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To the General Manager,

Response to ACCC Draft Determinations – Exemptions in respect of Emerald’s Melbourne Port Terminal Facility and GrainCorp’s Geelong Port Terminal Facility

The VFF Grains Group would like to thank the Commission for the opportunity to respond to its draft determinations regarding the applications from GrainCorp Operations Limited and Emerald Logistics Pty Ltd for exemption from Parts 3-6 of the Port Terminal Access (Bulk Wheat) Code of Conduct for their Victorian port terminals.

It is the VFF’s view that the draft determinations for the port terminals in Geelong and Melbourne are based on incomplete information, and that as a result, they require re-assessment.

The key concerns for the VFF, outlined in detail in our attached submission, include the following; 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.
- There was a failure by the applicants and the ACCC to quantify the costs of complying with Parts 3-6 of the Code, and the perceived benefits of exemption.
- 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.

In sum, the VFF Grains Group is concerned that the preliminary decisions to grant exemptions to GrainCorp and Emerald by means of their respective bulk wheat terminals at Melbourne and Geelong was based upon insufficient information and underestimated a number of important factors. The VFF considers that the applications should be reassessed.

Yours sincerely,



Brett Hosking
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Victorian Farmers Federation Grains Group

RESPONSE TO ACCC DRAFT DETERMINATIONS

Exemptions in respect of Emerald’s Melbourne Port Terminal Facility & GrainCorp’s Geelong Port Terminal Facility

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1 EXECUTIVE SUMMARY

The VFF consider that the ACCC's draft determinations regarding the exemption applications for GrainCorp's Geelong port terminal and Emerald's Melbourne port terminal are based on incomplete information, and as a result warrant re-assessment.

There are a number of key issues that the VFF identifies with the applications and the draft determinations:

Undue weight given to other grain storage and supply chains

- The purpose of the Port 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 presence of domestic and container markets is irrelevant to the question of whether there is "fair and transparent access" for bulk exporters at port, to bulk export services. The issue is not whether alternative domestic or container markets exist, but whether participants have competitive access to the bulk export market.

Failure to quantify costs of regulation and benefits of exemption

- It is not apparent what quantification of costs and competitive benefits has been undertaken to inform the draft determinations, as neither applicant quantified the costs of complying with Parts 3-6 of the Code or the perceived benefits to be gained from exemption.

Rail networks and natural terminal ports

- The importance of the long-standing rail network for determining bulk export pathways is underestimated.

Insufficient competition

- Despite the applicants' claims to the contrary, the concept of a 'Natural Terminal Port' is widely accepted by industry in both theory and practice.
- Melbourne and Geelong are treated by the applicants and the ACCC as a single port zone, however 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.
- The consequences of the applicants' high level of vertical integration are underestimated.
- The applicants' vertical integration and up-country dominance means growers' and bulk exporters' capacity to choose between competing port terminals is restricted.

Capacity constraints underestimated

- The peak export window is widely recognised as a competitive advantage for Australian grain relative to our major export competitors in the Northern Hemisphere. 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. In practice exporters seek to access capacity in the front half of the year when the Northern Hemisphere does not have supply.
- Potential future investment by bulk handlers in Victorian ports is evidence that there is less competitive access to bulk ports, and/or less excess capacity, than the applicants claim.

2 INTRODUCTION

The Victorian Farmers Federation (VFF) Grains Group thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to provide a response to its draft determinations released on 10 April 2015, regarding exemption applications for Victorian bulk grain export terminals.

The VFF Grains Group reiterates its support of the need for an open, efficient, and transparent market to promote competition throughout the grain supply chain. To this end, the VFF Grains Group considers that the level of competition in Victorian grain ports is currently insufficient to warrant granting exemptions from Parts 3-6 of the Code for GrainCorp's Geelong terminal and Emerald's Melbourne terminal, as recommended in the ACCC's draft determinations.

Growers have the most to lose in an industry without sufficient export competition, as they are the beginning of the supply chain and costs flow back through to the farm gate. As consumers of freight and port services, grain producers ultimately pay the storage, freight and port costs as a direct deduction from their returns. The lack of a competitive market at port means that relatively fixed port costs are simply passed through to the grower as a direct cost.

3 UNDUE WEIGHT GIVEN TO OTHER GRAIN STORAGE & SUPPLY CHAINS

3.1 DOMESTIC & CONTAINER MARKETS

The purpose of the *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Port 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".¹

The Port Code expressly addresses bulk port providers and users in Australia and access to bulk export port terminal services. The Port Code exemptions are an assessment of a competitive market between bulk port terminal service providers. VFF consider it ironic that the exemption applications must cite domestic competition as a limiting factor when the assessment is intended to be whether there are competing port providers for those exporters seeking access to a bulk export pathway to overseas markets. In the two cases in question it is clear that competition between bulk export pathways is extremely limited.

VFF note ACCC's assessment that the domestic market offers a competitive constraint on port pricing, however VFF contend the purpose of the Code is fair & transparent access to bulk port services. Secondly that grain is invariably produced in exportable surplus to domestic requirements and is not generally 'priced away' from the domestic market due to higher export supply chain costs.

The VFF reiterates the comments made in our first submission to the ACCC on this matter, wherein:

Despite comments by the applicants that domestic & container markets offer alternative pathways, the fact remains that wheat is still produced in

¹ *Port Terminal Access (Bulk Wheat) Code of Conduct*, 18 September 2014, Part 1(2), p.4.

surplus to domestic requirements (exportable surplus) year on year from Victoria. Thus export prices determine the floor price for wheat in Victoria through export price parity.

Therefore a bulk wheat exporter (access seeker) still requires access to individual bulk export port facilities, in the most cost efficient NTP port and port zone. Alternatively, the lack of an available competitive & efficient pathway precludes them from the bulk wheat export market. This is not in the interests of achieving a competitive and efficient supply chain.²

VFF contest the weighting the ACCC have attributed to these markets rather than focus on fair and transparent access to bulk port services.

