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Export Grain Logistics Joint Venture between GrainCorp Operations Limited and AWB Limited

Proposed joint venture to improve transport of export grain from country silos to export terminals

Final submission in support of the application for authorisation under sections 88(1), 88(8) and 88(9) of the Trade Practices Act 1974

23 March 2005

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Final submission in support of applications for authorisation A30233, A30234, A30235

1 Executive summary

1.1 Introduction and purpose of this Submission

This Submission is made by GrainCorp Operations Limited ("**GrainCorp**"), AWB Limited ("**AWB**") and Export Grain Logistics Pty Limited ("**Export Grain Logistics**"). This Submission responds to the Commission's draft determination dated 16 December 2004, and issues raised by parties at both the pre-decision conference on 14 February 2005 and in submissions made to the Commission since the draft determination and the pre-decision conference.

1.2 The request for authorisation and issues raised by third parties

The factual context of the authorisation

In responding to the various submissions from third parties, it is worthwhile reiterating that the request for authorisation is actually quite limited.

As set out in the Parties' original submission dated 27 September 2004, applications for authorisation have been lodged by GrainCorp, AWB and Export Grain Logistics ("**Parties**"), pursuant to sections 88(1), 88(8) and 88(9) of the *Trade Practices Act 1974 (Cth)* ("**TPA**") for:

(a) the acquisition of the ordinary shares in Export Grain Logistics, a special purpose company with a share capital of $2.00 and each of AWB and GrainCorp having a 50% shareholding; and

(b) the export collaborative arrangements ("**Joint Venture**") between GrainCorp and AWB, pursuant to a Joint Venture Shareholders Agreement between GrainCorp, AWB and Export Grain Logistics ("**Joint Venture Agreement**"), which joint venture arrangements are referred to in this Submission as the "**Transaction**".

Great lengths have been taken to limit the Joint Venture to export grain transport and not have any impact on domestic transport arrangements.

It is also important to reiterate that the Joint Venture is in relation to the export of wheat owned by AWB (as it effectively has the sole right to export wheat in Australia), the export of GrainCorp export grain and in relation to arrangements where GrainCorp as a grain storage and handler is providing services to AWB in a supplier / customer relationship in relation to export grain.

Accordingly, the Joint Venture primarily relates to the Parties' own grains or to situations in which they need to commercially collaborate because GrainCorp is a supplier of storage and handling services to AWB and more effective co-ordination leads to improved efficiencies in the export task.

Issues raised by third parties

Against this background, it is worthwhile considering the general issues that have been raised by third parties since the release of the Commission's draft determination. The Parties believe the main issues raised are as follows:

(a) **Export Grain Logistics is not the only way to achieve efficiencies** - third parties have suggested that while accepting that the Joint Venture provides public benefits and is "one way" of achieving such supply chain efficiencies, the Joint Venture is not the only means to achieve such increased efficiencies. This is considered in summary form in Section 1.3;

(b) **Further integration or "intervention" is needed to achieve all of the available efficiencies** - third parties have suggested that without further integration with rail operators the Joint Venture, while achieving efficiencies, will not achieve the full extent of efficiencies achievable without further integration and the establishment of arrangements such as those established for the Hunter Valley Coal Chain Logistics Team ("**HVCCLT**"). This is considered in summary form in Section 1.4;

(c) **There is a need to ensure confidentiality between Export Grain Logistics and AWB and GrainCorp where Export Grain Logistics obtains genuinely confidential information on grain storage and handling from third parties** - third parties have suggested that in arranging trains, Export Grain Logistics will obtain data on ABA and other grain storage and handling operations that could give its shareholders, AWB and GrainCorp, a competitive advantage and that confidentiality provisions in the Joint Venture should be improved. This is considered in summary form in Section 1.5; and

(d) **The efficiency benefits achieved by Export Grain Logistics will make GrainCorp and AWB more effective competitors against third parties** - third parties have suggested that the efficiencies and benefits that the Joint Venture would provide may give the Parties competitive advantages against third parties in relation to grain storage and handling and grain marketing. This is considered in summary form in Section 1.6.

There are minor variations on these issues, but the Parties believe that this is a general statement of the main points that have been raised. The Parties also believe that they are not really new issues as they are all addressed in the Commission's consideration of the Transaction in the draft determination.

The Parties believe the most relevant response to these issues is the actual experience of benefits under the interim authorisation.

1.3 Commercial rationale for Export Grain Logistics

Why did the Parties seek authorisation?

The Parties strongly believe that the formation of the Joint Venture is necessary to facilitate improved co-ordination in the movement of export grain and to introduce efficiencies for the export of that grain.

One party has questioned the Parties' commercial rationale for seeking an authorisation. The Parties initially informally notified the Commission of the proposed establishment of Export Grain Logistics as an acquisition. In discussions with the Commission, while firmly believing that the Transaction would not lessen competition substantially in any market, the Parties took note of the Commission's views that certain arguments put by the Parties (primarily relating to efficiencies) may be more appropriately considered in an authorisation context. There are no other reasons for the approach of seeking an authorisation and the Parties have been consistently upfront and straightforward on this basis.

The structure of the Joint Venture

Some third parties have questioned why Export Grain Logistics has been set up as an independent company with a small number of staff to operate as a break-even business (in the sense that it will not be a separate profit centre for its shareholders).

That answer is also straight forward. An unincorporated joint venture was considered by the Parties, but after a thorough analysis it was rejected on the basis that it creates considerable uncertainties in contracting liabilities and risk apportionment, that is having the ability to contract and pay for services and apportioning costs.

The corporate structure was also considered the most relevant to facilitate appropriate ring-fencing obligations of confidential information as between the Parties, to preserve the independence of GrainCorp and AWB as competitors in grain storage and handling and also to satisfy the confidentiality concerns of third parties. The corporate structure creates clear legal obligations for directors, and employees have clear employment relationships. This is discussed at paragraphs 7.20 to 7.34 of the draft determination.

In developing the most appropriate structure to achieve the above objectives, the Parties considered whether individual contracts with the rail freight service providers or, alternatively, a joint venture would be the best way of delivering the benefits sought.

To reiterate, the Parties believe that the efficiencies and logistics cost savings which Export Grain Logistics will deliver could not be effectively achieved by individual agreements between the Parties and the rail freight providers. Export Grain Logistics will provide the best vehicle to bring together GrainCorp (as the operator of infrastructure) and AWB (as the manager of the National Pool and holder of the rail contracts). The Parties decided that forming a joint venture to manage export grain logistics would be the preferred route given:

- the requirements to ring-fence this task to meet AWB (International) Limited's ("**AWBI**'s") National Pool management policies;

- the need for Export Grain Logistics to operate as an independent and neutral party with service providers, to enable incentives and other pricing criteria to be passed through to the Parties; and

- the need to put in place a neutral party to execute and independently co-ordinate rail and related storage and supply chain activities, to ensure rail contractual obligations are met.

Accordingly, from a legal as well as commercial perspective, an incorporated Joint Venture remains the most sound structural approach and the only way that the Parties believe is open to them to achieve efficiencies.

The Joint Venture has achieved efficiencies in reducing costs and has increased revenues / exports

Some of the third party submissions have questioned the extent of the public benefits that will be achieved, although no party has suggested that no public benefits will be achieved. However, the Parties continue to believe that there are substantial public benefits to be achieved, consistent with the Commission's draft determination. The interim authorisation granted by the Commission on 7 October 2004 has confirmed to the Parties that the Joint Venture can meet its objectives and that Export Grain Logistics is best placed to:

- ***achieve substantial efficiencies in the export supply chain for grains from the East Coast of Australia working between AWB and GrainCorp, with positive flow-on effects to the general industry.*** The Parties note that irrespective of comments regarding whether the Joint Venture is achieving all of the possible grain export supply chain efficiencies, it is achieving considerable efficiencies between AWB and GrainCorp through increased co-operation to reduce costs. The Joint Venture is also increasing export revenues through timely export sale and by reducing demurrage costs. The resultant increased revenues directly result in an increased National Pool, increased returns for growers and increased Australian wheat exports. These efficiencies and export increases cannot be disputed by third parties;

- ***increase efficiencies in the handling of rail freight tasks for export grain from upcountry silos to export port terminals.*** These efficiencies are explained in more detail in the public benefits section of this Submission (Section 2). There is a clear opportunity for improved co-ordination between rail freight operators and grain storage and handlers to deal with Australia's export grain task by Export Grain Logistics co-ordinating logistics. Whether or not full co-operation with each rail service provider is achieved at this time, the Joint Venture provides considerable opportunities for improvement whether it is with the existing service provider or any other rail service provider in the future;

- ***improve co-ordination between GrainCorp, AWB, Pacific National and Queensland Rail (and any other rail freight providers who wish to be involved), to facilitate the use and investment in rail infrastructure and rail lines in regional areas and communities of Australia, to support the efficiency of the Australian export grain industry.*** This involves GrainCorp and AWB co-operating through Export Grain Logistics to identify areas for improvement in the export grain task. It is then a question for shareholders and individual companies to determine what they choose to support. The Parties appreciate that this authorisation application has been supported by AgForce Grains and the Victorian Farmers Federation for a number of reasons including this improved co-ordination - see paragraphs 7.51 and 7.52 of the draft determination;

- ***achieve efficiencies in the use of available storage infrastructure and the use of available bulk rail freight from all service providers to maximise export grain volumes and minimise costs.*** This has occurred through maximising available storage in areas during difficult harvest times and co-ordinating rail tasks accordingly;

- ***improve the co-ordination of the rail export task which will decrease demurrage costs for grain exports associated with shipping delays from Australian ports.*** As discussed further in Section 2 of this Submission, there have been substantial revenue gains through reduced demurrage costs which translates directly to increased National Pool returns, a task that has been possible by co-ordination among the Parties themselves; and

- ***improve the rail export task to increase efficiencies to enhance and improve the international competitiveness of Australian grain exports, a specific public benefit under the TPA.*** There is currently considerable congestion at Australian export ports (for example, Newcastle in 2005 and Geelong in 2004). The improved co-operation between GrainCorp and AWB has led to improved vessel turnaround, increased certainty and has enhanced the reputation of Australia's wheat exports in the global market.

As to the argument that these efficiencies could have been achieved without the Joint Venture - the answer to that, quite simply, is that previous arrangements have only been able to achieve limited improvements in these types of efficiencies.

1.4 The argument as to increased integration and "intervention"

Joint Venture is willing to work with Government and third parties

There are currently existing contracts with some rail service providers which have meant that to date, the rail service providers have not been inclined to pass on or at least share efficiency benefits they have obtained through the operation of the Joint Venture. This has meant that the extent of benefits initially anticipated have not yet fully flowed through to the Joint Venture. However, the Joint Venture was established against the background of the Pacific National / Freight Australia merger which the Commission informally cleared in the anticipation of increased rail access in Victoria. Although some parties, such as Pacific National, have suggested that the Joint Venture should be extended to include Pacific National to integrate and capture these additional efficiencies, the Parties believe that this would curtail the potential benefits and efficiencies of increased rail freight competition, the potential for which the Parties believe is a substantial public benefit.

In addition, although the Parties note that HVCCLT experience was not an example put forward by the Parties, it is a broad group of parties which meet only for the purpose of overall logistics planning. That group is not a single entity but comprises Port Waratah Coal Services, Pacific National, Queensland Rail, ARTC, RailCorp and Newcastle Port Corporation.

The Joint Venture has been structured to comply with the TPA

The Parties have gone to considerable lengths to ensure that the Transaction is structured so that it does not contravene the TPA. The Joint Venture achieves the efficiency goals sought by the Parties, their grower based grain grower shareholders and industry participants (including rail freight service providers), without detrimentally affecting competition in the domestic environment. This is consistent with the Commission's approach to exports and the TPA. The Commission has in fact accepted this point at paragraph 7.218 of the draft determination where the Commission states:

> "*The ACCC also notes that the joint venture has been structured to minimise competition concerns which may also have the effect of limiting the potential efficiency gains that a more interventionist model would have provided. It could be argued that for the joint venture to be fully effective in achieving the desired savings and benefits there would need to be greater intervention and integration, on the one hand, between the joint venture, the storage and handling system and the rail providers.*"

However, the Parties believe that this issue does not go to the merits of the authorisation application, it merely relates to the quantum of the available benefits to be assessed against what the Commission has implicitly acknowledged are limited detriments. In any event, if the Commission were to take the view that it would allow greater integration / intervention as it has the potential for greater benefits, then on a balancing of detriments and benefits the Commission could specifically allow such integration in its authorisation and it would be a question for the Parties whether they choose to integrate to that level. In that sense, even if this argument by certain third parties were correct, the Commission itself has the ability to increase the available benefits to further outweigh any detriments should the Commission consider that was necessary.

1.5 Operation of Export Grain Logistics and confidentiality

Structural separation

There has been some misapprehension regarding the separate operations of Export Grain Logistics from the operations of GrainCorp and AWB. Export Grain Logistics, as a separate legal entity, will be responsible for certain tasks to improve the export grain logistics task. In that sense Export Grain Logistics will be, as expressed at the pre-decision conference, a "slave" to the Parties to make their operations more efficient and to act as an independent party for export grain transport services only.

Accordingly, third party grain storage and handlers such as ABA, Brooks Grain (Glencore), Sumitomo and Elders will still see competition from GrainCorp and AWB. This activity is quite separate from the role of Export Grain Logistics. Indeed, the structural separation of roles is why there is a confidentiality regime between AWB and GrainCorp to ensure that Export Grain Logistics remains separate in relation to the competing businesses of AWB and GrainCorp such as storage and handling and grain trading.

Incentives and the nature of information received

It is also worthwhile considering the incentives which will operate and the precise nature of the information received and undertake a practical analysis of some of the confidentiality conditions that have been suggested by third parties.

The purpose of forming Export Grain Logistics is, first and foremost, to improve efficiencies and to achieve logistics costs savings for grain exports. This purpose is achieved through improved co-ordination of export grain storage and transport activities and increased access to information from the Parties to facilitate the export grain task.

In summary, Export Grain Logistics will:

- be responsible for procuring transport logistics services for export grain;

- manage export supply chain activities and provide logistics planning and co-ordination services, including grain allocation and optimisation, cargo aggregation, service provider management and monitoring of performance and operational management; and

- acquire information from each of AWB and GrainCorp in relation to their export grain to enable it to improve co-ordination and achieve efficiencies in the fulfilment of the above functions. Confidential information between AWB and GrainCorp where these parties compete will be subject to ring-fencing obligations between Export Grain Logistics and the Parties.

The need to ensure confidentiality was one of the reasons that a separate company was established. As a separate company Export Grain Logistics will have in place strict arrangements to ensure that it does not breach any confidence between the Parties and between third parties. These arrangements will apply in relation to information provided to the Joint Venture where that information is actually confidential (this is discussed later in this Submission) or commercially sensitive. Such information is ring-fenced from the Parties.

ABB and Pacific National have suggested their own forms of confidentiality obligations. AWB and GrainCorp take confidentiality very seriously. As an illustration, AWB has corresponded with ABB in relation to a suggestion in its most recent submission that certain confidentiality principles were put to AWB in writing. AWB has advised ABB that it has no record of any such request.

In any event, the Parties note that if third parties believe that AWB and GrainCorp will not honour confidentiality provisions, the imposition of additional obligations will not overcome that initial distrust and fear of breach. Accordingly, the Parties believe that the best reason to believe that data such as ABA's confidential data will be protected is actual incentives.

In ABA's case, it is concerned as to the knowledge which Export Grain Logistics may obtain in negotiating with rail service providers regarding ABA's silo operations in Victoria and Southern New South Wales. AWB already has this information as ABA's largest customer and will continue to have this information as the party which actually contracts with ABA. Leaving aside the question as to whether this data is actually confidential, any efforts to attract grain to silos will need to be propagated to the market.

