7 Market delineation

7.1 Introduction

The principal areas of overlap between the activities of the parties, with respect to the Transaction and the acquisition of shares in JVCo, relate to:

- their respective grain storage and handling facilities (including export port facilities) in Queensland, New South Wales and Victoria;
- their respective grain marketing and trading businesses; and
- the acquisition of bulk freight rail services in Queensland, New South Wales and Victoria.

Having regard to these overlaps, the parties consider that, for the purposes of the Transaction, the relevant markets from a competition law perspective are:

- the separate Queensland, New South Wales and Victorian markets for grain storage and handling;
- the market for grain marketing services, which is at least national, if not international; and
- the markets in Queensland, New South Wales and Victoria, for the acquisition of bulk freight rail services.

These areas of overlap are now considered in more detail for an assessment of the public benefit compared to the detriment.

7.2 Grain storage and handling

Product market

The parties consider that the relevant product market is the market for the storage and handling of grain. This is consistent with the Commission's decision in relation to the acquisition of Milling Australia, as well as the Commission's decision with respect to GrainCorp's merger with Grainco. Accordingly, the parties do not believe that this product delineation is contentious.

Geographic market

The parties consider that there are markets for grain storage and handling in Queensland, New South Wales and Victoria. Again, this is consistent with the Commission's previous decision in relation to the acquisition of Milling Australia, as well as the Commission's decision with respect to GrainCorp's merger with Grainco. For these reasons, the parties do not believe that this geographic delineation is contentious.

Participants

There is approximately 33 million tonnes of independent storage capacity on the East Coast, as shown in Table One below. This is to be compared with the average winter crop production of 14.5 million tonnes in the past three years and 16.5 million tonnes including sorghum (range of 5 to 20 million tonnes).

In addition to independent storage there is over 10 million tonnes of on-farm storage. Accordingly grain storages are poorly utilised - less than 50% based on the major commercial crops.

Table One - Up country Storage Capacity in Eastern Australia (excl on-farm storage)

	Capacity				No of Silos			
	QLD	**NSW**	**VIC**	**Total**	**QLD**	**NSW**	**VIC**	**Total**
GrainCorp	4.4Mt	12.4Mt	7.0Mt	23.8Mt	65	189	119	373
AWB	0.4Mt	1.4Mt	0.8Mt	2.6Mt	3	10	4	17
ABA		0.7Mt	0.4Mt	1.1Mt		7	3	10
ABB			0.1Mt	0.1Mt			2	2
Others	0.5Mt	3.6Mt	1.0Mt	5.1Mt	42	105	62	209
Total	**5.3Mt**	**18.0Mt**	**9.3Mt**	**32.6Mt**	**110**	**311**	**190**	**611**
Average Production	2.4Mt	8.0Mt	4.1Mt	14.5Mt				
Utilisation	**45%**	**44%**	**44%**	**44%**				

Source GrainCorp and AWB

There are 8 grain port terminals on the East Coast to handle a grain task of around 7.5 million tonnes as shown in Table Two below. Approximately 70% of this grain task comprises AWB's wheat exports.

GrainCorp operates 7 of these grain port terminals. The other grain terminal is operated by ABA under an agreement with ABB. AWB has a 50% interest in this terminal but does not have operating control or influence over this terminal.

Table Two - Export grain volume in Eastern Australia

Grain	2000/01	2001/02	2002/03	3 YR AVG	Percent
Wheat	6,942,708	6,315,088	1,724,377	4,994,058	69%
Barley	1,251,015	1,333,981	400,279	995,092	14%
Canola	787,049	668,300	48,380	501,243	7%
Other	1,155,029	749,637	186,126	705,291	10%
Total Grain	**10,135,801**	**9,067,006**	**2,359,163**	**7,195,683**	**100%**

Source GrainCorp and AWB

7.3 Grain marketing and trading services

Product market

The parties consider that the relevant product market is the market for grain marketing services, which includes:

- buying grain from growers and other traders;
- selling grain to both domestic and export customers (including end users and other grain traders);
- providing various supporting services for growers and buyers (eg, forward contracts, pre-harvest contract delivery arrangements and other financial options for growers); and
- associated grain accumulation and logistics activities to support grain sales.

The parties consider that as the processes for marketing different grains are very similar, it is not appropriate to define the relevant product market in terms of different types of grain.

This is consistent with the Commission's decision relating to GrainCorp's merger with Grainco, in which the Commission appeared to accept that the relevant market is a market for grain trading and marketing services[2]. Accordingly, the parties do not consider that this is contentious.

Geographic market

The parties consider that there is a market for grain marketing services that is at least national, if not international. Features of that market include:

- the domestic consumers acquire over 50% of grain produced in Eastern Australia, with over 100 end users and numerous traders; and
- over half of the grain consumed domestically is stored outside of bulk handlers with a large proportion stored in on-farm storages.

Naturally, grain which is not consumed domestically is exported, with export prices set in international markets in which Australia is a price taker.

These international grains markets are very competitive and encompass a large number of customers including multinational companies and overseas end-users.

