Australian Competition & Consumer Commission

Draft Decision

GrainCorp Operations Limited's Application to Vary 2011 Port Terminal Services Access Undertaking

10 April 2014

Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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Glossary of terms and abbreviations

AGEA	Australian Grain Exporters Association
Carrington	GrainCorp's Carrington (Newcastle) Port Terminal, located at Berth no.3 at Carrington at the Port of Newcastle in New South Wales.
CBH	Cooperative Bulk Handling Ltd
CCA	*Competition and Consumer Act 2010* (Cth)
CDRs	Continuous Disclosure Rules
Emerald	Emerald Grain Pty Ltd
Glencore	Glencore Grain Pty Ltd
GrainCorp	GrainCorp Operations Limited
LD	Louis Dreyfus
Loading Statement	A current statement setting out a unique slot reference number for each ship scheduled to load grain using the port terminal service. GrainCorp also refer to this statement as the Shipping Stem
NAT	Newcastle Agri Terminal
NSW Farmers	New South Wales Farmers' Association
PentAG	PentAG Nidera Pty Ltd
PTSPs	Port Terminal Services Protocols
Undertaking	The Part IIIA Port Terminal Service Access Undertaking, accepted by the ACCC on 20 June 2011 and currently expiring on 30 September 2014.
WEMA	*Wheat Export Marketing Act 2008* (Cth) (as amended by the *Wheat Export Marketing Amendment Bill 2012*)

Summary

On 12 November 2013, GrainCorp Operations Limited (GrainCorp) made an application to the Australian Competition and Consumer Commission (ACCC) to vary its 2011 Port Terminal Services Access Undertaking (2011 Undertaking), which governs access to port terminal services at GrainCorp's East Coast Australian bulk grain ports (the Application to Vary).

GrainCorp's submission

GrainCorp proposes to vary the operation of its 2011 Undertaking to exclude certain provisions of the Undertaking from applying at its Newcastle Port, and has also proposed changes to the Port Terminal Services Protocols (PTSPs) to exclude the Newcastle Port from their application. The changes would have the effect of removing most of the existing access regulation at GrainCorp's Newcastle port, other than the existing Continuous Disclosure Rules under the WEMA. Changes have also been proposed to reflect the amendments to the *Wheat Export Marketing Act 2008* (WEMA).

GrainCorp submits that there is now competition for bulk wheat export port terminal services at the Port of Newcastle. The Newcastle Agri Terminal (NAT) (owned by its management as well as Cooperative Bulk Handling Limited (CBH), Olam and Glencore) has recently made its first shipment of grain from the terminal. Louis Dreyfus has operated a storage facility (in joint venture with Mountain Industries), with elevation being provided by Qube, since 2011.

GrainCorp's port terminal at Newcastle is currently subject to regulation because, as a vertically integrated port operator that also has a grain exporting arm, it is subject to the 'access test' in the WEMA. The access test can be met in part by having an access undertaking accepted by the ACCC. The competing facilities are not subject to the access test. GrainCorp submits that it is at a competitive disadvantage as a result of the two competing facilities not being currently subject to regulatory oversight.

GrainCorp also submits that there is significant excess capacity available at the Port of Newcastle that will provide it with the incentive to continue to provide access to exporters.

Consultation process

Six submissions from stakeholders were received in response to the ACCC's issues paper. To some extent, industry uncertainty concerning future possible regulation of the industry has limited the detail of submissions by stakeholders on the Application to Vary. Several stakeholders did not support the Application to Vary, some agreed in part with GrainCorp's rationale for making the Application to Vary and one supported the Application to Vary.

ACCC assessment

The draft decision has considered whether it is appropriate to remove existing Undertaking obligations considering the relevant matters in Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA). This has included consideration of the relevance of the mandatory Code, the current implications for GrainCorp from regulation, the extent of competition faced by the bulk wheat export market in Newcastle, and the markets upstream along the supply chain.

Mandatory code

The ACCC considers in the draft decision the implications of the possible move to a mandatory code of conduct for bulk wheat export.

The ACCC notes there is uncertainty about the introduction of the code. Accordingly, the ACCC is of the view that it would not be appropriate to delay the assessment of the Application to Vary at this time, or to refuse to consider the Application to Vary, on this basis. This is because there is considerable uncertainty about whether a Code will be brought in, what the Code will contain and what the timing may be. This draft decision notes the Code has yet to be consulted on publicly. It is possible that, following the draft decision, further information on the Code may be available.

Implications of regulation

The ACCC is of the view that, generally speaking, it is not optimal to have different regulatory arrangements in place for operators co-located at the one port. This has the potential to create distortions across the industry.

The ACCC's draft view is that, while GrainCorp does have flexibility under its Undertaking, the regulation does place restrictions on GrainCorp's activities. For example, GrainCorp is currently unable to enter into long term agreements with access seekers for the Carrington site. As an unregulated entity, NAT has greater flexibility to offer exporters customised shipping opportunities, priced accordingly. NAT also has the discretion to determine an appropriate capacity allocation model for its facility and can endeavour to meet shipping timing preferences of potential customers.

Competition at the Port of Newcastle

At the Port of Newcastle there are now three bulk wheat export operations:

- GrainCorp's Carrington port terminal facility
- NAT (owned by its management as well as CBH, Olam and Glencore)
- the Louis Dreyfus storage shed which operates in conjunction with an arrangement for elevation provided by Qube.

NAT and the Louis Dreyfus/Qube operations are not subject to the access test.

The ACCC accepts GrainCorp's arguments concerning the changing market for bulk wheat export services at the Port of Newcastle. NAT, in addition to the Louis Dreyfus export operation, has changed the market structure and the likely degree of competition for bulk wheat port capacity at Newcastle.

The three export operations have significantly increased the amount of available capacity at the Port of Newcastle, especially at the peak shipping period from December to May. This capacity is significantly in excess of the typical annual exports from Newcastle and should ensure that port operators will compete to increase exports through their facilities.

In regard to NAT, the ACCC considers the port terminal facility is comparable to Carrington, and in several respects appears to have better facilities. In addition to being newer, it is better designed to facilitate rail receival due to its balloon loop facility. While Carrington has greater storage facilities, NAT's facility can service larger vessels than the Carrington site, which provides a further potential competitive advantage. The ACCC notes that no submissions argued that NAT was not a comparable facility competing with Carrington. The ACCC's draft view is that the entrance of a significant new market participant in the form of NAT will provide considerable competitive constraint on GrainCorp's Carrington site.

In regard to Louis Dreyfus, the ACCC notes that the storage facility and broader export operation is relatively small but not insignificant. However, the ACCC considers that the facilities and elevator arrangement Louis Dreyfus has in place demonstrates that operators can explore alternative options to establishing a large scale port terminal operation. While this is subject to an exporter securing land at or nearby to the Port, it does demonstrate the feasibility of using such an arrangement to export grain.

The draft decision also contains the ACCC's assessment of the current profile of exporters from the Port of Newcastle. Given the presence of NAT, the ACCC's draft view is that it is likely that exporters should be able to access either NAT or Carrington to export wheat and other grains from the Port of Newcastle. It is possible that certain small and medium exporters may not necessarily be able to reach agreement with GrainCorp or NAT, or to set up their own operations along the lines of Louis Dreyfus. However, the ACCC notes that such exporters have in general had a limited presence in the in the Newcastle port zone in recent years. Accordingly, the likely implications from the removal of regulation may be limited in any case.

Competition in the Newcastle Port Zone

The draft decision also examines the relationship between the market for bulk wheat export port terminal services at the Port of Newcastle and associated markets upstream and downstream from the port. The ACCC's draft decision concentrates on the potential to limit port competition, rather than considering the full competitive situation upcountry.

The geographic region upstream from the port, the Newcastle Port Zone (NPZ), is the most likely source of originating wheat for GrainCorp's Carrington port and now competing facilities at the Port of Newcastle.

The draft decision considers:

- the profile of wheat production
- the level of competitive constraint provided by domestic end-users and the export container trade
- the level of competition in up-country storage and handling services, and the related market for transportation by road and rail.

As detailed in the draft decision, the ACCC's draft view is that there are significant competing demands for bulk wheat produced in the NPZ. There are a number of markets competing for bulk wheat, and competition within and between those markets.

The draft decision makes the following observations about the NPZ:

- The domestic market has the first call on wheat.
- The presence of container packing facilities at the competing ports at Newcastle and along the NPZ supply chain suggest growers have an alternative (albeit smaller) option to the domestic market and bulk wheat export.
- GrainCorp has had a significant presence up-country in the storage and handling market, but is likely to undertake a rationalisation of its facilities that will affect the extent of that presence, and the strength of its market position.
- Growers' options for marketing their wheat have increased as additional grain traders enter the NPZ market for up-country storage and handling. These include Cargill, Viterra, Louis Dreyfus and possibly in future CBH.
- There are rail operators available within the region which are more often accessed by the larger wheat exporters. The ability of small to medium operators to access rail services is a challenge not isolated to the NPZ. However the Louis Dreyfus model of operations could be feasible for small to medium operators in the NPZ.

The ACCC's draft view is that it is significant that export through the Newcastle port, including through GrainCorp's port terminal service at Carrington, is not the sole destination or even necessarily the preferred destination for wheat grown in the NPZ. The ACCC notes that, depending on wheat production levels, export may in some seasons be the likely destination for bulk wheat, but this is not always the case.

The significant degree of competition within the NPZ for bulk wheat means that port competition is not the only limit on GrainCorp's market power at Carrington. The ACCC concludes that the port's bulk terminals' influence on the upstream market is generally offset by the domestic market, competing storage and the container trade. The presence of a number of grain traders at both port and up-country suggests it will be less likely that any one grain trader or port operator will dictate trade along the supply chain.

Overall, the ACCC's draft decision is that, having regard to the matters listed in subsection 44ZZA(3) of the CCA and the submissions received in response to the ACCC's Issues Paper, it is appropriate for the ACCC to consent to varying GrainCorp's 2011 Undertaking as proposed in GrainCorp's Application to Vary.

1 Introduction

This document sets out the reasons for the ACCC's draft decision regarding the application by GrainCorp to vary its existing 2011 Undertaking, submitted on 12 November 2013.

The ACCC released an Issues Paper that invited submissions from stakeholders on the key issues relevant to GrainCorp's Application to Vary. The Issues Paper and responses to it are available on the ACCC's website at www.accc.gov.au > Regulated Infrastructure > Wheat > GrainCorp.[1]

The ACCC seeks comments from interested parties in response to this draft decision by 5:00pm (EST), 2 May 2014, after which the ACCC will issue a final decision. The ACCC welcomes comments on all aspects of GrainCorp's Application to Vary.

1.1 Background

The ACCC may accept an undertaking under Part IIIA of the CCA, from a person who is, or expects to be, the provider of a service, in connection with the provision of access to that service.[2] The CCA allows the provider of an access undertaking to vary that undertaking at any time after it has been accepted by the ACCC, but only with the ACCC's consent.[3]

On 20 June 2011, the ACCC accepted from GrainCorp, an access undertaking in relation to port terminal services. The 2011 Undertaking relates to the provision of access to services for bulk wheat export at the seven bulk wheat terminals operated by GrainCorp in Victoria, NSW and Queensland: Carrington (Newcastle), Fisherman Islands (Brisbane), Geelong, Gladstone, Mackay, Port Kembla and Portland.