When considering the risk that truly confidential data will not be protected under the confidentiality provisions of the existing storage and handling business, the question that must be asked is - what incentive would AWB have to breach any confidentiality obligation? The ABA relationship itself involves AWB as grain exported through the ABA silos is primarily exported through the Port of Melbourne, in which AWB has a 50% interest. This port operation competes with GrainCorp's export ports in receiving grain. Quite apart from the legal ramifications of failing to honour confidentiality obligations in the contract between AWB and ABB as to silo management, AWB has every commercial and financial incentive to honour the obligation and ensure that information is not provided to GrainCorp.

The Parties deal with Pacific National's comments elsewhere in this Submission in detail. Nonetheless, the Parties believe that the key solution to ensuring confidentially is structural separation. Structural separation achieves the desired result without the additional ring-fencing and confidentiality provisions Pacific National has suggested. The Parties note that Pacific National state on page 37 of their submission to the Options for Reform of the Victorian Rail Access Regime Canvassed by the Victorian Department of Infrastructure dated 31 August 2004:

> "*There are significant costs associated with full structural separation of below-rail and above-rail operations. A full corporate separation model should only be considered if there are serious and exceptional conflict-of-interest or structural issues that cannot be addressed by a less restrictive ring-fencing model.*"

The Parties believe that based on its own submissions, due to the variety of factors mentioned above, the Parties have actually already complied with the more rigorous structural separation that Pacific National has mentioned.

Existing confidentiality regime

The Parties note that they have already taken on board concerns expressed in relation to confidentiality and the structural separation of Export Grain Logistics already provides such confidentiality protection. Leaving aside the fact that third parties must prove that AWB and GrainCorp would breach those confidentiality provisions, it is very difficult to see AWB having any commercial incentive to do so or to allow GrainCorp to access that information.

1.6 The arguments put forward by third parties confuse the impact on competitors, with the impact on the competitive process

Certain third parties have raised issues that the Joint Venture will provide benefits to the Parties (by a more efficient export grain supply chain or in relation to grain storage and handling as well as trading generally), which will make the Parties more efficient competitors. There are two broad responses to this issue.

At an initial level parties such as Brooks Grain have a marketing alliance with the international commodity trader Glencore[1] and Elders. These parties are themselves part of large conglomerates and are more than capable of looking after themselves from a competition perspective to achieve efficiencies. Indeed they or their related corporations may possess overall advantages to the Parties given their Australian and global scale.

Second, these issues ignore the distinction between the impact on the competitive process as opposed to competitors. In *Boral Besser Masonry Limited v Australian Competition & Consumer Commission* (2003) ATPR 41-915, Gleeson CJ and Callinan J stated as follows:

> *"The purpose of the Act is to promote competition, not to protect the private interests of particular persons or corporations. Competition damages competitors."*

The Joint Venture may make the Parties more efficient competitors, but it does not prevent increased competition - particularly given competitors like Elders and Brooks / Glencore would not be viewed as likely to shrink from being vigorous competitors.

1.7 The Transaction will give rise to substantial public benefits

Introduction

The Parties' rationale for implementing the Transaction is to address supply chain co-ordination issues that currently occur in order to create more efficient logistical supply arrangements for grain to be exported from the East Coast of Australia.

In particular, the Parties believe that the Transaction delivers a number of clear and substantial public benefits including:

- cost savings from more efficient transport of grain destined for export from up-country grain accumulation silos to port;
- clearer signals and incentives for efficient investment in rail, grain handling and port infrastructure;
- better information and increased transparency on which to base investment decisions about grain storage and transport infrastructure; and

[1] Glencore, a major international grain trader with a significant interest in Xstrata, owns 100% of Brooks Grain

- improved use of existing infrastructure by improving train scheduling and co-ordination.

Public benefits

The Parties note that there has been some misapprehension as to the type of public benefits that flow from the Joint Venture. There are cost reductions through the more efficient use of resources and improved planning as a direct result of the Joint Venture. These cost reductions are both between GrainCorp and AWB and with third party service providers. The second set of benefits flow directly to the revenue line because of AWB's role in the export of wheat and the return of revenues to wheat growers in increased National Pool returns. Again, these savings (such as demurrage costs) can occur irrespective of co-operation with third parties.

There was and remains an imperative to achieve these public benefits for the most recent and future harvests for the following reasons:

- it was anticipated that Pacific National, which was in the process of integrating with Freight Australia at the time of lodgment of the authorisation application, would not have sufficient resources to handle the 2004/05 harvest in Victoria and New South Wales unless there was improved co-ordination between AWB and GrainCorp. This transpired, especially in northern New South Wales where there was a lack of rail capacity in the Newcastle zone;

- the provision of rail services for export grain is under threat from line closures and lack of investment in rail and rail related infrastructure, particularly in rural regions and communities of Australia. The long term viability and provision of export rail services will be dependent on reducing rail costs and improving asset utilisation - an area where the New South Wales Government has adopted a sensible and practical approach and effectively directed AWB and GrainCorp to work together for this very reason. The interim authorisation has provided numerous actual examples of improved co-ordination such as that which occurred at Werris Creek;

- the implementation of the Transaction will lead to improved co-ordination of the export grain task, which will provide considerable efficiencies. Many of these efficiencies will spread throughout the industry as the efficiencies obtained by rail freight providers and increased expenditure have a flow-on effect to other industry participants. The interim authorisation has allowed a demonstration of actual benefits between GrainCorp and AWB, such as:

  (i) the three trains in the Port Kembla zone which saved costs and freed two of five train sets for Pacific National (see paragraph 2.4 below); and

  (ii) the use of the sub terminals at Werris Creek which allowed faster loading of vessels, better use of ports and reduced demurrage.

To the extent that these benefits have not been fully reflected at this time, this is because rail freight logistics providers have not yet reflected these benefits as lower rail rates. For example Pacific National has arguably enjoyed efficiency benefits in dealing with Export Grain Logistics, but because they have existing contracts which retain current pricing or even allow them to increase prices ***and*** because Export Grain Logistics has not any ready alternative providers at this time, these savings have not been obtained by the Joint Venture;

- if the Transaction did not proceed, the loss of improved co-ordination and even lack of co-ordination, would result in higher supply chain costs to grain growers, delays in sales, potentially lost sales for Australia and higher shipping costs; and

- finally, one benefit not anticipated at the outset of the Transaction is that the finalisation of the Joint Venture has provided a counter-balance to the powerful rail service providers (made more important because of recent aggregation in the rail freight industry). *The ability to provide a counter to price increases or lack of train availability that may otherwise have occurred, even if it is not possible to achieve as great a quantum of benefits as originally anticipated in the short term or in fact quite possibly simply at least holding the current position, is a substantial public benefit.*

At the pre-decision conference, Pacific National mentioned the 2006 expiry of the contracts for rail freight which it inherited in the FreightCorp privatisation. The Parties believe that because of this change there is in fact considerable scope for there to be a re-negotiation of the grain freight task such that, while addressing some of Pacific National's concerns as to viability on certain branch lines, it will also deliver the opportunity for increased public benefits through various forms of efficiencies for the relevant parties.

In terms of transparency of the benefits and the flow on to the industry in general, GrainCorp notes that if it implements any storage and handling efficiencies, AWB will seek to ensure that other storage and handlers also implement similar efficiencies as part of its focus on achieving the least cost export path. This will ensure that any improvements in rail will quickly transfer to other storage and handlers and the industry in general. Accordingly, rather than being a reason to limit the term of the authorisation, as Pacific National suggested, it will be a factor in providing increased public benefits.

1.8 No significant impact on competition and therefore no significant public detriments

The Joint Venture is limited in scope

The proposed joint venture arrangement is very limited in scope -- it relates to managing the transport of export grain from up-country silos to export port facilities in a more efficient manner. In particular:

- the Transaction is a narrow joint venture through a very limited corporate entity (Export Grain Logistics). It is not a merger between the Parties and so the Transaction preserves flexibility for the future and retains the existing competitive position from a domestic perspective;

- the Transaction only relates to export grains. In this regard some of the submissions from third parties focused on the current single desk export rights that GrainCorp inherited from GrainCo in New South Wales relating to domestic malt barley and export barley, canola and sorghum produced in New South Wales as the New South Wales Grains Board's agent - these rights in fact expire in October 2005;
- Export Grain Logistics in not involved in the acquisition of storage services or any decision making in relation to trading (including allocation of storages against orders and stock movements). These functions will continue to remain with the respective Parties;
- Export Grain Logistics does not have any assets of any substantive nature - it will have only 4-6 staff;
- Export Grain Logistics is not a separate profit centre so it does not create financial disincentives to competition as between the Parties; and
- the Transaction does not combine ownership of any assets.

Transparency in tendering and competitive neutrality in rail freight logistics

Pacific National is a joint venture between Toll Holdings Limited (**"Toll"**), a corporation with a market capitalisation of approximately $4.327 billion as at 7 March 2005 and Patrick Corporation Limited (**"Patricks"**), a corporation with a market capitalisation of $4.147 billion as at 7 March 2005. Pacific National has raised concerns that the Joint Venture and GrainCorp in particular with its one grain train may "cherry pick" rail tasks and that Pacific National would face unfair competition from the Joint Venture shareholders GrainCorp and AWB.

There are a number of responses to this issue. The shareholders of Pacific National, Patricks and Toll, are large Australian companies. They are well known as fierce competitors and are more than financially well positioned to be effective competitors.

The arguments as to the unfairness or cherry picking of Pacific National freight tasks, even if that were to be the case, is not "unfair" competition given:

- the shareholders of Pacific National acquired Freight Corp knowing the contracts it had and they would be assumed to have made their bid for the assets accordingly; and
- Pacific National owns substantial sunk capital and operates a network with significant scale that gives it unparalleled competitive and cost advantage over any new entrants.

Perhaps the most powerful argument to counter the issues put forward by Pacific National is the underlying incentive on AWB (as being responsible for wheat exports), to ensure that grain is transported efficiently. This means that AWB is self interested to ensure that Pacific National is commercially viable in relation to grain transport and remains a provider of rail freight services, but at the same time does not increase prices to an extent that is detrimental to growers. Such a price increase would not be in AWB's commercial interests.

As to the use of confidential information or the request for "competitive neutrality", the assertion ignores the fact that AWB has no financial incentive to favour GrainCorp and its incentive is to financially maximise the efficiencies in the export supply chain. As a further matter, if AWB sought to have GrainCorp "sharpen its pencil" on a tender or have any third party do so, it is free to do that now - the Joint Venture does not change that position. If that request could be made of GrainCorp now by AWB, which AWB believes it can without breaching any confidentiality, there is no utility in Pacific National's requested conditions.

As a final matter, the Pacific National requested conditions do not overcome the issue of whether even if GrainCorp and AWB acted as one rail freight logistics purchaser, there would be such a competitive detriment as to warrant any conditions. Given that AWB and GrainCorp in most States already face one rail freight provider, it is difficult to see the introduction of any increased competition or even balancing of competitive positions, as being anything other than pro-competitive. Accordingly, the imposition of conditions is not warranted.

Grain storage and handling

At the pre-decision conference, ABB/ABA acknowledged that the Joint Venture provided benefits and was one way of providing such benefits, but that it could be provided in other ways such as the tri-partite contract that ABB enjoys with AWB and with the Australian Railroad Group entity, Australian Southern Railroads, in South Australia. That is a "legacy" contractual arrangement arising from historical times when parties were State rail organisations and in a situation where the rail provider is willing to co-operate.

In New South Wales, Pacific National has not been willing to separately co-operate with GrainCorp as well as with AWB. That was one reason for forming the Joint Venture.

Accordingly, the Parties again reiterate that the corporate structure was the only vehicle in which to advance these initiatives for a more efficient rail export grain task.

It should also be noted that the Parties have gone to lengths to try to accommodate any operational concerns of others and ABA as to confidentiality by virtue of the separate corporate structure.

Perhaps most importantly, the question in the authorisation test is well answered by the fact that if ABA has these concerns with AWB as a competitor in relation to grain storage and handling and grain trading, these concerns and issues exist now. The Joint Venture does not change this position in relation to AWB, and if anything, the interposition of a separate legal entity improves this position. As to the position of GrainCorp in the Joint Venture, these concerns are also addressed through the separate legal entity.

The Parties also note that in terms of incentives, the export grain supply chain is "only as fast as the slowest person". Accordingly, neither AWB nor GrainCorp would have any incentive to distort or slow the transport of any type of export grains by other traders such as ABB, Elders or Brooks as that would only lead to congestion on the export path and in particular at the export port terminal with a resulting impact on vessel queues and high demurrage costs. If this occurred it would cost GrainCorp or AWB revenue at the port terminal if it owned the terminal or it would tend to cause demurrage costs through port congestion if a vessel was delayed.

In ABB's recent submission there is a suggestion that the Joint Venture would affect Sumitomo. GrainCorp also notes that Sumitomo sought to and did acquire GrainCorp's 50% interest in ABA irrespective of the Joint Venture - an approach inconsistent with a statement that the Joint Venture would detrimentally and adversely effect the competitive viability of ABA.

Conclusion on public benefits vs detriments

Accordingly, GrainCorp and AWB believe that the Joint Venture arrangements will not give rise to any, or any significant, public detriments. In fact, the Parties believe that the proposed arrangements should lead to a pro-competitive result for the industry -- in particular, a more competitive and efficient supply chain, which will deliver substantial public benefits through an improved export supply chain as well as to the Australian grain industry in general, and grain growers specifically.

In any event, in relation to the arguments as to possible detriments, the Commission gave third parties ample opportunity to raise specific actual detriments as opposed to theoretical detriments and apprehensions from parties which are competitors to greater or lesser extents. The Parties submit that these hypothetical detriments are clearly outweighed by demonstrated actual public benefits.

In these circumstances, even with lesser than hoped for co-operation by some rail freight service providers, the Parties experience under the interim authorisation confirms their view and also confirms the Commission's initial assessment of likely public benefits of $10 to $30 million under the authorisation.

For the Commission's convenience, a matrix of the type of public benefits that have been and will be achievable is set out below in Table 1. Dollar values are included on the basis of actual numbers to date where it is possible to quantify them at this stage, noting that the Joint Venture has only been operating for a short period of time. In order to be conservative, some savings, such as increased capacity usage of wagons, have not been included in Table 1. Therefore, Table 1 is only intended to give an indication of the nature of efficiencies, without attempting to quantify and aggregate them all at this time.

Table 1: Matrix of benefits

Benefit	Revenue Enhancement $US	Cost Saving A$	Cost Saving to Pacific National
Address lack of rail capacity in Newcastle Zone		864,820	
3 trains in Port Kembla Zone		175,000	2 trains not required
Improved rail logistics			Operating savings
Improved supply chain (lower vessel costs)	418,000		
Use of Sub Terminals ie Werris Creek (lower demurrage costs)	1,102,000		Increased utilisation
Improved loading capacity			Increased utilisation

Source: AWB and Export Grain Logistics

1.9 Other matters

Austport has raised certain issues as to the Parties' motive and rationale for the Joint Venture, and the extent of disclosure of information on the Joint Venture. With the inclusion of additional Parts of Schedule One to the Joint Venture Agreement (which deals with requirements for service contracts and for rail freight service contracts) and Schedule Two to the Joint Venture Agreement, both in Annexure One to this Submission, together with the Agreement supplementing the Joint Venture Agreement at Annexure Two, the Parties have now disclosed the Joint Venture Agreement in its entirety as to the arrangements being authorised.

The Open Access Deed is a document between AWB and GrainCorp that is confidential and is not being authorised. Further, the Parties are not seeking authorisation of the storage and handling arrangements between AWB and GrainCorp. Such arrangements detail AWB and GrainCorp's customer and supplier relationship (as are such agreements between AWB and ABA or AWB and ABB).

The Commission was also provided with copies of relevant board papers as to the Joint Venture on a confidential basis. It is difficult to contemplate greater disclosure by the Parties to the Commission or to the public relating to the authorisation.