3.2 ON-FARM STORAGE

The ACCC observes the “increasing trend for on-farm storage in eastern Australia”³ and recognises the opportunities it presents to growers for selling domestically. However it is important to note that on-farm storage is not a ‘competitive constraint’ on the provision of bulk export services.

If on-farm storage grain is to be exported in bulk it must ultimately enter the GrainCorp or Emerald supply chain whether it be up-country or at port in order to be exported through GrainCorp or Emerald’s terminals. As noted by the NSW Farmers’ Association:

...even in instances in which a farmer may utilise on farm storage to take advantage of counter seasonal price spikes or the capacity to blend grain to increase a premium, delivery will often occur through the bulk handling system. For the majority of growers across the east coast...this will be a GrainCorp site.⁴

4 RAIL NETWORKS & NATURAL TERMINAL PORTS

4.1 RAIL AS THE DRIVER OF BULK EXPORT PATHWAYS

The VFF notes the ACCC’s comments in its draft determinations that:

Rail does not dominate grain transport services in Victoria, and evidence suggests that rail services are accessible to those exporters who wish to use them. The ACCC considers that given that road transport appears to be cost effective across many locations in Victoria, the use of rail in Victoria is of less significance than in some other parts of Australia.⁵

However, the VFF disagrees with this assessment of the importance of rail to the export supply chain. As noted by the Victorian Grain Logistics Taskforce in 2011, a group comprised of industry experts including Bulk Handlers, Port Providers, and transport companies:

² VFF Grains Group, *Submission to the ACCC regarding Victorian wheat ports exemption applications*, 6 February 2015, pp.3-4.

³ ACCC, *Draft determinations*, 10 April 2015, p.30.

⁴ NSW Farmers’ Association, *Submission in response to ACCC Issues Paper: GrainCorp’s Newcastle Port Undertaking*, January 2014, p.8.

⁵ ACCC, *Draft determinations*, 10 April 2015, p.33.

Rail is generally best suited for export grain transport because of its ability to transport large volumes and load ships reasonably quickly – a 40,000 tonne ship can be loaded by 18 trains compared with 900 B-double trucks.⁶

The increased transport of grain to port by road in recent years is not a function of the lack of importance of rail but instead is a reflection of both the lack of investment in the rail network, and the higher cost of storing grain in up-country bulk-handling service providers. VFF agree this has had the combined effect of a mode shift towards road transport in recent years, however industry and Government has recognised this is an un-sustainable and inefficient use of resources. State Governments have now committed to re-invest in rail for the bulk movement of grain to port in Victoria with announcements by the Andrews governments as recently as March 2015.

Long-standing rail networks have shaped the development of Victoria's grain supply chain and continue to play a significant role in export pathways, including providing a foundation for 'Natural Terminal Ports' and port zones.

4.2 EXISTENCE OF 'NATURAL TERMINAL PORTS'

GrainCorp and Emerald's applications cite the change in export pathways since export deregulation in 2008, with GrainCorp arguing that "the concept of a "Natural Terminal Port" for silos [is] redundant".⁷ In reality, however, this is clearly not the case.

Both the concept and the specific term, 'Natural Terminal Port' (or NTP), continue to be widely used across the grains industry. The concept of a Natural Terminal Port, whereby grain is 'naturally freight advantaged' with infrastructure leading to a particular port, is recognised by Emerald.⁸ The term remains common and current trade parlance, continuing to be used in the location differentials published annually by Grain Trade Australia (GTA).

As outlined in GTA's *Development of GTA Location Differentials* explanatory notes:

Location Differential is the "value" attributed to a specific up-country grain bulk storage and handling facility to an export port terminal facility by the GTA Commerce Committee for the purpose of valuing up-country grain on a 'port bases'.⁹

The concept of 'Natural Terminal Port' is defined as such:

*a) For the determination of the **Natural Terminal Port** for a site, rail transportation to a port takes precedence over road transportation to that same port.*

*b) Where a port and tributary up country rail site are connected by rail, the **Natural Terminal Port** for that site will be the port with the lowest Location Differential.*

⁶ Victorian Government, *Grain Logistics Taskforce Report*, 2011, p.10.

⁷ GrainCorp, *Supplementary submission in response to issues paper Victorian wheat ports exemption assessments*, 27 February 2015, p.2.

⁸ *Emerald's Application for Exemption under cl 5(2) Port Access Code of Conduct Redacted Public Version*, November 2014, p.6 and p.12.

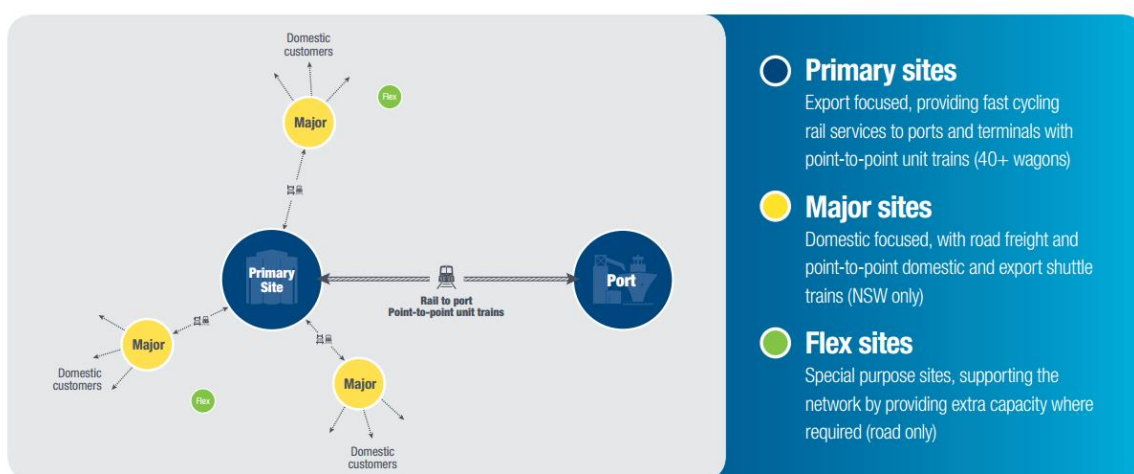
⁹ Grain Trade Australia, *Development of GTA Location Differentials (LDs)*, available online [accessed 16 April 2015], p.1.