GrainCorp provided its 2011 Undertaking to meet the access test prescribed by the WEMA. The access test, in part, can be met if port terminal operators that also export bulk wheat, have an access undertaking accepted by the ACCC. The 2011 Undertaking commenced on the expiry of, and effectively replaced, GrainCorp's previous Undertaking that had been accepted on 29 September 2009 (certain clauses commenced on 1 August 2011 with the remainder coming into effect on 1 October 2011).

In November 2012, amendments to the WEMA were introduced which stipulate that the access test will be repealed on 1 October 2014, subject to there being in place a mandatory code of conduct.[4] The code must (among other things):

- deal with the fair and transparent provision to wheat exporters of access to port terminal services by the providers of port terminal services

- be consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain.[5]

On 12 November 2013, GrainCorp applied to vary its 2011 Undertaking pursuant to subsection 44ZZA(7) of the CCA. On 12 December 2013, the ACCC published an 'Issues Paper' seeking stakeholder views on GrainCorp's application. The ACCC has now made a draft decision with respect to GrainCorp's Application to Vary and is seeking submissions on the draft decision. Details on the ACCC's assessment process are set out in section 1.5 of this draft decision document.

GrainCorp has applied to vary a number of provisions in the 2011 Undertaking; the Standard Terms and the PTSPs. These are outlined in more detail below and assessed in Chapters 3, 4, 5, 6 and 7 of

1 Content relating to GrainCorp's Application to Vary is available directly via the following link: http://www.accc.gov.au/regulated-infrastructure/wheat-export/graincorp-operations-ltd-2011/variation
2 Subsection 44ZZA(3) of Part IIIA of the Competition and Consumer Act 2010 (CCA).
3 Subsection 44ZZAA(7) of Part IIIA of the CCA.
4 Section 2 and Schedule 3, Wheat Export Marketing Amendment Act 2012 (Cth)
5 Section12 of the Wheat Export Marketing Amendment Act 2012 (Cth)

this draft decision. The primary change is to remove the operation of the majority of the undertaking clauses from applying at its Carrington Port.

The Application to Vary, and associated documents, are available on the ACCC's website, including:

- the Port Terminal Services Access Undertaking - with the variations marked up
- the revised Port Terminal Service Protocols which form Schedule 2 to the Undertaking (excluding their application to the Newcastle Port Terminal) – with the variations marked up.
- the proposed new PTSPs to apply at the Port of Newcastle (which will not form part of the Undertaking).
- a supporting submission.

GrainCorp also provided a supplementary submission in response to stakeholders' submissions on the Application to Vary.

The documents can be accessed by visiting to the ACCC's website at www.accc.gov.au/wheat.

1.2 GrainCorp's proposed variation

In brief, GrainCorp is seeking to amend the Undertaking and PTSPs to make changes to exclude the current access provisions (other than those relating to the continuous disclosure rules required by the WEMA) from applying at Newcastle. GrainCorp has also proposed to exclude the application of the PTSPs to the Newcastle facility. It will introduce specific Newcastle PTSPs, but these will not fall under the Undertaking.

In its accompanying submission, GrainCorp states that in pursuing these variations it is seeking the equal application of regulation at GrainCorp and competing port terminals at Newcastle. It is seeking to achieve this through moving Newcastle to a commercial market for port elevation services.

GrainCorp submits that:[6]

> The combination of
>
> 1. Strong competition;
> 2. Significant excess capacity; and
> 3. Unequal application of regulation
>
> provide a sound rationale for the ACCC to reduce the regulatory obligations for GrainCorp's port terminal at Newcastle.

In addition, GrainCorp has made a number of more minor changes to reflect the changes made to the WEMA since the 2011 Undertaking was accepted.

1.3 ACCC assessment

The ACCC's decision making framework is set out in Chapter 2 of this draft decision. Briefly, the ACCC must apply the tests set out in Division 6 of the CCA in deciding whether to consent to the variation of an existing undertaking. Subsection 44ZZA(7) of the CCA provides that the ACCC may consent to a variation of an access undertaking if it thinks it is appropriate to do so having regard to the matters set out in subsection 44ZZA(3).

[6] GrainCorp, Submission – proposed variatiions to Port Terminal Services Access Undertaking (supporting submission), p. 4.

The relevant factors the ACCC must also consider include the objects of Part IIIA of the CCA.[7] These objects include providing a framework and guiding principles to encourage a consistent approach to access regulation in each industry.[8]

In its assessment of GrainCorp's Application to Vary, the ACCC is required to form a view regarding what constitutes an appropriate access undertaking in the bulk wheat export industry. Where appropriate, the ACCC has considered industry-wide issues in its assessment of this application, in so far as they relate to access to port terminal services at the Port of Newcastle.

1.4 Making a submission

The CCA provides that the ACCC may invite public submissions on an access undertaking application, including applications to vary an existing access undertaking. The ACCC invited earlier submissions on GrainCorp's Application to Vary by releasing an Issues Paper. The ACCC is now inviting submissions on its draft decision in respect of GrainCorp's Application to Vary.

Chapters 3, 4, 5, 6 and 7 of this draft decision set out the ACCC's draft views on GrainCorp's Application to Vary. The matters listed in Chapters 3, 4, 5, 6 and 7 do not represent a comprehensive summary of all aspects of the Application to Vary, nor are comments required on each of those matters. Further, interested parties are invited to comment on any aspect of the Application to Vary that they consider relevant to the ACCC's assessment.

Background information on the legislative framework by which the Application to Vary will be assessed is also set out in Chapter 2. If practicable, submissions should refer to the legislative framework, as this will assist the ACCC in assessing the Application to Vary.

Interested parties are asked to include detailed reasons to support the views put forward in submissions. If interested parties consider that any aspect of the Application to Vary is not appropriate, please suggest changes that may address the concern/s, including drafted amendments where possible.

1.4.1 Invitation to make a submission

The ACCC, pursuant to section 44ZZBD of the CCA, invites public submissions on this draft decision on the Application to Vary GrainCorp's 2011 Undertaking.

Submissions should be addressed to:

Mr David Salisbury
Deputy General Manager
Fuel, Transport and Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

Email: transport@accc.gov.au

The ACCC prefers that submissions be sent via email in Microsoft Word format (although other text readable document formats will be accepted).

1.4.2 Due date for submissions

Submissions must be received before 5:00pm (EST), 2 May 2014. The ACCC may disregard any submissions made after this date, as prescribed by subsection 44ZZBD(3) of the CCA. Therefore it is in interested parties' interest to make submissions within this timeframe.

7 Subsection 44ZZA(3)(aa) of Part IIIA of the CCA.
8 Section 44AA sets out the objects of Part IIIA of the CCA.

1.4.3 Confidentiality of information provided to the ACCC

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part. The ACCC will then assess the Application to Vary in the absence of that information.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication *Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information,* available on the ACCC website.[9]

1.5 Further information

If you have any queries about any matters raised in this document, please contact:

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Director
Fuel, Transport and Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001
Ph: 03 9290 1945

Email: michael.eady@accc.gov.au

[9] Available at www.accc.gov.au.

2 Decision making framework

2.1 Overview

This chapter sets out the legislative framework for assessing access undertaking applications under Part IIIA. It also includes information about the public consultation process that the ACCC has conducted in relation to GrainCorp's Application to Vary. The chapter also sets out the current legislative arrangements, including the possible introduction of a mandatory code of conduct and the cessation of the undertakings.

2.2 Variation of an access undertaking

The test the ACCC applies in deciding whether to consent to the variation of an undertaking is set out in subsection 44ZZA(7) of the CCA. This section provides that the ACCC may consent to a variation of an undertaking if it thinks it appropriate to do so having regard to the matters set out in subsection 44ZZA(3). Those matters are:

- the objects of Part IIIA of the CCA, which are to:
    - promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets
    - provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry
- the pricing principles specified in section 44ZZCA
- the legitimate business interests of the provider of the service
- the public interest, including the public interest in having competition in markets (whether or not in Australia)
- the interests of persons who might want access to the service
- whether the undertaking is in accordance with an access code that applies to the service
- any other matters that the ACCC thinks are relevant.

In relation to the pricing principles, section 44ZZCA of the CCA provides that:

(a) regulated access prices should:

- be set so as to generate expected revenue for a regulated service that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and
- include a return on investment commensurate with the regulatory and commercial risks involved.; and

(b) access price structures should:

- allow multi-part pricing and price discrimination when it aids efficiency; and

- not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and

(c) access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

2.2.1 Timeframes for ACCC decisions and clock-stoppers

Subsection 44ZZBC(1) of the CCA provides that the ACCC must make a decision on an access undertaking application within 180 days starting on the day the application is received (referred to as the ‘expected period’).

Section 44B of the CCA defines an ‘access undertaking application’ to include an application to vary an undertaking .

Pursuant to 44ZZBC(6), if the ACCC does not publish a decision on an access undertaking under section 44ZZBE of the CCA within the expected period, it is taken, immediately after the end of the expected period, to have:

- made a decision to not accept the application, and
- published its decision under section 44ZZBE and its reasons for that decision.

Subsection 44ZZBC(2) of the CCA provides for ‘clock-stoppers’, which mean that certain time periods are not taken into account when determining the expected period. In particular, the clock may be stopped:

- by written agreement between the ACCC and the access provider, and such agreement must be published: subsection 44ZZBC(4) & (5)
- if the ACCC gives a notice under subsection 44ZZBCA(1) requesting information in relation to the application
- if a notice is published under subsection 44ZZBD(1) inviting public submissions in relation to the application, and
- a decision is published under subsection 44ZZCB(4) deferring consideration of whether to accept the access undertaking, in whole or in part, while the ACCC arbitrates an access dispute.

2.3 Current legislative arrangements

The Wheat Export Marketing Act 2008 (Cth) (the WEMA) came into effect on 1 July 2008 and was amended by the Wheat Export Marketing Amendment Act 2012 (Cth) in November 2012.

In 2008, the WEMA and associated transitional legislation replaced the Export Wheat Commission with a new statutory body, Wheat Exports Australia, which was given the power to develop, administer and enforce an accreditation scheme for bulk wheat exports, including the power to grant, vary, suspend or cancel an accreditation.[10]

Amendments to the WEMA in November 2012 saw the Wheat Export Accreditation Scheme and the Wheat Export Charge abolished on 10 December 2012, and Wheat Export Australia wound up on 31 December 2012. As per these amendments, the WEMA will be repealed on 1 October 2014 on condition that a mandatory code of conduct has been declared under section 51AE of the CCA by this date.

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10 The relevant transitional legislation is the Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008 (Cth).

