



## Statement of Issues

31 March 2017

### **AGT – proposed acquisition of InterGrain**

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#### **Purpose**

1. Australian Grain Technologies Pty Ltd (**AGT**) proposes to acquire InterGrain Pty Ltd (**InterGrain**) (the **proposed acquisition**).
2. This Statement of Issues:
  - gives the Australian Competition and Consumer Commission's (**ACCC's**) preliminary views on competition issues arising from the proposed acquisition
  - identifies areas of further inquiry
  - invites interested parties to submit comments and information to assist the ACCC's assessment of the issues.

#### **Overview of ACCC's preliminary views**

3. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In respect of this acquisition, the ACCC has identified one 'issue that may raise concerns' and one issue that is 'unlikely to raise concerns'.

#### **Issue that may raise concerns: breeding, development and supply of barley**

5. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in relation to the breeding, development and supply of barley seed varieties for the Australian market.
6. AGT and InterGrain operate the only two significant barley breeding programs in Australia. The ACCC's preliminary view is that the loss of competitive tension arising from the proposed acquisition may lead to less research and

development in barley, and/or higher end point royalties (**EPRs**) on barley varieties.<sup>1</sup>

### **Issue unlikely to raise concerns: breeding, development and supply of wheat**

7. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in relation to the breeding, development and supply of wheat seed varieties for the Australian market. It considers that, post-acquisition, in the breeding, development and supply of wheat seed varieties AGT would continue to face sufficient competitive constraints from alternative wheat breeders and the threat of new entry.

### **Making a submission**

8. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
  - the impact of the proposed acquisition on innovation in the breeding and development of new barley varieties in Australia
  - the likelihood of entry and/or expansion in barley breeding and development in Australia
  - the impact of the proposed acquisition on the level of EPRs for barley varieties, and
  - the impact of the proposed acquisition on the breeding, development and supply of wheat.
9. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
10. Interested parties should provide submissions by no later than **5pm on 19 April 2017**. Responses may be e-mailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: Submission re: AGT/InterGrain - attention Madeleine Houghton/Andrew Gallagher. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Madeleine Houghton on (02) 9230 3816, or Andrew Gallagher on (02) 9230 9129.
11. The ACCC anticipates making a final decision on **25 May 2017**; however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.acc.gov.au/mergersregister](http://www.acc.gov.au/mergersregister).

### **Confidentiality of submissions**

12. The ACCC will not publish submissions regarding the proposed acquisition. It will not disclose submissions to third parties (except to its advisors/consultants) unless compelled by law (for example, under freedom of information legislation)

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<sup>1</sup> EPRs are royalties collected by seed breeders from grain growers from the sale of grain produced using a particular seed variety – see paragraph [43] below.

or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate this as such. The ACCC's [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

## About ACCC 'Statements of Issues'

13. A Statement of Issues published by the ACCC is not a final decision in respect of a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
14. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

## Timeline

Date	Event
10 January 2017	ACCC commenced review of the proposed acquisition
31 January 2017	Closing date for submissions from interested parties
6 March 2017	ACCC requested further information from the parties. Former provisional date for announcement of findings (9 March 2017) delayed to 30 March 2017 to allow the parties time to provide the additional information
29 March 2017	ACCC waiting on information from vendor. Former provisional date for announcement of findings (30 March 2017) delayed
31 March 2017	ACCC publication of Statement of Issues
19 April 2017	Deadline for submissions from interested parties in response to this Statement of Issues
25 May 2017	Anticipated date for ACCC final decision

## The parties

### AGT

15. AGT is Australia's largest wheat breeding company. It is a proprietary limited company that was established in 2002 by three shareholders – the Grains

Research and Development Corporation (**GRDC**), the South Australian Government and the University of Adelaide – following the corporatisation of previously publicly-run breeding programs. AGT is headquartered in South Australia and operates nationally, with breeding centres in Northam (Western Australia), Roseworthy (South Australia), Wagga Wagga (southern NSW) and Narrabri (northern NSW).