In addition, given the ability of all participants in the relevant market to enter into grain swaps and other trading arrangements with numerous counter-parties, the physical location of the grain marketing organisation is not a significant constraint on its ability to compete nationally or internationally.

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[2] Commission's Media Release, "ACCC Not to Oppose the Proposed Merger of GrainCorp Ltd and Grainco Australia Ltd", 23 May 2003.

As the Commission is aware, the marketing of grain to export customers is subject to regulation in a number of States. With the exception of wheat, those single desk export arrangements are State-based and the holders of the relevant single desk rights compete against grain exports from other States.

Table Three below sets out a brief summary of the grain industry participants who hold single desk export rights in each of those States.

Table Three - Grain export single desk arrangements for major crops

Grain	Queensland	NSW	Victoria	SA	WA
Barley		GrainCorp until 1 Oct 2005 (although subject to new export permits)		ABB	CBH & Permit System
Sorghum		Open Permit System			
Canola		Open Permit System			CBH
Wheat	AWB	AWB	AWB	AWB	AWB

Source : AWB and GrainCorp

Participants and market shares

The market share figures for grain trading are not known with certainty for the following reasons:

- grain is traded in multiple transactions, eg the same parcel of grain in a silo could be bought and sold 2 or 3 times by title transfer;
- grain can and is sold on an ex silo or track basis, so the grain trader or gain storage provider is not aware of the ultimate destination of the grain;
- over 50% of domestic grain is stored outside of GrainCorp and AWB silos; and
- a large portion of domestic grain is traded / purchased by the end user direct ex farm without the use of traders

Outlined below in Tables Four and Five are the parties' estimates of shares of sales in both the export and domestic markets and an estimate of the combined average tonnage of grain used in each segment, as well as data on world wheat production.

Table Four - Estimated Grain export market shares

	National Export Grain				National Domestic Grain		
	Export share for wheat	Export share for barley	Export share for sorghum/ pulses (8)	Export share for canola	Domestic share for wheat	Domestic share for barley /sorghum /other (2)	Domestic share for canola
AWBI	99%	Nil	Nil	Nil	5%	Nil	Nil
AWBAU	Nil	Negligible	9%	20%	18%	12%	13%
GrainCorp	Nil	8%	27%	10%	8%	13%	2%
ABB	Nil	55%	15%	15%	10%	15%	1%
CBH	Nil	32%	40%	40%	2%	5%	5%
Other	1%	5% (4)	9%	15% (3)	57%(7)	55%(6)	78% (5)
Total (1)	**17,000,000**	**4,200,000**	**1,000,000**	**1,000,000**	**5,600,000**	**4,800,000**	**700,000**

Note: (1) Estimate of exports is based on average grain production less estimated domestic consumption. Domestic consumption has first claim and exports represents residual sales.
Note: (2) It is difficult to break up barley from other grains as the stock feed segment can substitute grains
Note (3) Other major exporter of canola include Mitsui, Cargill, Sumitomo
Note (4) Other major exporter of barley/other include Glencore and JK International
Note (5) Other traders of domestic canola include Cargill and Riverina Oilseeds
Note (6) Other traders of domestic barley/other include feedlots and stockfeeders
Note (7) Other traders of domestic wheat include flour millers, traders, stockfeeders
Note (8) Most of sorghum is from QLD

Source : AWB and GrainCorp

Table Five - World wheat production, trade and stocks

Millions of Tonnes											
PRODUCTION - Producers (major)											
Country	**1992/93**	**1993/94**	**1994/95**	**1995/96**	**1996/97**	**1997/98**	**1998/99**	**1999/00**	**2000/01**	**2001/02**	**2002/03**
China	100.5	106.4	101	102.2	110.6	123.3	109.7	113.9	99.6	93.9	90.3
EU	84.8	81.1	85.5	87.7	100	94.7	103.8	96.9	104.7	91.2	103.3
India	55.7	56.8	59	65.8	62.6	69.3	65.9	70.8	76.4	69.7	71.8
USA	66.9	65.4	63.2	59.5	62	67.5	69.4	62.7	60.8	53.3	44
Canada	29.9	27.2	23.2	25	29.8	24.3	24.1	26.9	26.5	20.6	15.7
Australia	16.2	16.9	9	17	23.7	19.4	22.1	25	22.1	24.3	9.4
Pakistan	15.7	16.2	15.2	17	16.9	16.7	18.7	17.9	21.1	19	18.2
Turkey	17.3	16.8	14.7	15.5	16.2	16.2	18.5	16.5	18	15.5	16.8
Argentina	9.7	9.2	11.3	9.5	15.9	14.8	11.5	15.3	16.2	15.5	12.3
Total world production	**561.4**	**558.1**	**524.3**	**540.6**	**582.4**	**609.8**	**586.5**	**584.4**	**581.3**	**567.3**	**564.5**

Source: International Grains Council September 1998, 2000-03 figures from ABARE 2003

7.4 Bulk rail freight services

Product market definition

JVCo's activities will include negotiating and acquiring rail transportation services from rail providers such as Pacific National and Queensland Rail for the transport of export grain from up-country storage facilities to ports.

