



21 February 2005

The General Manager
Adjudication Branch
ACCC
PO Box 1199
Dickson ACT 2602

Via Email: adjudication@accc.gov.au

Dear General Manager

Joint Venture authorisation application for export grain freight & logistics

NSW Farmers' Association (The Association) writes in regard to the interim authorisation for the Export Grain Logistics (EGL) joint venture arrangement involving AWB Ltd and GrainCorp Operations Ltd (GrainCorp).

Authorisation

The NSW Farmers Association supports authorisation for the EGL joint venture on the proviso that:

- 1) The authorisation operates only until its benefit to grain producers can be fully and accurately assessed. The Association therefore recommends that EGL be authorised to operate until the AWB International 2004/2005 national pool returns are finalised and reported to growers, and;
- 2) EGL establishes an auditable, six monthly, public reporting process which details the quantitative benefits to grain producers generated by the joint venture. EGL's reporting process should be separate from existing company reports of each applicant to the JV.

The applicants have stated that the benefits of this JV will become more evident in the final 2004/2005 national pool analysis. Should these benefits be fully demonstrated as a direct result of the JV, the Association will be better able to determine the performance of EGL and its support for an extension of the JV.

Background

The Association wrote to the ACCC on 13 July 2004 in relation to the proposed joint venture between AWB LTD and GrainCorp and made a further written submission on October 1 2004. I would like to reiterate the Association's position on this issue.

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The Association supports initiatives aimed at lowering supply chain costs for NSW grain producers and has long recognised the need for potential benefits that could be achieved from a greater co-ordination between the two major participants in the supply chain.

Based on the applicant's public claims and following further investigation, the Association was of the view that this joint venture had the potential to deliver benefits in the movement of grain from farm to the export market.

In particular, the public claims made by the applicants in June 2004 stated:

- *The JV is designed to improve coordination of the grain export task, increase efficiencies and, over time, lower supply chain costs to improve the competitive position of Australian grain growers in the global market¹*
- *This joint venture will provide clearer commercial incentives for investment in the grain supply chain. The result will be a faster and more efficient system that will benefit both producers and buyers of grain²*

Performance of the JV under Interim Authorisation

Applicants Objectives

The Association believes that the objectives of the applicants as defined in points 7.36 – 7.45 could be achieved without the need for a formal Joint Venture entity. Both applicants currently engage in contractual storage and handling, transport and other service agreements. It seems reasonable that similar agreements can be reached to achieve improved processes of information flow, coordination and the setting of common transport operating criteria without the need to have the ACCC authorise a new entity.

The Association is concerned about the consolidation of exclusive market powers through a formalised JV entity such as EGL, particularly where this entity ignores other critical participants in the grain supply chain such as rail operators. There is evidence that the opportunity exists to achieve significantly greater efficiencies through improved logistical interfacing between the applicants and rail operators. For instance, significant demurrage (empty train runs and downtime) still occurs as a result of poor co-ordination between rail operators, storage and handlers and owners of the grain but the current JV structure excludes other rail operators.

Supply Chain Costs

The Association monitored supply chain costs at several NSW receipt sites and has noted that costs have risen considerably over the recent harvest. Appendix A (attached) illustrates supply cost increases at GrainCorp - Temora, GrainCorp - Walgett, AWB - Stockinbingal and BFB Grain at Temora when compared to the previous year. This result conflicts with the applicants' public claims in June 2004 of 'lower supply chain costs' as a result of the JV.

¹ GrainCorp / AWB Media Release, 28 June 2004

² GrainCorp / AWB Media Release, 28 June 2004

Estimated Silo Returns (ESR's) as published by AWB were used to measure supply chain costs over the 2004/2005 harvest. These ESR's are effectively the port value per tonne of pooled grain less itemised costs for up country storage and handling, freight and port charges. While it is acknowledged that ESR's are only estimates and can vary, they are considered the most effective measure of supply chain performance.

Benchmarking

In its original submission, the Association asked the ACCC to ensure that the applicant's establish a transparent performance benchmarking system to give the wider industry surety that its public claims in relation to the JV were in fact being achieved. However there appears to be no such system in place.