If Austport still has questions as to process or information or disclosure requirements, it is not up to the Parties to provide further explanation. It is respectfully suggested that Austport has the opportunity to obtain its own advice on these matters and can obtain its own explanations as to process.

1.10 Duration of requested authorisation

The Parties are seeking an authorisation for the period where AWB has power for export wheat under the Wheat Marketing Act 1989 (Cth) ("**WMA**"), or for a period of not less than five years. It is, however, noted that in the draft determination the Commission has determined that the Undertaking referred to in the original submission by the Parties is not necessary on the basis that the Commission has a general right of review in such changed circumstances.

In light of this position, the Parties submit that the authorisation should be granted for such sufficient time as to allow the Joint Venture an opportunity to have commercial certainty and enter into appropriate contracts to obtain the public benefits set out in this Submission balanced against the timeframe for any review of the WMA. In these circumstances, the Parties submit that a reasonable balance is to allow at least five full harvests such that the authorisation would continue until November 2010 having regard to the scheduled review of the WMA in 2010.

1.11 Conclusion

The Parties have engaged in extensive upfront dialogue with the Commission and the Commission has undertaken extensive market inquiries since the Transaction was first notified to the Commission on 16 June 2004.

The Parties believe that the Joint Venture has and will continue to deliver substantial public benefits in relation to the export of grains from Australia. It should also be reiterated that it is almost entirely the Parties' own grain being exported.

The Parties believe that they have demonstrated actual benefits that have and will flow from the Joint Venture. The Commission appears to accept that considerable effort has been made by the Parties to structure the Joint Venture so that it has minimal, if any, competitive detriment and concerned third parties have only been able to point to theoretical or possible detriments. In this context the Parties submit the Commission is correct in its draft determination that the public benefits outweigh any detriment.

As to the suggestion of conditions, the Parties suggest that these should only be contemplated where there is a suggestion that benefits may not outweigh the detriments. There has been no evidence of any actual detriments during the operation of the interim authorisation.

In any event it is worthwhile considering the merits of the suggested conditions. ABB has suggested certain confidentiality conditions be put in place with Export Grain Logistics as the Joint Venture may become aware of what ABB is doing at the ABA silos in terms of making them attractive to grain growers. AWB believes that this concern is unfounded as AWB (ABA's largest customer) is the party that contracts with ABA, as it does with GrainCorp for storage and handling. This type of information is already available in the market place and is not confidential. First, questions must be asked is that data actually confidential. If it is being used to attract growers to a site it must be in the public domain. Second, if there was anything that was confidential, it would already be known by AWB as ABA's largest customer. If ABA / ABB thought that confidence were to be breached, it shares exactly the same risks as GrainCorp does as it also has AWB as its largest customer.

In these circumstances, the Joint Venture and the existence of Export Grain Logistics does not change the position in the market.

At a more practical level, rather than mere speculation, because AWB has an interest in Melbourne Port Terminal which competes with GrainCorp port terminals, AWB has every interest in ensuring anything which is confidential is kept confidential from GrainCorp.

As to Pacific National's suggestions for confidentiality, ring-fencing and competitive neutrality, the Parties note that Pacific National has the same issues now irrespective of the existence of the Joint Venture and whether it was incorporated or unincorporated. In any event, the Parties also believe that Pacific National's refusal to unconditionally assign or novate contracts with AWB to Export Grain Logistics (and the Parties believe it would so refuse irrespective of any confidentiality, ring-fencing or competitive neutrality provisions) during the period of the interim authorisation, reinforce that Pacific National's market position means that, consistent with the Commission's draft determination, these issues are a matter as between commercial parties.

At a time of increased focus on the importance of exports to the Australian economy and the benefits that they bring to the overall economy, the Parties would hope that the actual benefits shown so far in relation to the Joint Venture will confirm for the Commission the accuracy of the Commission's draft determination. If that were to be the case, the Parties can then focus upon implementing improvements in the grain export supply chain and seek to overcome bottlenecks that have occurred whether in the Victorian rail access regime or other parts of the export chain.

1.12 Structure of Submission

This Submission contains six Sections as follows:

Section Two	-	provides an analysis of public benefits that have arisen since the establishment of the Joint Venture pursuant to the interim authorisation
Section Three	-	provides background information on rail freight issues and why the Joint Venture has not yet been able to capture all efficiencies
Section Four	-	provides a competition assessment in relation to grain storage and handling, grain marketing services, ports and the domestic grain price
Section Five	-	provides information in relation to the structure of the Joint Venture and how this addresses confidentiality and contestability concerns
Section Six	-	sets out a brief conclusion
Annexure One	-	Parts A and B of Schedule One and Schedule Two to Joint Venture Agreement
Annexure Two	-	Agreement Supplementing and Amending the Joint Venture Agreement
Annexure Three	-	Confidential elements of the Submission

2 Public benefits associated with Joint Venture since interim authorisation

2.1 Introduction

Since the grant of the interim authorisation, the Joint Venture has provided GrainCorp and AWB with substantial opportunities to reduce supply chain costs for export grain with no impact on the domestic industry. These opportunities have been realised, with the Joint Venture achieving maximum public benefits and minimum, if any, public detriment.

This Section 2 is intended to demonstrate, on the basis of the Commission's invitation, the actual public benefits that have arisen since the interim authorisation was granted. It is also important to recognise that the interim authorisation was granted immediately before harvest. It was therefore difficult to put in place many arrangements with third parties and indeed some third parties declined because it was only an interim authorisation.

This Section will include some material from the original submission. The Parties believe it is important to appreciate that these benefits would not have flowed without the Joint Venture and therefore it is important that these benefits be considered in context.

It is also important to consider that benefits arise in four forms as follows:

- **Better supply chain co-ordination** - from developing commercial solutions to address the inefficiencies and dis-connects that exist in the current supply chain.
- **Cost savings** - from lower overall supply chain costs. These will flow back to National Pool participants. Since the grant of the interim authorisation, Export Grain Logistics has saved at least $1 million in rail costs.
- **Revenue enhancement** - from lower shipping / demurrage cost / improved sales. This will pass through to National Pool participants through increased pool returns at end of pool life.
- **Cost savings to Pacific National (or any other rail operator)** - from improved and more efficient operations. Since the grant of the interim authorisation, Export Grain Logistics has enabled Pacific National to save 2 trains and increase the loading capacity of its wagons. Most of these benefits have not translated into lower costs yet, as this requires:
  - (i) negotiation with Pacific National to obtain a fair share of these in lower rail rates; and/or
  - (ii) increased competition with the introduction of new rail providers to obtain rail rate savings.

2.2 Without the Joint Venture, there would continue to be greater inefficiencies in supply chain co-ordination

As noted in the Parties' initial submission, significant inefficiencies currently exist in the export grain supply chain due to its fragmented nature. There is a 'dis-connect' between the owners of individual parcels of grain, the owner and operator of grain storage and handling infrastructure and the acquirer of rail transport services. This means that some of the decision makers (including GrainCorp and AWB) lack:

- the ability to link the two functions involved with rail movements, being placing orders for rail and the loading of rail;
- commercial incentives to minimise the overall grain export grain supply costs; and
- access to all information that is relevant for the efficient co-ordination of the export grain task.

Specific examples of these inefficiencies include:

- poor rail cycle times as trains wait many hours for loading and/or unloading;
- poor use of (limited) rail resources with uneven month to month demand for rail transport by AWB and GrainCorp;
- lack of investment at GrainCorp silos to load trains faster; and
- delays in shipping, with significant demurrage costs incurred by AWB, resulting from delays caused in delivering grain to the port terminal due to decreased co-ordination between the storage owner and the rail provider.

The parties believe that efficiencies and logistics cost savings have been achieved in the export supply chain through Export Grain Logistics developing commercial solutions to address the inefficiencies that currently exist in the export supply chain. These are further examined below.

2.3 The Joint Venture has achieved public benefits

The Joint Venture has resulted in public benefits which the Parties believe outweigh any public detriments.

At paragraph 7.57 of the draft determination, the Commission stated that

> *"... if the joint venture results in a more efficient use of existing rail stock and infrastructure that increases overall availability and timeliness for all users, that would be a public benefit".*

The parties submit that Export Grain Logistics has and will allow the parties to reduce export logistics costs and increase rail capacity to service the variable export grain task between seasons and within a season.

Export Grain Logistics believes that it has resulted in a more efficient use of existing rail stock and infrastructure through:

(a) a reduction in export logistics costs;

(b) use of sub-terminals;

(c) loading of wagons;

(d) efforts to address the lack of rail capacity; and

(e) increased co-ordination from silo to port to vessel.

2.4 Reduction in export logistics costs

The Commission's draft determination stated at paragraph 7.54 that:

> *"It appears to be broadly accepted that the joint venture would be able to generate efficiency savings and potentially lower grain freight rates for the applicants."*

The Parties note that some submissions have observed the likelihood that the Joint Venture will reduce transportation costs for grains. For example:

(a) Pacific National's submission of 9 February 2005 comments at paragraph 6, page 12 that it does not dispute the Commission's findings in paragraphs 7.54 to 7.56 of the draft determination, that the Joint Venture will potentially result in some efficiency savings and possible lowering of grain freight rates, and that this would constitute a public benefit; and

(b) Brooks Grain and Elders' joint submission of 21 February 2005 comments at page 6 that the Export Grain Logistics joint venture may negotiate rail freight rates downwards.

The Joint Venture has permitted Export Grain Logistics to enter into arrangements with GrainCorp and negotiations with Pacific National which the Parties believe will result in a reduction in rail freight rates in the medium to longer term.

As part of the negotiations that Export Grain Logistics had with Pacific National this harvest 2004/2005, it was agreed that Export Grain Logistics would use its independent position to change a number of traditional arrangements and capture efficiencies for the rail provider and its customers.

Examples of the types of changed arrangements agreed to and their consequence are outlined below:

(a) **single trains must be loaded at no more than three sites on a single continuous line from port** - Export Grain Logistics recognised that there are savings to Pacific National by agreeing to this arrangement. Through regular performance planning meetings between Export Grain Logistics, Pacific National and GrainCorp , Export Grain Logistics is attempting to identify further initiatives such as the ability to load whole trains at single sites. This is a difficult task as the grain storage and handler must seek to ensure sufficient grain is available to best maximise the efficient use of rail assets. The Parties also note that while Pacific National may submit that doing this was already within GrainCorp's commercial ability, the Parties believe that as noted in the Parties original submission, in the absence of the Joint Venture there is no commercial reason for GrainCorp to incur this extra responsibility as it obtains no benefit. While the Parties acknowledge that this saving to Pacific National has not yet been incorporated into this year's rates, Export Grain Logistics and the Parties believe that this altered behaviour should be reflected in future freight charges by the rail service provider;

(b) **provision of information to assist Pacific National to better plan the rail task** - Export Grain Logistics has provided details of its clients' tonnage by the agreed zones to Pacific National for the Port Kembla zone. Export Grain Logistics will also provide a train allocation plan linked to this estimated tonnage. This will assist Pacific National to undertake better planning with more complete information about the rail task and should be able to generate savings through better asset utilisation and staff rostering. The Parties note that prior to the Joint Venture this information would not have been shared with a co-ordinating entity. Again, the Parties expect that the savings accrued from this initiative will be reflected in future rates by the rail service provider;

(c) **cost saving initiatives in the Port Kembla zone** - Export Grain Logistics has agreed to work with Pacific National to implement cost saving initiatives in the Port Kembla zone. These initiatives may include implementing a plan to operate with less than five unit trains with reduced days of operation. After some consultation between the parties, it was agreed that three trains would be operated in the Port Kembla zone, in comparison with the five on hand. This has allowed Pacific National to move a train into the Newcastle area and move locomotives into the coal business. Pacific National has recognised the benefits of these initiatives through varying its original freight offers by $175,000[2] and removing some previous penalties - this is an indisputable public benefit;

(d) **alignment of hours of work at ports with demand for resources -** the suggested hours of work at ports will be put forward by Export Grain Logistics to the port operator in line with the demand for resources and supply of export grain. As noted at (c) above, Export Grain Logistics has agreed to only utilise three trains with Pacific National in the Port Kembla zone, so the selection of load sites and/or days/hours of operation will be varied to more efficiently utilise these assets. For example, Export Grain Logistics is currently examining the respective costs of working four or five days in comparison with seven days. This would optimise the task further and place more emphasis on pre-positioning the cargo. These benefits are again to Pacific National and should be reflected in future freight rates.

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[2] This calculation is based on AWBI receivals into the five GrainFlow sites and actual non wheat shipments to date of 160,000mt.

The Parties accept that it is difficult to demonstrate actual cost savings where the rail operator declines to provide any benefit for savings to them. In many ways this is another issue. However, there have been some actual savings of $175,000 and there is clearly the potential for increased savings and public benefits.

2.5 Use of sub-terminals

Export Grain Logistics has used sub-terminals to facilitate a reduction in export logistics costs through efficient use of infrastructure.

As outlined in the Parties' initial submission, the Joint Venture was intended to suggest the most efficient areas for infrastructure use to GrainCorp and AWB. It is then a question of which infrastructure the Parties choose to use for the particular export task at hand. However, it is not Export Grain Logistics which makes that decision, it merely assists in optimising infrastructure usage and depending on the individual parties decision, then co-ordinates with the rail provider to optimise the use of rail assets at appropriate times to match port and shipping schedules.

In November and December 2004, Export Grain Logistics arranged to accumulate stock into Werris Creek from various regional locations to assist in the following areas:

(a) harvest receivals;

(b) smoothing demand for rail resources;

(c) contingency planning; and

(d) better utilisation of rolling stock (capacity of wagons).

Between 17 December 2004 and 3 January 2005, Export Grain Logistics moved an estimated 57,000mt of stock to Newcastle from Werris Creek. Over this period the Parties were faced with a reduced number of available sites to load to given fumigation programmes and line washaways.

Had this initiative not been instituted, AWB and GrainCorp's other options would have included deferring the shipping period (with the potential for later increased congestion and waiting times), deferring sales (with reduced returns for growers as prices fall away) or redirecting vessels to other ports (further congesting those ports, assuming the grain quality and stock was available, and still facing the task of shipping the same tonnage through Newcastle at a later date). Further, Export Grain Logistics would have been faced with Pacific National having idle resources (and costs). The program would have been condensed into a shorter period in a port with potential capacity problems, which may have resulted in higher storage/carry costs, lost opportunities to make sales, or higher transport costs as alternatives are investigated and implemented.

These movements of stock from Werris Creek to Newcastle resulted in an estimated saving in vessel waiting time of 29 days. Based on the average vessel hire rate of $US38,000 per day, a 29 day saving represents **$US1,102,000**, much of which the parties expect to be reflected in improved despatch earnings or demurrage. This type of public benefit savings will flow back to National Pool growers as a higher pool return. This type of public benefit is actually technically an increased revenue item as it increases the value of Australian exports and is clearly a benefit to growers.

Recent history shows that such a practice was avoided in the past due to the additional double handling costs levied by the storage operator and rail charges. The Joint Venture has provided an independent mechanism to support the necessary planning required for such a decision, and brokered the arrangement across all parties.

The Parties expect that the 100,000mt of stock remaining at Werris Creek will deliver similar benefits when it is moved through to port. Indeed, Export Grain Logistics is contemplating moving more tonnage through Werris Creek in a post-harvest environment, a strategy to pre-position grain, smooth out the transport task and facilitate the faster loading of vessels.

2.6 Loading of rail wagons - performance and increased efficiency

Export Grain Logistics has assisted with the loading performance of wagons, representing a more efficient use of existing rail stock and infrastructure that increases overall availability and timeliness for all users.