16. AGT is currently owned by:
  - GRDC (a Commonwealth statutory body) (39.11%)
  - Vilmorin & Cie (Limagrain) (32.77%)
  - South Australian Government (14.88%), and
  - University of Adelaide (13.24%).
17. Prior to 2002, grain breeding and development programs were generally run by state government bodies, which were corporatised as part of a push to encourage private sector investment in plant breeding. During that process, AGT acquired or licensed wheat breeding programs from:
  - University of Adelaide
  - Victorian Department of Primary Industries
  - Sydney University (through AGT's merger with SunPrime Seeds)
  - NSW Department of Primary Industries, and
  - Queensland Department of Primary Industries.
18. AGT has breeding programs for all varieties of wheat (except for Udon noodle wheat), with 41 active wheat varieties.
19. AGT is also active in lupins and barley, which, like wheat, are winter crops. Winter crops are annual crops sown in autumn and harvested in spring or summer.
20. AGT's barley breeding program commenced approximately three years ago. Its breeding program is supported by germplasm from its international shareholder and partner, the grower-owned French cooperative, Limagrain. Germplasm is genetic material that may be developed and maintained for the purposes of plant breeding, preservation, and other research uses. It has also recently been awarded commercial rights to part of the University of Adelaide's breeding program, following the University's decision in 2016 to exit barley breeding. The University is currently finalising licensing agreements granting exclusive access to its germplasm to several parties. AGT does not yet have any commercialised varieties of barley resulting from its own breeding program.

### **InterGrain**

21. InterGrain was formed in 2007 when the Western Australian State Government and the GRDC privatised the Department of Agriculture's and Food Western

Australia's (**DAFWA**) wheat breeding program. It operates wheat and barley breeding facilities primarily in Western Australia, but also has a presence in South Australia and Victoria.

22. InterGrain is owned by:
  - the Western Australian Government (62%), and
  - GRDC (38%).
23. In 2010, Monsanto became a shareholder of InterGrain but in 2016 sold back its shares to GRDC and the Western Australian Government. During this period, Monsanto and InterGrain had an arrangement in place for a wheat germplasm exchange.
24. InterGrain does not breed any winter crop species other than wheat and barley, with 30 active wheat varieties and 10 active barley varieties.
25. InterGrain targets hard wheat regions in southern NSW, Victoria, South Australia and Western Australia, as well as producing Western Australia-based specialty Udon noodle wheat.
26. InterGrain entered into barley breeding in 2009 through the transferral of the publicly run barley breeding program at DAFWA to InterGrain. InterGrain's breeding program targets all the major cereal growing areas in Australia.
27. InterGrain has also acquired barley germplasm from various other sources, including from other previously public breeding programmes in Australia.

## **Industry background**

28. Grain breeding in Australia was generally formerly conducted through publicly funded state-based entities, typically through universities or through state-based agricultural departments. As a result, these entities typically specialised in breeding crops that were adapted to the climate and growing conditions of a particular state or region.
29. Over the past two decades, the majority of these publicly funded breeding programs have been corporatised, and their germplasm sold or licensed to private entities, such as AGT and InterGrain. The ACCC understands that licences for germplasm are typically provided to licensees at little or no cost, but give the licensor the right to a percentage of the royalties that are generated as a result of the germplasm being used to bring a variety to the market. Due to the constantly evolving nature of breeding and developing seed varieties (discussed in further detail below), the value of germplasm diminishes over time, as germplasm continues to be improved.
30. As described above, germplasm is the genetic material contained within a seed that may be developed and maintained for the purposes of plant breeding, preservation, and other research uses.