Until then, parties seeking to export bulk wheat from Australia are required to pass the 'access test' in the WEMA until 30 September 2014. The access test, set out in section 9 of the WEMA, will be satisfied if either:

- the ACCC has accepted from a person who owns or operates a port terminal facility used to provide a port terminal service an access undertaking under Division 6 of Part IIIA of the CCA, and that undertaking relates to the provision to wheat exporters of access to the port terminal service for purposes relating to the export of wheat; and the access undertaking obliges the person to comply, at that time, with the continuous disclosure rules[11] in relation to the port terminal service; and at that time, the person complies with the continuous disclosure rules in relation to the port terminal service, or

- there is in force a decision under Division 2A of Part IIIA of the CCA that a regime established by a State or Territory for access to the port terminal service is an 'effective access regime'; and under that regime, wheat exporters have access to the port terminal service for the purposes relating to the export of wheat; and at that time, the person complies with the continuous disclose rules in relation to the port terminal service.

The Wheat Export Marketing Act 2008 (Cth) will be repealed in its entirety on 1 October 2014 if the Minister for Agriculture has by notice published in the Gazette approved a code of conduct and the code has been declared by regulations under section 51AE of the CCA to be a mandatory industry code.[12]

The Minister must not approve a code of conduct unless the Minister is satisfied that the code of conduct.[13] The Code must:

- deal with the fair and transparent provision to wheat exporters of access to port terminal services by the providers of port terminal services

- require providers of port terminal services to comply with continuous disclosure rules

- be consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors through the supply chain, and

- be consistent with any guidelines made by the ACCC relating to industry codes of conduct.

If a code of conduct is not approved and declared by 30 September 2014, the WEMA will not be repealed and the current arrangements, including the access test, will continue.

2.4 Indicative timeline for assessment

Subsection 44ZZBC(1) of the CCA provides that the ACCC must make a decision on the Application to Vary the undertaking within 180 days, starting on the day that the Application to Vary was received (referred to in the CCA as the 'expected period'). The Application to Vary was received from GrainCorp on 12 November 2013.

The CCA also provides for 'clock-stoppers', meaning that some days will not count towards the 180-day expected period. Specifically, the clock is stopped where the ACCC either publishes a notice inviting public submissions on an undertaking (including an Application to Vary an undertaking), or gives a notice requesting information about an application.[14] The consultation period following the

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11 In summary, the continuous disclosure rules require port terminal operators to publish on their website their policies and procedures for managing demand for port terminal services; a statement, updated daily, setting out, amongst other things, the name of each ship scheduled to load grain using port terminal services, the estimated date on which grain will be loaded into the ship (if known), the date on which the ship was nominated and the date on which the nomination was accepted (this statement is termed the 'Loading Statement').

12 Section 2 and Schedule 3 Wheat Export Marketing Amendment Act 2012 (Cth).

13 Clause 12 of Schedule 1 to the Wheat Export Marketing Amendment Act 2012 (Cth).

14 Subsection 44ZZBC(2) of the CCA.

release of this draft decision will not count towards the 180-day timeframe for this decision, in accordance with the ‘stopping the clock’ provisions.

The ACCC will be seeking to finalise its assessment of the Application to Vary by June 2014, although the actual timeframe may depend on the nature of comments received from industry and any potential developments in relation to the Code.

2.5 Public consultation process

The CCA provides for the ACCC to invite public submissions in its consideration of GrainCorp’s Application to Vary its accepted undertaking. Accordingly, the ACCC published an Issues Paper inviting submissions on key issues in relation to GrainCorp’s Application to Vary on 12 December 2013.

The ACCC received submissions from the following parties:

- Cooperative Bulk Handling Ltd (CBH)[15]
- Emerald Grain Pty Ltd (Emerald)[16]
- Glencore Grain Pty Ltd (Glencore)[17]
- Australian Grain Exporters Association (AGEA)[18]
- PentAG Nidera Pty Ltd (PentAG)[19]
- NSW Farmers’ Association (NSW Farmers).[20]

The ACCC also received a supplementary submission from GrainCorp.[21]

As noted in Chapter 1, all public submissions received in response to the Issues Paper and Draft Decision are available on the ACCC’s website at www.accc.gov.au > Regulated Infrastructure > Wheat.[22]

2.6 Structure of this document

As noted in Chapter 2, in assessing GrainCorp’s Application to Vary, the ACCC must determine if the proposed variations are appropriate, having regard to the matters listed in subsection 44ZZA(3) of the CCA.

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15 CBH, *Invitation for interested parties to make a submission – application by GrainCorp Operations Limited to vary the 2011 Port Terminal Services Access Undertaking in relation to its Newcastle Port Terminal*, 3 February 2014 (CBH submission in response to issues paper).

16 Emerald Grain, *Letter re GrainCorp application to vary undertaking – Newcastle port terminal*, 31 January 2014 (Emerald submission in response to issues paper).

17 Glenncore Grain, *Letter re GrainCorp operations Limited – Application to vary the 2011 Port Terminal services Access Undertaking un realtion to its Newcastle Port Terminal*, 6 February 2014 (Glencore submission in response to issues paper).

18 AGEA, Letter, 29 January 2014 (AGEA submission in response to issues paper).

19 PentAG Nidera, *Submission on GrainCorp Operations Limited – Application to vary the 2011 Port Terminal Services Access Undertaking in relation to its Newcastle Port*, 20 December 2013. (PentAG submission in response to issues paper).

20 NSW Farmers, *Submission in response to ACCC Issues paper: GrainCorp’s Newcastle Port Undertaking*, January 2014 (NSW Farmers submission in response to issues paper).

21 GrainCorp, *GrainCorp proposed variation to the port terminal services undertaking in respect of the Newcastle Terminal – response to interested parties’ submissions*, 21 February 2014 (GrainCorp response submission).

22 Content relating to GrainCorp’s Application to Vary is available directly via the following link: http://www.accc.gov.au/regulated-infrastructure/wheat-export/graincorp-operations-ltd-2011/variation.

In the draft decision, having regard to the matters specified in subsection 44ZZA(3) and the submissions received to the ACCC's Issue Paper, the ACCC has considered the following key issues:

- the overall approach and rationale from GrainCorp to request the proposed variations,
- the nature of the variations and implications from current regulation
- the state of competition in the bulk wheat export market at the Port of Newcastle; and
- the characteristics of the wheat market in the Newcastle Port Zone, in so far as it relates to and/or influences the bulk wheat export market for port terminal services at the Port Newcastle.

The ACCC discusses and provides its preliminary views on the proposed Application to Vary in the following chapters:

- Chapter 3 Regulation of the bulk wheat export industry
- Chapter 4 GrainCorp's Application to Vary proposed amendments
- Chapter 5 Competition re Port of Newcastle
- Chapter 6 Newcastle Port Zone

Within each chapter, the draft decision includes:

- a summary of the key issues to be addressed in the chapter
- GrainCorp's supporting arguments as detailed in its initial submission
- the relevant views of stakeholders
- GrainCorp's supporting arguments as detailed in its second submission
- the ACCC's preliminary views.

As noted above, six stakeholders lodged submissions in response to the ACCC Issues Paper on GrainCorp's Application to Vary. Support for GrainCorp's application is varied. To some extent, most stakeholders have been restrained in their willingness to wholly consider the Application to Vary while uncertainty remains concerning future regulation of the industry.

3 Regulation of the bulk wheat export industry

This chapter considers issues in relation to the implications of the possible move to a mandatory code of conduct for bulk wheat export, and on the decision-making framework faced by the ACCC. These issues provide context to the ACCC's view on whether, against the legislative framework, the GrainCorp Application to Vary is appropriate.

The ACCC's draft conclusion is that information pertaining to the Code is limited, and it is uncertain at this stage what future regulation may look like. It is not clear, should the Code be introduced, how currently unregulated ports would be affected. The ACCC must consider the current state of regulation of the market at the Port of Newcastle, rather than a potential outcome which may put the three export operators on a level playing field. The ACCC also considers that its decision-making framework, under the CCA and WEMA, does allow it to reach a view on GrainCorp's Application to Vary.

3.1 Overview and key issues

In its Application to Vary, GrainCorp submits that its current Undertaking places its port terminal at Newcastle at a disadvantage because the two neighbouring wheat export operations at the Port of Newcastle are not subject to regulatory oversight under the WEMA. Neither NAT nor the Louis Dreyfus storage facility are subject to the current access test in the WEMA.[23]

As outlined above in section 2.3, the WEMA sets down a process for industry to transition from the current access test regime to a mandatory code of conduct. If the Code is introduced, the access test will fall away and the current Undertaking will no longer be required.

Given this potential change in regulatory arrangements, it is appropriate that the ACCC consider the implications of a possible move to a mandatory code of conduct for bulk wheat export and its impact on whether, against the decision making framework of s.44ZZA, the GrainCorp Application to Vary is appropriate.

However, the timing and content of the Code is not yet certain. The Department of Agriculture is the lead policy agency responsible for the development of the Code of Conduct. The ACCC and Treasury are also participating in the development of the Code, which is being developed using input from an industry representative Code Development Advisory Committee. Following the Senate Supplementary Budget Estimates November 2013, the Department provided the following response in February to a question on notice:

> A draft set of principles for the operation of a Mandatory Code of Conduct has been developed by industry, through its Code Development Advisory Committee. These are being considered by agencies in the development of a draft code. It is intended that the draft code be released for public comment.

No further information is currently publicly available on the Code.

If a code of conduct is not approved and declared by 30 September 2014, the WEMA will not be repealed and the current arrangements, including the access test, will continue.

The ACCC also must make its decision on GrainCorp's Application to Vary against the matters set out in Part IIIA of the CCA, and against the legislative background of the WEMA. It is appropriate to consider the relevant legislative context when making its decision on the Application to Vary, particularly given that the proposed arrangements at Carrington are unusual for wheat export undertakings to date.

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23 GrainCorp, supporting submission, p. 14.

3.2 GrainCorp's and stakeholder supporting submissions

3.2.1 GrainCorp submission

GrainCorp outlines its rationale for making this Application to Vary in its supporting submission:[24]

> the proposed variations aim to reduce the regulatory obligations for GrainCorp's Newcastle Port Terminal in light of the high level of competition it faces from the two neighbouring unregulated bulk wheat export terminals, the Louis Dreyfus Commodity Terminal and the Newcastle Agri Terminal (NAT).

GrainCorp notes the following objectives for the application: [25]

Equity	Equal application of regulation at GrainCorp and competing port terminals at Newcastle
Competition	Move Newcastle to a commercial and competitive market for port elevation services

In making the application, GrainCorp submits it has a 'track record as a commercial and open access provider to grain exporters'. Looking forward, GrainCorp argues it has a strong commercial incentive to continue to provide open access, because there is:

- numerous viable alternative pathways for grain to be exported from eastern Australia
- strong Domestic Demand, and
- substantial excess capacity along the whole grain supply chain.[26]

GrainCorp further submits that it recognises that the expected Code could address the regulatory inequities that it considers it faces from the fact that NAT and LD are not subject to access undertakings. However it argues that:

> …we cannot place our business 'on hold' in anticipation of these new arrangements given:
>
> - The new Mandatory Code will not be introduced until 1 October 2014 at the earliest;
> - There is no certainty that the new Mandatory Code will be introduced; and
> - There is no certainly that a new Mandatory Code will be applied evenly to all port operators.
>
> GrainCorp is seeking a level regulatory playing field to support fair and equitable competition at Newcastle for this season and to provide a regulatory precedent for the following seasons if regulatory equality is not achieved by 1 October 2014 through the new Mandatory Code.[27]

3.2.2 Stakeholder submission

Most stakeholders have considered their response to the GrainCorp application against the backdrop of a period of likely change in the industry; specifically through the likely introduction of the Code.