For many years, Pacific National has been critical of the rail wagon loading performance of bulk handlers, citing numerous examples of under-or over-loading. Pacific National has provided data to AWB that incorrect loading of wagons results in them achieving only 90% capacity from their rail fleet. The reasons for this are varied and include:

- the varied loading performance of bulk handlers;
- the rail operator arriving late at sites and leaving before loading can be completed;
- the number of unserviceable wagons being presented for loading; and
- the range of different wagon types being presented for loading, all having different capacity.

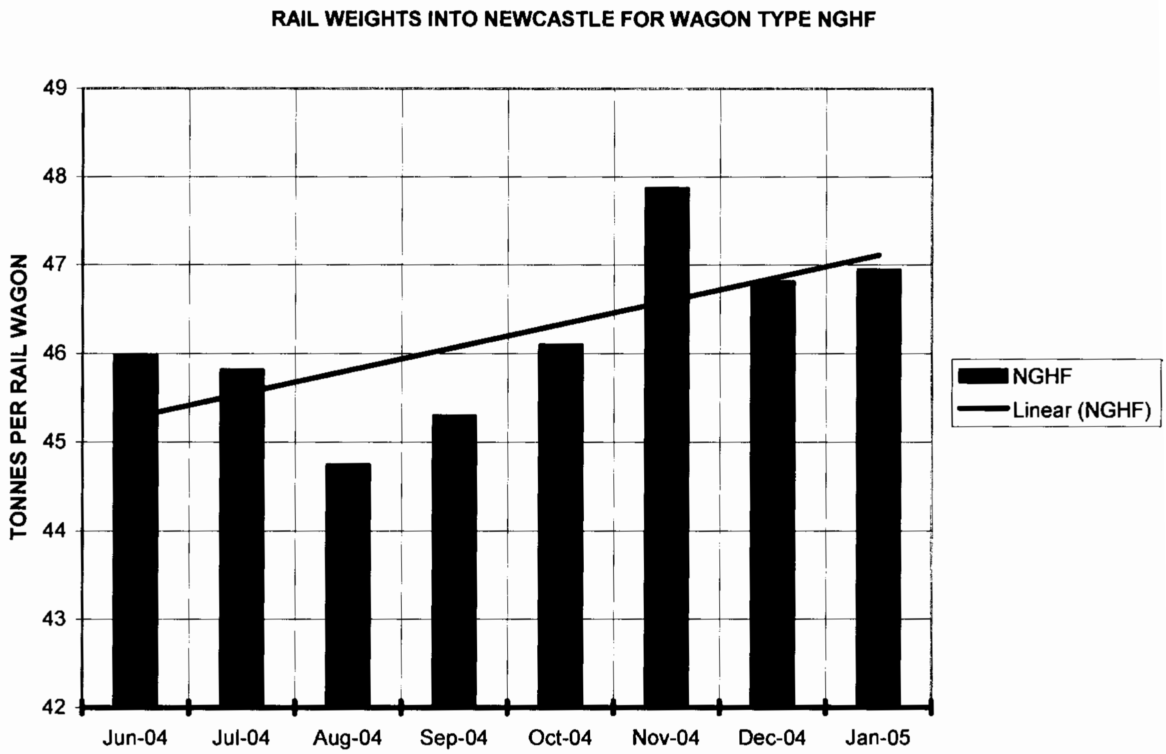
Bulk handlers have attempted to solve this problem over the years to little effect, mainly due to the different perspective each party holds about the matter and the interrelationships of the supply chain process. GrainCorp and AWB held the view that this is one area in which the Joint Venture can assist the rail operator and develop initiatives to improve rail loading performance

Export Grain Logistics has made a concerted effort to provide information to sites about the types of wagons being presented and information about how these wagons should be correctly loaded against the loading capacity for each different wagon type for that rail line. Early indications are most promising, with improved loading performance on most wagon types and reduced overloading on others.

Figures 1 to 4 below depict the improvements already made through Export Grain Logistics' intervention on this issue of increased loading for a range of different of wagon types used in New South Wales.

While it is too early to definitively quantify this benefit[3], a 5% improvement in loading performance means that Pacific National enjoys a 5% higher utilisation rate, and revenue earned, for its fleet. Whether this will be passed back to users as a financial benefit is still to be seen, but regardless, there is potentially a 5% efficiency benefit for all users of the rail system.

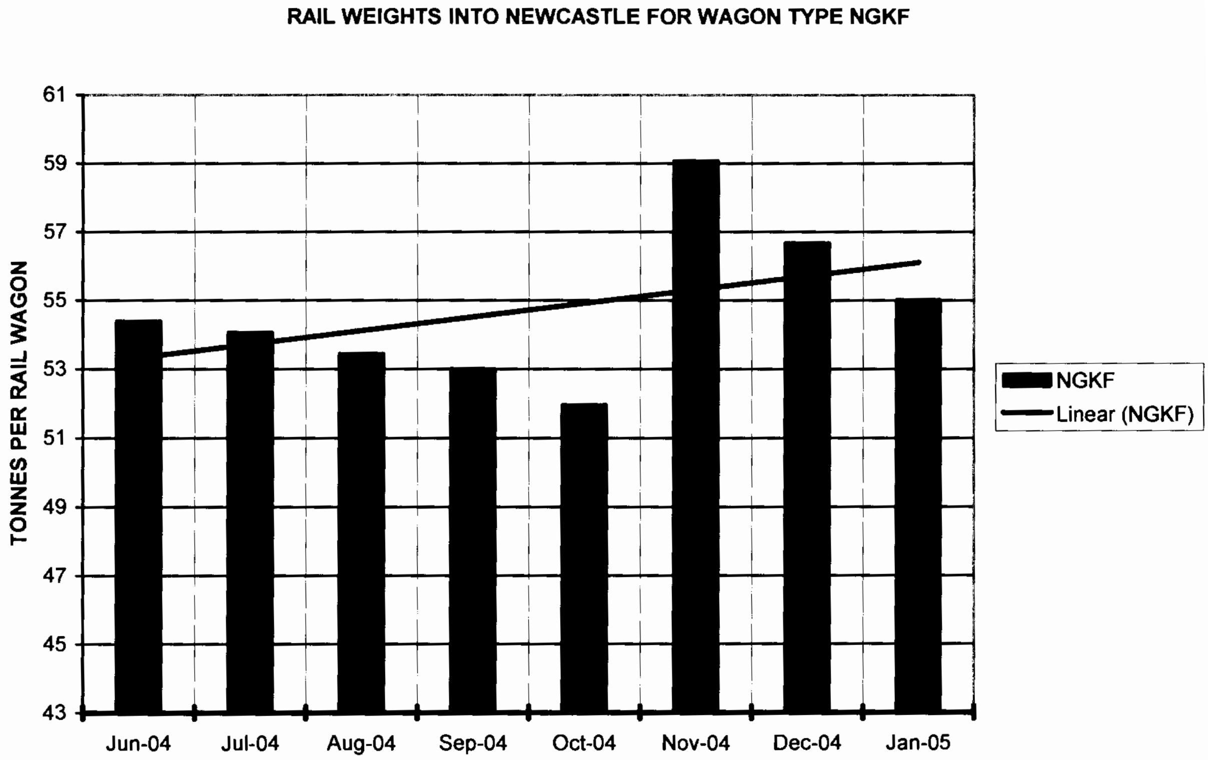
Figure 1 – Rail weights for NGHF type wagons delivered into Newcastle (showing improvements since the interim authorisation in October 2004)



Source: Export Grain Logistics

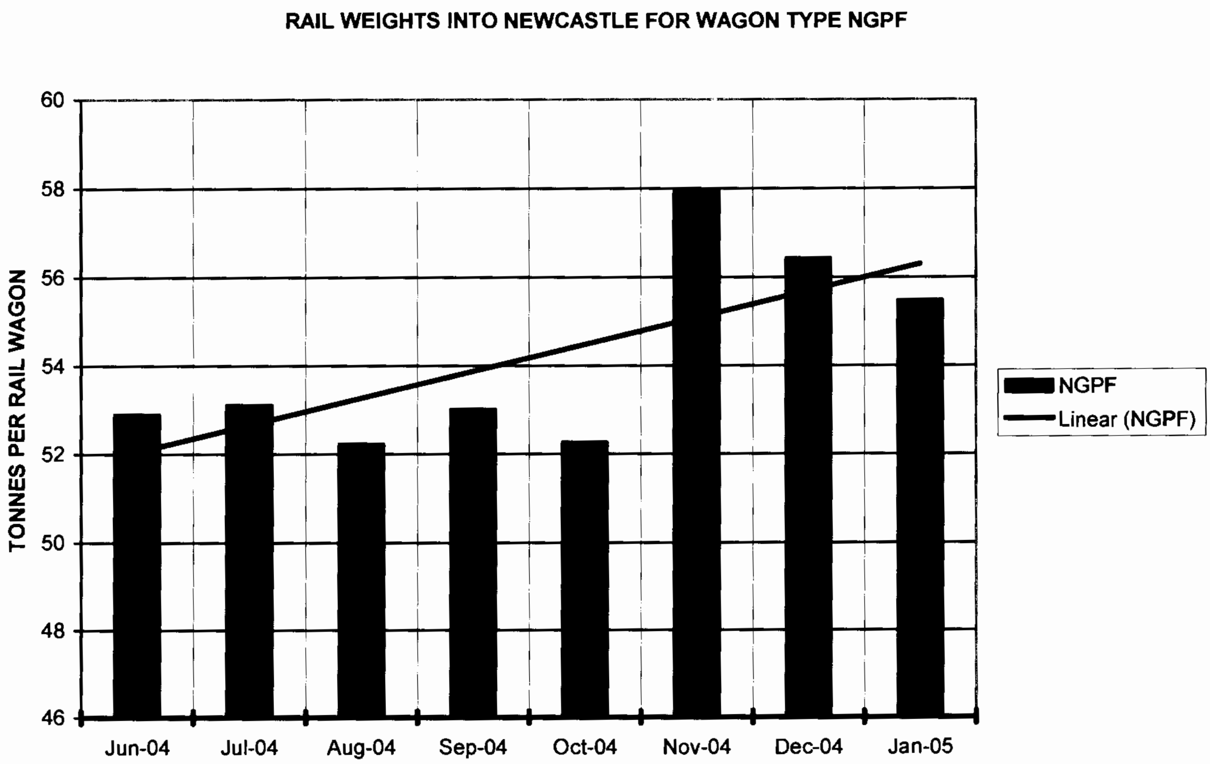
3 The Parties note that this data has only recently been collected for measuring usage - so the time series is for a short period of time. Nonetheless, while the Parties have not put forward a saving based on this efficiency, it is indicative of the improved co-ordination and efficiency enhancing behaviour of the Joint Venture.

Figure 2 – Rail weights for NGKF type wagons delivered into Newcastle (showing improvements since the interim authorisation in October 2004)



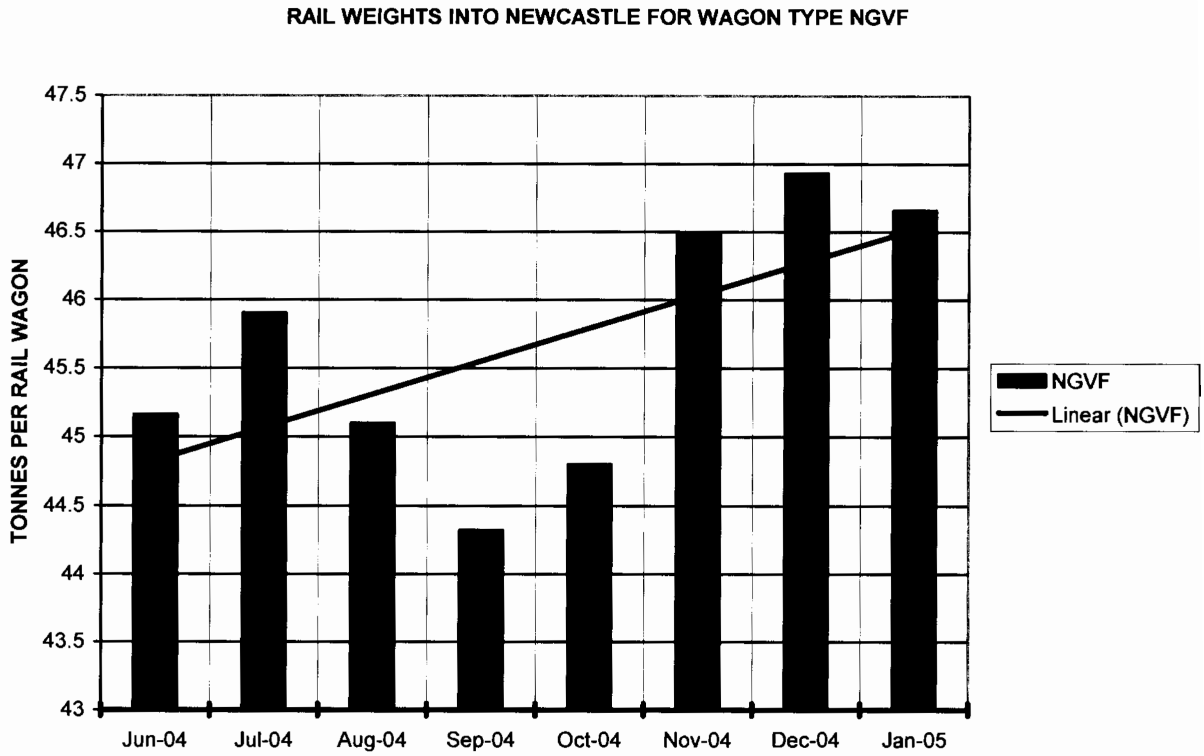
Source: Export Grain Logistics

Figure 3 – Rail weights for NGPF type wagons delivered into Newcastle (showing improvements since the interim authorisation in October 2004)



Source: Export Grain Logistics

Figure 4 – Rail weights for NGVF type wagons delivered into Newcastle (showing improvements since the interim authorisation in October 2004)



Source: Export Grain Logistics

2.7 Efforts to address lack of rail capacity

Export Grain Logistics' efforts to address the lack of rail capacity are clearly illustrated with regard to its activities in the Newcastle zone. Given the limited time Export Grain Logistics has been in operation, there is the ability to take these initiatives to other areas and States.

Prior to this year's (2004/05) harvest, Export Grain Logistics consulted with Pacific National regarding the northern New South Wales rail task for 2004/05. Pacific National advised that it could only achieve a target movement of 9,000mt per day based on its current resources of 11 trains and respective crews. Further, Pacific National acknowledged that it could not haul grain from west of Dubbo and north of Gilgandra into the Newcastle zone without adversely impacting the target tonnage of 9,000mt per day. Export Grain Logistics provided estimated receivals by site to assist Pacific National in this planning process.

The following options were available to Export Grain Logistics to increase capacity and meet the export task demand:

(a) **road movements direct to port or to closer sites** - however road movements to port from these areas were considered too expensive and the increased road tonnage on country roads has infrastructure and safety issues;

(b) **relocating Pacific National resources from the Port Kembla zone to haul grain into Newcastle** - relocating Pacific National resources is difficult to implement given Pacific National needs to transfer crew resources along with the train. Nevertheless, Pacific National committed to transfer one train on 8 January 2005. This option may not also be optimal given the distribution of tonnage between the two ports and potential congestion between all trains into Newcastle (diminishing return between the trains as paths become more scarce). As yet Pacific National has not committed to crew this train on a full time basis or been able to increase the target tonnage into Newcastle;

(c) **Pacific National using Port Kembla zone resources to move Newcastle zone stock into Port Kembla** - as the option of moving more trains through Newcastle appeared sub-optimal, the parties explored the option of moving tonnage with Pacific National from this area into Port Kembla. Export Grain Logistics believes that there were benefits to all parties in pursuing this option, however Pacific National was not prepared to amend its rate structure; and

(d) **Alternative rail service providers** - seeking spot rates from other operators with capacity - this option of utilising the services of another operator has delivered the best supply chain outcome.