## Breeding and development process

31. Breeding and development of agricultural seed involves the identification, testing and stabilisation of new varieties of particular plants with germplasm that expresses particularly desirable traits. In wheat and barley, desirable traits can include yielding high volumes of grain, high quality grain, disease resistance and being adapted to grow in a range of Australian climates and growing conditions.
32. Varieties with desirable traits are then stabilised through in-breeding, to ensure that future generations of the variety consistently express the same traits, before being commercialised.
33. Breeders begin the process by undertaking research programs designed to enhance the natural characteristics of plants according to the local soil type, climate and locally prevalent diseases. After cross-breeding different varieties with each other, the parties submit that it takes four generations (about two years) for a new variety to stabilise and become a 'fixed line'. This process can be sped up by using "doubled haploids" or "single seed descent" methods, which reduces the amount of time it takes between the initial cross-breed and the production of a fixed line, although with additional cost. Once the variety stabilises, the breeder can start testing it to determine whether the variety has the commercial characteristics that would make it commercially viable. This process takes an additional three to four years.
34. The length of time it takes to bring a new variety to market is approximately ten years for wheat and twelve years for malting barley, as it takes a further two years for malting accreditation. Once a barley variety has malting accreditation, it is much more valuable than feed barley. These periods can be reduced by approximately two years if doubled haploids or single seed descent methods are used.
35. The results of cross-breeding are essentially random and there is no guarantee of success. A cross-bred variety may express desirable traits of its parents, but it may also express undesirable traits or have no particular advantages as compared to its parent varieties. Therefore, the more cross-breeds a plant breeder is able to carry out and test, the higher its chances of producing a successful variety with particularly desirable traits.
36. The chances of producing a successful wheat or barley variety are increased through the use of "elite" or "mature" germplasm which is adapted to growing in local environments. In the Australian context, the ACCC understands that "elite" germplasm refers to germplasm with desirable traits that is within the research and development pipeline, and is valuable for use in cross-breeding, and not available publicly: once a breeder has established a fixed line from cross-breeding varieties (which takes about two years), the breeder begins the process of identifying promising varieties produced as a result of that cross-breeding. These can then be recycled back for future cross-breeding while simultaneously continuing to be developed for potential commercial release. This means that before a variety is released commercially, a breeding company is already likely to be using the variety as a parental line, and may have a head-start of several years on other breeding companies in the use of that material. Unlike in other jurisdictions, in Australia, the plant breeders' rights system means that once a seed variety is placed on the market, the genetic material in the seed can be accessed by anyone (see below).

37. In practice, although not a mandatory process, all new seed varieties are tested by the National Variety Trial (**NVT**) program, which allows for comparative testing of varieties. Information is then provided to grain growers. Grain growers compare varieties and choose the appropriate variety accordingly.

### **Commercial supply**

38. Seed breeders typically license the right to grow their seed to seed growers, who multiply the seeds for retail sale. Seed growers sell the seeds to grain growers (farmers), typically under licence, who then sell their produce to grain buyers for domestic processing or export.
39. In Australia, unlike in other jurisdictions, a farmer-to-farmer traded seed sales system allows farmers to produce their own seed and to sell seed to other growers.

#### Plant Breeders' Rights

40. Once a seed variety is ready to be commercialised, breeders apply for intellectual property protection, known as Plant Breeders Rights (**PBRs**), in the new varieties they are seeking to release. Breeders must register a variety under the *Plant Breeder's Rights Act* (the **PBR Act**). This enables the breeder to collect EPRs on the registered seed variety (see below).
41. The PBR Act grants particular rights to, and places certain obligations on, the holders of PBRs. Under the PBR Act, the grantee of a PBR in a plant variety must "*take all reasonable steps to ensure reasonable public access to that plant variety*" (section 19(1)). Once a new seed variety has been placed on the market, it is open to anyone to use the germplasm in that variety in the breeding of other varieties.

#### End Point Royalties

42. In Australia, EPRs are a mechanism by which seed breeders collect royalty payments from grain growers. The EPR system is used on a range of crops, including cereals (such as wheat and barley), pulses and brassicas, but not on major crops such as canola and cotton. The EPR for a particular seed variety is set by the owner of the PBR and is payable per tonne of grain produced using that variety. The amount of the EPR payable to the breeder is calculated at the point of sale, when a grain grower declares the variety of grain and the tonnage being sold. It is calculated only on the quantity of grain sold, and is not affected by the quality of the grain, or the price that the grower receives for the grain.