c) Where an up country site has only road access, the **Natural Terminal Port** for that site, will be the port with the lowest Location Differential [emphasis added].¹⁰

Additionally, the VFF notes that Emerald’s Melbourne Port Terminal began operating prior to deregulation, in the year 2000, and although more exporters have entered the market in the years since, the export rail pathways have not changed substantially. Although there has been investment in some rail sidings, rail loops and trains, the rail lines still largely run from up-country silos to the same ports that they have for the last 50 years.

As can be seen in the image below, from GrainCorp’s *Project Regeneration* fact sheet, rail infrastructure is still clearly a key driver of export pathways in Victoria.

Figure 1. GrainCorp’s ‘localised cluster operations’¹¹



5 FAILURE TO QUANTIFY COSTS & BENEFITS

As noted by the VFF in our initial submission,¹² the applicants, and further, 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

The VFF queries, therefore, how the ACCC can adequately assess or determine that exemptions will increase competition and/or reduce costs, in the absence of quantified data.

5.1 COSTS OF COMPLIANCE

As the ACCC notes, both GrainCorp and Emerald already have significant flexibility within the current regulatory arrangements to manage their business activities:

¹⁰ Ibid, pp.1-2.

¹¹ GrainCorp, *Project Regeneration*, fact sheet, 2014, available online [accessed 17 April 2015], p.2.

¹² VFF Grains Group, *Submission to the ACCC regarding Victorian wheat ports exemption applications*, 6 February 2015, p.2.

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.¹³

However, the compliance costs of these arrangements are unclear.

It is difficult for the ACCC and other stakeholders to accurately analyse the impact that current regulatory requirements have for the port terminal service providers, and the extent to which exemptions would 'reduce their regulatory costs', without having access to data on this point.¹⁴

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.

VFF suggest that the regulatory cost should be assessed relative to the volume of grain exported via port terminals. For example, a \$250,000 regulatory cost may appear significant however considered across two million tonnes of exports, then the 'regulatory burden' of 12.5 cents per tonne may be considered negligible relative to the average \$50/tonne in supply chain costs paid by grain producers, when considered relative to the competitive benefits regulatory oversight provides.

5.2 BENEFITS OF EXEMPTION

As above, the VFF is concerned that the benefits, or efficiencies, that will be gained by the applicants should the exemptions be granted were not adequately articulated in their applications. Just as the magnitude of the costs entailed in compliance with Parts 3-6 of the Code are unclear, so is the magnitude of the efficiencies related to exemption.

This hampers the ACCC's ability to conduct a detailed cost/benefit analysis of the impact of the exemption(s), and undermines the transparency of the process.

6 INSUFFICIENT COMPETITION

6.1 THE 'PROPOSED' BUNGE TERMINAL IN GEELONG

VFF consider ACCC's preliminary acceptance of GrainCorp and Emerald's exemption applications is also flawed as the proposed future Bunge grain export terminal in Geelong is consistently considered to be, and indeed analysed as, a substantial competitor to the existing port terminals.

Although it is noted that the Bunge facility is 'proposed', it continues to be referenced throughout the applications and the ACCC's draft determinations. For example, the 'proposed Bunge facility' is referenced at least once, and often numerous times, in each section of the ACCC's paper. While the ACCC notes that the proposed Bunge terminal comprises a 'credible threat of entry' rather than a

¹³ ACCC, *Draft determinations*, 10 April 2015, p.54.

¹⁴ ACCC, *Draft determinations*, 10 April 2015, p.i.

current competitor, the weight given to a proposal that remains unapproved and yet to be constructed at the time of submission¹⁵ is inappropriate.

That is, the VFF questions how a non-existent port terminal can offer genuine competitive pressure.

Secondly, and perhaps more importantly, the proposed Bunge terminal is a road-only facility, which will offer no competing rail access service. This also serves to reinforce the question of whether the proposed terminal will be able to offer genuine competitive pressure. It will certainly not provide a competitive rail alternative to the current terminals in Geelong and Melbourne.

Finally, when the Bunge facility is constructed, then it is arguable that exemption applications could then consider whether the Bunge facility offered a genuine alternative to Geelong. The ACCC should then assess the degree of competition posed by the Bunge facility relative to the vertically integrated supply chain of GrainCorp.

6.2 EXPORTERS & BARGAINING POWER

6.2.1 COMPETITIVE BARGAINING POWER

With regards to the ACCC's observation that "Emerald and GrainCorp both consider their non-vertically integrated customers have significant bargaining power",¹⁶ the VFF would make the point 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 must go through their facilities. Thus genuine fair and transparent access is required for these other exporters.

6.2.2 LONG-TERM CAPACITY ALLOCATION

The ACCC notes that GrainCorp has "operated a longer term capacity allocation model where exporters can sign long term 'take or pay' agreements for port capacity over three years".¹⁷ The VFF has a number of concerns with this if the final decision to grant an exemption for GrainCorp's Geelong terminal is made.

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.¹⁸ As a result, competition is discouraged.

Additionally, the VFF shares Senator Bill Heffernan's concern that port terminal service providers may take advantage of the long-term allocation arrangements, as discussed with the ACCC's Rod Sims and Michael Eady at a recent Senate Committee hearing:

Senator HEFFERNAN: ...In South Australia, is it the case now—it is Glencore, isn't it? Do they pay themselves their fine if they miss their slot?

Mr Eady: Obviously, when you have vertically integrated entities, yes, there is some element of money going between different arms.