Export Grain Logistics anticipates freight savings on the stock located at GrainFlow Nyngan and Narromine of $456,410 for the remaining 85,000mt of grain. It also anticipates savings on the remaining 68,000mt located at other sites on this line in the order of $408,410. These savings, along with estimated $76,600 arising from the 20,000mt movements to date will be passed back to growers in the New South Wales freight reconciliation at the National Pool closure.

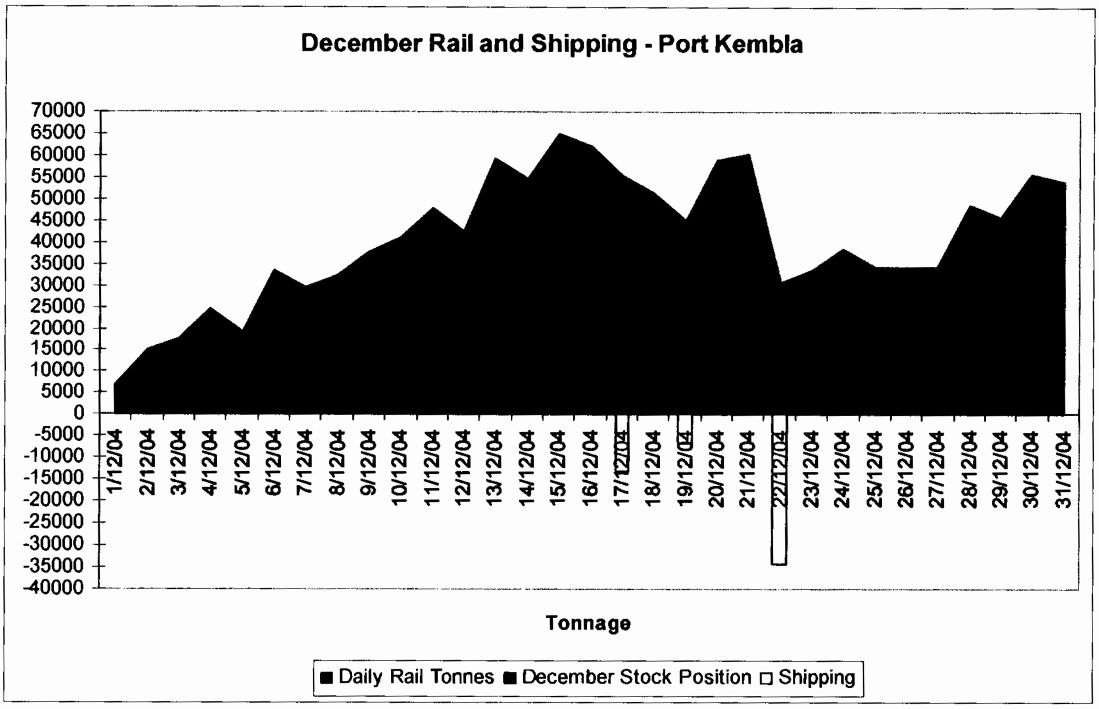
In addition to these freight savings, Pacific National have not been faced with the costs that would arise through diminishing returns on their Newcastle assets, should they have been forced to move this grain.

2.8 Improved co-ordination

The parties submit that the Joint Venture has resulted in improved co-ordination.

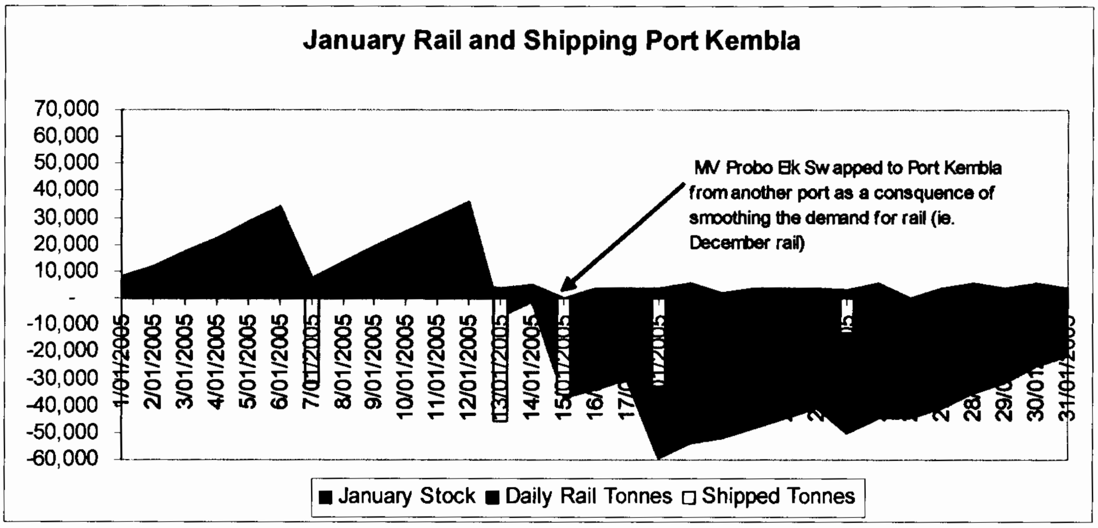
Prior to the formation of Export Grain Logistics, the bulk of cargo accumulations occurred when nominations were received - generally 14 days before vessel arrival. With the formation of Export Grain Logistics, all parties can now plan with a higher level of confidence that any stock moved for these clients will be shipped in the planned period. As a result of this greater certainty, GrainCorp have removed the specific port storage charging regime for all clients. As demonstrated by Figures 5 and 6 below depicting Rail and Shipping in Port Kembla in December 2004 and January 2005, Export Grain Logistics moved grain in this manner. There is therefore an opportunity for grain marketers to trade-off improved vessel accumulation and loading with the cost of grain storage charges.

Figure 5: Port Kembla Rail and Shipping - December 2004



Source: Export Grain Logistics

Figure 6: Port Kembla Rail and Shipping - January 2005



Source: Export Grain Logistics

It is estimated that these new arrangements have saved grain marketers 11 days of vessel waiting time, for which AWB and GrainCorp would have incurred either a loss of despatch or incurred demurrage. Based on an average vessel hire rate of around $US 38,000 per day, the improved grain accumulation arrangements have saved up to **$US 418,000** in vessel hire costs over December 2004 and January 2005 alone. Irrespective of whether that saving is translated into extra despatch earned or demurrage saved, these savings flow back to the marketers, with AWBI reflecting the benefit in a higher National Pool return.

There are other benefits arising from the improved co-ordination and planning process which allows stock to be moved without a vessel nomination. Examples of these include:

(a) **vessel swapping between ports** - for example, the MV Probo Elk was swapped into Port Kembla from Newcastle on 6 January 2005 without affecting the accumulation plans of other vessels. Leaving this vessel in Newcastle would have added 3 to 4 days additional waiting time for the remaining four January vessels there, which at $US38,000 per day represents between $US114,000 and $US152,000 of value of each vessel. Such a practice would not have been possible in the past as marketers were disinclined to pre-position grain at port due to its high cost and the uncertainty of shipping arrival times.

(b) **ability to smooth the demand for transport resources** - the benefits of the parties' continued ability for this to occur should be reflected in future transport pricing arrangements.

Other similar planning initiatives have also been implemented, including the following:

(a) switching vessels between Newcastle and Brisbane to assist with the heavy program in Northern New South Wales (i.e. swapping an earlier vessel into Newcastle to give the flexibility to continue to run a full program into Newcastle, without blocking the port out). The tactical movement of vessels has enabled the key Newcastle programme to continue unhindered while optimising grain throughput and minimising rail asset down-time. There would also be savings for Pacific National through this careful management of the rail/shipping programme;

(b) placing 18,500 tonnes of overflow APH2 grain into pad storage at Fisherman's Island and therefore assisting GrainCorp Operations to create additional space at Thallon for harvest deliveries. Flexibility provided through this additional stock being stored at Fisherman's Island allowed Export Grain Logistics to accumulate early for potential vessels. This stock has subsequently being shipped, which resulted in improving the vessel turnaround. This enabled GrainCorp to offer additional storage space at Thallon to growers and improve their turnaround times;

(c) moving 18,000 tonnes of APH2 ex Surat via GrainFlow The Gums in one movement program to Fisherman's Island. This saved AWB GrainFlow double handling costs and provided pre-positioned grain at port for early shipment and quicker loading.

2.9 Nature of public benefits

At paragraph 7.87 of the draft determination, the Commission noted that the weight to be provided to public benefits would be greater where they are passed through to growers. Leaving aside the Commission's correct observations of AWB's obligation as contracted to AWBI to ensure efficiencies are passed back to growers, the Commission should also note that some of the savings such as decreased demurrage directly flow back to the National Pool and are not only increased export revenue, but increase the returns to growers.

2.10 Conclusion on public benefits

Export Grain Logistics has resulted in a number of substantial efficiencies and cost savings. Some of these efficiencies achieved through improved co-ordination were urgent short term requirements in relation to the most recent harvest - a necessity just for management purposes.

In the medium to long term, the increased efficiencies will deliver significant and additional public benefits to participants at all levels of the export grains supply chain, as well as enhancing the competitiveness of Australia's grain exports and the international competitiveness of Australia's grain industry in general.

3 Competition assessment - bulk freight rail services

3.1 Introduction

As noted in the Parties' initial submission, GrainCorp and AWB have discussed the Joint Venture proposal with Freight Australia, Queensland Rail and Pacific National. All these companies had 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.

The Parties remain firmly of the view that the Joint Venture will provide substantial benefits, including benefits in the market for bulk rail freight services, and that only theoretical detriments and apprehensions (from parties who are competitors to greater or lesser extents), have been raised to weigh against these benefits.

The Parties submit that it is difficult to see any anti-competitive impact in the market for bulk freight rail services, particularly in the current circumstances of an increase in the countervailing power of the rail freight providers through rail freight aggregation.

3.2 Benefits to rail freight providers

The Parties would like to reinforce the fact that the Joint Venture will enable the railways and industry to generate savings and encourage efficient rail-based investment (eg in rail outloading equipment). This will be achieved through:

- information exchange to fully explain and discuss 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.

Further, as noted in the Parties' initial submission, 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 the international competitiveness of Australia's grain industry.

3.3 Provision of bulk rail freight services

It must first be noted that there has been an increase in the countervailing power of the rail freight providers through rail freight aggregation (eg Pacific National's acquisition of Freight Australia and ATN) and that in most parts of Australia, AWB and GrainCorp now negotiate with a single rail freight provider. These rail freight providers (Queensland Rail and Pacific National) are well placed financially to be effective competitors and are more than capable of looking after themselves. For example, the shareholders of Pacific National, Patricks and Toll, are both large Australian companies well known as fierce competitors.

Various parties' concerns with the Joint Venture appear to involve a perception that the Joint Venture would not choose the lowest cost rail freight operator and may unfairly favour rail freight services provided by one of the shareholders, for example rail freight services from GrainCorp.

The Parties believe this concern is hypothetical and not valid given the interaction of the following three commercial drivers:

(a) the Joint Venture is a non-profit business that has a commercial incentive to obtain, and pass onto the National Pool, a sustainable and reliable rail freight service at the lowest cost;

(b) the shareholders do not have a commercial incentive to support the other business interests of the other shareholder - eg why would AWB favour GrainCorp trains over Pacific National trains if that leads to higher supply chain costs?; and

(c) the National Pool, which is subject to internal and external reviews, has an incentive to obtain the lowest rates and no incentive to provide an advantage to GrainCorp or any other party in the provision of rail freight (or other) services.

In any event, if AWB sought to favour GrainCorp on a tender or have any third party do so, AWB would have been free to do that before the Joint Venture - the Joint Venture does not change that position.

The example cited by Pacific National in its submission merely provides evidence of the cost savings able to be achieved by the Joint Venture and the potential that exists for more vigorous competition in the market for rail freight services.

The Parties believe that Pacific National's concern of being 'cherry picked' and the operation of the Joint Venture are two unrelated issues. In addition to the above commercial drivers the Parties wish to point out that Pacific National is well positioned to be the main provider of rail services to the Joint Venture. 'Cherry picking' is a function of competition, noting that both GrainCorp and AWB businesses have been and will continue to be subject to this form of competition by other organisations.

Further, even if "cherry picking" of freight tasks was to occur, the Parties submit this would not amount to "unfair" competition. The shareholders in Pacific National acquired FreightCorp knowing the contracts it had and would be assumed to have made their bid for the FreightCorp assets accordingly.

As to the example and document provided at the pre-decision conference by Pacific National as to possible "cherry picking" in Victoria, the example is hypothetical as there has been no successful accessing of the Victorian rail network - a rail infrastructure issue that should perhaps be revisited if access still does not occur.

Perhaps the most telling point to counter the arguments put forward by Pacific National is that there is always an incentive on AWB (being responsible for wheat exports) as well as GrainCorp (to the extent it owns any export grains being hauled by Pacific National), to ensure that Pacific

National is commercially viable and remains a provider of rail freight services and does not increase prices to an extent that is detrimental to the supply chain. This would not be in the commercial interests of the Parties.

The use of third party trains is actually pro-competitive

In any event, the entry of new competitors or additional trains run by third party providers or GrainCorp would be pro-competitive as it would act as a constraint on Pacific National and provide an alternative potential competitor should Pacific National decline to provide additional services.

The HVCCLT example cited by Pacific National

Some parties, such as Pacific National, have suggested - to address the issues raised above and to integrate and capture additional efficiencies - that the Joint Venture should be extended to include Pacific National. The HVCCLT is given as an example of how this may work. The Parties believe that such a step would potentially decrease the benefits and efficiencies of increased rail freight competition, the potential for which is a substantial benefit.

In addition, the HVCCLT is a group of parties which meet for overall logistics planning only, not a single entity that can commercially contract a number of rail providers and obtain aggregate rail savings. That group comprises Port Waratah Coal Services, Pacific National, Queensland Rail, the Australian Rail Track Corporation, RailCorp and Newcastle Port Corporation.

An incorporated vehicle was chosen by the Parties in preference over other structures for the reasons outlined in Section 1.3.

3.4 Acquisition of bulk rail freight services

Various parties have raised concerns about the supposed ability of the Joint Venture to acquire rail freight services to such an extent as to inhibit other parties from accessing such services. This concern misunderstands one of the primary benefits to be derived by the Joint Venture - the more efficient use of existing rail stock and infrastructure to benefit all rail users. The Joint Venture's capacity to achieve more effective utilisation of rolling stock resources for export grain will benefit all acquirers of rail freight services. Section 2 of this Submission details how such efficiencies have and will be achieved.

ABA/ABB noted that the issue of scarce rail rolling stock resources had been raised in their previous submission of 19 October 2004 and that it is "looming as a major issue" as "the requirement for non-discriminatory access to rail resources and transparency of any negotiations that have industry-wide flow-on effects" are "critical". The Parties do not dispute the importance of rail assets and the question of rail resource availability is one for the whole industry so that anything that Export Grain Logistics is able to do to improve asset utilisation should help free up resources for all market participants. This is provided of course that Pacific National wishes to make those resources available for any particular party - that is their prerogative. *As an example in Victoria, Pacific National has its own allocation protocols and makes the rail fleet available for all grain exporters based on these protocols. This has nothing to do with GrainCorp, AWB or indeed, Export Grain Logistics, it is a choice in the hands of Pacific National.* In addition, it is noted that subject to rail access, ABB as a larger company than GrainCorp, has its own options of acquiring rail assets.

The Parties also believe that the availability of better information and the increased transparency created by the Joint Venture will allow better decision making and encourage additional investment and improvements in rail infrastructure.

In Pacific National's submission dated 18 February 2005, Pacific National proposed that the authorisation period be limited to November 2007 because of the expiry of AWB's contract with Pacific National in 2006. The Parties take the view that the expiry of the contract actually provides an opportunity for the Joint Venture to negotiate new arrangements and increase public benefits. Therefore, it is important that the authorisation of the Joint Venture continue for a significant period after that time in order to provide commercial and contractual certainty to allow these benefits to be obtained.

