

UNDERTAKING

TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition & Consumer Commission given for the purposes of section 87B of the *Trade Practices Act 1974* (Cwlth)

By

GRAINCORP OPERATIONS LIMITED (ABN 52 003 875 401) and
AWB LIMITED (ABN 99 081 890 459)

September 2004

1 Interpretation and definitions

In these undertakings, the singular includes the plural and vice versa.

A reference to "these undertakings" is a reference to all of the provisions of this document.

"Act" means the *Trade Practices Act 1974* (Cwlth).

"AWB" means AWB Limited (ABN 99 081 890 459).

"Business Day" means a day on which banks are generally open in New South Wales.

"Commission" means the Australian Competition & Consumer Commission.

"Deregulation Date" means the date on which AWB ceases to hold the statutory monopoly in the export of wheat under the *Wheat Marketing Act 1989* (Cwlth).

"GrainCorp" means GrainCorp Operations Limited (ABN 52 003 875 401).

"Joint Venture" means the proposed joint venture company formed by GrainCorp and AWB.

"Joint Venture Shareholders Agreement" means the agreement between GrainCorp, AWB Limited and the Joint Venture dated [] 2004.

"Parties" means GrainCorp and AWB.

"Related Body Corporate" has the meaning given to it by section 4A of the Act.

2 Background

- 2.1 In June 2004, the Parties sought informal clearance from the Commission in relation to the formation of a joint venture company which will provide various logistics services to GrainCorp and AWB in Queensland, New South Wales and Victoria in relation to grain for export.
- 2.2 After considering the Parties' submissions and conducting market enquiries, the Commission advised GrainCorp and AWB that it may be preferable to have the matter considered under the authorisation procedures in the Act.

2.3 As part of proceeding with the authorisation application, GrainCorp and AWB offer the following Undertakings.

3 Commencement of Undertaking

3.1 These Undertakings come into effect when all of the following conditions are satisfied:

- (a) the Undertakings are executed by GrainCorp and AWB; and
- (b) the Commission accepts the Undertakings so executed.

4 Undertakings

4.1 If at any time during the term of the Joint Venture, AWB ceases to hold the statutory monopoly of export of wheat under the *Wheat Marketing Act 1989* (Cwlth), the Parties agree that they will:

- (i) seek confirmation from the Commission that it does not intend to oppose the Joint Venture on the basis that the continued operation of the Joint Venture after the Deregulation Date would contravene sections 45 and 50 of the Act; and
- (ii) if necessary, enter into good faith negotiations with the Commission in relation to any undertakings required by the Commission (which are also acceptable to the Parties), to address any concerns that the Commission may have in relation to the continued operation of the Joint Venture after the Deregulation Date.

4.2 If the Commission and, following any appeal, the relevant appeal body do not accept any undertakings offered by any or all of the Parties in accordance with paragraph 4.1(ii) above, and the Joint Venture cannot otherwise be restructured to address any of the Commission's concerns, the Parties agree that they will terminate the Joint Venture in accordance with the terms set out in the Joint Venture Shareholders Agreement.

5 Obligations to procure

5.1 When the performance by GrainCorp or AWB of an obligation under these Undertakings requires a Related Body Corporate of GrainCorp or AWB to take some action or refrain from taking some action, GrainCorp or AWB will procure that Related Body Corporate to take that action or to refrain from taking that action.

6 Confidentiality

Public inspection

6.1 GrainCorp and AWB acknowledge that the Commission will make this Undertaking available for public inspection.

Reference to Undertaking

6.2 GrainCorp and AWB acknowledge that the Commission may from time to time publicly refer to this Undertaking.

7 No derogation

- 7.1 GrainCorp and AWB acknowledge that these Undertakings in no way derogate from the rights and remedies available to any other person arising from the Joint Venture and conduct to which these Undertakings relate.

8 Provision of information

- 8.1 The Commission may, at any time after the Deregulation Date, request information from GrainCorp and AWB that the Commission reasonably requires for the purpose of monitoring such undertakings. GrainCorp and AWB will comply within ten Business Days of receipt or such other period of time as may be agreed by the Commission.

9 Enforcement action

- 9.1 For the avoidance of doubt, the Commission may take enforcement action at any time during any relevant limitation period whether before or after the Deregulation Date in respect of any breach by GrainCorp or AWB of a term of these Undertakings or the Act.

10 Notices

- 10.1 Any notice or other communication to the Commission pursuant to these Undertakings must be sent to:

General Manager, Mergers & Asset Sales
Australian Competition & Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

or in whatever manner the Commission subsequently notifies GrainCorp or AWB.

- 10.2 Any notice or other communication to GrainCorp pursuant to these undertakings must be sent to:

Business Development Manager
GrainCorp Operations Limited
Level 10, 51 Druitt Street
Sydney NSW 2000

Any notice or other communication to AWB pursuant to these undertakings must be sent to:

General Manager
Supply Chain Operations
AWB Limited
380 La Trobe Street
Melbourne VIC 3000

EXECUTED by GRAINCORP OPERATIONS LIMITED in accordance with section 127(1) of the *Corporations Act 2001* (Cwlth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company secretary*
*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)
*delete whichever is not applicable

EXECUTED by AWB LIMITED in accordance with section 127(1) of the *Corporations Act 2001* (Cwlth) by authority of its directors:

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company secretary*
*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)
*delete whichever is not applicable

ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

.....
Graeme Julian Samuel
Chairman
Australian Competition & Consumer Commission

Date: 2004