Regulation of the bulk wheat export industry

In particular AGEA, the exporter representative body[28] indicates in its submission that, in light of the Code, it will not comment on the GrainCorp Application to Vary or the ACCC Issues Paper on the GrainCorp Application to Vary.

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24 ibid, p. 2.
25 ibid, p. 3.
26 ibid, p. 2.
27 ibid, p. 17.

AGEA submits:[29]

> That it is inappropriate to consider such significant changes to the Undertakings while the Government and industry are working towards a new mandatory Code that will replace the Undertakings subject to the Minister's approval. AGEA believes the issues raised in the GrainCorp submission and ACCC Issues Paper fundamentally deal with the intent of the Undertakings and run the risk of creating inequities ahead of the industry moving to a new set of rules.

It also submits that:[30]

> the GrainCorp submission goes directly to some of the contentious issues debated by the Code Development Advisory Committee and is essentially requesting a decision on issues which are still subject of debate, with the industry's expectation being that the Government would provide a view on these issues in the draft Code which is expected to be released for consultation in the near term. The GrainCorp submission also removed for the Newcastle terminal some of the core obligations that were agreed by all parties during the CDAC process.

AGEA notes that GrainCorp believes it is competitively disadvantaged by having less commercial freedom and flexibility, but suggests that:[31]

> the intent (of the Code) is that all bulk terminals be included under the Code and thus, will address these issues by ensuring there is a level playing field for all parties; or where it is determined that a level of competition requires a lighter touch regulatory approach this can be applied in a consistent manner.

AGEA reiterates how GrainCorp in its submission acknowledged that:[32]

> with all bulk wheat exporters being subject to the Code that such arrangements could make for a fairer playing field in the industry and could remove its perceived competitive disadvantage.

AGEA acknowledges the uncertainty surrounding the timing of the Code and the prospect that the GrainCorp Undertaking may expire. AGEA submits GrainCorp could apply to extend the Undertaking. In light of its concerns AGEA does not support the ACCC making a determination on GrainCorp's request, but states that it would support a variation to extend the GrainCorp Undertaking until the Code is clarified.[33]

Glencore supports the development of a whole of industry code of conduct which applies equally across all export grain terminals. It submits that:[34]

> The application of different levels of regulation to export port terminals in Australia gives rise to significant potential for competitive distortions across the export grain industry, the costs of which may ultimately be borne by growers.

In light of this view Glencore does not support the GrainCorp Application to Vary, though as discussed in the following chapter it agrees with a number of matters set out in GrainCorp's Application to Vary.

Emerald also raises the matter of the Code in its submission, and submits that:[35]

> … the ACCC should not pre-empt the important discussions that need to be held around the next stage of regulation by accepting GrainCorp's application at this time.

Emerald submits that work on the Code is continuing and:[36]

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28 AGEA members are: Bunge, Cargill, Emerald, Gavilon, Glencore, Goodman Fielder, Louis Dreyfus, Mitsui, Noble Resources Australia, PentAg NIDERA, Plum Grove, Riverina, Toepfer International, Touton, Quadra Commodities, Queensland Cotton/Olam, Viterra. Listed on AGEA website, http://www.agea.com.au/, (viewed on 12/3/2014).

29 AGEA, submission in response to issues paper, p. 1.

30 ibid

31 Ibid, p. 2.

32 Ibid.

33 ibid

34 Glencore, submission in response to issues paper, p. 2.

35 Emerald, submission in response to issues paper, p. 5.

36 ibid

> if the Mandatory Code remains a realistic goal for the Government, then it would be far more preferable that GrainCorp's Undertaking be rolled over temporarily than the proposed variation be accepted by the ACCC, thus risking a future claim from GrainCorp for relief from the Mandatory Code on the grounds of competition / excess capacity.

Emerald goes on to conclude that:[37]

> if the ACCC accepts at this time that GrainCorp should be exempt from the anti-discrimination provisions of its Undertaking as far as they pertain to its Newcastle terminal, it would then be illogical for the Government to propose a new Code which prohibited terminal operators favouring their own trading arms.

PentAG also does not support the GrainCorp application to vary. Like AGEA, PentAG notes that the industry and Government has been working towards the Code. It submits that the Code is intended to apply equally for all terminal operators, and that:[38]

> The implementation of this code as envisioned would result in all three port terminal operators in Newcastle operating under the same regulatory regime providing equitable access to port services to market participants.

PentAG concludes that the GrainCorp Undertaking should remain in place until the Code comes into effect.

Legal frameworks: The WEMA and the CCA

NSW Farmers submits that GrainCorp's variation application is inconsistent with the regulatory framework for the bulk wheat export industry. NSW Farmers submits a purposive approach should be taken to interpreting the port access test.

NSW Farmers refers to the Minister's second reading speech which discusses regulating ports with natural monopoly characteristics and the need for access for all exporters on fair and reasonable terms. NSW Farmers submits that the Application to Vary if accepted would frustrate the objectives of the policy.[39]

NSW Farmers also broadly references the terms of s44ZZA of the CCA by which the ACCC can undertake its assessment of the variation application. They suggest the GrainCorp application is:[40]

> … contrary to the pricing principles in that it would GrainCorp, as a vertically integrated provider of terminal services, to 'set terms and conditions that discriminate in favour of its downstream operation.

In light of this interpretation of the WEMA and the CCA, NSW Farmers questions the ability of the ACCC to approve GrainCorp's Application to Vary.

Glencore also queries the ACCC's ability to consider the GrainCorp Application to Vary within the current decision making framework, stating that it:[41]

> … questions whether it is appropriate for the ACCC to accept a variation to an access undertaking, the effect of which would be to remove all rights of access to the port terminal service provided by means of GrainCorp's terminal. In Glencore's view, the key feature of any access undertaking should be that it provides some rights of access to the relevant service.

Glencore highlights a number of provisions of the CCA and the WEMA that the ACCC will consider in the course of considering GrainCorp's Application to Vary.

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37 ibid

38 PentAG, submission in response to issues paper, p. 1.

39 NSW Farmers, submission in response to issues paper, p. 3.

40 ibid, p. 12.

41 Ibid, p. 3.

3.2.3 GrainCorp's response to stakeholder views

Mandatory Code of Conduct

GrainCorp notes that stakeholders in their submissions have concentrated on whole of industry regulation issues. In response GrainCorp submits it should not have to wait until the Code is introduced to pursue this matter, noting:[42]

> There is a lack of clarity as to when the proposed Code may be finalised or what level of regulation it will require. The only substantive guidance available to date is the findings of the 2010 Productivity Commission review, which concluded that it would be appropriate for the access test contained in section 9 of the Wheat Export Marketing Act 2012 (WEMA) to be abolished by 1 October 2014.

Furthermore, on the development of the Code and in response to the submission from AGEA, GrainCorp submits 'there is not full agreement in all areas'. With respect to the timing of the introduction of the Code, GrainCorp submits that:[43]

> In the event that the Code is implemented on its scheduled date of 1 October 2014, there are still 7 months, or one harvest season, until it would take effect. GrainCorp notes that Viterra (Glencore) has already extended its undertaking beyond 1 October 2014, suggesting they see a possibility that the Code will not be in place by then.

GrainCorp submits that several submissions highlight how inequitable access regulation creates an uneven playing field and distorts the operation of efficient markets. They note that the costs of unnecessary regulation including staff, systems and legals are passed back up the supply chain to farmers.[44]

GrainCorp also considers the opportunity costs to its operations from having access regulation in place and reference the National Competition Council's broader concern that 'inappropriate access regulation could restrict investment and innovation, and impede desirable change'.[45]

GrainCorp outlines several examples where access regulation has limited its activities:[46]

> regulation prevents us from negotiating tailored shipping solutions to meet the needs for individual exporters, prevents us from flexibly selling capacity to exporters and constrains the efficient operation of the terminal in terms of managing vessel order and inbound transport. This limits shipping capacity and competition and in turns adds cost to the grain supply chain.

Decision Making Framework

GrainCorp also responds to stakeholder submissions on the decision making framework:[47]

> Suggestions that the Variation is not a valid undertaking for the purposes of meeting the access test in the WEMA are without basis. The Variation is a valid undertaking capable of acceptance by the ACCC, so long as the ACCC is satisfied of the criteria contained in section 44ZZCA(1) of the Competition & Consumer Act 2010 (CCA). It is also sufficiently related to the provision of access at Newcastle so as to meet the requirements of the access test contained in the WEMA.

GrainCorp also submits:[48]

> that the future (potential) introduction of the Code is not relevant to any of the considerations contained in section 44ZZCA(3) of the CCA. This is particularly so in circumstances when the substance of the Code is not known at this time.

GrainCorp further addresses the access test and requirements of Part IIIA of the CCA in its submission and submits that:[49]

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42 GrainCorp, response submission, p. 1.
43 ibid, p. 2.
44 ibid, p. 3.
45 ibid.
46 ibid.
47 ibid, p. 2, 5.
48 ibid, p. 3.

> … accordingly, the access test will be passed if the Variation is an undertaking 'in relation to the provision of access to port terminal services at the Port of Newcastle.' The Variation is 'in connection with' or 'in relation to' the provision of access to Port Terminal Services, at Newcastle. It contains the following provisions which impose obligations on GrainCorp in respect of the provision of access at Newcastle:
>
> - the obligation to comply with the continuous disclosure rules, including:
>   - an obligation to publish the Port Terminal Services Protocols which apply to the loading of vessels at the Newcastle terminal;
>   - an obligation to publish a shipping stem, which includes ships which have nominated to load at the Newcastle terminal;
> - an obligation that the Newcastle Port Terminal Services protocols are a comprehensive statement of GrainCorp's policies and procedures for managing demand for Port Terminal Services;
> - an obligation to keep information previously provided in the context of an access dispute or negotiation confidential.
>
> The Variation therefore imposes these publication obligations on GrainCorp in respect of the supply of Port Terminal Services, and more specifically in respect of the loading of vessels at the Newcastle terminal. The fact that the Undertaking contains reduced obligations in respect of Newcastle, does not mean that it is not 'in connection with' or 'related to' access to services at Newcastle.

GrainCorp further submits that:[50]

> The Undertaking exists in a unique situation, where there is (a) a legislative obligation on GrainCorp under the WEMA to submit a voluntary undertaking to the ACCC in respect of a service provided by infrastructure which is not in fact 'monopoly' infrastructure and (b) there is inconsistent application of regulation of like infrastructure due to a peculiarity of the WEMA. This arises because the requirement to meet the access test is determined by the shareholding structure of the infrastructure owners, rather than by the nature of the service provided by the infrastructure.
>
> In this circumstance, the Variation gives appropriate weight to (a) the interests of persons who might want access to the service and (b) the public interest, including the public interest in having competition in markets (whether or not in Australia). In assessing these criteria it is necessary to have regard to the fact that the service in question is being provided in a competitive market where GrainCorp is constrained by competing terminals.

