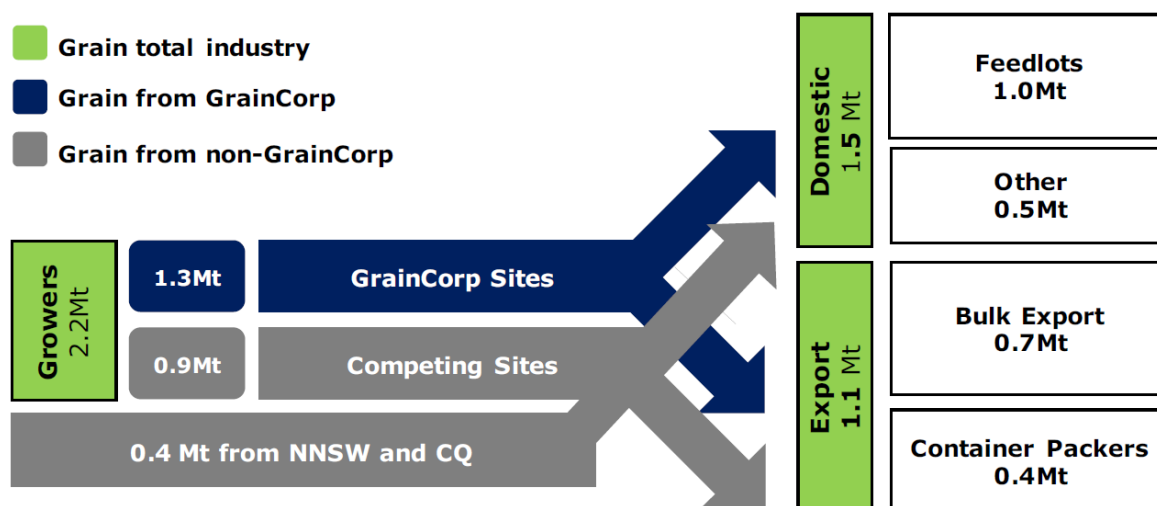
GrainCorp submits that:

- Bulk grain export competes with the container export and domestic markets. About 65% of southern Queensland's average grain production moves into these alternative markets.²⁶

²⁶ GrainCorp, p. 4.

- The container export market exports approximately 0.5 million tonnes on the back of low cost container rates and low barriers to entry. This represents 20% of grain production and 35% of grain exports.²⁷
- The large domestic market consumes an average of 1.1 million tonnes, representing 45% of grain production in an average year. This does not include an estimated 0.4 million tonnes of grain in the domestic market from northern NSW and central Queensland.²⁸

Figure 4: Southern Queensland grain supply and demand – GrainCorp submission



Source: GrainCorp submission, p. 6.

GrainCorp also submits that:

The non-regulated export container market is a major competitor for bulk wheat and other grains across eastern Australia. In Southern Queensland, GrainCorp faces competition from 11 major container packers with an estimated total packing capacity of around 1.2 [million tonnes]...

...The strong growth in container exports has been driven by:

- Deregulation in 2004, which allowed this industry to grow substantially prior to removal of the single wheat desk for bulk exports in 2008.
- Demand from processors in China and south-east Asia who prefer smaller parcels of grain.
- Favourable supply-side drivers including the availability of empty containers in eastern Australia, low container shipping rates compared to bulk shipping rates, and relatively low barriers to entry for container packers to enter the market.²⁹

QBT

QBT argues in its submission that:

²⁷ GrainCorp, p. 10.

²⁸ GrainCorp, p. 10.

²⁹ GrainCorp, p 12.

- The Port of Brisbane zone is subject to strong competition from alternative and competing uses of grain: a large domestic consumer base and a robust container packing market.³⁰
- Domestic demand in the Port of Brisbane zone requires close to 100% of total Brisbane grain production (approximately 2 million tonnes).³¹
- In most years, the Port of Brisbane zone is a net importer of grain for domestic consumption, sourced mostly from northern NSW and central Queensland.³² The amount of 'out of zone' grain delivered is approximately 1 million tonnes.³³

Key questions and issues

10. To what extent do container exports and domestic demand provide a competitive constraint on bulk wheat exports at the Port of Brisbane? In your response, please answer the following questions:
- (a) Does any one of these options generally pay a higher price?
 - (b) Other than price, what other factors will a grower consider when deciding on a potential alternative to selling to a bulk exporter?
11. Do any of these markets have a 'first call' on grain, particularly in years of low production?

3.5.2. Bulk export supply chain

The services in the bulk wheat export supply chain that are typically used by exporters include:

- upcountry storage and handling services (including off-farm and on-farm storage)
- transport services (from the farm or storage facility to the domestic market or port by road or by rail)
- port terminal services.