The Parties also note that in terms of incentives, the export grain supply chain is only "as fast as the slowest person". Accordingly, neither AWB nor GrainCorp would have any incentive to distort or slow the transport of any type of export grains by other traders such as ABB, Elders or Brooks as that would only lead to congestion on the export path and at the export port terminal and to queuing vessels. If this occurred it would cost GrainCorp or AWB revenue at the port terminal if it owned the terminal or it would tend to cause demurrage costs through port congestion if a vessel was delayed.

3.5 Rail freight rates - why they have not fallen

ABB has correctly noted that following commencement of the Joint Venture and prior to the grain harvest, there have been rail freight increases of up to 7-8%.

Leaving aside the fact that Export Grain Logistics was established pursuant to an interim authorisation immediately before harvest so the time to negotiate better rates was very limited and some rail freight providers are declining to negotiate while it is only an interim authorisation, the answer to this issue is factually straightforward. The increase in rail freight prices has occurred because the rail freight provider chose to remove the fixed cost train and charged what the market would pay as there was no alternative provider.

As to the increases in New South Wales, these were as per the existing contract and in response to Elders/Brooks contention as to AWB's position on this, AWB was not a party to the New South Wales Government sales contract, and it is also not happy with the increase as the rail provider has declined to introduce the other elements of the contract which would have further capped freight rates.

3.6 Conclusion

The Parties submit that the concerns raised by third parties in respect of the market for bulk rail freight are hypothetical detriments or would have occurred irrespective of the Joint Venture. In any event, they are clearly outweighed by the actual public benefits provided by the Joint Venture.

The Joint Venture, because of its nature and the operations of AWB, will continue to have an incentive to choose the lowest cost rail operator. As to the "competitive neutrality" conditions requested by Pacific National and others, the aim of the Joint Venture is to improve efficiencies in the export supply chain and pass this on to the National Pool to the benefit of grain growers. The conditions that Pacific National seek are in relation to rail freight competition (an area where AWB and GrainCorp believe the Joint Venture will actually be pro-competitive) and it is not apparent how those conditions would improve the position of growers benefiting from lower rail freight costs.

Further, it is very difficult to argue that the aggregation of AWB and GrainCorp through the Joint Venture 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, the Parties believe that the Joint Venture will not have any competitive detriment in respect of bulk rail freight services. In fact, the Parties believe that the proposed arrangements should lead to a pro-competitive result which will deliver benefits to the Australian grain industry, in general, and grain growers specifically.

4 Competition assessment - grain storage and handling, grain marketing services, ports and the domestic grain price

4.1 Introduction

The Parties submit that the Joint Venture has not and will not substantially lessen competition in relation to grain storage and handling, grain marketing services and ports for the reasons set out below.

Export Grain Logistics has been appointed as the exclusive provider of export logistics services to the businesses of GrainCorp and AWB. The Joint Venture solely relates to managing the transport of export grain from up-country silos to port. It has not and will not affect the Parties' respective activities in relation to domestic grain or grain storage, grain marketing services or access to ports.

In particular, GrainCorp and AWB remain free to compete with each other (and other participants in the grain industry) in relation to:

- the provision of upcountry grain storage and handling services and the provision of export port services; and
- grain marketing to both domestic and overseas customers (in the non-regulated grains).

In addition, contrary to the submissions from some parties - Export Grain Logistics ***does not***:

- negotiate or have anything to do with the commercial relationship between the storage handler and the grain owner, grower or trader - it does not deal with grain storage and handling charges; and
- negotiate or set Estimated Silo Returns - they continue to be set by AWB.

These matters are now considered in more detail.

4.2 No impact on competition for grain storage and handling

Introduction

The Joint Venture will not result in a substantial lessening of competition in the market for grain storage and handling for the following reasons:

- it does not give rise to any aggregation of storage and handling facilities;
- it does not alter AWB and GrainCorp Marketing contracting other storage providers;
- it continues to be constrained by significant and effective competition from a number of actual and potential competitors for grain storage and handling; and

- it will not detrimentally impact on the market for domestic grain.

In terms of transparency of the benefits and the flow on to the industry in general, GrainCorp notes that if it implements any storage and handling efficiencies, AWB will seek to ensure that other storage and handlers also implement similar efficiencies as part of its focus on achieving the least cost export path. As a result any improvements in rail will quickly transfer to other storage and handlers and the industry in general.

The Joint Venture does not give rise to any aggregation of storage and handling facilities

Export Grain Logistics does not contract or manage any grain storage and handling facilities. The Parties remain free to compete with each other (and other participants in the grain industry) in relation to the provision of up-country grain storage and handling services and the provision of export port services.

AWBI, AWB Australia ("**AWBAU**") and GrainCorp Marketing continue to enter into agreements with storage providers for their grain and will be responsible for the payment of storage fees direct to their storage provider. For this reason, the suggestion by some parties that the resulting "competitive advantage" would enable GrainCorp and AWB to charge a lower cost for storage and handling services is unfounded.

As submitted previously, the Joint Venture will not change the competitive dynamics between GrainCorp, AWBAU and their competitors as:

- contractual arrangements for the provision of storage and handling by storage services remain direct with AWB and GrainCorp Marketing;

- storage agreements and fees continue to be confidential between the storage provider and the relevant grain buyer whether this be AWB, GrainCorp, ABB, ABA or any other third party;

- GrainCorp and AWB Grainflow storages continue to have a commercial incentive to provide storage services to all grain growers and grain buyers; and

- to the extent that AWB is not satisfied that GrainCorp is delivering cost effective storage which is not satisfactory to AWB given its responsibility to maximise returns for growers (obligations under its Constitution), AWB can build its own storage facilities or contract with other suppliers where it is commercially beneficial for it to do so.

The Joint Venture 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 GrainFlow, ABB and ABA. AWB has no incentive to disadvantage any of those silos, and indeed has a commercial incentive to ensure that ABA and AusBulk / ABB silos have access to competitive rail rates.

As such, despite suggestions by some parties, undertakings are not required for non-discriminatory treatment of competitive storage sites by the Joint Venture - the Joint Venture has no such relationships. It does not determine where grain is stored - the owner of the grain does. Grain marketers determine which sites are available for grain to be drawn from and where ships will load.

The Parties continue to be constrained by significant and effective competition from a number of actual and potential competitors for grain storage and handling

The Parties continue to compete with each other in relation to grain storage and handling, both up-country and at port. In addition, they continue to be constrained by actual and potential competition from parties including ABB/AusBulk, and Co-operative Bulk Handling Limited. Notwithstanding it does not yet have any storage facilities on the East Coast, Co-operative Bulk Handling Limited made a submission in which it indicated that it might. As the Parties have noted previously, this significant and effective competition represents a significant competitive constraint on the behaviour of other market participants, including AWB and GrainCorp.

These competitive constraints are demonstrated by evidence of entry and expansion by other participants in the grain industry. Examples of these include the new entry of an international player in Sumitomo in purchasing half of ABA, as well as the public statements made by Brooks Grain as to its silo network. Brooks Grain is wholly owned by Glencore. Both Glencore and Sumitomo[4] are large international companies with sufficient resources to more than effectively compete. Some submissions in relation to the authorisation argued that current and potential third party competitors of GrainCorp and AWB in the grain storage and handling market would not benefit from the increased transparency available to Export Grain Logistics, and instead argued that the Parties would be able to charge a lower cost for storage and handling services.

The Parties agree with the Commission that this appears to misapprehend the distinction between the impact on competitors and the competitive process. In fact the difficulty with these arguments opposing the Joint Venture are apparent when it is noted that such parties then proposed that all grain buyers be given the opportunity to transfer responsibility for grain supply chain logistics to Export Grain Logistics (provided there was increased transparency). However, Export Grain Logistics is a not for profit entity and as such is not proposed to provide services for all parties.

The additional issue raised on transparency disappears once it is reiterated that the Joint Venture does not negotiate storage and handling fees and charges and does not establish Estimated Silo Returns. Estimated Silo Returns are determined by AWB and will continue to reflect transport and storage deductions on a transparent basis.

[4] Furthermore it should be noted that Sumitomo acquired a 50% interest in ABA in October 2004. It had full knowledge of this Transaction before lodging its bid.

As part of that submission by those third parties, it was also submitted that increased transparency as to cost drivers in grain supply chain logistics should be made available to all stakeholders. However, it is the grain marketers (especially AWB) which will be seeking to directly negotiate improved performance and lower prices for storage providers rather than indirectly through Export Grain Logistics.

No impact on the market for domestic grain

The Joint Venture does not substantially lessen the competition in the market for domestic grain in Australia.

Export Grain Logistics is only involved in transport logistics for export grain (predominately rail) and is not involved in contracting transport logistics for domestic grain. It cannot create an advantage for AWB or GrainCorp domestic grain transport given the structural separation in the transport of domestic and export grain.

The Joint Venture is structured such that GrainCorp Marketing and AWB are not placed in a more advantageous position in relation to domestic grain acquisition and trading in comparison with any other industry participant.

In particular, GrainCorp Marketing and AWB continue to separately negotiate domestic transport with transport providers for their domestic grain tonnage.

However, GrainCorp and AWB believe that Export Grain Logistics could have an indirect positive benefit for the domestic grain market. Improvements in rail efficiency may provide flow-on benefits for domestic rail logistics through improved storage infrastructure and operations.

Some submissions suggested that a public detriment may occur in the market for trading of domestic grain as domestic and export grain inventory management are interdependent and the Parties will obtain a competitive advantage as a result of improvements in supply chain costs. However, AWBI and AWBAU stock levels are kept separately and are accounted for separately within each bulk handler. Further, the grain marketers determine which stock is available for export and select the stock they require for export. Only then does Export Grain Logistics have a role in managing the movement of these stocks to the export terminal (also selected by the marketer). The Parties also note that in a multitude of matters in this industry, the Commission has found that with stock swaps and trading it is not possible at any given time to definitively determine ownership until this nomination is made.

Export Grain Logistics therefore does not organise domestic movements of grain. As such it does not have access to the supply chain costs of domestic grain, which one party suggested that Export Grain Logistics should provide. Further, AWBI already publishes the Estimated Silo Returns and site to sea costs to the market.

In addition, it is not necessary to consider the introduction of the following domestic market initiatives submitted by one party:

- a common supply chain cost for both export and domestic grain with a fee rebate for export grain after completion of export loading. As noted above, Export Grain Logistics does not organise domestic movements of grain; and

- ownership of AWB grain be recorded in both AWB and handling company information systems, identified as either domestic or export grain from the time of initial receipt and harvest, and tracked through for the duration of its ownership by AWB. This is already recorded by the companies as the Joint Venture will not deal with AWB or GrainCorp domestic grain.

4.3 No impact on competition for grain marketing services

The Joint Venture does not involve grain marketing

As examined above, the Parties remain free to compete with each other and other grain industry participants in relation to domestic and international grain marketing. AWBI, AWBAU and GrainCorp Marketing will continue to sell grain to domestic and overseas customers, control the movement of their grain and enter into stock swaps for their grain pursuant to appropriate customer approvals.

Stock swaps

Differences in rail rates between silos to alternative domestic and export destinations create arbitrage opportunities for stock swaps between owners of grain. While Export Grain Logistics may create new relativities for rail rates between silos that take into account efficient supply chain costs for export grain, it is not involved in stock swaps or marketing decisions for grain stored in GrainCorp, 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.

It was submitted by one party that formal processes should be created for conducting and reporting stock swaps between AWBI and other parties. AWBI already have formal processes for stock swaps which are made readily available to the trade. Stock swaps are closely monitored by the WEA. As they are commercial transactions between AWBI and other parties, they should not be made public.

Further, assertions were made at the pre-decision conference regarding the ability to undertake stock swaps without the permission of the owner of the grain. The Parties reiterate that grain received at a silo is retained at that silo on behalf of the customer (which was confirmed by comments made by Brooks Grain at the pre-decision conference). GrainCorp cannot 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).

GrainCorp has storage and handling contracts with its clients to allow it to initiate stock swaps for a limited range of operational reasons, including 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 Parties note that GrainCorp must and does pay any affected client compensation for the freight and quality differential.

4.4 No impact on competition with regard to ports

The Parties submit that the Joint Venture will neither prevent the operation of competing export port facilities, nor prevent competitive neutrality between suppliers of port services.

As is the case for up-country storage facilities, the Joint Venture does not involve the acquisition or common management of any competing export port facilities and, in fact, expressly preserves the ability of either Party, or third party, to operate a competing port.

As there is currently substantial excess capacity at port terminals in New South Wales, Queensland and Victoria, it is difficult to commercially justify investment in a new port. The Joint Venture would not have an impact on the commercial considerations relevant to whether or not to construct or operate a competing port facility. The Parties noted in their initial submission that a new port terminal would require at least one million tonnes of grain, and that it was not clear that there was sufficient grain to warrant such an investment.

Competitive neutrality

Some submissions suggested that Export Grain Logistics may act in a manner that would prevent competitive neutrality and suggested that undertakings be given for non-discriminatory treatment of competitive ports. As noted above, the Joint Venture does not select shipping terminals, only sites where grain is available within parameters. Grain marketers determine which sites are available for grain to be drawn from and where ships will load. The Joint Venture does not inhibit AWB from sending grain to any port, even a new port. Export Grain Logistics consults with AWB and then AWB directs grain to those ports which deliver the least cost supply chain.

Further, one party has submitted that a perceived lack of competitive neutrality between suppliers of port services will decrease investment in ports which will discourage the modernisation of port facilities necessary for the increased effectiveness of grain transport. As noted above, the Joint Venture arrangements do not involve the acquisition or common management of any competing export port facilities, do not expressly preserve the ability of either Party to operate a competing port and would not have an impact on the commercial considerations regarding whether or not to construct or operate a competing port facility.

The Commission in the draft determination queried whether the realignment of operations and service pricing encourage additional investment and improvements in the rail system and its interaction with ports (and so create lasting benefit). The Parties believe that the examples given in Section 2 of this Submission confirm that there are benefits which arise through additional investment or changed work practices where it is commercially efficient to do so.

4.5 Domestic grain price

The Commission concluded at paragraph 7.138 of the draft determination that to the extent that Joint Venture savings represent a more efficient cost of supplying export grain to port, relative to delivering grain to domestic destinations, this would seem to support the Parties' contention that domestic prices will become more reflective of competitive export pricing. This conclusion has not been disputed by any of parties opposing the authorisation.

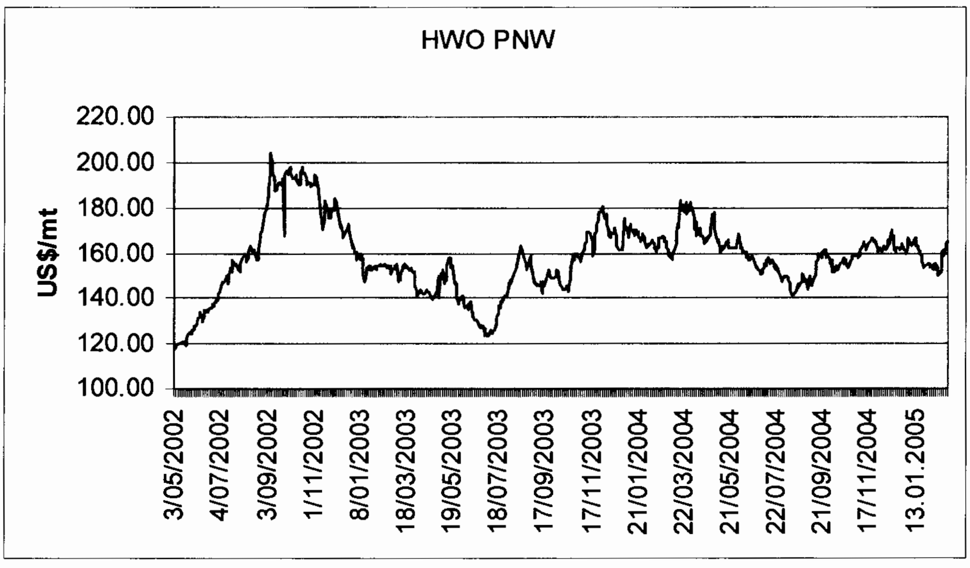
The Parties agree with the Commission's findings at paragraph 7.135 of the draft determination that:

- the floor price for grain is set by the port export price which reflects international prices (it was widely acknowledged at the pre-determination conference that Australia is a price taker);
- the domestic market has always had priority over export grain because it can and does pay a premium based on the relevant delivered port or local destination price net of freight and storage deductions; and
- changes in international prices are reflected in port and domestic prices, as are any changes in deductions - these normally flow back to growers.