It is essential that EGL establish a fully compliant and transparent public reporting process which sets out the financial benefits achieved by the JV and the flow of these benefits to each JV party.

The Association notes that both applicants are currently deriving benefits from monopoly grain marketing powers. AWB Ltd is the sole licensed exporter of bulk wheat under the 1989 federal Wheat Marketing Act and GrainCorp is agent for the sole licensed exporter of NSW Canola Barley and Sorghum under the 1991 NSW Grain Marketing act.

The Association believes that with both parties currently engaged in a JV arrangement that consolidates certain areas of their respective monopolistic privileges, they have an obligation to undertake a transparent and auditable reporting process. The applicants have stated privately that the majority of benefits will result in increased pool revenues, not supply chain cost reductions. Without a transparent reporting mechanism for the JV, there will be no publicly available audit trail to identify what benefits are being derived or how these benefits will flow back to the grain producers.

AWB Ltd claim that the most appropriate benchmarking tool to assess the applicants' performance under the JV is the Wheat Industry Benchmark (WIB). The WIB is an internal monitoring process developed by AWB that sets out benchmarks for pricing, foreign exchange hedging, and supply chain performance. However, the WIB is inadequate to assess supply chain performance with respect to the JV for the following reasons:

- The WIB only assesses the performance of AWB International (AWB I) and AWB Ltd and does not monitor the performance of GrainCorp in its management of the supply chain.
- The WIB only applies to wheat exports (38% of total grain volumes exported) and not the export of other grains such as barley, sorghum, canola and pulses.
- While the WIB is claimed to benchmark supply chain performance, it can not isolate such performance with respect to the JV.
- The calculations to determine the WIB are available only to AWB LTD, AWB International and the WEA. The WIB cannot be seen as a transparent indicator of supply chain performance because it is subject to confidentiality and is not available to the general public.
- It is possible for AWB (I) and AWB Ltd to satisfy the criteria of the WIB despite supply chain costs increasing.



Benefit to the grain producing public

Point 7.62 of the ACCC draft determination on December 16 2004 states "The parties indicate that savings will be shared between the owners of the grain and the rail provider by negotiation." This statement conflicts with comments made by both parties in their June 28 2004 press release and indicates that the JV prioritises distribution of supply chain savings to the shareholders of each company over NSW grain producers.

GrainCorp has no constitutional or legal obligation to pass savings back to growers. Likewise, AWB Ltd has no legal or constitutional obligation to pass savings directly back to growers where the export trade of other grains such as Canola, Barley and Sorghum is concerned.

The obligation to pass savings back to growers only exists in relation to the Wheat Marketing Act where AWB International is required to maximise returns to growers through export pools. Exports of Pooled wheat from NSW only account around one third of annual grain production in NSW. Based on Point 7.62 of the draft determination, the applicants indicate that savings achieved on export wheat will be shared between the parties before distribution to growers.

Should you require further information, please contact me on 0427 442 252 or Senior Policy Manager, Cropping Dougal Gordon on 02 825 11 816

Yours Sincerely

A handwritten signature in cursive script, appearing to read "Angus Macneil", written over a solid black rectangular background.

Angus Macneil
Chairman
Grains Committee

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Appendix A

Supply chain costs as itemised in Estimated Silo Returns (ESR's) for Australian Hard Wheat No.1 (AH-1)

	2003/04 Pool				2004/05Pool				year on year change	without freight
	S&H	Freight	Port	Total	S&H	Freight	Port	Total		
Graincorp Temora	\$ 14.15	\$ 14.28	\$ 12.15	\$ 40.58	17.22	16.98	12.73	46.93	15%	13%
BFB Temora (Cargill)	\$ 12.31	\$ 17.06	\$ 12.95	\$ 42.32	14.3	19.05	12.97	46.32	9%	8%
AWB Stockinbingal	\$ 14.00	\$ 13.11	\$ 12.95	\$ 40.06	16.09	15.04	12.97	44.1	10.0%	8.0%
Grain Corp - Walgett	\$ 15.23	\$ 32.11	\$ 12.68	\$ 60.02	\$ 15.23	\$ 32.58	\$ 12.86	\$ 60.67	1.1%	0.3%