¹⁵ The deadline for objections to Bunge's revised planning permit (#922/2014) was 12 April 2015, and given the statutory deadline of 60 days for permit decisions to be made, it is considered unlikely that the City of Greater Geelong has made a final decision as yet. Certainly no decision has as yet been made public.

¹⁶ ACCC, *Draft determinations*, 10 April 2015, p.22.

¹⁷ ACCC, *Draft determinations*, 10 April 2015, p.21.

¹⁸ ACCC, *Draft determinations*, 10 April 2015, p.23.

Senator HEFFERNAN: So, if I were them and I wanted to, as it were, politely and legally constrain things at the port a bit, I would just take as many slots as I thought I would have to do to do that, and then if I missed a slot I would have to pay myself the fine, wouldn't I?

Mr Eady: There is some difference with the way the auction premiums work. The auction premiums do not just travel between Glencore. My understanding is that the lost capacity fee—I am not sure if that is the correct term in South Australia—does work that way. But the auction premiums go into a pool. If they miss that slot, they do not get those premiums back; they get distributed to other exporters who participate in that auction.

Mr Sims: And there are nondiscrimination clauses in both the undertaking and the code, so we can keep some eye out for that sort of behaviour [emphasis added].¹⁹

The VFF is concerned that the 'nondiscrimination clause' referred to by Mr Sims, above, which is contained in Part 3, clause 10 of the Port Code, would no longer apply to GrainCorp's facility in Geelong if an exemption was granted, as Parts 3-6 of the Code would no longer apply to GrainCorp.²⁰ This would mean that the regulation requiring GrainCorp "not to discriminate or hinder exporter's access to port terminal services"²¹ would not apply, and the capacity for the ACCC to 'keep some eye out' for discriminatory or self-advantaging behaviour would no longer exist.

6.3 MELBOURNE & GEELONG: DISTINCT PORT ZONES

As discussed in Section 4, long-standing rail lines are a key determinant of natural bulk export pathways. This is depicted in Figure 2, below, where the mapping of NTPs for Victorian sites (as per GTA's 2014-15 Location Differentials) shows clearly that there are distinct geographical regions for each port, despite claims from GrainCorp²² and Emerald²³ to the contrary.

¹⁹ Senate Rural and Regional Affairs and Transport References Committee, *Official Committee Hansard: Australian grain networks*, 5 February 2015, pp.4-5.

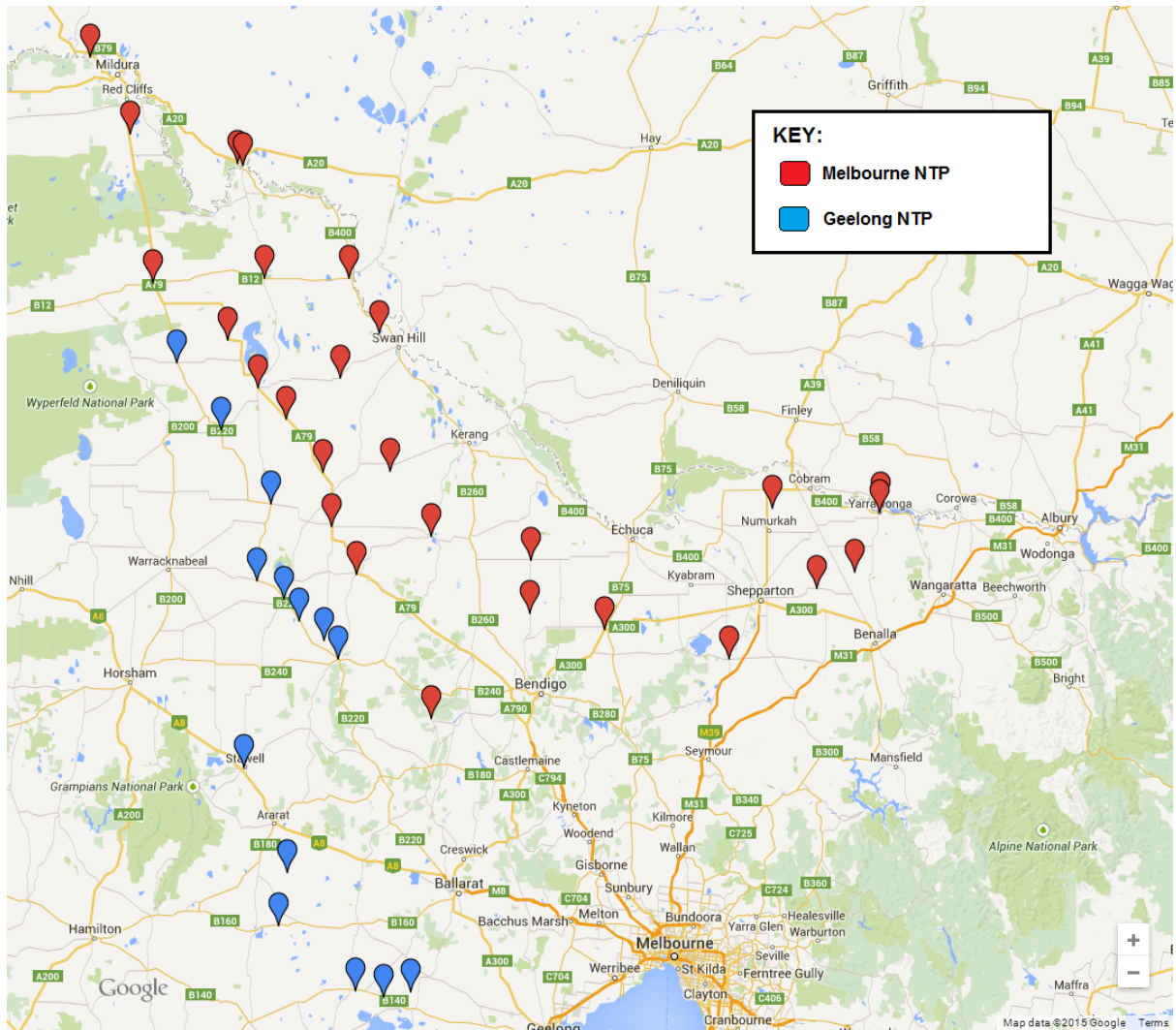
²⁰ *Port Terminal Access (Bulk Wheat) Code of Conduct*, 18 September 2014, Part 1(4)(8), p.8.