On the Emerald submission, GrainCorp notes that it:[51]

> …disagrees with Emerald's remarks that the Variation would require the ACCC to make a decision that was inconsistent with the approach it took when initially approving the Undertaking in 2009.

GrainCorp notes that the ACCC had not conducted a 'comprehensive market analysis in relation to each of the ports', but rather considered the undertakings in light of parliament's '… clear intention to require port terminal operators to provide access undertakings to mitigate the potential for anti-competitive harm'.

However GrainCorp notes that five years have now passed and submits that:[52]

> It is entirely appropriate for the ACCC to now have regard to the operation of the industry and to take a different approach to the one it took in 2009. We also note that to the best of GrainCorp's knowledge, in that period, no access disputes have been raised for its port terminals.

3.3 ACCC's preliminary view

The ACCC considers that, before considering the specifics of GrainCorp's proposed variations, and the specifics of the competitive situation at the port, that it is relevant to consider the issues relating to

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49 ibid, p. 6.

50 ibid.

51 ibid, p. 7

52 ibid, p. 8.

the possible change of regulatory structure and the decision making framework, particularly in light of submissions made by interested parties.

The mandatory Code of Conduct

The ACCC considers that the provision in the WEMA for the introduction of the mandatory Code of Conduct is a matter to consider under s. 44ZZA(3)(e) of the CCA. The ACCC considers that the future regulatory framework, particularly given that the intended introduction of the Code is relatively imminent, is relevant to the ACCC's deliberations.

The ACCC notes that industry has ongoing concerns surrounding the future regulatory environment of the bulk wheat export industry. At this point in time, there is limited public information on both the timing and the possible content of the Code. While the ACCC acknowledges the prospect of future change to industry regulation, it must also consider a scenario where the Code is not implemented within the timeframe as set down in the WEMA of 30 September 2014.

Should the Code not be introduced, as per the arrangements set down in the WEMA the current regulatory arrangements will continue, including the access test provisions. The ACCC notes that, should the Code not be brought in by 30 September 2014, it would be necessary for further legislative change to remove the application of the access test, even if the Code was subsequently introduced.

The possibility that the Code will not be introduced has been contemplated by Viterra, who recently extended its Undertaking until 30 September 2015. Emerald and CBH have also commenced plans to extend their undertakings.

The matter of the Code has curtailed or limited the commentary stakeholders have been able or prepared to provide on the substance of the GrainCorp Application to Vary. As noted above, some stakeholders, particularly AGEA, explicitly restricted comment on the Application to Vary. These stakeholders have indicated concern at the prospect of changes being made to the GrainCorp Undertaking while the industry potentially transitions from the current regulatory arrangements to the Code. Some stakeholders have expressed the view that the Code will in fact address the equity issues raised by GrainCorp in its submission.

There was limited detailed submission concerning the implications of the specific variations to the undertaking and the removal of access obligations. However, key concerns raised by stakeholders include the removal of the arbitration provision and the non-discrimination provision have been raised, and the possible implications should these be removed from the undertaking at the current time, before the future regulation was known.

The ACCC also notes GrainCorp's concern that in its view the current regulation is limiting its ability to compete at present at the Port of Newcastle, and that in its view it could not wait for the introduction of the Code to potentially address these concerns. Stakeholders acknowledged the new and changing market for port terminal services at Newcastle, but also more broadly expressed concern with the current regulatory arrangements in place across the Australian bulk wheat export industry. Some stakeholders have indicated specific support for GrainCorp's proposal or a general acknowledgement that GrainCorp's application is not without some merit or rationale.

The ACCC has considered the views of submitting parties that it should not make a decision on the GrainCorp Application to Vary at this time, in light of the uncertainty about the Code. The ACCC does not agree, given the considerable uncertainty about whether a Code will be brought in, what that Code will contain and what the timing of that introduction may be. It notes that the Code has yet to be consulted on publicly.

The ACCC also considers more generally, in relation to s. 44ZZA(3)(b), that it is relevant to consider the overall public interest in the context of assessing the effect of competition in the appropriate level of regulation at Port of Newcastle.

In that context, as noted in submissions, there is now an increasing level of competition in the bulk wheat export port terminal services market at a number of Australian ports. In addition to the additional operations at Newcastle, and as noted in submissions, the following new port developments have commenced operations or development following the introduction of the WEMA in 2008:

- in Brisbane, the Queensland Bulk Terminal in Brisbane
- in Western Australia, new ports being developed by Vic Stock at Albany and Bunge at Bunbury
- at Port Kembla, a planned development by Qube and Noble.

The ACCC observes that discrepancy has now arisen across the industry; in so far as competing ports by virtue of the regulatory environment currently operate under significantly different regulatory requirements. The ACCC believes that, generally speaking, it is not optimal to have different regulatory arrangements in place for operators co-located at the one port. As noted by CBH and Glencore, this development has the potential to create distortions across the industry and may prove contrary to the Objects of Part IIIA of the CCA.

As such, the ACCC considers that it should assess the application provided by GrainCorp, particularly in light of the uncertainty in relation to the Code. It is possible that, following the draft decision, further information on the Code may be available. If further information is available, and greater certainty provided about the future regime, the ACCC may take this into account in subsequent decisions.

Decision making framework under Part IIIA

Interested parties also submitted on the decision making framework under which the ACCC must determine the appropriateness of GrainCorp's Application to Vary, and the validity of the proposed Undertaking against that framework. This includes consideration of whether the requirements under the varied Undertaking would relate sufficiently to the requirements under the CCA, as well as considering whether the change is against the intention of the WEMA and regulation of the industry more broadly.

As required by s. 44ZZA, and as referenced by GrainCorp in its submission, the ACCC when making this decision must consider the Objects of Part IIIA. Set out in section 44AA, they are to:

a) Promote the economically efficient operation of, use of, and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
b) Provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.

As per subsection (b), the establishment of a framework and guiding principles has been a significant concern for the ACCC when making decisions pertaining to bulk wheat export terminals. Consistency of regulation across an industry can facilitate certain efficiencies for access seekers and establish a level playing field among market participants.

One example is the approach the ACCC took in the course of considering the undertakings accepted in 2011. In its draft decisions, the ACCC noted that:

> The ACCC will consider each undertaking on its own merits and notes that, while undertakings accepted by the ACCC from each bulk handling company (BHC) will reflect the particular circumstances of that company, there are certain aspects of the undertakings for which the ACCC will be seeking a consistent approach across the bulk wheat export industry.

At that point, the CBH, Viterra and GrainCorp undertakings already shared a number of identical and/or similar provisions, including requirements relating to non-discrimination, dispute resolution and some publication obligations.

In 2011 when considering the new tranche of undertakings, the ACCC determined it was appropriate that the port operators adopt a consistent approach to the port operating documents.

> In assessing the PTSP submitted by GrainCorp and the PTSP variation process, the ACCC has taken into consideration the experience of each of the bulk handlers' variation processes, because it considers that a consistent approach across the industry is appropriate.

As outlined above, where appropriate the ACCC has and continues to ensure there has been a consistent approach to access arrangements across the Undertakings, and therefore until recently across the industry as a whole. In light of developments within particular markets, including the arrival of new entrants not captured by the access test who operate under different market conditions, it is appropriate for the ACCC to take these considerations into account.

However, in addition to pursuing consistent regulation across the industry at a broad level, there are circumstances where the ACCC has considered specific and unique arrangements. The current port terminal services undertakings are not identical and reflect the various challenges and market characteristics unique to each port terminal operator.

This is possible as the ACCC must consider the appropriateness of a proposed undertaking and/or proposed variation to an undertaking having regard to all of the matters specified in section 44ZZAA(3) of the CCA, which include the public interest in having competition, the legitimate business interests of GrainCorp and the interests of the access seekers.

Previous examples of where the ACCC has considered specific provisions often relate to capacity allocation. This reflects the fact that the port terminal operators do not compete in identical markets. The various bulk wheat export port terminals are subject to varying degrees of constraint, both at port and along their respective supply chains.

In light of these different markets, the ACCC has determined that some arrangements proposed by port terminal operators have been appropriate and others not appropriate, for example:

- The ACCC determined in 2011 it was appropriate that GrainCorp continue to allocate capacity on a first-come-first-served approach, while CBH used an auction system.

- The ACCC in 2011 issued a draft decision that a baseload capacity proposal put forward by CBH was not appropriate.

- In 2012 the ACCC determined it was appropriate for Viterra in South Australia to move to an auction system to allocate the state's often constrained export capacity, but that the auction system did not have to be identical to that used by CBH.

- In 2011 the ACCC determined it was appropriate, in light of the constraint provided by GrainCorp's Geelong port, to accept a less prescriptive access undertaking from Emerald for its Melbourne port terminal service.

- In 2012 the ACCC did not object to GrainCorp's proposal to introduce long term capacity allocation arrangements at its ports.

- In 2013 the ACCC did not object to CBH's decision to implement a buy back process for capacity, and to further change its auction system.

Consistent with the decisions outlined above, the GrainCorp Application to Vary has been considered against the matters set out in section 44ZZA(3) of the CCA. The ACCC does not consider that it is necessarily inappropriate, or against the legislative matters it must consider, to have differing arrangements at different ports. It has considered the particular scenario relevant to the application of the Undertaking at Newcastle.

The co-location of port terminal operators at the one port will not itself prove a sufficient impetus for the ACCC to determine that the Application to Vary is appropriate. It will be necessary for the ACCC to consider a range of matters including the extent of the constraint posed by the competing Newcastle bulk wheat export operations. The ACCC will also have to consider the resulting detriment to GrainCorp's Carrington operations from continuing regulation at Newcastle after the onset of competition, in conjunction with an assessment of the potential harm to access seekers and the industry which may arise from the variation.

In relation to NSW Farmers' submission to the Minister's second reading speech, the ACCC considers that the application is not inherently contrary to any legislative intention of the WEMA. In particular, the ACCC considers that this is a relevant matter. However, if there is sufficient competition for a port, concerns of monopoly characteristics may be reduced. Similarly, the pricing principles are a relevant matter for the ACCC to consider but not determinative of the assessment.

The ACCC has also considered Glencore's submission concerning the rights of access in the undertaking. The ACCC considers that the proposed variations to the Undertaking would contain sufficient clauses relating to access to be accepted under the CCA, but notes that whether the undertaking remains appropriate is for the ACCC to determine, having regard to the matters specified in s .44ZZA(3).

Conclusion

The ACCC acknowledges that stakeholders in their submissions have focused on the possible introduction of the mandatory code of conduct. The ACCC also notes that the timing of the Code is uncertain and that, should the mandatory code of conduct come into force, it is not clear what obligations GrainCorp's Carrington port terminal or the other export operations at the Port of Newcastle could be subject to.

Importantly, the matters specified in section 44ZZA(3) which the ACCC must have regard to in assessing GrainCorp's Application to Vary, go beyond the fact that there is a possibility that a mandatory code of conduct may be introduced. For example, these matters include the public interest (including the public interest in having competition in markets), the legitimate business interests of GrainCorp and the interests of access seekers.