The particular characteristics of freight largely determine the appropriate means of transport and the extent to which other substitution possibilities are a viable option. The most significant characteristics are the size of the consignment, the value of the freight relative to its volume and weight, the time-sensitivity of the freight, and the points of origin and destination.

Bulk freight services are appropriate to transport bulk commodities such as grain, as grain can be readily loaded from silos by outloading the grain directly into a train wagon.

The parties consider that road is not generally substitutable with rail for the transport of bulk freight, particularly grain, over medium to long distances. The reasons for this are as follows:

- in order to meet shipping requirements, grain is required to be transported to ports in large volumes. While road haulage is able to transport a proportion of those volumes, bulk freight rail services is significantly better placed to manage those volumes in a more cost effective manner; and
- grain can be moved faster to the port by rail than road to meet shipping orders given the capacity of rail to move large tonnages within a short time period.

This view is generally consistent with that expressed by the National Competition Council in its determination concerning the certification of the Victorian rail access regime. Moreover, it appears to be consistent with the Commission's previous merger decisions in this sector, including the Commission's decision in the Lang Corp/Toll Holdings Limited's acquisition of National Rail Corporation and FreightCorp and most recently Pacific National's acquisition of Freight Australia.

For these reasons, the parties consider that the relevant product market for the purposes of the Transaction is relatively settled and is the market for the bulk freight task by rail. In particular, the parties note that the relevant product market, as recently found by the Commission in the Freight Australia matter, includes bulk commodities such as "grains, minerals, ores, gravel, sugarcane, sand and petroleum".

Geographic market

Given that the rail networks in New South Wales, Queensland and Victoria operate on different rail gauges, there are limits on the extent to which grain stored at receival facilities can be moved interstate for export. Furthermore the rail track infrastructure in each of these States is separately owned and managed (e.g. Queensland and New South Wales track is owned by the respective State governments (subject to recent arrangements in New South Wales with the Australian Rail Track Corporation) and track in Victoria is leased by Pacific National).

GrainCorp has previously explained to the Commission its difficulties in obtaining access to the Victorian rail track network from Freight Australia.

The merger of Pacific National and Freight Australia, will lead to supplier consolidation across New South Wales and Victoria. Accordingly, from a supply side perspective, while the geographic market may be expanding, the parties believe that it is likely that there will continue to be separate markets for rail in Queensland, New South Wales and Victoria in the medium term given the different rail gauges and the State based access regimes over intrastate track.

Participants and market shares

In excess of 95% of all export grain is moved by rail. Export rail transport is dominated by Queensland Rail in Queensland with 100% share of this rail task and dominated by Pacific National in New South Wales and Victoria with over 95% of this rail task.

The only competing rail operators for the haulage of grain in New South Wales are GrainCorp (with one leased train in New South Wales) and ARG for domestic grain to Manildra.

7.5 Conclusion

The parties believe that the relevant markets for consideration in relation to the Transaction are:

- the markets for grain storage and handling in Queensland, New South Wales and Victoria;
- at least a national market for grain marketing and trading services; and
- the markets for the acquisition of bulk rail freight services in Queensland, New South Wales and Victoria.

8 Competition analysis - grain storage and handling

8.1 Introduction

GrainCorp and AWB believe that the joint venture will not substantially lessen competition in the markets for grain storage and handling for the reasons set out below. Both parties will continue to directly contract storage services and have the commercial flexibility to enter into contracts in their own name, as they see fit, with other storage providers.

8.2 The joint venture would not give rise to any aggregation of storage and handling facilities

Up-country storage

JVCo will not contract or manage any grain storage and handling facilities. The joint venture is discrete in its scope and relates solely to *transport logistics* for managing supply chain issues in relation to the delivery of grain for *export* from up-country silos to port. In this regard nothing in the joint venture arrangements prevent, limit or restrict either GrainCorp or AWB from establishing or operating (independently or in conjunction with another person) any:

- grain receival and storage facility; or
- facility for the receival, storage or loading of grain for export.

The parties also submit that the joint venture arrangements would not in any way limit the *incentive* that they have to continue to compete against each other in relation to up-country grain storage and handling. The joint venture will not change the competitive dynamics between GrainCorp and AWB Grainflow and other storages for the following reasons:

- contractual arrangements for the provision of storage and handling by storage services will still be direct with AWB and GrainCorp Marketing;
- storage agreements and fees would continue to be confidential between the storage provider and the relevant grain buyer;
- GrainCorp and AWB Grainflow storages will continue to have a commercial incentive to provide storage services to all grain growers and grain buyers with a range of services (such as warehousing); and
- to the extent that AWB is not satisfied that GrainCorp is delivering cost effective storage and therefore that is not satisfactory to AWB given its responsibility to maximise returns for growers (its obligations under its Constitution), AWB can continue to build its own storage facilities or contract with other suppliers where it is commercially beneficial for it to do so.