### **Future with and without the acquisition**

43. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment if the acquisition proceeds (the "with" position) to the likely future competitive environment if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

44. InterGrain has been operating at a loss for several years according to its financial statements. The ACCC considers that likely possible alternatives include:
- continuing to operate under its current ownership structure
  - being acquired by another party, or
  - ceasing to operate and selling/licensing its breeding programs/germplasm.

## **Market definition**

45. The ACCC's preliminary view is that the relevant markets for assessing the effects on competition of the proposed acquisition are national markets for:
- the breeding, development and supply of barley seed varieties, and
  - the breeding, development and supply of wheat seed varieties.

## **Product market**

46. The ACCC's starting point for delineating the relevant markets in which to assess the competitive effects of the proposed acquisition involves identifying the products actually or potentially supplied by the parties. The ACCC then considers what other products constitute sufficiently close substitutes to provide a significant source of constraint on the combined AGT-InterGrain.
47. The ACCC has considered whether the relevant breeding, development and supply markets form a broad single market encompassing various winter grain crops (including wheat, barley, and other winter crops), or whether wheat and barley constitute separate markets in themselves.
48. The ACCC understands that the choice of crop that a grower sows is dependent on a number of different factors. These factors include:
- international prices and demand for a particular crop: the ACCC understands that over 80% of Australian wheat and barley is exported. Currently, wheat is the dominant winter crop in Australia and international demand for wheat is significantly higher than demand for other winter crops, such as barley or legumes
  - the yield that a given crop will produce
  - the cost of growing that crop. This is affected mainly by the crop protection products that must be applied to the crop, the cost of irrigation if relevant, the cost of fertilisers, the costs of physical and human capital, and the level of EPRs
  - crops being grown on a rotation system: most farmers typically rotate crops between wheat, barley, canola and a legume crop. This allows for the proper nutrient levels, chemical resistance and pest and disease management. Accordingly, the crop that is grown depends on how rotations are being managed and what type of crop is due to be planted.



49. Since farmers are likely to grow different crops for different purposes or to meet specific needs, the various types of seeds do not appear to be substitutable. For the purposes of the ACCC's assessment, whether or not barley and/or wheat are substitutes for other winter crops depends essentially on whether growers are likely to switch between them in response to a decrease in the relative quality (in terms of yield or pest and disease resistance) of available varieties, or an increase in the EPRs charged on those varieties.
50. As outlined above, relative quality in terms of yield and cost in terms of EPR levels are among a number of factors that affect a farmer's choice of crop. While important, they are not overriding factors in that choice, and may be outweighed by other considerations. Therefore, the ACCC's preliminary view is that a breeder of either wheat or barley varieties is likely to have the ability to, for example, impose a sustained increase in the level of EPRs without being constrained by farmers switching to other crops.
51. The ACCC has also considered supply-side substitution, that is, the ability of breeders of wheat, barley and/or other winter crops to switch between breeding programs. The ACCC understands that the technology, equipment and industry knowledge needed to run barley, wheat and other grain breeding programs may be similar. In addition, breeding companies are often active in the breeding and development of more than one crop. However, it appears that it is difficult to switch readily between breeding one type of crop and another. It appears that the requirements for an established breeder of a particular winter crop to switch its breeding program to a different winter crop is akin to the requirements a new entrant seeking to establish a breeding program would be subject to. In particular:
- key assets such as germplasm are not substitutable, and
  - once breeding and development of a particular seed variety is commenced, it is not possible to switch to the breeding and development of another seed variety without significant investment in acquiring germplasm and long lead in times of at least three to five years to cross-breed lines before a potentially successful variety can be identified for potential stabilisation.
52. For the reasons outlined above, the ACCC's preliminary view is that in order to consider the competitive effects of the proposed acquisition, it is appropriate to consider wheat and barley as distinct product markets.