The ACCC notes the withdrawal of the majority of access obligations at Carrington is unusual for the bulk wheat undertakings to date. However the ACCC has demonstrated in its assessments of proposed undertakings, undertaking variations and extensions and port terminal services protocols variations, it is necessary to consider applications against the objective of consistent regulation in conjunction with considering what is appropriate for specific market settings, including upstream and downstream markets.

The ACCC therefore considers that it is open for GrainCorp to argue that it should not be subjected to a different set of obligations than its competitors at the Port of Newcastle. The Application to Vary, if accepted by the ACCC, would enable GrainCorp to operate the Carrington port terminal in a manner closer to that of its competitors (noting it will still adhere to the legislative CDRs which its competitors are not required to do).

With respect to the WEMA, the obligation to satisfy the access test was borne out of concern that the dominant vertically integrated bulk handlers would become regional grain export marketing monopolies. However, the onset of competition at the Port of Newcastle, as explored further in Chapter 5, suggests that this may not be the case. Accordingly it may not be necessary to have regulation continuing equally at all ports consistently. This may be also reflected in the Productivity Commission recommendation in its inquiry into bulk wheat exporting arrangements that the industry should continue to move towards deregulation.

4 GrainCorp's proposed amendments

This chapter examines the existing Undertaking obligations on GrainCorp, and the potential limitations on the ability of GrainCorp to compete that these may cause. The ACCC's consideration of GrainCorp's obligations and potential detriments will contribute to the ACCC's view on whether, against the decision making framework of s.44ZZA, the GrainCorp Application to Vary is appropriate.

The ACCC's draft view is that, while GrainCorp has considerable flexibility with its current arrangements, the Undertaking does impose restrictions and costs on GrainCorp, while its competitors at the Port of Newcastle currently have none. The ACCC recognises the limitations that are imposed on GrainCorp's behaviour by the Undertaking.

4.1 Overview and key issues

GrainCorp proposes that clause 4.1 of its 2011 Undertaking will be amended to exclude certain specific provisions from applying in relation to port terminal services provided by means of the Port Terminal Facility at Carrington: [53]

- Clause 5 'Price and non-price terms'
- Clause 6 'Negotiation for access'
- Clause 7 'Dispute resolution'
- Clause 8.2 'Dispute resolution' (relating to confidentiality)
- Clause 9 'Capacity Management' (except clause 9.1 Continuous Disclosure Rules and 9.2 Port Terminal Services Protocols)
- Clause 10.1 'Information on stock at the port'
- Clause 11 'Report on Performance Indicators'

GrainCorp also submits that:[54]

- Clause 8.1 'Treatment of Confidential Information' will remain but be amended to apply to any confidential information that may have been provided to GrainCorp by a customer previously, to ensure that a confidentiality obligation remains in respect of the confidential information.
- Clause 9.1 'Continuous Disclosure Rules' will remain in order to comply with section 9(1)(b) of the WEMA, which requires that 'the access undertaking obliges the person to comply, at that time, with the continuous disclosure rules in relation to the port terminal service'

Overall, other than maintaining the CDRs, the Application to Vary proposes to remove essentially all existing access provisions and has the effect of removing the current negotiate-arbitrate framework from applying at Carrington.

Given the nature of GrainCorp's proposed variation, it is relevant that the ACCC consider whether and how the existing obligations on GrainCorp may restrict GrainCorp's operations, its ability to compete and limit any potential conduct that may disadvantage exporters.

[53] GrainCorp, supporting submission, p. 17.
[54] Ibid, p. 18.

4.2 GrainCorp and stakeholder supporting submissions

4.2.1 GrainCorp submission

Against the backdrop of greater competition at the Port of Newcastle, GrainCorp submits that the unequal application of regulation across the bulk wheat export market in Australia hampers its ability to compete. In particular it submits operations at Carrington are disadvantaged against NAT and LD (which are not subject to regulation) as it has:[55]

> a) Limited commercial freedom to enter into flexible and private contractual arrangements for our own grain and with other exporters to secure and retain export grain volume into our port.
>
> b) Limited operating freedom to manage elevation capacity between conflicting customer requirements in a flexible manner to optimise our service offering and minimise operating costs.
>
> c) Limited freedom to apply flexible pricing and to enter into private pricing arrangements to allocate elevation in an efficient manner.
>
> d) Limited ability to manage our commercial business and operations in a confidential manner.

GrainCorp suggests that, unlike itself, NAT and LD are not required to:[56]

- Publish information on their operations that include shipping stem and stocks;
- Publish reference rates and be bound by minimum standard terms;
- Operate on a non-discriminatory basis;
- Be subject to dispute resolution procedure;
- Be subject to a an ACCC audit right; and
- Have a public and common port protocol governing how elevation capacity is allocated and managed.

GrainCorp submits that:[57]

> The current regulation in respect of the Newcastle Port Terminal fails to meet the object of Part IIIA of the Competition & Consumer Act (2010) contained in section 44AA(b) to 'provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.

If the Application to Vary was accepted, GrainCorp submits that it has demonstrated that it can commercially operate under more flexible access arrangements, which have included:[58]

- A "first-in-first-served" system of elevation capacity allocation
- Long Term Agreements, allowing [GrainCorp] to reserve long term capacity for our own and customer's use, and
- Day to day flexibility in managing elevation capacity with our customers through out of protocol arrangements agreed to by our customers.

4.2.2 Stakeholder submissions

Stakeholders expressed a range of views on the central aspect of the proposed variation, the withdrawal of the majority of the access provisions at GrainCorp's Carrington facility.

Some stakeholders indicated in principle support for GrainCorp's argument relating to the unequal application of regulation across Australia's bulk wheat export port terminal services.

[55] GrainCorp, supporting submission, p. 3.
[56] ibid, p. 14.
[57] ibid, p. 3.
[58] ibid, p. 2.

This includes Glencore, who agrees with a number of matters set out in GrainCorp's application, and submits that:[59]

- The unequal application of access regulation can create potential risks to, and place unwarranted limits on, effective competition; and
- Access regulation should not be applied in a way that limits the ability of infrastructure owners to engage commercially with customers, and enter into flexible and efficient commercial agreements to meet the evolving (and often different) requirements of customers. Glencore agrees both with the importance of developing genuinely commercial arrangements with customers, and with GrainCorp's observation that there are some obstacles to this within the current regulatory regime (in particular the broadly drafted non-discrimination provision).

As noted above, given Glencore's preference for a whole-of-industry response, it does not support the GrainCorp Application to Vary itself.

In particular, Glencore notes that the effect of the proposed variation would be the removal of the right to access at Carrington, removal of obligations concerning price and price changes, no recourse to independent arbitration, removal of the non-discrimination provision. Essentially, Glencore submits that 'access seekers would not have any substantive rights to use, or to negotiate access to, GrainCorp's Carrington terminal'.[60]

CBH agrees with the rationale proposed by GrainCorp and argues that:[61]

> the uneven application of regulation creates an uneven playing field and distorts the operation of efficient markets with an adverse impact in both domestic and international wheat markets.

CBH expands on the possible detriments and disadvantage from an arrangement like the one at the Port of Newcastle:[62]

> unequal application of regulation places those entities which are subject to regulation at a competitive disadvantage compared to their non-regulated competitors. This is because regulated entities face high costs and burdens associated with regulatory compliance, operational constraints, and inflexibility in applying prices and managing how to acquire and export wheat. For example, it takes time to make adjustments to the commercial terms covered by an undertaking to deal with changes in market circumstances (including changes made at the request of customers.
>
> This competitive disadvantage creates a distortion in commercial terms available in the market for the export of wheat and conceivably in relation to export terms for wheat from Australia in the global market. Such an uneven playing field makes it very difficult for the regulated entities to compete effectively.

CBH further submits that:

> that it is in the interests of productivity and effective competition that regulation is removed in these circumstances so that it does not create unintended distortions, it allows industry participants to be free to compete on a level playing field in the most effective and efficient manner and that they are able to make long term commercial investments in infrastructure based on market forces.

Emerald also finds merit in GrainCorp's argument pertaining to unequal application of regulation. Emerald acknowledges there will be implications for GrainCorp from the onset of competition at Newcastle. Emerald recognises that the 'framework for the regulation of Australian wheat exports should be dynamic.' [63]

> GrainCorp has, though its application for variation, asked a very reasonable question of government and the industry, given the recent development of alternative terminal capacity at Newcastle.'
>
> …
>
> Emerald notes that GrainCorp's application is consistent with the views of the Productivity Commission in its report into Australia's wheat exporting arrangements.

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59 Glencore, submission in response to issues paper, p. 1.
60 ibid, p. 2.
61 CBH, submission in response to issues paper, p. 2.
62 ibid, p. 3.
63 Emerald, submission in response to issues paper, p. 1-2.

However Emerald indicates:[64]

> we do not believe that unequal application of regulation in the context of the wheat market is a bad thing. It should be remembered that the current regulatory scheme was introduced out of concern that the major BHCs would establish so-called "regional monopolies", and it was not designed, as far as we aware, to deter new investment, and therefore competition, at port. There is a danger that a "one size fits all" approach to regulation may be counter-productive to competition. New investors need, in particular, the ability to underwrite the risk of the investment in the form of take-or-pay arrangements.

While Emerald notes that the Application to Vary 'raises some important questions about the basis of the regulation of wheat marketing arrangements in Australia', it does not believe the GrainCorp case to be compelling and concludes that it does not believe GrainCorp has demonstrated in its submission that competition has or will cause significant ensuing detriment:[65]

> GrainCorp does not demonstrate in its submission what the impacts are of the unequal application of regulation, apart from vague claims about constraints on flexibility and operational constraints.

By way of example, Emerald illustrates the flexibility available to GrainCorp at Carrington under the GrainCorp Undertaking. They reference GrainCorp's capacity to negotiate long term agreements for up to 60 per cent of capacity at Carrington for a period of three years.

Emerald also notes that:

> GrainCorp's trading arm has been the largest exporter serviced at Newcastle since export deregulation, with 46% share of exports. We conclude that the impacts on GrainCorp of unequal application of regulation are not excessive.

NSW Farmers do not support GrainCorp's Application to Vary and suggest that GrainCorp has a range of levers at its disposal to compete or alternatively not compete across its ports, including:

- charges in Queensland (where GrainCorp face little competition of note) have been consistently higher than in Victoria and NSW.
- since 2012-2013 GrainCorp has not charged additional amount for grain originating outside of its Victorian ports, where it is faces competition from Emerald's Melbourne Port Terminal.
- for 2013-2014 GrainCorp removed the additional charge for the delivery of grain to Carrington, presumably in anticipation of competition from NAT. It continued the levy at Port Kembla.
- GrainCorp raising the nomination fee for a shipping slot from $5 to $8 per tonne.
- the introduction of long term agreements for port access. [66]

NSW Farmers also considers GrainCorp's financial performance (citing GrainCorp's Annual Reports from 2006-20011) suggests that GrainCorp has achieved a commercial return while subject to the requirements of the access test. [67]

On the substance of the variation, NSW Farmers highlight the importance of the Undertaking's arbitration and dispute resolution provisions:[68]

> the arbitration and dispute resolution processes of the ACCC provide a suitable and commercial means for the resolution of disputes over the establishment of conditions of access and over disputes over alleged breaches of these terms once established.

