



# MANILDRA FLOUR MILLS (MFG) PTY. LTD.

100% AUSTRALIAN OWNED

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Mr David Hatfield  
Adjudication Branch  
ACCC  
PO Box 1199  
Dickson ACT 2600

1 October 2004

(Fax 02 6243 1211)

Dear Mr Hatfield,

**Application for authorization A302233, A30234 and A30235. GrainCorp/AWB.**

I refer to your letter of 28 September 2004. Manildra did not receive a copy of this letter until we specifically requested a copy, having found out about it from others.

We note that comments on the application for an Interim authorization are due by 1 October 2004- 2 days after we have obtained a copy. Further we were initially not able to download the substantial amount of documentation that make up the three applications.

**This urgent response relates to the Interim issue only.**

Manildra **opposes** the Interim authorization.

It's presumed that the ACCC has already decided that the proposal is anti competitive and hence in breach of the Trade Practices Act. As the ACCC has not made any public statement on the GrainCorp/AWB merger /joint venture application for review we are not aware of the exact aspects of the ACCC concerns about this proposal. The ACCC should have made a public statement outlining its concerns with the proposal before the parties moved to the next stage of applying for authorization. We understand that it is ACCC announced policy to make such statements.

Manildra is now being asked, within a very limited time, to comment on the application for an Interim authorization. To some extent we are being asked to do so in a blackout of vital information.

An Interim authorization is a serious issue. Where the ACCC has already decided that there is a likely breach of the law, the ACCC should not grant an Interim authorization except in the most exceptional circumstances, such as issues of public safety or national economic crisis.

An Interim authorization is in most cases effectively a final. The market factors in the new situation, the parties act accordingly and there is a premium in delaying the final decision as an Interim is in place. Past ACCC/TPC experience is that temporary arrangements are never temporary, they have permanent effects.

The Interim authorization will have permanent results as part of the application is that neither AWB nor GrainCorp will conduct, carry on or promote a separate export logistics business in Queensland, NSW and Victoria. It is assumed that this will mean a dismantling of some existing operations. Operations that are unlikely to be re established if the final ACCC decision is to refuse the application.

As to the Undertaking offered we will comment on that in our submission on the final decision but would say that it simply does what the law already enables the ACCC to do. (section 93 (4) of the TPA)

On the reasons for an Interim authorization submitted by the applicants, we do not accept these. The arrangements have not been in place before, there are no overwhelming public policy issues to have the arrangements in place now, there is no reason why the proposal cannot wait the proper public authorization process. Much of what is proposed can proceed without the Interim authorization. Some of the aspects of the proposal will have permanent outcomes should an Interim authorization be granted.

The parties have requested an interim authorization on the basis,

- impending, above average harvest
- need to publish ESR's
- need to put logistical arrangements in place.

After a large harvest last year, the AWB will export in excess of 18 million metric tonnes in the 2003/04 year (likely to be a record level of exports in a 12 month period). This is a tremendous result that required the current supply chain participants (AWB, Ausbulk, CBH, GrainCorp, Rail Providers) to work very closely and efficiently. This coming harvest is not forecast to be as large as last season, given poor spring rains to date (nb. GrainCorp are currently lowering their production forecast). Hence, given the export shipping performance of last season's crop, a dramatic overview would hardly need to be introduced under an interim authorization measure.

The AWB will be able to published Estimated Silo Returns (ESR's) as it has done for many prior seasons. The ESR is exactly that, an estimate only of the Pool return paid to growers. Hence, an interim authorization is not needed to be granted for this reason.

GrainCorp believes that the joint venture will give it confidence to invest in out-loading infrastructure. Such infrastructure improvements take an extended time frame to introduce (i.e. budgeting, planning, tenders sought, structures built). Any infrastructure improvements that GrainCorp wishes to implement as a result of a joint venture going ahead would only apply for the 2005/06 season (i.e. 12 months and beyond). Manildra maintains that GrainCorp would be constantly analyzing the upgrading its infrastructure, regardless of the joint venture proceeding.

As stated earlier an Interim authorization is only warranted in exceptional circumstance and we would suggest never in a merger situation. This proposal covers both merger and non merger issues.

Apart from the merits of any Interim authorization, the issue of process is not to be ignored. If the ACCC grants an Interim authorization it can be assumed that it has decided the public benefit issue. Why else grant an Interim authorization? To say that it can be undone is commercial naivety. Frankly it would be more honest for GrainCorp/AWB to simply merge and have that subject to an application for authorization. Rather than this halfway house and playing regulatory monopoly.

Finally, we ask that the proper authorization process take place and that third party input not be gazumped by an Interim authorization.

Yours truly,



Mr. John Campbell  
General Manager  
Manildra Flour Mills