An exporter will almost always need to access storage or transport services (or both) before using a port terminal for export. Access to such services may therefore impact an exporter's ability to access port terminal services. Accordingly, the ACCC considers that the level of competition in the bulk export supply chain is relevant to the level of competition faced by GrainCorp and QBT at the Port of Brisbane.

Storage and handling services

GrainCorp submits:

- The large range of marketing options in southern Queensland has supported a substantial and competitive country storage network.³⁴
- Southern Queensland has significant excess country storage capacity, as outlined in Table 3 below. GrainCorp estimates that southern Queensland has total storage

³⁰ QBT, p. 2.

³¹ QBT, p. 8.

³² QBT, p. 2.

³³ QBT, p. 8.

³⁴ GrainCorp, p. 13.

capacity of around 5.5 million tonnes, with average utilisation of only 40%. This falls to 28% if country domestic and container packing capacity is included.³⁵

- Within the Port of Brisbane zone, GrainCorp has 22 country silos and manages both rail and road transport to its Port of Brisbane terminal.³⁶
- In southern Queensland, GrainCorp faces competition from around 13 major competing country silos owned by competitors including major grain exporters such as Cargill, Associated Grain, Woods and Thallon Grains.³⁷
- GrainCorp also faces significant competition from on-farm storage, including silo bags. According to GrainCorp, southern Queensland is estimated to have around 1.8 million tonnes of on-farm storage.³⁸

Table 3: Southern Queensland country storage capacity – GrainCorp submission

Country Storage	Sites	Capacity	Portion	Avg Prod / Capacity	Peak Prod / Capacity
GrainCorp	22	2,350,360	30%		
Other bulk handlers	13	1,300,000	17%		
On-farm (ABS estimate)		1,832,953	23%		
Total	35	5,483,313	70%	40%	57%
Production				2,190,558	3,119,851
County Domestic	13	1,180,291	15%		
Country Packers	12	1,205,000	15%		
Total	13	2,385,291	30%		
Combined Total	48	7,868,604	100%	28%	40%
Production				2,190,558	3,119,851

Source: GrainCorp submission, p. 13.

QBT submits that it does not own any upcountry supply chain assets.³⁹ However, GrainCorp submits that:

QBT has aligned itself with country storages (eg GrainHart) for the rapid rotation of road trucks to access competitive road transport rates.⁴⁰

QBT also submits that:

...the size of the domestic consumptive demand and up country packing facilities limits any ability for QBT to exercise power over the Brisbane port zone.⁴¹

Transport services

GrainCorp submits that:

- Road dominates the movement of grain in southern Queensland. All domestic and most containerised grain is moved by road.⁴²

³⁵ GrainCorp, p. 13.

³⁶ GrainCorp, p. 8.

³⁷ GrainCorp, p. 13.

³⁸ GrainCorp, p. 13.

³⁹ QBT, p. 2.

⁴⁰ GrainCorp, p. 9.

⁴¹ QBT, p. 6.

⁴² GrainCorp, p. 11.

- Bulk export grain that must travel long distances to the Port of Brisbane (about 400km to 650km) is transported by rail. Most grain that is grown closer to the port moves by road.⁴³
- The cost of road transport is comparable to rail transport and can be lower if grain is sourced from ex-farm into Brisbane.⁴⁴
- Over the past decade, the portion of export grain moved by rail to GrainCorp's Brisbane terminal has declined from 100% to around 40%.⁴⁵
- Aurizon is the sole rail provider for grain in southern Queensland. GrainCorp contracts two trains for export grain and also subcontracts its rail transport to other exporters.⁴⁶

QBT submits that:

- Road is the main form of transport for grain in the Port of Brisbane zone.⁴⁷
- Rail is mostly used for moving grain from western Brisbane sites to port, where rail has significant cost advantages over road. For that reason, for growers in grain regions connected to rail, there are some barriers to QBT effectively competing with GrainCorp.⁴⁸
- For most production areas in the Port of Brisbane zone, road is competitive when compared to rail.⁴⁹

⁴³ GrainCorp, p. 5.

⁴⁴ GrainCorp, p. 11.

⁴⁵ GrainCorp, p. 11.

⁴⁶ GrainCorp, p. 11.

⁴⁷ QBT, p. 10.

⁴⁸ QBT, p. 10.

⁴⁹ QBT, p. 10.

Figure 5: Port of Brisbane zone movement of grain by road and rail – QBT submission



Source: QBT submission, p 11.

Key questions and issues

12. What level of competition is there between upcountry storage and handling services in the Port of Brisbane zone? Do third party facilities and/or on-farm storage facilities provide a competitive constraint?
13. How does the level of competition in upcountry storage and transport services currently affect an exporter's ability to secure fair and transparent access to port terminal services at the Port of Brisbane?
14. What transport service(s) do producers and exporters use to transport wheat to the Port of Brisbane for export? How much wheat is transported to the Port of Brisbane by rail and how much by road? What level of competition is there in the provision of these transport services?
15. How would an exemption for GrainCorp and/or QBT impact on competition in the upcountry storage and transport markets and the upcountry supply chain as a whole?