### **Geographic market**

53. The ACCC's preliminary view is that the markets for the breeding, development and supply of barley and wheat seed varieties are national.
54. The ACCC recognises that the extent of substitutability between different barley seed varieties and different wheat seed varieties can depend on local geographical areas and their agronomic requirements. The ACCC is aware that some varieties of wheat and barley are capable of being grown across multiple regions, while others are more specialised for use in particular growing and climatic conditions.

55. However, in general, the ACCC considers that there is sufficient substitutability across different geographic regions for the breeding, development and supply of seed varieties to be considered a national market. Seed breeders appear able to breed seeds for any area in Australia; the skills, expertise and equipment for developing seeds suitable for growing in different areas are essentially the same. Most major breeders in Australia operate in more than one area.
56. Although the ACCC considers that the relevant markets are national in scope, it is also considering whether the potential effects on competition of the proposed acquisition are amplified in any particular region.

The ACCC invites comments from market participants on its preliminary views as to the definition of the relevant markets.

### **Issue that may raise concerns: breeding, development and supply of barley**

57. Based upon its inquiries to date, the ACCC's preliminary view is that the proposed acquisition may substantially lessen competition in relation to the breeding, development and supply of barley seed varieties for the Australian market.
58. The proposed acquisition would result in the horizontal aggregation of the only two significant barley breeding programs in Australia. The ACCC is concerned that the loss of competitive tension may:
  - decrease investment in research and development in barley, potentially leading to a reduction in the quality and breadth of barley varieties that would otherwise be available in the future, and/or potentially retarding the pace of development of new barley seed varieties, and/or
  - allow the combined AGT-InterGrain to raise the levels of EPRs on its barley varieties.

### **Competitive tension in research and development**

59. AGT and InterGrain are currently the only two significant barley seed breeding programs in Australia, following the decision by the University of Adelaide to exit barley breeding and license its breeding program. The ACCC understands that the University of Adelaide's barley breeding program was significant and that it contributed to competitive tension in barley breeding. It also understands that the germplasm currently within the University of Adelaide's research and development pipeline includes valuable 'elite' or advanced germplasm. As noted above, AGT has licenced a portion of the University of Adelaide's germplasm, which has resulted in further concentration of barley breeding in Australia.
60. The ACCC understands that while AGT's barley breeding program has not yet produced a commercially available variety of barley on the market, it operates a significant barley research and development program and is testing a small number of direct introductions from Europe. Its barley breeding program is also supported by germplasm from its international shareholder and partner, the grower-owned French cooperative, Limagrain, which is the world's largest commercial wheat breeder, second largest commercial barley breeder and fourth

largest seed company.<sup>2</sup> While, the ACCC understands, it is likely to be a number of years before AGT has a significant commercial offering from its own barley breeding program, the licences it has recently obtained to the University of Adelaide's barley breeding program are likely to result in it being in a position to commercialise barley varieties within a much shorter timeframe. InterGrain operates the largest barley breeding and development program in Australia. InterGrain's size is attributable in part to its access to a number of previously publicly funded breeding programs, as described at paragraph 27 above.

61. The ACCC understands that, at present, barley seed varieties are available that were originally bred and developed by various parties, including, in particular, the Victorian Department of Primary Industries and the University of Adelaide. However, the Victorian Department of Primary Industries is no longer involved in research and development, and, as already stated, the University of Adelaide recently announced that it will cease research and development this financial year.
62. Therefore, although there are several alternative varieties currently available to growers, this is reflective of greater competition in the past, and does not reflect the current state of competition in research and development, or the likely future availability of new and better varieties.
63. The ACCC is still considering the impact of the acquisition on the breeding, development and supply of barley seeds in Australia, but is concerned that the proposed acquisition would result in the loss of future competition between the only two significant barley breeding programs in Australia. The proposed acquisition might diminish the incentives for AGT and InterGrain to invest as much in research and development, in particular over the longer term, and to bring new seed varieties to market.

