



Ref: SOE/MFN0287/nb

19 October, 2004

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MARKS/ITEM	

Mr. T. Grimwade
 The General Manager
 Adjudication Branch
 Australian Competition & Consumer Commission
 PO Box 1199
 DICKSON ACT 2602

Dear Mr. Grimwade

SUBMISSION TO ACCC RE AWB / GRAINCORP LOGISITICS JOINT VENTURE

~~CONFIDENTIALITY REQUESTED~~ ✎

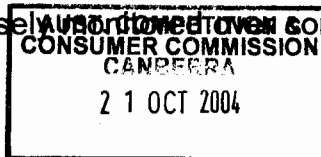
Further to your letter of 28 September and our submission dated 1 October re the proposed interim authorization of the above joint venture, we advise that we do not object to the concept of the proposal and its objective of reducing supply chain costs. We do, however, have some concerns at the potential effect that the joint venture may have on free and open competition in the industry sectors of grain storage and handling and marketing.

As a 50% owner of Australian Bulk Alliance, ABB is concerned that ABA's major competitor (Graincorp) will, in joint venture with its major customer (AWB), be negotiating and determining the actual and comparative freight rates for Graincorp, GrainFlow and ABA sites. The maintenance of a competitive situation in this scenario is very dependant on the absolute confidentiality of data and complete transparency by AWB and Graincorp in relation to Estimated Silo Returns (ESR's). Based on past evidence of the lack of confidentiality between Graincorp's storage and trading divisions we believe that enforceable protocols for the ring fencing of data should be instituted. Total transparency in relation to actual freight rates and those disclosed in ESR's has been problematic in the past and should be subject to periodic and random review by appropriate bodies such as the Office of the Regulator General in Victoria.

The issue of the allocation of scarce rail rolling stock resources, particularly in Victoria and New South Wales, is of major concern. The joint venture will provide services for the export of grains by the two largest operators on the east coast, including the rail rate negotiations, grain, site and cargo allocations. As a result there appears to be a major potential for other export marketers to be squeezed out in the regular, timely and appropriate allocation of rolling stock. The issue of the availability, adequacy and allocation of rolling stock has been growing over the past year and given the size and strength of the venture partners, this is, in our view, a critical commercial issue, which we urge the Commission to seriously consider. Certainly from our part it is a situation, which will be closely monitored over the coming months.

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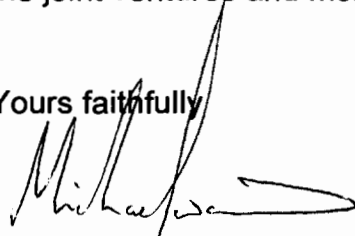
While the operation of the J/V is to be nominally restricted to export grain logistics, it is often difficult to distinguish "export" grain from "domestic " grain and storage sites are not necessarily designated as "export" or "domestic" sites. It is inevitable, therefore, that the proposed J/V will have flow-on implications for the competitiveness of domestic grain storage, accumulation and marketing.

While the AWB/Graincorp submission attempted to address the issue of "notional stocks", "cleanout of stocks etc, it does not, in our view give sufficient weight to the abovementioned uncertainty or the degree of data confidentiality required to protect the stock sovereignty of non joint venture marketers. Similarly the ability to allocate prime sites and segregations to specific grain varieties, which favour wheat at the expense of other grains and, by extension, other parties, is an issue, as it will result in lower service levels yet higher supply chain costs for other grains/parties.

We understand that the AWB/Graincorp submission includes an "Open Access Deed", details of which have not been disclosed due to confidentiality issues. In the absence of those details, we would support the request by CBH (submission dated 1 October 2004) for "the provision of on-going non-discriminatory access to the respective joint venture parties' storage and handling systems and (where relevant) ports, to third party traders, customers and exporters". Of particular concern to ABB is that non-discriminatory access to port services be maintained in accordance with established industry and maritime experience.

In conclusion, I would repeat that we do not object to the concept of the joint venture, but do have concerns over issues, which may affect free and open competition within the storage and handling and marketing sectors of the grain industry. If the joint venture is to be approved by the commission, we would seek that appropriate, enforceable undertakings be put in place by the joint ventures and monitored by ACCC or other appropriate bodies.

Yours faithfully

A handwritten signature in black ink, appearing to read "Michael Iwaniw", written over a white background.

Michael Iwaniw
Managing Director