Appendix A: Exemption assessments under the Code

The Port Terminal Access (Bulk Wheat) Code of Conduct (the Code) was prescribed under section 51AE of the *Competition and Consumer Act 2010* (Cth) (CCA) and commenced on 30 September 2014.

The Code replaced the previous regulatory framework under the *Wheat Export Marketing Act 2008* (Cth), which required vertically integrated providers of port terminal services, including GrainCorp, to provide the ACCC with access undertakings.

The purpose of the Code is stated in clause 2:

The purpose of this code is to regulate the conduct of port terminal service providers to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.

The Code applies to port terminal service providers

The Code applies to port terminal service providers (PTSPs). A PTSP means:

the owner or operator of a port terminal facility that is used, or is to be used, to provide a port terminal service.

A port terminal service is:

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.

A port terminal facility is defined as:

a ship loader that is:

- (a) at a port; and
- (b) capable of handling bulk wheat;

and includes any of the following facilities, situated at the port and associated with the ship loader, that are capable of handling bulk wheat:

- (c) an intake/receival facility;
- (d) a grain storage facility;
- (e) a weighing facility;
- (f) a shipping belt.

Obligations on port terminal service providers

PTSPs must comply with all six Parts of the Code. PTSPs that are determined by the ACCC or the Minister for Agriculture to be exempt service providers are not required to comply with Parts 3 to 6 of the Code.

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

Part 2 of the Code requires a PTSP to:

- deal with exporters in good faith
- publish a port loading statement and policies and procedures for managing demand for their services

- make current standard terms and reference prices for each port terminal facility publically available on their website.

Part 3 of the Code requires a PTSP:

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

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

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

Part 6 requires a PTSP to retain records such as access agreements and variations to those agreements.

Determining exempt service provider status of a PTSP

Exemptions by the ACCC

Subclause 5(2) of the Code provides that the ACCC can determine a PTSP to be an exempt service provider of port terminal services provided by means of a specified port terminal facility.

Subclause 5(3) of the Codes provides that the ACCC must have regard to a list of matters in making a determination under subclause 5(2) of the Code. The ACCC can subsequently revoke an exemption determination under subclause 5(6) of the Code.

On 1 October 2014 the ACCC determined GrainCorp to be an exempt service provider at Carrington (Newcastle), New South Wales.

On 10 April 2015 the ACCC released draft determinations proposing to:

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

On 7 May 2015 the ACCC released:

- a draft determination that Newcastle Agri Terminal and Qube Holdings Limited are exempt service providers at the Port of Newcastle
- an issues paper to seek views on whether it is appropriate to determine GrainCorp and/or Quattro Ports to be exempt service providers at their respective facilities at Port Kembla.

Exemptions by the Minister for Agriculture

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

- (a) grain-producer members who represent at least a two-thirds majority of grain-producers within the grain catchment area for the port concerned; and
- (b) sound governance arrangements that ensure the business functions efficiently and that allow its members to influence the management decisions of the cooperative.

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

On 17 November 2014 the Minister for Agriculture found that Co-operative Bulk Handling Limited's (CBH) port terminal facilities located at the ports of Albany, Esperance, Geraldton and Kwinana satisfactorily met the criteria for exemption under subclause 5(1) of the Code.

The Minister therefore determined CBH to be an exempt service provider at those facilities. Accordingly, CBH is not required to comply with Parts 3 to 6 of the Code when providing port terminal services from those facilities.

How the ACCC will conduct the assessment process

On 6 November 2014 the ACCC sent a letter to stakeholders which outlined its intention to assess exemptions on a geographic basis.⁵⁰

On 16 November 2014 the ACCC released its *Guidelines on the ACCC's process for making and revoking exemption determinations* (Guidelines).⁵¹

The Guidelines state that when a PTSP submits an exemption application, the ACCC will seek to conduct its exemption assessment and determine whether to exempt or not exempt within 12 weeks.

This timeframe may vary where the ACCC conducts a public consultation process or requests information from the PTSP or does both. Generally, the length of any consultation period(s) will extend the ACCC's timeframe for the exemption assessment.

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 Guidelines, which are available on the ACCC website, provide further detail about the ACCC's process for making and revoking exemption determinations.

Indicative timeline for assessment

Submissions on this issues paper close on **Wednesday 15 July 2015**.

The ACCC anticipates that it will release draft determinations on GrainCorp and QBT in August 2015 and final determinations in September 2015.

The ACCC notes that the timeframe for assessing the exemption applications will depend on the nature and timeliness of information provided by interested parties.

⁵⁰ The letter is available on the ACCC's website at <http://acc.gov.au>.

⁵¹ The Guidelines are available on the ACCC's website at <http://acc.gov.au>.