At paragraph 7.139 of the draft determination the Commission invited further comment on the possible detriment of the cost change in the wider context of grain pricing and the extent to which any effect may be diminished by other price factors such as the impact of overseas harvests, exchange rates and global prices on domestic prices.

It is important to note that the volatility of international grain prices is quite significant from year to year and indeed varies markedly within seasons as depicted in Figure 7 below. Figure 7 shows the pricing of US Hard Winter Ordinary in US$ per tonne over the past 2.5 years. US Hard Winter Ordinary is the base grade against which AWBI prices the Australian base grade, APW. International wheat sales are conducted in US dollars and AWB converts these to Australian dollars for the payment of growers delivering into the National Pool. Australian wheat grower returns are therefore heavily impacted by the vagaries of the international grain and currency markets. As seen below, prices ranged from around US120 per tonne in May 2002 to over US$200 per tonne some 4 months later. In 2004, prices varied by over US$40 per tonne.

Figure 7 - International grain prices (measured by US Hard Winter Ordinary)



Source: AWB

While savings in supply chain costs through the introduction of efficiencies may result in higher prices for export grain over time, the impact of these pricing movements on domestic prices is minimal when compared with the impact of international grain and currency markets.

Finally, in the draft determination the Commission requested comment on:

- the effect of the higher domestic grain price on purchasers of domestic grain;
- concerns regarding higher Estimated Silo Returns;
- domestic pricing becoming more reflective of competitive export pricing;
- possible detriment of the cost change in the wider context of grain pricing; and
- intervention and integration generally.

These issues have been largely dealt with in the previous sections of this Submission. However, as a broad principle it is difficult to argue against pricing in any market reflecting the underlying cost. If goods can be exported at better prices because of supply chain efficiencies, then from an international trade and export perspective this is clearly a better outcome consistent with the elimination of distortions and the free flow of trade. This occurs with a great number of products in Australia - for example beef or live seafood where other countries are willing to pay more for those products. However, these prices will rise and fall with international supply and demand.

4.6 Conclusion

Some of the submissions made by some third parties have raised a hypothetical possibility of a decrease in competition, which the Parties strongly refute.

The Parties are primarily customer (AWB) and supplier (GrainCorp). To the extent that they do compete in *grain storage and grain trading*, there is no suggestion of any collusive or improper activity and so there is no justification for a suggestion that such behaviour will occur in the future.

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. The third party submissions concerned with this issue have misapprehended a concern as to the level of competition with a concern for the impact of the Joint Venture on competitors. As the Parties note, the competitors who have raised these issues are all strong competitors. It would be more of a concern from a competition perspective if competitors did not complain.

Further, the Joint Venture will neither prevent the operation of competing *export port facilities*, nor prevent competitive neutrality between suppliers of port services.

The Parties do not believe that the Joint Venture will have any negative impact on the *domestic market*, other than eliminate distortions and promote a more competitive export supply chain. Instead it will 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.

Export Grain Logistics results in substantial public benefits which heavily counter-weigh any theoretical detriments submitted by some third parties in relation to the authorisation application.

5 Joint Venture structure, confidentiality and transparency

5.1 Introduction

The Parties strongly believe that the formation of the Joint Venture is necessary to facilitate improved co-ordination and efficiencies in the export grain supply chain.

The Parties equally strongly believe that the existing Joint Venture arrangements sufficiently protect the confidentiality of information both as between GrainCorp and AWB and with respect to information obtained by Export Grain Logistics from third parties. Further, because it is structured as a separate legal entity, various legal duties arise in respect of the Joint Venture and its officers regarding the protection of confidential information which provide legal weight to the practical arrangements in place.

The export performance of AWB is also already subject to the oversight of the Wheat Export Authority ("**WEA**") including significant reporting obligations under the WMA. To the extent some parties have requested additional monitoring or reporting by the Commission in relation to the Joint Venture, this monitoring already occurs by the WEA. AWB notes in particular that its supply chain performance is already reported to the WEA so that no specific additional monitoring is required. If, as some parties suggest (but which does not seem to be consistent with the facts and savings achieved to date), the Joint Venture is not delivering the efficiencies sought, AWB would naturally also reconsider whether the Joint Venture is achieving its charter.

Accordingly, GrainCorp and AWB believe that given the absence of any significant public detriments in relation to the Joint Venture and the potential for the Joint Venture to deliver substantial public benefits through an improved export supply chain, the existing monitoring and reporting arrangements provide sufficient transparency to allow a transparent assessment of the performance of the Joint Venture.

5.2 Joint Venture structure

Optimal structure to achieve public benefits

Various parties, while acknowledging the scope for improved efficiencies in the export grain supply chain, have questioned whether a joint venture structure is the most effective structure to achieve improved efficiencies. The Parties, after taking into account practical, commercial and legal considerations, strongly believe that the Joint Venture and Export Grain Logistics is the optimal structure to facilitate improved co-ordination and efficiencies in the export grain supply chain.

On 7 October 2004 the Commission granted interim authorisation to the Joint Venture. The operations of the Joint Venture under the interim authorisation have further confirmed to the Parties that it can meet its objectives and the Joint Venture is best placed to achieve:

(a) substantial efficiencies in the export supply chain for grain from the East Coast of Australia as between AWB and GrainCorp, with positive flow-on effects to the general industry (as discussed in Section 2 of this Submission, the Parties note that irrespective of comments as to whether the Joint Venture is achieving all of the possible grain export supply chain efficiencies, it is achieving considerable efficiencies as between AWB and GrainCorp, a fact that cannot be challenged by third parties);

(b) increased efficiencies in the handling of the rail freight task for export grain from upcountry silos to export port terminals (as detailed in Section 2 of this Submission);

(c) improved co-ordination between rail freight operators and grain storage and handlers to deal with Australia's export grain task through better co-ordination of logistics by the Joint Venture (whether or not full co-operation with the rail service provider is achieved at this time, the Joint Venture provides considerable opportunities for improvement); and

(d) improved co-ordination between GrainCorp, AWB and Pacific National and Queensland Rail (and any other rail freight providers who wish to be involved), to facilitate the use of and investment in rail infrastructure and rail lines in regional areas of Australia, to support the efficiency of the Australian export grain industry (this benefit involves GrainCorp and AWB co-operating through the Joint Venture to identify areas for improvement - the extent of which is of course ultimately subject to shareholder approval).

Some third parties have suggested that an incorporated joint venture is not the "only means to achieve efficiencies". It has been suggested that an unincorporated joint venture is a preferable structure. An unincorporated joint venture was considered by the Parties, but after analysis it was rejected on the basis that it creates considerable uncertainties in contracting benefits, liabilities and risk apportionment.

Particularly as Export Grain Logistics was established not to make profits, a corporate structure was considered the most effective to facilitate appropriate ring-fencing obligations and to preserve the independence of GrainCorp and AWB as competitors in grain storage and handling. The creation of a separate legal entity (with the corresponding legal duties that arise - discussed further below) reinforces the confidentiality obligations of the Joint Venture and the preservation of the competitive independence of GrainCorp and AWB. Both of these issues have been the subject of considerable comment from third parties.

At the pre-decision conference ABB acknowledged that the Joint Venture was one way of providing the proposed benefits, but suggested that it could also be provided in other ways such as the tri-partite contract that ABB enjoys with AWB and the Australian Railroad Group entity Australian Southern Railroads in South Australia. That is a "legacy" contractual arrangement arising from historical times when parties were State rail organisations and in a situation where the rail provider is willing to co-operate. In New South Wales, Pacific National has not been willing to separately co-operate with GrainCorp as well as with AWB. This situation has been one of the drivers for the Joint Venture. As it is now, Pacific National has declined to unconditionally accept the transfer or novation of some AWB contracts to Export Grain Logistics.

Further, in developing the most appropriate model for achieving the above objectives, the Parties considered whether individual contracts with the rail freight service providers or, alternatively, a joint venture would be the best way of delivering the benefits sought. The Parties came to the view that the efficiencies and logistics cost savings which the Joint Venture will deliver could not be effectively achieved by individual agreements between the Parties and the rail freight providers. The Joint Venture will provide the best vehicle to bring together GrainCorp (as the operator of infrastructure) and AWB (as the manager of the National Pool and holder of the rail contracts). The Parties decided that forming a joint venture to manage export grain logistics would be the preferred route given:

- the need for the Joint Venture to operate as an independent and neutral party (i.e. pay the invoices) with the service providers, to enable incentives and other pricing criteria to be passed through to the Parties;

- the need to put in place a neutral party to execute and independently co-ordinate rail and related storage and supply chain activities, to ensure rail contractual obligations are met; and

- the requirements to ring-fence this task to meet AWBI's pool management policies.

It should also be noted that the Parties have gone to great lengths to try and accommodate any operational concerns of ABB as to confidentiality, the incentives and any detriment caused by the Joint Venture.

Accordingly, from a legal as well as a commercial perspective, an incorporated Joint Venture remains the most effective structural approach to achieving the various public benefits outlined in Section 2, while also addressing the various concerns of third parties and the Commission.

Separation of Joint Venture's operations

It appears from various third party submissions that there is still some confusion as to the separation of the Joint Venture's operations from the operations of GrainCorp and AWB. The Parties would like to reinforce that the Joint Venture has been set up as an independent company and is very limited in scope - in particular:

- the Transaction is a narrow joint venture through a very limited corporate entity (Export Grain Logistics). It is not a merger between the Parties and so the Transaction preserves flexibility for the future and retains the existing competitive position from a domestic perspective;

- the Transaction only relates to export grains. In this regard some of the submissions from third parties focused on the current single desk export rights that GrainCorp inherited from GrainCo in New South Wales relating to domestic malt barley and export barley, canola and sorghum produced in New South Wales as the New South Wales Grains Board's agent - these rights in fact expire in October 2005;

- the Joint Venture does not have any assets of a substantive nature - it will have only 4-6 staff;

- the Joint Venture is not a separate profit centre so it does not create financial disincentives to compete as between the Parties;

- the Transaction does not combine ownership of any assets; and

- the Transaction does not curtail independent decision making in relation to trading (including the allocation, swapping and movement of stock) and the supply and acquisition of storage services, which will continue to remain with the respective Parties.

The purpose of forming the Joint Venture is, first and foremost, to improve efficiencies and to achieve logistics costs savings for grain exports, through improved co-ordination of export grain storage and transport activities and increased access to information from the Parties to facilitate the export grain task.

Accordingly, the Joint Venture, as a separate legal entity, will be responsible for:

- procuring transport logistics services for export grain;

- managing export supply chain activities and providing logistics planning and co-ordination services, including grain allocation and optimisation, cargo aggregation, service provider management and monitoring of performance and operational management; and

- acquiring information from each of AWB and GrainCorp in relation to export grains to enable it to improve co-ordination and achieve efficiencies in the fulfilment of the above functions. As discussed below, confidential information as between AWB and GrainCorp where these parties compete, will be subject to ring-fencing obligations.

Third party grain storage and handlers such as ABB, Glencore, Sumitomo and Elders will continue to see competition from GrainCorp and AWB, but that is quite separate from the role of the Joint Venture. Indeed the separation of roles and the continuing competition between the businesses of GrainCorp and AWB explains the importance placed on the confidentiality arrangements of the Joint Venture by the Parties (as discussed below).

5.3 Confidentiality

Introduction

The Parties remain firmly of the view that the Joint Venture will not have an information advantage that could be used to the detriment of other grain industry participants. Further, as a separate legal entity, the Joint Venture will have in place obligations to ensure that it does not breach the confidence as between GrainCorp and AWB in respect of information provided to it or in relation to information that it obtains relating to third parties. Where that information is actually confidential or commercially sensitive such information is ring-fenced from the Parties.

The Joint Venture Agreement which sets out these arrangements was attached as an annexure to the confidential version of the Parties' original submission. Having regard to requests to see what is in that annexure, the annexure dealing with ring-fenced information is enclosed with this Submission as is the schedule setting out how the Joint Venture will go about procuring rail freight service providers.

The type of information received by Export Grain Logistics

There would appear to be a misapprehension by some parties as to the type of information that Export Grain Logistics will receive.

Export Grain Logistics will not negotiate with grain storage and handlers as to their arrangements for grain. Accordingly, AWB as the largest user of ABA's terminals will continue to have details on grain storage and handling at ABA sites and as AWB contracts with AWBI, the distinction sought to be made by ABB in its letter of 4 February 2005 as between AWBAU and AWBI is not factually correct. Similarly, as to information on rail arrangements, AWB already has this information as it contracts with the rail freight provider. Accordingly, even if the Commission were to accept ABB's arguments that this information is confidential, the interposition of Export Grain Logistics would not change the position, such that there would not be any impact on the "with or without" test. To the extent that ABB has any concerns with the use of such information, they can therefore only apply as to GrainCorp and these concerns should be addressed by existing contractual or ring-fencing provisions within Export Grain Logistics.

Contractual provisions or statutory laws already apply in relation to the use of confidential information

Leaving aside the arguments as to the with or without test and any hypothetical impact, the Parties intend to honour the confidentiality obligations as a matter of contract and general / statute law. In respect of confidential information obtained from third parties, legally enforceable contractual obligations will be negotiated as between the third parties and Export Grain Logistics to protect such confidential information. These contractual restrictions on Export Grain Logistics will operate in addition to the ring-fencing arrangements outlined in the Joint Venture Agreement.

The creation of a separate legal entity also gives rise to corresponding legal duties on the officers of the Joint Venture (both in general law and under the *Corporations Act 2001 (Cth)*) which reinforce the protection of confidential information and the preservation of the competitive independence of GrainCorp and AWB. For example, at general law, directors of a company must not disclose or improperly use confidential information of the company.

In response to Pacific National's and ABB's suggested confidentiality conditions and ring-fencing on AWB and GrainCorp directors and on the Joint Venture itself, we note that AWB (through its 50% joint venture at Melbourne Port Terminal) and GrainCorp operate competing export ports. We note further that Patricks and Toll are in the same position in respect of their operation of Pacific National. Senior Patricks and Toll directors are board representatives on Pacific National, yet there would appear to be no undertakings or ring-fencing in place as has been proposed by Pacific National for application to the Joint Venture.

Further, the Parties refute Brooks/Edlers' suggestion that a "culture of non-compliance" in respect of confidentiality obligations exists within the Parties' operations. The examples listed by Brooks/Elders are irrelevant to the operations of Export Grain Logistics and in respect of the maintenance of stock records, inaccurate.

Confidentiality in relation to rail freight services

As discussed in Section 3 of this Submission in respect of the market for bulk rail freight services, various parties have raised concerns as to the possible use of confidential information and specifically have requested arrangements to ensure "competitive neutrality" as between suppliers of services to the Joint Venture. Such assertions ignore the fact that AWB has no financial incentive to favour GrainCorp and its actual incentive is to financially maximise the efficiencies in the export supply chain. If AWB sought to have GrainCorp "sharpen its pencil" on a tender or have any third party do so, it would be free to do so regardless of the existence of the Joint Venture - the Joint Venture does not change that position. If that request could be made of GrainCorp now by AWB, there is no utility in the requested conditions put forward by Pacific National and others.