²¹ *Port Terminal Access (Bulk Wheat) Code of Conduct*, 18 September 2014, Part 3(10), p.13.

²² See for example, p.2 of GrainCorp's supplementary submission to the ACCC, where they argue that "the concept of a "Natural Terminal Port" for silos [is] redundant".

²³ ACCC, *Draft determinations*, 10 April 2015, p.34.

Figure 2. Melbourne and Geelong port terminal catchment zones²⁴



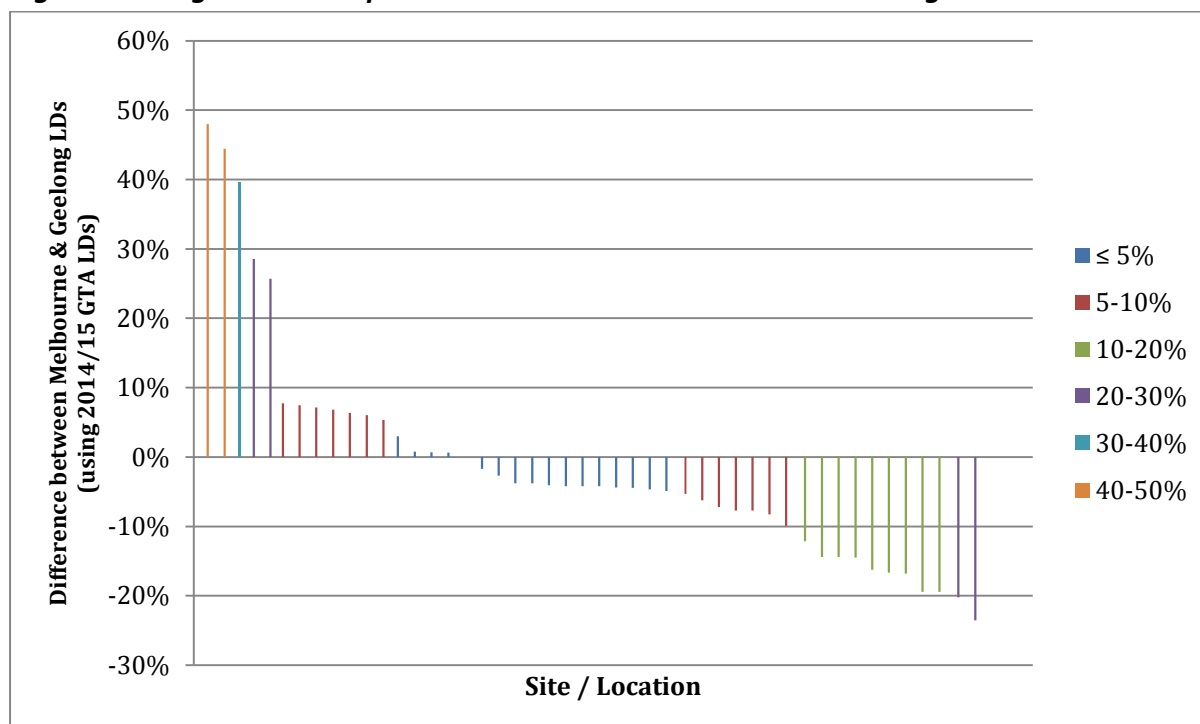
There is only one site in Victoria where the location differential is the same for Melbourne and Geelong (Carwarp), and there is a difference of more than 5% in location differential pricing between Melbourne and Geelong for almost two thirds of the sites identified in Figure 2.²⁵

This is clearly demonstrated in the graph below, and does not support the argument that the port zones are interchangeable.

²⁴ Grain Trade Australia, *GTA Location Differentials 2014/2015 – VICTORIA*, effective 1 October 2014, available online.

²⁵ Based on calculations using *GTA Location Differentials 2014/2015*, there is a difference of >5% in location differentials between Melbourne and Geelong for 63.8% of sites.

Figure 3. Freight cost comparison between Melbourne and Geelong



6.4 VERTICAL INTEGRATION & SUPPLY CHAIN CONTROL

6.4.1 UP-COUNTRY DOMINANCE

As discussed above, there are natural and distinct geographical catchment areas for the port terminal in Geelong and the port terminal in Melbourne, and grain is still priced based on the freight to its closest port. However, due to the high degree of vertical integration held by the port terminal service providers (which are also exporters and storage providers) this is not necessarily how bulk grain travels to port in reality.

The flow of these exports is largely determined by a combination of the NTP and the vertically integrated nature of the port / silo service providers. That is, a third-party exporter is largely bound by where they acquire stock up-country, in whose silo they acquire it (GrainCorp or Emerald), and has limited choice as to where they outturn the stock from.

For example, a grain producer who is delivering to an up-country GrainCorp silo cannot readily 'switch' to an exporter delivering to Melbourne port. In reality GrainCorp (or Emerald) control where the export customers will pick up their grain from, regardless of theoretical opportunities to 'switch'.

Emerald's submission explicitly recognises this issue:

A key competitive advantage to ensuring high export volumes is the scale and geographic spread of a port operator's upcountry network. As a result of GrainCorp's upcountry dominance...Geelong already exports grain from locations that would most efficiently flow to Melbourne.²⁶

²⁶ Emerald's Application for Exemption under cl 5(2) Port Access Code of Conduct Redacted Public Version, November 2014, p.6.

Figure 4, below, shows the significant presence of GrainCorp sites within the Melbourne port zone. Only seven of 27 sites do not have GrainCorp presence, and at two of these GrainCorp sites can be found nearby.