JVCo may, however, enter into interface agreements with storage providers for rail performance criteria and incentive payments to ensure performance criteria set by the rail provider can be met. It is envisaged that this agreement would only encompass a few operating issues such as outloading speed and outloading times. For example if the rail provider seeks 24/7 outloading JVCo could enter into a back to back agreement with the storage provider to provide this specific service.

Accordingly, the parties submit that the Transaction will not have any impact on future investment in up-country silos and could in fact provide incentives for such investment on commercial grounds. In this regard, the parties note that there is already substantial excess storage capacity in Eastern Australia.

Export port facilities

As is the case for up-country storage facilities, the joint venture arrangements do not involve the acquisition or common management of any competing export port facilities and, in fact, expressly preserve the ability of either party to operate a competing port.

The parties also submit that those arrangements would not have an impact on the commercial considerations whether or not to construct or operate a competing port facility. The parties note that:

- there is currently substantial excess capacity at port terminals in New South Wales, Queensland and Victoria, with more than 15 million tonnes of shipping capacity for an average of 7.5 million tonnes of grain for export;
- it is difficult to commercially justify investment in a new port terminal given the level of exports as noted in Section Seven. A new port terminal would require at least 1 million tonnes of grain and it is not clear there is sufficient grain to warrant such an investment; and
- in the absence of improved harvests and crop investment, the percentage level of grain exports is expected to decline, given increasing domestic demand from a growing population and limited excess grain. In this regard, less than 50% of grain in Eastern Australia is now exported and ABARE forecasts that this will decline by a further 1 million tonnes by 2007.

8.3 JVCo does not alter GrainCorp and AWB Grainflow's storage arrangements with other grain buyers

It should be noted that GrainCorp has a commercial interest to provide competitive services to all customers. GrainCorp systems / processes and 'open access' policy at its silos reinforces this approach. GrainCorp also publishes its standard storage and handling agreements and tariff fees on its web site. (http://www.graincorp.com.au/resources/pdfs/services/storageandhandling agreement 20032004.pdf)

GrainCorp provide storage services to its customers in three ways:

- customers placing grain direct into the storages in their name, as growers (warehousing) or as buyers;

- customers buying grain from growers who hold grain in warehousing or from other grain buyers through private contracts (title transfers);
- customers placing (public) prices at the silos, creating a market place at the silo.

GrainCorp services nearly 100 grain traders and has limitations on its storage services only in a narrow range of operational circumstances, where:

- storage space has been blocked for a specific segregation combined with the inability to access rail for overflow; or
- the silo does not handle the delivered grain or grade type or the silos are leased to a customer (only a few low tonnage silos are in this category); or
- the silo is closed due to the high costs of operation of the silo or lack of grain in the area (predominately the smaller silos).

For its part, AWB Grainflow has not denied access to any party who has entered into a storage and handling agreement. AWB Grainflow has in fact expanded storage capacity in circumstances where there has been additional demand.

8.4 JVCo does not alter AWB and GrainCorp Marketing contracting other storage providers

AWB stores almost all of its export grain in New South Wales, Queensland and Victoria in up-country facilities owned by GrainCorp, AWB, ABA and Ausbulk. AWB has no incentive to disadvantage any of those silos, and indeed has a commercial incentive to ensure that ABA and Ausbulk silos have access to competitive rail rates.

AWBI's National Pool will continue to 'post prices' by way of determining an Estimated Silo Return ("**ESR**") for silos owned by GrainCorp, AWB Grainflow, ABA, AusBulk and the 6 or so AWB accredited private storages on the East Coast. AWBI will also determine an ESR for any other private storage that meets the National Pool's storage and operating standard accreditation policies.

AWBAU will normally post prices and buy grain at any of the above storages where the grain is well positioned either for further domestic trade or for delivery against domestic sales contracts.

Furthermore AWB will continue to have a commercial incentive to utilise ABA's Melbourne Port Terminal given its 50% interest in the assets at that port.

GrainCorp Marketing usually posts prices at GrainCorp silos in the Eastern States, reflecting the quantity of storage GrainCorp operates. GrainCorp does post prices at facilities where there are no GrainCorp silos, for example at AusBulk and Consolidated Bulk Handlers ("**CBH**") storages. GrainCorp also posts pool prices at some AWB and ABA silos for its regulated pool grains.

8.5 The parties will continue to be constrained by significant and effective competition from a number of actual and potential competitors

Following implementation of the Transaction, the parties will continue to compete with each other in relation to grain storage and handling, both up-country and at port. In addition, they will continue to be constrained by competition from other actual and potential competitors. Those competitors include:

- **ABB/AusBulk**. The merged ABB/AusBulk will be the second largest listed grain agribusiness in Australia holding a substantial share of barley sales.

  Ausbulk owns and operates a network of approximately 111 country silos and seven export port terminals in South Australia and Victoria, with a total storage capacity of approximately 9.9 million tonnes. That storage network is capable of handling the entire grain crop in South Australia.

  AusBulk recently invested $48 million to enhance and upgrade its storage facilities. AusBulk has also implemented a strategic site development program resulting in an investment of more than $150 million.