The Parties are of the firm view that the practical ring-fencing arrangements as set out in the Joint Venture Agreement, the additional contractual arrangements as negotiated by third parties, and the overarching legal duties on officers of Export Grain Logistics are more than sufficient to ensure confidentiality of information is maintained by Export Grain Logistics. Any residual risk associated with these arrangements is subject to the existing constraint of legal action (by third parties under contract and for breach of duties) and is clearly outweighed by the extensive public benefits of the Joint Venture detailed in Section 2 of this Submission.

5.4 Transparency

Various parties have raised concerns as to the transparency of the Joint Venture, specifically in relation to the mechanisms for measuring and reporting the public benefits achieved.

The Commission will be aware that the export performance of AWB is already subject to the oversight of the WEA. Under the WMA the WEA is obliged to monitor, examine and report on the export performance of AWB (specifically AWB's subsidiary AWBI) and the benefits that flow to growers. A monitoring framework has been developed by the WEA to assess how AWBI is managing the export arrangements on behalf of growers.

The WEA has identified six key areas to be analysed in to order to assess and report on AWBI's performance:

(a) wheat export arrangements;

(b) pooling operations;

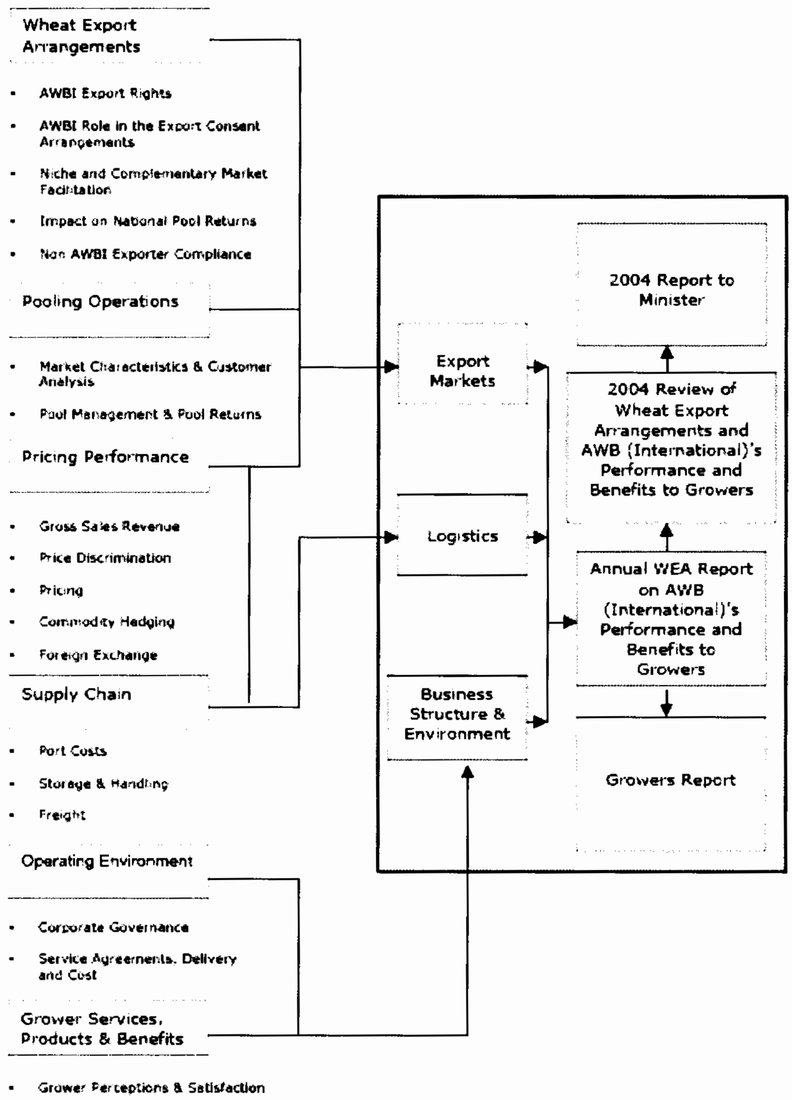
(c) pricing performance;

(d) ***supply chain***;

(e) operating environment; and

(f) growers services, products & benefits.

The following diagram sets out WEA's monitoring framework in detail:



Source: http://www.wea.gov.au/monitorawbi/kpi/framework.pdf

It is noted that supply chain logistics is identified as one of the key areas of the WEA's monitoring responsibility. The WEA produces a number of reports pursuant to their statutory reporting obligations, including:

(a) the annual Growers Report; and

(b) the WEA Annual Report.

These reports provide growers and other market participants with information as to the benefits flowing through to growers as a result of the Joint Venture (albeit indirectly). These reports and other publications of the WEA are publicly available at the WEA's website (www.wea.gov.au).

We note also that AWBI itself publishes the "AWB National Pool Performance Report" which is publicly available at AWB's website (www.awb.com.au).

The suggestion by New South Wales Farmers Association that monitoring Estimated Silo Returns is an appropriate measure of the Joint Venture's success in lowering supply chain costs is incorrect. Estimated Site to sea costs that differentiate Estimated Silo Returns from site to site have three components, namely the estimated upcountry storage cost, the estimated freight cost and the estimated port cost. At a site level, all three elements vary from season to season based on a number of factors, not the least of which is harvest volume and AWBI's marketing strategy, which may result in grain being held for a shorter or longer period, depending upon sales revenue projections or capacity issues. Further, with the growth in competition between storage operators, the market has seen more competitive pricing and service differentiation between operators and between sites. Such pricing decisions impact upon the Site to sea costs at a site level and a port level, and can also impact upon freight pricing depending upon the service level storage providers are prepared to offer in terms of rail loading.

It is because of these seasonal, production and market related factors that AWB constructed the Pool Performance model, which is used to measure changes in supply chain charges from season to season and to measure AWB's performance in managing the supply chain. This measure is reported to the WEA and to growers and has been accepted as the appropriate measure by the Grains Council of Australia and was previously accepted by the New South Wales Farmers Association.

GrainCorp and AWB believe that the Joint Venture arrangements will not give rise to any significant public detriments. The Parties believe that the proposed arrangements should lead to a more competitive and efficient export supply chain which will deliver substantial public benefits to the Australian grain industry in general, and grain growers specifically. The Parties submit that in this context, the existing arrangements provide sufficient transparency and allow sufficient assessment of the performance of the Joint Venture. Further, any additional transparency that may be provided by further reporting obligations must be weighed against the costs of implementing such arrangements. The Parties submit that such additional costs are not justified given the absence of any tangible additional benefits.

5.5 Conclusion

The Parties submit that from a legal as well as a commercial perspective an incorporated Joint Venture is the most effective structural approach to achieving the various public benefits outlined in Section 2 of this Submission.

The Joint Venture allows competitive independence to be maintained between GrainCorp and AWB and allows confidential information as between GrainCorp and AWB as well as between the Joint Venture and third parties to be sufficiently protected.

The Parties further submit that given the absence of any significant public detriments of the Joint Venture and the potential for the Joint Venture to deliver substantial public benefits through an improved export supply chain, the existing monitoring and reporting arrangements provide sufficient transparency to allow assessment of the performance of the Joint Venture.

6 Conclusion

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

The Parties structured the Transaction so that domestic competition would not be substantially lessened. The co-ordination of the export grain supply chain and the necessary information flows to maximise efficiencies is quarantined through Export Grain Logistics from the activities of the Parties in relation to the domestic market.

The incorporated joint venture structure of Export Grain Logistics "ring-fences" and the domestic operations of the Parties at the least preserve, if not enhance the existing level and dynamics of competition. It is submitted that the Transaction enhances domestic competition in that by creating a more transparent environment for rail rates, Export Grain Logistics creates a more efficient grain supply chain and provides 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 Export Grain Logistics lead to increased efficiencies in the export grain supply chain, but the Transaction and the formation of Export Grain Logistics:

- 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.

GrainCorp Operations Limited **AWB Limited**
24 March 2005

Annexure One

Annexure One - Joint Venture Agreement Schedules

Please see separate PDF document

SCHEDULE 1

PRINCIPLES FOR SERVICE CONTRACTS

PART A: REQUIREMENTS FOR ALL SERVICE CONTRACTS

Each Service Contract must:

(a) provide for supply chain plans (a cost-effective schedule of tasks for each service provider) to be prepared;

(b) be medium/long term;

(c) encourage investment in the supply chain to provide cost-effective service over time;

(d) provide commercial rates of returns to the service provider;

(e) have a charging structure that reflects efficiencies and inefficiencies of the existing infra structure;

(f) provide for cost-saving targets and productivity improvements;

(g) include performance incentives and penalties for under-performance;

(h) provide for critical data exchange;

(i) require high levels of service from the service provider; and

(j) include performance measures.

PART B: REQUIREMENTS FOR RAIL FREIGHT SERVICE CONTRACT

- The JV Company will be a buying group for rail and road transport services for AWB Services in respect of export grain of AWBI and AU and GrainCorp Marketing export grain.
- The JV Company will seek to minimise supply chain costs through common and transparent supply chain operating criteria. e.g.
    - Rail discounts for storage service such as 24 hour loading
    - Rail discounts for speed of loading such as 400TPH and 1,000TPH
    - Rail discounts for unit train operations such as balloon loops
    - Grain buyer performance in term of loading orders and order timing
    - Rail performance
    - Segregation requirements
- Contracts could include take or pay, lease/term hire, spot market, volume discount or straight variable contracts through multiple operators.
- The JV Company will not service domestic grain.
- The JV Company will give priority to service AWB and GrainCorp grain first.
- The JV Company could, after first offering to AWB Services and GrainCorp Marketing, on sell transport services if it reduces associated transport risk and costs (eg on sell leased train if there is insufficient rail business).
- The JV Company will handle the payment of all contracted transport rates for AWB Services and GrainCorp Marketing with the objective of minimising the cost of transport for the group.

SCHEDULE 2

RING-FENCED INFORMATION

PART A: INFORMATION TO BE RING-FENCED FROM AWB

- Specific market and buyer information, including product requirements, specifications, pricing arrangements, customer contract information, market analysis and forecasts, funding mechanisms and end-user demand
- GrainCorp Group marketing and risk management strategies, grain accumulation strategies or transactions
- Any GrainCorp Group information unrelated to GrainCorp's Queensland, New South Wales and Victorian supply chain requirements
- Information relating to the GrainCorp Group's supply chain operations in other states

PART B: INFORMATION TO BE RING-FENCED FROM GRAINCORP

- Specific market and buyer information, including product requirements, specifications, pricing arrangements, customer contract information, market analysis and forecasts, funding mechanisms and end-user demand
- AWBI National Pool marketing and risk management strategies and transactions. National Pool's wheat physical and covered positions and any information relating to tender sales not publicly available
- Pool Performance Benchmarking (WIB) and Attribution model(s)
- AWBA's marketing, risk management and grain accumulation strategies or transactions. AWBA's individual grain positions and information pertaining to the application for relevant export licences
- Any AWB Group information unrelated to AWB's Queensland, New South Wales and Victorian supply chain requirements
- Information relating to the AWB Group's supply chain operations in other states including AWB Grainflow Pty Ltd

Annexure Two - Agreement Supplementing and Amending the Joint Venture Agreement

Please see separate PDF document

AGREEMENT SUPPLEMENTING AND AMENDING THE JOINT VENTURE SHAREHOLDERS AGREEMENT

DATE 20 NOVEMBER 2004

PARTIES

GrainCorp Operations Limited ABN 52 003 875 401 (**GrainCorp**)

AWB Limited ABN 99 081 890 459 (**AWB**)

Export Grain Logistics Pty Ltd ACN 109 812 197 (**JV Company**)

The parties entered into a Joint Venture Shareholders Agreement on or about 13 October 2004 (**Joint Venture Shareholders Agreement**). They have agreed to supplement and amend that agreement as follows:

1. The parties acknowledge and agree that the Commencement Date was on 18 October 2004.

2. The parties agree that the interim authorisation which has been received from the Australian Competition and Consumer Commission (**ACCC**) satisfies the condition precedent in clause 2.1(a) of the Joint Venture Shareholders Agreement.

3. The parties acknowledge that the ACCC has given its authorisation on an interim basis and may withdraw it. If the ACCC withdraws its authorisation, the parties agree to:

   (a) terminate the Joint Venture Shareholders Agreement; and

   (b) do everything necessary to restore the parties to the positions they were in before the Commencement Date of the Joint Venture.

4. Clause 2.1(b) of the Joint Venture Shareholders Agreement is deleted. The parties agree to put in place interim arrangements which will apply pending finalisation of the AWB and GrainCorp Supply Agreements. The parties agree that the AWB and GrainCorp Supply Agreements must be executed and take effect by 31 March 2005. Unless otherwise agreed by the parties, if either Supply Agreement has not been executed and taken effect by that date, either party can terminate the Joint Venture Shareholders Agreement.

5. In clause 3.2(a) of the Joint Venture Shareholders Agreement, "after the Commencement Date" is deleted and replaced with "after final authorisation by the ACCC".

6. At the end of clause 4.1(b) of the Joint Venture Shareholders Agreement, add "or Melbourne, Victoria".

7. In clause 4.4(b) of the Joint Venture Shareholders Agreement, "Initial Business Plan and Budget" is deleted and replaced with "Implementation Business Plan".

8. Clause 6.2(a) of the Joint Venture Shareholders Agreement is amended to read as folbws: "The Initial Business Plan and Budget must be adopted before the expiration of the Implementation Business Plan referred to in clause 4.4(b), and will apply as the Business Plan and Budget for the period ending 30 September 2005 provided that the Board may amend the Initial Business Plan and Budget from time to time ".

9. Clause 18.2(a)(i) of the Joint Venture Shareholders Agreement is amended to read: "the information described in part A of schedule 2 is not disclosed to AWB or its related bodies corporate, other than the Directors appointed by AWB to the Board of the JV Company;"

10. Clause 18.2(a)(ii) of the Joint Venture Shareholders Agreement is amended to read: "the information described in part B of schedule 2 is not disclosed to GrainCorp or its related bodies corporate, other than the Directors appointed by GrainCorp to the Board of the JV Company; and"

11. Clause 18.2(a)(iii) of the Joint Venture Shareholders Agreement is amended to read: "any other Ring-Fenced Information provided by a Shareholder is not disclosed to the other Shareholder, other than to the Directors appointed by the other Shareholder".

12. The words "a Director or" are deleted from Clause 18.2(b)(i) of the Joint Venture Shareholders Agreement.

13. In clause 18.2(c) of the Joint Venture Shareholders Agreement, "immediately" is deleted and replaced with "as soon as practicable".

Terms in this document have the same meaning as those in the Joint Venture Shareholders Agreement.

EXECUTED as an agreement.

SIGNED for **GRAINCORP OPERATIONS LIMITED**, by its duly authorised officer, in the presence of:

N.P. Hart

Signature of witness

Nigel Phillip Hart
Corporate Services &
Company Secretary

Name

T.B. Keene

Signature of authorised officer

Thomas Bodley Keene
Managing Director

Name and title

ANNEXURE TWO
(Page 3 of 3)

ANDREW LINDBERG, MANAGING DIRECTOR

SIGNED for AWB LIMITED, by its duly authorised officer, in the presence of:

Signature of authorised officer

RICHARD FULLER

Name and title

COMPANY SECRETARY

Signature of witness

Name

SIGNED for EXPORT GRAIN LOGISTICS PTY LTD, by its duly authorised officer, in the presence of:

Signature of authorised officer

J. CULLINGHAM

Name and title

DIRECTOR.

Signature of witness

JOHN CROSBIE

Name

141703787

Annexure Three (Confidential)

[Confidential - information deleted]