Figure 4. GrainCorp presence at Melbourne NTP sites, 2014/15

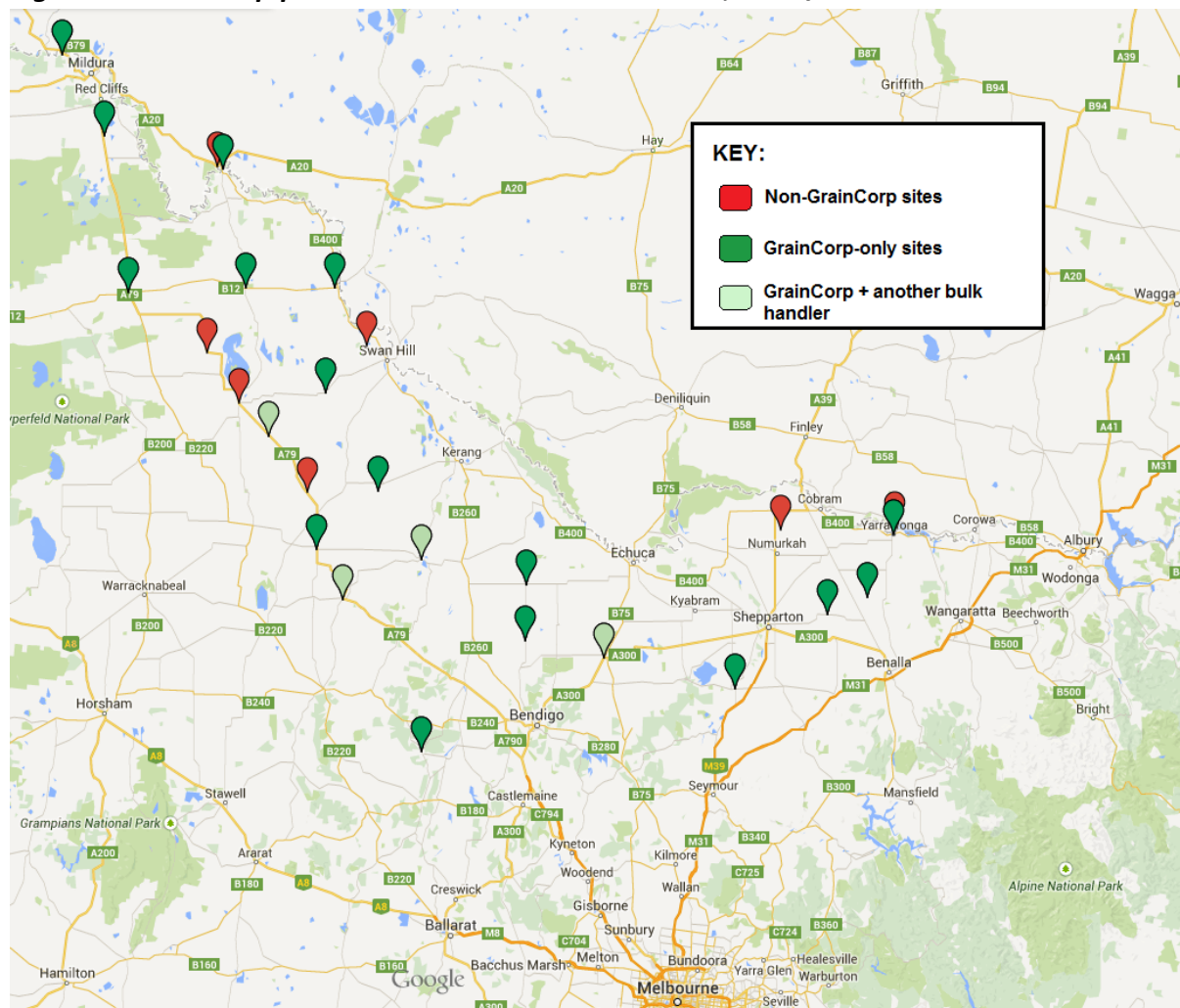
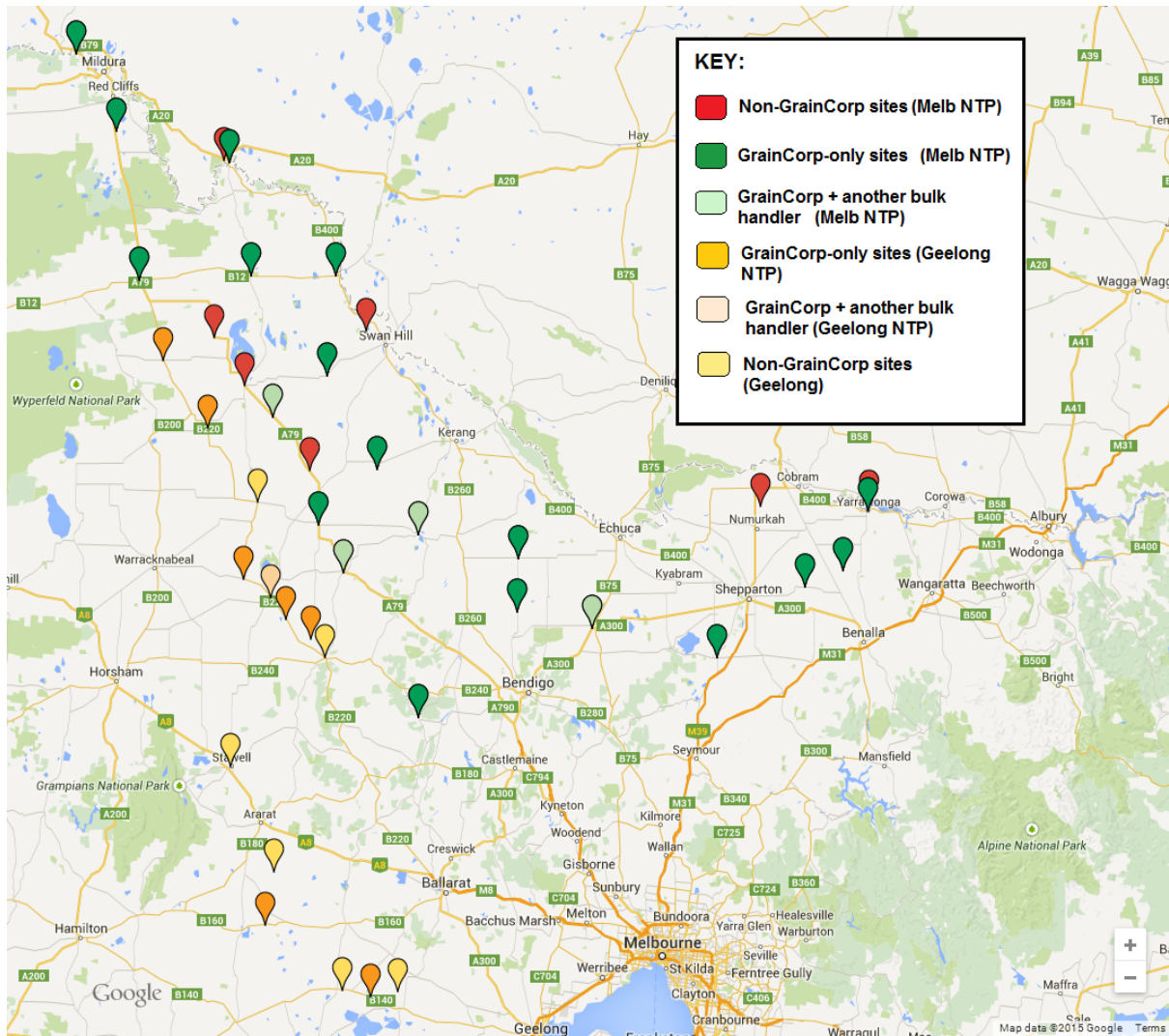