  In addition to its wholly-owned storage and handling facilities located in Victoria, AusBulk also has an interest in:

  - six storage and handling facilities located in New South Wales and Victoria, through ABA (a joint venture with GrainCorp); and
  - the Melbourne Port Terminal, through its interest in ABA and ABA's MPT joint venture with AWB.

  AusBulk has also sought to diversify its interests in the grain industry through its acquisition of Joe White Malting, Australia's largest malting company, at a cost of over $143 million.

  Given the increasing exports of grain produced in Western Victoria through export port facilities located in South Australia, AusBulk's storage and handling network in both Victoria and South Australia represents a significant competitive constraint on the behaviour of other market participants. In this regard, in May 2001, the South Australian Government announced AusBulk as the successful developer of the proposed $90 million deepwater terminal at Outer Harbour, which will be the only deepwater facility serving the State's east.

AusBulk has estimated that this development will increase the contestable tonnage of grain in Western Victoria that is exported through ports in South Australia by 500,000 tonnes[3]. This is because, a modern, efficient port that is able to handle larger vessels will reduce the ocean freight component of export grain pricing, allowing the port to draw grain from a wider geographic area and use the ocean freight saving to compensate for greater internal surface freight costs. Accordingly, this development is likely to increase the level of competition between Victorian and South Australian grain receival and export port facilities.

ABB has an exclusive statutory right to operate the single desk export monopoly for barley in South Australia. ABB is also the leading barley exporter from Victoria given that it held export monopoly powers in that State up until 2000 and its ability to leverage its significant South Australian volume.

ABB receives and stores up to 3.4 million tonnes of grain (mostly barley) each year from growers located in South Australia, Victoria and Southern New South Wales.

In 2001, ABB and Grain Pool (a subsidiary of CBH) formed "Grain Australia" to handle their respective barley export marketing activities.

- **Co-operative Bulk Handling Limited.** CBH, a co-operative controlled and financed by Western Australian grain growers, is a very significant competitor in relation to grain storage and handling in Western Australia. CBH merged with The Grain Pool of Western Australia on 1 November 2002.

  CBH stores and handles up to 40% of the national average grain production annually, and more than 95% of the Western Australian crop is exported each year through CBH's four port terminal facilities located at Kwinana, Geraldton, Esperance and Albany.

8.6 Evidence of significant expansion

The competitive constraints that these other market participants (actual or potential) will continue to exert on the parties are demonstrated by evidence of entry and expansion of other participants in the grain industry. For example:

- AWB Grainflow has constructed 17 new grain receival sites in Victoria, New South Wales and Queensland, since 1999. In the 2003/4 season, these sites, between them, received approximately 1.6m tonnes of grain;

[3] AusBulk submission to the Essential Services Commission Review of the Handling and Storage of Export Grain in Victoria, June 2002 (discussed in the Kronos Review of Structural Issues in the Australian Grain Market, September 2002, page 42).

- in 2000, Ausbulk, AWB and (the former) Grainco constructed the MPT with dual gauge access. This port facility has the capacity to handle 1.5 million tonnes of grain per annum. There are plans to expand this port so that it may handle 2.0 million tonnes of grain;

- in the past 4 years, ABA has constructed or gained access to 6 storage and handling facilities in Victoria and Southern New South Wales with the capacity to store approximately 785,600 tonnes of grain;

- since 2001/2002, AusBulk has constructed two new grain storage and handling facilities in Victoria, each with the capacity to store approximately 60,000 tonnes of grain.

  AusBulk's recent acquisition of Joe White Malting Limited (which provides AusBulk with a major customer in Western Australia, South Australia, Victoria, Tasmania and Queensland) also provides a commercial incentive for AusBulk to continue to expand its storage and handling activities in other States; and

- a number of grain traders and end customers (such as Manildra and George Weston) are able to implement, and have implemented, their own rail freight logistical arrangements through their own storage or rail operations or other grain storage and handling arrangements by "sponsoring" silos operated by individual growers to receive and store their grain requirements. Growers are also able to construct their own "on-farm" storage facilities.

The parties emphasise that it is not necessary for those competitors to "replicate" the grain storage and handling network of other participants in order to compete effectively in relation to the storage and handling of grain. Those competitors can compete and win market share very effectively by investing in grain storage and handling facilities located at strategic sites.

8.7 Conclusion

One of the arguments that could be put forward against the Transaction is that in creating a joint venture for more efficiently handling the export grains task, it brings parties together who are competitors and creates a disincentive for future competition. This is the "traditional" argument against joint ventures between competitors.

However, in this situation, the parties are primarily customer (AWB) and supplier (GrainCorp). In addition, to the extent that they do compete in grain storage and grain trading, there has never been any suggestion of any collusive or improper competitive behaviour between the parties, such that there is no reason to suggest it will occur in the future. There is simply a hypothetical possibility of a decrease in competition - a possibility which the parties strongly refute. It does not establish a substantive lessening of competition under the TPA.

In any event, irrespective of hypothetical disincentives as to competition through the joint venture, in this matter, the Transaction brings substantial public benefits which heavily counter-weigh any theoretical lessening of competition.