NSW Farmers also discount a previous reference made by GrainCorp which suggested access seekers could seek remedy to issues of access via Part IV, Part V, and sections 46 and 47 of the

[64] ibid, p. 4.
[65] ibid.
[66] NSW Farmers, submission in response to issues paper, p. 14.
[67] ibid, p. 15.
[68] ibid.

CCA. They note the limitations of these provisions as set out in the Productivity Commission Inquiry Report into Wheat Export Marketing Arrangements 2010 and the Hilmer Review.[69]

4.2.3 GrainCorp's response to stakeholder views

GrainCorp submits that its Newcastle terminal is subject to a number of competitive pressures and reiterates the arguments outlined in its initial submission. GrainCorp also references the ACCC GrainCorp Port Terminals Services Access Undertaking Final Decision which noted that port terminal capacity was 'relatively unconstrained on the east coast and that the export of bulk wheat through GrainCorp's port terminals are subject to a number of competitive pressures'.[70]

GrainCorp submits that the level of competition in Newcastle now is even higher than that described by the ACCC in 2011, as:[71]

- The 3 export terminals operating at Newcastle have a combined 4.3 million tonnes of annual elevation capacity to service an average bulk export grain demand of only 1.1 million tonnes and peak demand of 1.8 million tonnes.
- The average annual utilisation of capacity at Newcastle, based on past actual annual exports is 23%. The peak utilisation in recent years was 43% in 2005, followed by 38% in 2012.
- The combined capacity of the NAT and LDA terminals can comfortably handle the total annual average and peak bulk grain export task at Newcastle.
- Approximately 63% of grain production (around 2 million tonnes) from the Northern NSW catchment zone (ie which is serviced by the Port of Newcastle), is consigned into the domestic and container markets.

GrainCorp also reiterates the extent of competition upcountry in storage and handling, as outlined in its initial submission. GrainCorp notes Emerald's observation that 'it is evident that GrainCorp now faces competition at the port of Newcastle'*.* GrainCorp submits that the Application to Vary should be approved by the ACCC in light of:[72]

> (a) the general acceptance that there is a significant degree of competition amongst the three grain export terminals at Newcastle (supported by clear evidence of strong competitive constraints), together with
>
> (b) recognition that inequitable regulation gives rise to inefficiencies and costs, which will ultimately be passed up the supply chain to farmers.

In response to Emerald's suggestion that GrainCorp may exclude third party access to the Carrington site, GrainCorp submits it:[73]

> has no incentive to exclude third party access from its Newcastle Terminal, so as to create a closed supply chain, as suggested by Emerald. As submitted previously, shipments (for all exporters) only account on average for 23% of the capacity of the Newcastle Terminal.

GrainCorp reiterates that the 'high fixed cost nature of its infrastructure means that it is economically incentivized to maximize throughput in order to recover those costs'. Citing the importance of throughput, GrainCorp notes its storage facilities have always remained open to growers and grain traders.

4.3 ACCC's preliminary view

Limitations of the current GrainCorp Undertaking

On the substance of the proposed variations and the implications for access arrangements at the GrainCorp Carrington facility, GrainCorp has presented limited information and evidence to substantiate their claims. Its key concern, as outlined above, is that the GrainCorp Undertaking

69 ibid.
70 GrainCorp, response submission, p. 4.
71 ibid
72 ibid, p. 5.
73 ibid, p. 7.

imposes a series of limitations on its business with respect to: privacy, operating freedom, prices and commercial freedom. These suggested limitations are addressed in greater detail below.

The ACCC also notes that GrainCorp itself noted in its submission accompanying the Application to Vary, that it has had the flexibility to enter into a range of contractual relationships including the long term arrangements, that it has managed capacity allocation on a first-in-first-served approach (compared with an auction system as in place in Western Australia and South Australia), and by way of the protocols has had ‘day to day flexibility in managing elevation capacity with our customers’.

The ACCC also notes that with respect to the timeliness and imperative for this decision that GrainCorp made the decision in February 2014 to proceed with opening the first-in-first served allocation of capacity for all its port terminals for the shipping period 1 October 2014 - 30 September 2015.

GrainCorp has also been able to offer long term capacity arrangements to its customers. However, this process is undertaken once every three years. If the undertakings were to continue, the matter of long term agreements at Carrington would be next considered in 2016.

Access Agreements

As outlined above, GrainCorp submits it has ‘limited commercial freedom to enter into flexible and private contractual arrangements’, and/or the ‘limited ability to manage their business and operations in a confidential manner.’

However, the ACCC notes that, as set out at *Section 5.1 Access to Standard Port Terminal Services* of the 2011 Undertaking, a range of arrangements pertaining to access can be negotiated, and if required arbitrated on, including:

- non Standard Port Terminal Services (that are nonetheless within the ambit of Port Terminal Services);
- non Standard Terms (for Port Terminal Services or Standard Port Terminal Services);
- prices other than Reference Prices (for Port Terminal Services or Standard Port Terminal Services); or
- any combination of the above.

Taking into account the rationale of the WEMA, GrainCorp must adhere to clause 5.5 (a) Non-discriminatory access:

> In providing access to Port Terminal Services, GrainCorp must not discriminate between different Applicants or Users in favour of its own Trading Division, except to the extent that the cost of providing access to other Applicants or Users is higher.

However this clause only limits GrainCorp’s ability to provide favourable terms to its own Trading Division, not to other operators more generally.

General framework

The ACCC considers the publish-negotiate-arbitrate framework has worked successfully. Accepted by the ACCC in 2009, it was rolled forward into the 2011 Undertaking. The framework provides:

- GrainCorp will offer to supply the standard port terminal services to access seekers on standard published non-price terms and conditions (Standard Terms). In providing access to port terminal services, GrainCorp must not discriminate between different applicants or users in favour of its own trading arm, except to the extent that the cost of providing access to other applicants or users is higher.
- GrainCorp must, for access to each standard port terminal service, publish reference prices on the GrainCorp website.

- GrainCorp will enter into negotiations with access seekers for the provision of access to port terminal services. Both parties must negotiate in good faith in accordance with the terms of the 2011 Undertaking. The negotiations will be finalised by the execution of an access agreement.

- Any dispute, except those in relation to executed access agreements or the PTSPs, will be resolved in accordance with clause 7 of the 2011 Undertaking. Clause 7 provides a process whereby disputes may be escalated from negotiation to mediation to arbitration.

As noted by the ACCC in the 2011 Undertaking Draft Decision, the ACCC considers that this approach was effective and would balance the legitimate business interests of GrainCorp with the interests of access seekers, being matters the ACCC must have regard to as specified in subsections 44ZZA(3)(a) and 44ZZA(3)(c) of the CCA.[74]

The ACCC notes that during the five years this model has been operating, no arbitrations have taken place. However, this does not suggest that the negotiate-arbitrate framework has been unsuccessful. To the contrary, the ACCC considers that the threat of arbitration by an independent arbitrator such as the ACCC appears to be effective in encouraging parties to reach commercially negotiated outcomes.

In addition to the different types of agreements GrainCorp can enter into, the length of the agreements is also flexible. In 2012, the ACCC did not object to GrainCorp's proposal to offer long-term agreements (LTAs) to users of its bulk grain export facilities. At the time of the decision to not object, the ACCC indicated it recognised the benefits in allowing longer-term bookings, including allowing greater certainty for users in planning their long-term grain export programs and aiding supply-chain planning.

In February 2013, customers had the opportunity to book capacity for three years for the period 1 October 2013 – 30 September 2016. GrainCorp was able to allocate up to 60% of its port capacity to exporters who are willing to commit to minimum export volumes over a three-year period. If users fail to book and/or use this capacity each year, they will still be required to pay the booking fee ($8/tonne) to GrainCorp. GrainCorp reported in February at its Annual General Meeting that 1.9mmt[75] p.a. under LTAs was confirmed by third parties from FY14 to FY16 (3.8mmt including GrainCorp Marketing).[76]

The ACCC notes that through the LTA process 400,000 tonnes of capacity was taken up at Carrington on a per annum basis. Given annual elevation capacity at Carrington is 2,500,000 and 60 per cent of the total was available to allocation GrainCorp could have allocated 1,500,000 tonnes to access seekers, including to GrainCorp Trading. This 400,000 tonne amount allocated is considerably less than the annual LTA allocations at Port Kembla of 1,400,000 tonnes and at Geelong 1,046,000 tonnes.[77]

This result may be for a number of reasons, including but not limited to a reflection of the current drought conditions in Northern NSW, in combination with the many competing interests for wheat from the domestic market in the region. However, the allocation took place for a term of three years, and before information about the harvest was available. Access seekers are also likely to have wanted to see what commercial arrangements would be available through the Newcastle Agri Terminal. Furthermore, previous customers of GrainCorp at Carrington that are involved in the ownership of NAT – Queensland Cotton, Glencore and CBH – are potentially more likely to plan to ship from the NAT facility.

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74 ACCC, *GrainCorp Operations Limited Port Terminal Services Access Undertaking Draft Decision*, 24 March 2011, pp. 21-22.

75 mmt is million metric tonnes

76 2013 AGM Presentation – 25 Feb (FY13), p38 http://www.graincorp.com.au/investors-and-media/presentation-and-events/annual-general-meetings, viewed 17/03/2014.

77 GrainCorp Long Term Agreement Capacity Allocations 1 October 2013 – 30 September 2016, http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/, (viewed 17/03/2014).

While GrainCorp does not explicitly reference its concern with the non-discrimination provision, this appears to be a key issue of concern given the nature of GrainCorp's comments at *1.2 Limitations of the Current Port Undertaking*. Given neither NAT or Louis Dreyfus are subject to the access test they are not bound by the provisions of non-discrimination and can enter into commercial arrangements as they see fit.

At this point in time no information is available publicly pertaining to NAT's capacity allocation arrangements. Further information may become available following the Draft Decision and will be considered accordingly.

However, shipping customers of NAT or growers who sell wheat to Louis Dreyfus would currently engage in commercial negotiations to arrive at a suitable shipping or marketing agreement. Louis Dreyfus as both grain trader and wheat exporter is not constrained in the use of its own facility. Furthermore, while the ACCC is unable to ascertain the specific arrangements that CBH, Olam and Glencore have secured at NAT, it is unlikely to be to their detriment compared to other access seekers. Therefore this is unlike the non-discrimination provision of the GrainCorp Undertaking at Carrington which prevents GrainCorp providing preferential treatment to GrainCorp Trading.

As outlined above in accordance with its legitimate business interests, GrainCorp has had the discretion to enter into agreements which reflect a range of scenarios. Parties have been able to negotiate on price and terms, or opt for standard terms and reference prices. GrainCorp is also not required to disclose the agreements it makes with access seekers.

In the absence of competition at the Port of Newcastle the ACCC does not believe GrainCorp would be constrained in its ability to enter into access agreements, other than with its Trading Division. Given its previous monopoly position at the Port, it has been in the interests of GrainCorp, access seekers and the public that an appropriate balance has been maintained with respect to access. However with the onset of competition at the port, the ACCC considers that GrainCorp's business interests as a whole may be constrained when competing with other Newcastle port terminals.