Figure 5, below, further illustrates the significant upcountry presence of GrainCorp in the Geelong and Melbourne port zones and the extent of its vertical integration. The only sites within these zones without GrainCorp facilities are shown in red and yellow –13 out of a total of 41 sites – and three of those 13 are Emerald sites.

Figure 5. GrainCorp presence in Melbourne and Geelong NTP zones, 2014/15



VFF Grains notes the ACCC’s comment that “GrainCorp operates the largest number of storage sites in Victoria but 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”.²⁷ However, we disagree with the implication that the market power exercised by GrainCorp is no longer ‘substantial’ and argue that it remains very present and very significant for growers, as depicted in Figure 5. As shown above, GrainCorp is identified as a bulk handler at almost 70% of Melbourne or Geelong NTP sites.²⁸

Although GrainCorp claim that “most of [their] export customers have access to alternative supply chains,”²⁹ this is evidently not the case as GrainCorp (and Emerald) have a clear and dominant presence up-country. The VFF reiterates its earlier comment that the Port Code is intended to ensure competition in bulk export supply chains, and not just ‘grain supply chains’ in general.

It should also be again noted that other bulk handlers & exporters wishing to export in bulk must ultimately access the GrainCorp or Emerald supply chain. To do so often incurs additional fees, such

²⁷ ACCC, *Draft determinations*, 10 April 2015, p.31.

²⁸ There is a GrainCorp presence at 68.3% of sites listed in the GTA 2014/15 Location Differentials document as having either a Melbourne or Geelong NTP, that is, at 28 of 41 sites.

²⁹ GrainCorp, *Submission – Victorian Port Terminals: Exemption from Port Terminal Access (Bulk Wheat) Regulation*, December 2014, p.4.

as receipt fees, reducing the competitiveness of these exporters wishing to utilise other non-GrainCorp or non-Emerald sites.

6.4.2 VERTICAL INTEGRATION

Vertical integration must be a serious consideration in any competition analysis, and the applicants' high level of vertical integration is of significant concern to the VFF. The ACCC acknowledges the applicants' vertical integration in its draft determinations.³⁰ As noted in our initial submission to the ACCC, the degree of vertical integration held by GrainCorp and Emerald is significant, and is acknowledged by each provider in their applications. It is also illustrated throughout GrainCorp's *Project Regeneration* factsheet; see, for example, Figure 1, above.

Notably, vertical integration is one of the two key issues identified by ACCC chair Rod Sims as forming the basis of the ACCC's assessment of exemption applications:

*The two key issues are: are there competitive ports or is this a monopoly; and secondly, the level of vertical integration. If the port is not owned by somebody competing in the upstream market; if the port is owned by somebody who is disinterested in foreclosing competition – vertical integration and competition are the two key issues that we would look at.*³¹

Even Emerald recognises the impact that vertical integration has on a bulk handler's ability to manipulate the natural bulk export pathways:

*GrainCorp has a significantly larger and more geographically diversified upcountry storage and handling network than Emerald. This assists GrainCorp in providing more competitive pricing in regions around its upcountry silos. In doing so GrainCorp draws grain that is naturally freight advantaged to Melbourne into its upcountry sites, and then uses a less efficient pathway to move that grain through bulk export out of Geelong.*³²

In addition, while we reiterate the need for exemption assessments to be based on current access levels (see Section 6.1), if the ACCC continues to include proposed or potential future scenarios in decision-making processes,³³ it is reasonable to ask that the potential future vertical integration of the current providers, GrainCorp and Emerald (Sumitomo) is also considered, along with potential future deepening of that integration. For example, the bulk handlers in the United States are significantly vertically integrated, and this is expanding to include Canada, as evidenced by Bunge's involvement in a joint venture purchase of a majority share in the Canadian Wheat Board.³⁴

³⁰ ACCC, *Draft determinations*, 10 April 2015, p.21.