9 Competition assessment - grain marketing services

9.1 Introduction

GrainCorp and AWB believe that the joint venture arrangement would not substantially lessen competition in the national market for grain marketing services. Following the formation of the joint venture the parties will not acquire any competitive advantage in relation to their grain marketing and other activities as this Transaction only concerns export grain.

9.2 Separation of export from domestic operations

The parties have structured the arrangements so that GrainCorp Marketing and AWBAU are not placed in a more advantageous position in relation to domestic grain acquisition and trading compared to any other industry participant.

GrainCorp Marketing and AWBAU will have to separately negotiate domestic transport with transport providers for their domestic grain tonnage.

9.3 Impact on competition

Some parties may initially be concerned that the implementation of the joint venture will disadvantage competing traders in relation to de-regulated export grains -- for example, by AWBAU and GrainCorp Marketing having access to the JVCo's export rail rates or the rail providers passing on those benefits to the parties domestic operations.

Given the competitiveness of export grains markets, where Australian producers and marketers are simply "price takers", there is no lessening of competition likely from the formation of the JVCo. Indeed, the efficiencies potentially achievable by the JVCo are more likely to increase the competitiveness of the parties, and potentially others, in the international sales of de-regulated export grains.

GrainCorp's export volume is relatively small in terms of tonnage and does not include wheat. In any event, GrainCorp's access to AWB export rail rates, even if they were obtainable for non-wheat, would at best enable GrainCorp to more effectively compete against AWB and others in relation to export grains (and therefore query impact on any Australian market). This benefit should also be viewed within the following context:

- AWB(I) holds the export rights for bulk wheat under the WMA and is the only party that acquires rail services for export wheat. Accordingly AWBI already enjoys the benefit associated with its wheat export volumes in accordance with the purpose of that legislation. The JVCo does not change this arrangement or this benefit;

- rail providers often apply differential pricing for wheat and non-wheat grains given the lower density (i.e. lower tonnage of grain in a rail wagon) and fragmented tonnages of non wheat grains. Rail services providers will continue to be able to do so, post the formation of JVCo. They will also continue to be free to offer competitive rates to traders competing with the parties;

- ABB Grain is the major exporter of non wheat grains (around 1 million tonnes of barley) from Victoria and New South Wales. ABB's marketing position will be further enhanced through its merger with Ausbulk; and

- the JVCo will face significant countervailing power from the merged Pacific National and Freight Australia with control of over 95% of grain rail services in New South Wales and Victoria and Queensland Rail with 100% of the export task in Queensland.

In addition, the relevant product market in which rail freight service providers operate is bulk rail freight including minerals. Glencore, one of the world's largest barley traders and an emerging trader in Victoria, presumably has an ability to obtain access to freight rates based on its indirect interest in coal exports in Australia through its interest in Xstrata Coal. The parties do not know whether this could occur, but it is equally as much a hypothetical as the parties obtaining any domestic freight advantages.

The merged ABB / AusBulk, with ABB's Single Desk rights for barley already enjoys an advantage over GrainCorp on rail freight. The joint venture, if it assists GrainCorp in obtaining more advantageous freight rates, only allows GrainCorp to become a more effective competitor.

Much of the discussion in this Section 9.3 involves hypothetical situations - it is intended to show that if GrainCorp obtains any domestic advantages from the joint venture, it is very, very difficult to see that they translate to a lessening of competition which is substantial in the market for grain marketing services.

9.4 Access to information

Some parties may have some initial concerns that, as a result of the Transaction and GrainCorp's ownership of storage and handling facilities in the relevant States, the parties may receive some form of information advantages in relation to information.

The key information the JVCo will have will be export grain inventory information and the export program for AWB and GrainCorp. This information will be used by the JVCo to co-ordinate export logistics in an efficient manner.

The information held by each of the parties

Traditional competition analysis emphasises that, in order to deliver any meaningful competitive advantage, information available to a party must be confidential. GrainCorp is firmly of the view that information held by GrainCorp in relation to grain held at its sites does not deliver to it any competitive advantage.

The amount of grain held by a grain owner in a particular storage facility is unlikely to reflect its full grain trading position. The operator of a grain storage does not know the grain trading position of a grain owner for the following reasons:

- stock information does not reflect a grain trader or owner's position or reveal their marketing strategy, as it only reflects one part of the trading equation. The other information elements, i.e. open purchases and open sales executed by title transfers or under delivered contacts, will continue to be confidential to the grain owner;
- given the liquidity of the grain market, it is possible (and is regularly done for trading reasons) for a grain owner to hold all or part of its grain stocks in another grain owner's name. Storage operators are not aware of or privy to those sale and purchase arrangements;
- GrainCorp already has knowledge of AWB and other party's stock information. GrainCorp, as demonstrated by history and as previously reviewed by the Commission, does not derive an advantage from this information; and
- information held by a bulk-handler as to grain quality and market prices and shipping stem is also generally available.

The JVCo will not have an information advantage that could be used to the detriment of other grain participants. In addition, the purpose of ring-fencing is to meet AWB corporate governance requirements for AWBI.