#### **Potential effect of the proposed acquisition on EPRs**

64. The ACCC is also considering the possible effects of the proposed acquisition on EPRs charged for barley seed varieties produced by a combined AGT-InterGrain. As currently available varieties (including those for which no royalty is paid to breeders no longer involved in developing new varieties) are superseded, a combined AGT-InterGrain may be left as the only supplier of popular barley varieties. As a result, it may be able to increase the level of EPRs.
65. The ACCC is continuing to explore whether the proposed acquisition would give AGT the ability to raise the level of EPRs post-acquisition, which would result in higher royalties to be paid by grain growers. In that regard, we note, in particular, that post-acquisition AGT may be constrained from increasing EPRs on its varieties because of the threat of non-compliance with the EPR system by grain growers. Market enquiries have indicated that because collection of EPRs relies largely on an honour system and correct declaration of the variety grown, it is open to growers to avoid declaring varieties that have high EPRs and to declare varieties that have low or no EPRs.

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<sup>2</sup> See: <http://www.agtbreeding.com.au/news/agt-moves-into-barley-breeding>.

### Likelihood of new entry or expansion

66. The ACCC's preliminary view is that the likelihood of timely new entry or expansion into barley breeding and development is low, and that the threat of new entry or expansion is unlikely to sufficiently constrain AGT post-acquisition.
67. The ACCC's market inquiries have identified one potential future new entrant. However, it is not clear that any new entry would be on a scale that would meaningfully constrain AGT post-acquisition. In addition, it seems unlikely that any new entry or expansion would be possible in a timely manner. Factors informing this assessment include:
- The advantage of access to "elite" or "mature" germplasm: that is, access to numerous and diverse lines of genetic material or germplasm, created through years of cross-breeding, which is adapted to growing in Australian environments (see above).
  - The length of time it takes to bring a new seed variety to market, and the long period of investment before any costs may be recovered. The ACCC understands that the period of time between the initial breeding of a barley variety and bringing it to market is around 10 years (including the research and development phase, industry evaluation, regulatory approval, and application for plant breeder rights). As noted above, the ACCC understands that in order for barley to achieve accreditation as a malting variety (which allows it to attract a higher EPR) a further growing period over two seasons is required.
  - The cost of establishing a barley breeding program, which the ACCC understands requires sunk costs of at least AUD 1 million and possibly up to AUD 5 million per year over the 10 plus year period, without any guarantee of success or of being able to recoup any of the costs.
68. The ACCC is also considering the possibility of entry by overseas industry participants, including the possibility for overseas industry participants to directly import barley varieties into Australia. However, the ACCC's preliminary view is that while this is possible in principle, and has been attempted, it is unlikely to achieve success which would meaningfully constrain AGT post-acquisition. Australian climatic and environmental conditions and disease profiles are unique as compared to other barley growing regions around the world. Accordingly, it is unlikely that international varieties of barley would have the necessary traits that would allow them to be successfully grown in Australia. The ACCC also understands that there can be difficulties and expense involved in importing seed into Australia due to quarantine restrictions.
69. Overseas seed varieties are generally imported to breed particular traits into existing Australian varieties (such as higher yield or chemical resistance), and therefore an overseas entrant would need access to an existing Australian breeding program to successfully cross-breed imported varieties of barley with Australian varieties.
70. The ACCC is also considering the effect the proposed acquisition may have on the likelihood of new entry. The ACCC's market inquiries have raised the concern that because post-acquisition AGT would already have highly successful varieties of barley, developed from high quality germplasm, including

from previously public breeding programs, it would have a much higher chance of future success than other breeders. Market participants have suggested that since seed breeding and development is, to a large extent, a “numbers game”, the more genetic material a breeder has access to and the more cross-breeds it is able to perform, the higher the likelihood of success in producing a successful commercial variety.