³¹ Senate Rural and Regional Affairs and Transport References Committee, *Official Committee Hansard: Australian grain networks*, 5 February 2015, p.6.

³² *Emerald's Application for Exemption under cl 5(2) Port Access Code of Conduct Redacted Public Version*, November 2014, p.12.

³³ As per references to the proposed Bunge terminal in Geelong and rumours around a potential future Quattro terminal in Portland throughout the Draft Determinations.

³⁴ "For Bunge, the deal significantly expands its reach into Canada's wheat-growing regions by adding facilities that purchase grain from farmers, and transport crops through the Great Lakes waterways." As one analyst in the article notes, "the buyout indicated global companies were keen to get hold of infrastructure assets to ensure they had a supply chain from the grower to the international markets." Emma Field, 'Saudis' Canada wheat move', 22 April 2015, *The Weekly Times*, p.62.

The global grain companies have demonstrated their interest in Australian grain supply chains, such as ADM's recent bid for GrainCorp. Without adequate oversight it is likely that the Victorian grain industry will move the same way as North America, Australia's largest competitor, with a grains industry dominated by a small number of extremely large, highly integrated bulk handlers with specific catchment networks.

6.5 LACK OF CHOICE FOR GROWERS

As demonstrated above, and supported by Emerald's own submission to the ACCC, there is very limited or non-existent choice for growers in many locations as to whether their grain enters the GrainCorp system, in which case it is most likely to be transported to Geelong (despite Melbourne being its NTP). Grain producers in these areas do not have a ready export port alternative when delivering to these silos. The alternative is that they are forced to incur greater costs to buy larger trucks, and drive further away, either to an alternative silo or directly to port.

On-farm storage is often raised as another alternative for growers, but, as outlined in Section 3.2, for bulk grain to be exported it must enter the bulk handling system. Therefore, the VFF contends that both the concept and the practice of natural geographic export catchment zones remain significant to the Victorian bulk grain export task, as clearly evident and recognised by the ACCC with regards to the Portland port terminal.

Additionally, as a result of the features of the Victorian bulk grain export system and the market power exercised by GrainCorp, as discussed above, grain producers do not have genuine choice of competing bulk port service providers unless they are forced into inefficient road investment pathways.

For these reasons, and as outlined in Section 3.2, on-farm storage should not be considered a countervailing competing force. An exporter or grain producer seeking access to bulk export port services will still be required to enter the GrainCorp or Emerald system at some point along the supply chain regardless of whether they own on-farm storage.

7 CAPACITY CONSTRAINTS UNDERESTIMATED

7.1 PEAK & OFF-PEAK CAPACITY

It is neither practicable nor 'in the legitimate business interests' of the exporters to overly 'spread the export task into the non-peak period.' The ACCC argues that it is 'exporters' preference' to export during peak periods, while 'spreading of the export task into the non-peak period is an efficient outcome.' The VFF contends that, rather than being simply a 'preference,' export during the peak period is a reality of Australia's place in the global grain market, forming a significant competitive advantage for exporters from Australia.

This is widely recognised, as evidenced by AEGIC's 2014 report into *The cost of Australia's bulk grain export supply chains*:

A key consideration in understanding the efficiency and value of the Australian export grain supply chain is the capacity to export grain in the December to May marketing window. In this period the supply from competitors in the northern hemisphere is waning, and there are premiums

*and opportunities available in the Asian markets. There is significant benefit to traders in shipping during this period, with benefits realised by producers through increased price basis.*³⁵

The USDA also acknowledges the marketing advantage and inherent capacity constraints of this period:

*Australia has the capacity to export wheat in the December to May marketing window when the northern hemisphere season is ending. During this period, seasonal demand for grain, rail and port services and shipping slots increases significantly and a queuing system has been used for bulk grain exporters.*³⁶

It is unrealistic and inefficient to suggest exporters surrender their commercial trade advantage and their 'legitimate business interests' in this way. This also does not take into consideration the higher storage costs that would be incurred by an exporter having to defer their exports to later in the year. Further, as noted by AEGIC above, the benefits of the 'increased price basis,' from exporting in this period also flow through to producers, who would also lose out if the export task was excessively spread into the non-peak period. This means there will inevitably be a certain degree of capacity constraint at port during certain times of the year, and the ACCC itself acknowledges that:

*where there are capacity constraints...a vertically integrated port terminal service provider may have an incentive to exclude other exporters and preference its own trading business.*³⁷

Therefore fair and transparent access to port capacity means the ability for exporters to contest for access to capacity at all times of the year, including premium export periods.

7.2 PORT CODE AS A BARRIER TO INVESTMENT?

Emerald 'consistently' argues that the Port Code provides a 'disincentive to efficient investment'.³⁸ However, the interest from Bunge, and perhaps also the Quattro consortium, in recent times is clear evidence to the contrary.

If the current bulk export system was functioning as claimed, with sufficient or excess capacity and open access for all exporters, there would be no incentive for Bunge or others to invest. The proposed investment indicates that either there is not as much capacity as claimed by the applicants, or access is not as "fair and transparent" as necessary,³⁹ or both.

Either way, it is clear that exempting GrainCorp's Geelong terminal and Emerald's Melbourne terminal from Parts 3-6 of the Code would not assist the development of this "fair and transparent access" in the future.

³⁵ AEGIC, *The cost of Australia's bulk grain export supply chains*, information paper, January 2014, p.5.

³⁶ United States Department of Agriculture, *Australia: Grain and Feed Annual 2015*, GAIN Report No. AS1506, 7 April 2015, p.3.

³⁷ ACCC, *Draft determinations*, 10 April 2015, p.10.

³⁸ *Emerald's Application for Exemption under cl 5(2) Port Access Code of Conduct Redacted Public Version*, November 2014, p.18; see also Emerald's supplementary submission, dated 26 February 2015.

³⁹ *Port Terminal Access (Bulk Wheat) Code of Conduct*, 18 September 2014, Part 1(2), p.4.