9.5 Stock Swaps

Some parties may have initial concerns that, as a result of the Transaction and GrainCorp's ownership of storage and handling facilities in the relevant States, the parties may receive unfair information advantages in relation to stock swaps.

Stock swaps and arbitrage

Differences in rail rates between silos to alternative domestic and export destinations create arbitrage opportunities for stock swaps between owners of grain. JVCo may create new relativities for rail rates between silos that take into account efficient supply chain cost for export grain.

JVCo however will not be involved in stocks swaps or marketing decisions for grain stored in GrainCorp or AWB Grainflow or other silos. Decisions in relation to stock swaps are made by the grain owners where the arbitrage benefit is contractually shared between the two counterparties. There are two forms of stock swaps in GrainCorp silos.

Client initiated stock swaps

Grain received at a silo is retained at that silo on behalf of the customer. GrainCorp can not outload, title transfer or stock swap that grain without the permission of the client owning that grain (with the exception of GrainCorp initiated operational stock swaps as discussed below).

Client initiated stock swaps are undertaken by two storage clients without reference to GrainCorp. GrainCorp is not aware of the stock swap instruction until after a deal is struck between the parties and is never privy to the contractual details behind the deal.

GrainCorp initiated stock swaps

GrainCorp has entered into storage and handling contracts with its clients to allow it to initiate stock swaps for a limited range of operational reasons i.e. delays or grain unavailability due to weather problems, grain infestation or fumigation, grain quality problems, inaccessible grain, mechanical failure, rail delays and last of grain in storage being outloaded.

The purpose of these stock swaps is to enable all clients to gain access to grain in the event of storage (and sometimes rail) operational difficulties. Most clients appreciate the advantage of this system in terms of outloading reliability. It should be noted that:

- Customers can reserve grain (at a fee) so their grain will not be stock swapped; and
- GrainCorp must pay any affected client compensation for the freight and quality differential.

The stock swaps rules are in the GrainCorp storage and handling agreement, a copy of which is available on the GrainCorp web site (http://www.graincorp.com.au/docs/services/storageAndHandling.html#agreement).

9.6 Conclusion

The parties believe that the joint venture arrangements will have no negative impact on the national market for grain marketing services - if there is any impact domestically, the joint venture should lead to the parties being more effective competitors.

10 Competition assessment - bulk freight rail services

10.1 Introduction

GrainCorp and AWB have discussed the joint venture proposal with Queensland Rail and Pacific National. These companies, who will be dealing with the joint venture, have informed the parties that they support the principles of the joint venture given its ability to provide much needed co-ordination and efficiencies in the export grain supply chain.

In addition, in Queensland, Queensland Rail is the only bulk rail freight service provider and in New South Wales and Victoria, apart from some operations of ARG for Manildra, Pacific National is the only bulk rail freight provider. In this situation, the parties believe that it is difficult for those rail providers to object to the Transaction on the basis of aggregation of export grain volumes as between GrainCorp and AWB. In particular, given that GrainCorp's export grain volumes are modest (and are in relation to non-wheat grains) and the improved information flows will ensure the more efficient use of silos and the rail/storage interface which also benefit the rail service provider, the parties submit that it is difficult to see any negative impact in the market for bulk freight rail services

10.2 Benefits to rail freight providers

The joint venture will enable the railways and industry to generate savings and encourage rail-based investment (e.g. in rail outloading equipment). This will be achieved through:

- information exchange to explain and discuss fully the information that allows rail freight companies to determine performance/investment in rail outloading;
- performance payments that link rail, storage and marketing to minimise supply chain costs;
- improved co-ordination of rail orders; and
- improved interface arrangements between rail and storage.

The Joint Venture also assists in co-ordination of appropriate investment in rail infrastructure in country and regional areas of Australia which will assist rural communities and also facilitate ensuring Australia has an internationally competitive grain industry.

10.3 Conclusion - impact on competition

The parties believe that there has been a countervailing increase in the position of the rail freight providers through freight rail aggregation (e.g. the merger between Pacific National and Freight Australia) and that in most parts of Australia, AWB and GrainCorp now negotiate with a single freight provider.

As to the aggregation of AWB and GrainCorp through JVCo, it is very difficult to argue that this will prevent entry into bulk rail freight markets given that it is accepted that bulk rail freight involves the transport of many commodities, not just grains.

In these circumstances, there is unlikely to be any impact on the rail freight provider.

11 Competition assessment – domestic market

11.1 Introduction

The Commission may also wish to understand if there are any vertical issues associated with the joint venture given GrainCorp's ownership interest in Allied Mills. In particular, whether there are any incentives for JVCo to advantage Allied Mills over other domestic participants in allocation of grain stock and domestic transport.

GrainCorp and AWB believe that the joint venture arrangement will not substantially lessen competition in the domestic market in general and in the purchase of domestic transport in particular. The JVCo will have no negative impact on the domestic grain market nor create a supply risk for domestic grain consumers.