71. While the ACCC is aware of a potential new entrant in the relevant market, in the light of the barriers described above – in particular, the length of time it would take from establishment of a breeding program to releasing a variety to the market – the ACCC does not consider it likely that the potential new entrant will be in a position to meaningfully constrain the combined AGT-InterGrain in a timely manner.
72. The ACCC is of the preliminary view that the likelihood of new entry in barley breeding by large overseas breeding companies, such as The Dow Chemical Company and Bayer, is low, in particular given the size of the market and the significant investment required to establish a breeding program. Barley is a relatively small market in Australia, with approximately nine million tonnes of barley produced per year (compared to approximately 25.4 million tonnes of wheat produced per year in Australia).<sup>3</sup>

The ACCC invites comments from market participants on the potential effects of the proposed acquisition on the breeding, development and supply of barley seed varieties in Australia. In particular, market participants may wish to comment on:

- The impact of competitive tension in seed breeding and development. What are the important factors that contribute to the success of a breeding program (for example, total investment, number of breeding plots, staff etc.)? How are these factors likely to be affected if the proposed acquisition goes ahead?
- The factors that influence the level of EPRs on barley seed varieties. Does the level of an EPR affect the success of a variety? To what extent (if at all) is the level of EPRs which InterGrain currently collects on its barley varieties constrained by the level of EPRs collected on other popular varieties (that were developed by competitors which have since ceased breeding and development)?
- The lifespan of currently available barley varieties. If only a combined AGT-InterGrain remains as a significant barley breeder in the future, how long until currently available varieties are likely to become obsolete?
- The likelihood of new entry in barley breeding in Australia, including by overseas breeding companies.
- The extent to which access, or lack of access, to “elite” or “advanced” germplasm developed for Australian conditions affects the likelihood of new entry or expansion in barley breeding in Australia.

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<sup>3</sup> Production forecast for 2016–17, [http://data.daff.gov.au/data/warehouse/aucrpd9abcc003/aucrpd9abcc201606vVFkk/AustCropRrt20160615\\_v1.0.0.pdf](http://data.daff.gov.au/data/warehouse/aucrpd9abcc003/aucrpd9abcc201606vVFkk/AustCropRrt20160615_v1.0.0.pdf).

## **Issue that is unlikely to raise concerns: breeding, development and supply of wheat**

73. The ACCC's preliminary view is that the proposed acquisition is unlikely to give rise to significant competition concerns in the breeding, development and supply of wheat seed varieties.
74. The ACCC recognises that AGT and InterGrain are close competitors in the breeding, development and supply of wheat varieties, particularly in Western Australia and South Australia and in medium and low rainfall zones. However, the ACCC considers that, post-acquisition, AGT would continue to be constrained by other major private wheat seed breeders, such as LongReach Plant Breeders (a joint venture between Advanta Seeds Pty Ltd and Syngenta Australia Pty Ltd), and by public programs, such as the program run by the NSW Department of Primary Industries.
75. Furthermore, while the barriers to new entry or expansion into wheat seed breeding are generally similar to those described above for barley, the ACCC considers that the likelihood of new entry is greater than in relation to barley. This is due, in part, to the much larger size of the national wheat crop. There are recent examples of new entry by major multinationals, including The Dow Chemical Company and Bayer Australia Ltd.
76. For these reasons, the ACCC considers that, post-acquisition, AGT would continue to face sufficient competitive constraints from alternative wheat breeders and the threat of new entry.
77. The ACCC would welcome submissions on its preliminary view.

## **ACCC's future steps**

78. As noted above, the ACCC now seeks submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of the proposed acquisition. Submissions are to be received by the ACCC no later than **19 April 2017** and should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au).
79. The ACCC will finalise its view on the proposed acquisition after it considers submissions invited by this Statement of Issues.
80. The ACCC intends to publicly announce its final view by **25 May 2017**. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement to explain its final view.