11.2 Allocation of grain stocks

JVCo will not make decisions in relation to grain acquisition, storage and its movement; these will be made by the grain owner.

JVCo will initially choose the allocation of specific sites for export in accordance with each party's nominated export requirements subject to final AWB and GrainCorp approval. Furthermore as explained in Section Nine stock swaps are only able to be executed with the agreement of the parties that physically own the grain.

GrainCorp cannot now, nor can the JVCo in the future, "empty out an area" of grain to disadvantage or advantage a domestic customer. The formation of the JVCo will involve the transfer of the GrainCorp's activities in terms of site selection to the JVCo. This will enable site selection for export grain to take into account *both* silo operations and rail operation issues. Since AWB has no interest in Allied Mills, AWB's 50% interest in JVCo should in fact provide greater comfort to industry participants that there will not be any disadvantaging other industry participants.

By way of background the current arrangements for moving wheat from specific silos in accordance with AWBI (and other customer's) shipping requirements involve the following arrangements:

- AWB provides its shipping program to GrainCorp. Accordingly GrainCorp already has information on AWB exports, which is of little value in itself as:
    - GrainCorp is not permitted to export wheat;
    - GrainCorp is not privy to the contractual details behind the shipments and program;
    - much of this information, eg the shipping stem, is available publicly;

- GrainCorp normally selects the specific silos for a customer's export order against its nominated quality specification. GrainCorp chooses a range of silos, within a port zone, based on GrainCorp's knowledge of stock inventory to meet GrainCorp's silo operational requirements - eg grain is not blocked or under fumigation or outloading configuration; and

- finally and importantly, the owner of the grain has to provide final approval by issuing an order number before movements can occur. The owner of grain will generally not allow their grain to be moved to export if there is an arbitrage opportunity with a domestic client for stock swaps. For example if AWBI had a parcel of wheat at Condobolin silo it would not allow that wheat to be moved to Port Kembla for a $2 pt saving in transport cost if it could obtain in excess of $2 pt from a stock swap with a flour miller.

Even if the Commission were not to accept the parties arguments as to why such a suggestion of "emptying out" a region by GrainCorp is not possible and instead believes it were possible - following that line of argument means that GrainCorp could do it now. Accordingly, even accepting that argument, the establishment of JVCo does not adversely affect competition.

11.3 Domestic transport arrangements

The JVCo will only be involved in transport logistics for export grain (predominately rail) and will not be involved in contracting transport logistics for domestic grain. Furthermore the JVCo can not create an advantage for AWB or GrainCorp domestic grain transport given the structural separation in the transport of domestic and export grain, namely:

- over 80% of domestic grain is moved by road (compared to less than 5% of export grain). The JVCo will only be a small contractor of road services with its relatively small export road task; and

- domestic end-users, who do have access to rail, will continue to have direct access to the most competitive rail rates into their facilities given their ability to control the tonnes received, the unloading of trains and their ability to contract dedicated trains based on specific wagons. This is demonstrated now where AWB (and GrainCorp and most other traders) sell wheat to flour millers at up-country silos and the miller organises the movement of the grain to the mill.

The parties believe that the JVCo could have an indirect positive benefit for the domestic grain market as improvements in rail efficiency, through improved storage infrastructure and operations, may provide flow on benefits for domestic rail logistics.

11.4 Conclusion

The parties do not believe that the Transaction will have any negative impact on the domestic market, but will instead have an overall positive impact as there will be flow on effects to other industry participants from the efficiencies and investment by rail freight operators.

12 Conclusion

The parties believe that the Transaction will not detrimentally affect the existing competitive conditions in the Australian grain industry.

The Transaction has been structured in such a way by the parties that domestic competition will not be substantially lessened, such that the co-ordination of the export grain supply chain and the necessary information flows to maximise efficiencies is quarantined through JVCo from the activities of the parties in relation to the domestic market.

The JVCo will operate only in relation to export grain. The JVCo is an independent third party which will negotiate the rail rates for AWB's export grain in the future, with the additional volume of GrainCorp's export grains being aggregated.

Moreover, the incorporated joint venture structure of JVCo "ring fences" the domestic operations of the parties and at the least preserves if not enhances the existing level and dynamics of competition. It is submitted the Transaction enhances domestic competition in that by creating a more transparent environment for rail rates, the JVCo creates a more efficient grain supply chain and provide incentives for additional investment in grain storage. This will benefit all industry participants and Australian grain growers in particular.

In these ways, not only does JVCo and the Transaction lead to increased efficiencies in the export grain supply chain, but the Transaction and the formation of JVCo:

- increases the competitiveness of Australia's export grains - export enhancement; and
- increases the international competitiveness of Australia in grain exports generally.

GrainCorp and AWB appreciate the Commission's consideration of this matter and in particular, the consideration of the interim authorisation request, given the impending harvest and logistics involved in this export grain task.

GrainCorp Operations Limited **AWB Limited**
27 September 2004

Appendix One (Confidential) - Joint Venture Agreement

[Confidential - information deleted]

Appendix Two (Confidential) – Open Access Arrangements for AWB

[Confidential - information deleted]