Operations

GrainCorp submits that a constraint of the Undertaking is the limited operating freedom to manage elevation capacity in a flexible manner. Yet the ACCC in its 2011 Draft Decision on the GrainCorp Undertaking confirmed the need to take into account the operational nature of the Port Terminal Services Protocols.

> As the ACCC considers that certainty, flexibility and timeliness regarding the operation of the PTSP are of critical importance, given the PTSP is the document by which the port operates, an approval role in respect of each proposed variation is inappropriate.[78]

Therefore in 2011 when the ACCC accepted the inclusion by GrainCorp of an objection notice power with respect to potential changes that could be made through variation to the PTSP, the clause was limited to only be used in certain circumstances, where the proposed variation is material and gives rise to concerns under either the anti-discrimination or no hindering clauses. As such, while the ACCC has reviewed bulk wheat exporters' protocol variations, it has not to date exercised this power, although it has used a similar objection notice in response to Viterra's initial proposed auction system in 2012.

The ACCC notes that while the above process has operated as intended. In the competitive environment now in place at the Port of Newcastle, GrainCorp may be constrained operationally. GrainCorp is unable to offer to the market the same level of service and/or necessarily respond to emerging opportunities that the other operators at Newcastle will be able to, particularly NAT. NAT may be able to be more responsive to emerging situations concerning wheat availability, shipping opportunities and other changes. More broadly customers may find it appealing that NAT can operate without regulatory oversight.

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[78] GrainCorp 2011 Undertaking Draft Decision, pp62-63.

Pricing

In relation to NAT and LD, GrainCorp submits it has 'limited freedom to apply flexible pricing and to enter into private pricing arrangements to allocate elevation in an efficient manner'. However, in the ACCC's *2011 GrainCorp Draft Decision*, the ACCC confirmed its position that:

> prescriptive ex ante price regulation is not necessary in the case of GrainCorp's Proposed 2011 Undertaking.[79]

Furthermore as outlined above and set out Clause 6, access seekers may negotiate non-standard price and non-price terms.

In 2011, the ACCC determined it was appropriate that the pricing provisions be rolled over from the previous 2009 undertaking. This was determined for a number of reasons, including the state of the market and the absence of significant competition. The ACCC notes that it has not been required to arbitrate on any matters involving wheat access, including price. Access seekers have appeared to negotiate successfully on price and other terms as provided for under the undertaking.

GrainCorp has had significant discretion to offer access prices it has determined are appropriate, but it is restricted from improving on offers it has made to other access seekers when entering into agreements with GrainCorp Trading. This arrangement now has some inconsistency against the backdrop of the market for bulk wheat port terminal services at Newcastle, where neither Louis Dreyfus nor NAT are required to comply with obligations on pricing in relation to any customer/s.

Confidentiality

In response to GrainCorp's concerns regarding confidentiality, the ACCC notes the Undertaking does not stipulate public disclosure requirements pertaining to access agreements, other than publishing the standard terms. The only exception is the requirement set out at clause 5.5 (c) of the 2011 Undertaking:

> c) Within five Business Days of executing an Access Agreement with its own Trading Division, GrainCorp must provide to the ACCC a copy of that Access Agreement.

This disclosure requirement is to the ACCC and it does not release the agreement into the public domain.

However GrainCorp elects to publish this material on its website voluntarily, as outlined on its website at the "Shipping" page.

> Access Agreement Executed with GrainCorp Marketing
>
> Clause 5.5 (c) of the Undertaking requires GrainCorp to provide to the ACCC a copy of the Access Agreement with GrainCorp Marketing within five days of execution. GrainCorp is not required by the Undertaking to publish this Agreement, however has elected to do so voluntarily.

GrainCorp also voluntarily publishes information concerning its prices and procedures for non-wheat services, including the following documents:

- 2013/14 Bulk Grain Port Terminal Services Fee Schedule (Non Wheat)
- 2011/2014 Bulk Grain Port Terminal Services Agreement

Accordingly it appears to the ACCC that some level of disclosure is not necessarily harmful to GrainCorp's interests. The ACCC notes that publication of the daily loading statement will continue to be required by the Undertaking should the variation be accepted.

Conclusion

The ACCC considers that the existing Undertaking does provide GrainCorp with considerable discretion to manage its legitimate business interests. The Undertaking allows GrainCorp to

[79] GrainCorp 2011 Undertaking Draft Decision, p68.

determine prices, terms and conditions for elevation from Carrington, and to apply non-standard terms for different exporters. It also provides GrainCorp with a range of mechanisms to allocate capacity, although there is a formal process to go through for these mechanisms to be changed.

However, against the backdrop of the onset of competition, GrainCorp is more restricted in its behaviour in the market for port terminal services from the Port of Newcastle than its competitors. Its recourse to offer long term access arrangements at Carrington is only available once every three years. Its competitors are not restrained from entering into commercial arrangements with potential exporters, end-users and growers. Its competitors also have greater capacity to respond flexibly to the demands of the market and customers, for example by varying capacity allocation rules in exchange for commercial considerations. The Undertaking also imposes conditions and costs on GrainCorp, where its competitors at the Port of Newcastle currently have none. Overall, the ACCC recognises the limitations that are imposed on GrainCorp's behaviour by the Undertaking.

As information pertaining to the Code is limited, it is not clear, should it be introduced, if the competing unregulated ports would be affected or brought into regulation. On this note, as set out in Chapter 3, the ACCC must consider the current state of regulation of the market at the Port of Newcastle, rather than a potential outcome which may put the three export operators on a level playing field.

5 Level of competition in bulk wheat export operations at the Port of Newcastle

This chapter examines the development and operation of the three bulk wheat export operations situated at the Port of Newcastle, and the resultant levels of competition. The ACCC's consideration of the market for port terminal services and bulk wheat export operations will contribute to the ACCC's view on whether, against the decision making framework of s.44ZZA, the GrainCorp Application to Vary is appropriate.

The ACCC's draft view is that the establishment of the NAT, in conjunction with the LD operation at the Port of Newcastle, will sufficiently protect competition for bulk export from Newcastle, and overall limit any market power of GrainCorp's Carrington port terminal. Overall, due to this competition, the interests of exporters should not be damaged by a reduction in regulation of the Carrington facility.

5.1 Overview and key issues

Three bulk wheat export operations are located at the Port of Newcastle for the export of bulk wheat and other grains:

- GrainCorp's Carrington port terminal facility
- Newcastle Agri Terminal (NAT) (owned by its management as well as CBH, Olam and Glencore)
- the Louis Dreyfus storage shed which operates in conjunction with an arrangement for elevation provided by Qube.

It is relevant in assessing GrainCorp's application that the ACCC consider the competitive dynamic for bulk wheat export at the Port of Newcastle, including the extent to which NAT and Louis Dreyfus may provide genuine competitive constraint on GrainCorp's Carrington facility. It is also important that in assessing the interests of access seekers the ACCC examine the profile of exporters operating through the Port of Newcastle and assessing the likely impacts on those exporters should regulation be reduced.

5.1.1 Competing port facilities

The facilities and practices of the three export operations are discussed in detail below.

Wheat from the Newcastle Port Zone (NPZ) if exported is most likely to be shipped from the Port of Newcastle. December to May is the post-harvest marketing window when exporters are best placed to sell wheat and other grains into Asian and other international markets. As discussed in greater detail below, wheat being exported is generally wheat surplus to domestic demand.

However, over the last 12 months and in light of the drought conditions across the NPZ , there has been limited shipping from Carrington. This has coincided with the period that the two competing ports have been operating. A previous drought affecting the NPZ occurred in 2007 and shipping from Carrington did not increase again until 2009.

Such conditions also make shipping particularly difficult for smaller exporters. As AEGIC notes 'having the capability to spatially and temporally react to a wide range of logistic requirements also creates additional costs'.[80]

[80] The Cost of Australia's Bulk Grain Export Supply Chains, Australian Exports Grain Innovation Centre (AEGIC), p.5, http://www.aegic.org.au/media/23072/140203%20AEGIC%20Supply%20Chains%20Report.pdf, (viewed 17/3/2014).

GrainCorp's Carrington Port Facility

The GrainCorp port terminal facility is located at Berth no.3 at Carrington at the Port of Newcastle. The facility can manage a range of products including wheat, barley, oats and canola. The following facilities are located at Carrington and covered under the 2011 GrainCorp Undertaking:

- Intake/receival facility
- Grain storage facility
- Weighing facility
- Shipping belt
- Ship loader

GrainCorp also have, within the NPZ, 25 country silos and also transport arrangements for rail and road. These facilities and resources are examined in greater detail at Chapter 6. Consequently, GrainCorp customers have the opportunity to utilise this network when planning accumulation strategies, managing risk and servicing clients.

As noted in GrainCorp's initial submission, available capacity at Carrington has not been wholly constrained across the year or in peak times. This information is contained in the total grain elevation capacity table submitted by GrainCorp, extracted below at 5.2.1.

Under the access arrangements a number of third party exporters have used GrainCorp's port facilities for shipping bulk wheat. At Carrington since 2008, these include Cargill, CBH, Louis Dreyfus, Elders, Gardner Smith, Glencore, Noble Resources, Queensland Cotton, Riverina, Toepfer. However, predominately the facility has been used by GrainCorp Trading, Cargill and, until recently, Viterra/Glencore.

As noted in the numbers submitted by NSW Farmers, since 2010/2011 to 2013/14 GrainCorp Trading has been the largest exporter of bulk wheat from Carrington, exporting a total of 1,628,688 tonnes over the four years. This amounts for 43 per cent of total bulk wheat exports from the port. This is followed by Cargill who has exported a total of 1,079,131 tonnes over the same period, amounting to 29 per cent of total bulk wheat exports at the port.

Cargill and GrainCorp Trading's shipping activity is relatively consistent over the four years, taking into account the drought. Between 2010/2011 and 2013/2014, GrainCorp has shipped between 462,702 tonnes to 588,686 tonnes, with shipping falling away as the drought took hold in 2013. During the same period Cargill's shipping activity from Carrington landed between 232,170 tonnes and 439, 850 tonnes, before 2013 when its shipping program declined to 40,000 tonnes.

Glencore and Queensland Cotton are the next largest historical shippers from the port, with their activity amounting to 8 per cent and 5 per cent respectively of total bulk wheat shipped over the four years. Glencore's shipping program has been highly variable, moving from 31,000 tonnes in 2010/2011, up to 174, 526 tonnes in 2011/2012 and then declined to 60,000 tonnes in the following year. Glencore has made one shipment of 20,000 tonnes in 2013/14.[81] Both of these exporters, being investors in the NAT, could be expected to reduce their level of Carrington shipping in future years.

As noted throughout the decision document, the current drought conditions and competing interests for wheat from within the NPZ have led to less wheat moving to export at Carrington.

Looking forward to future shipping from the port, and as noted above, GrainCorp has opened its first-in-first served allocation of capacity for all its port terminals for the shipping period 1 October 2014 - 30 September 2015. Previously this process has commenced approximately mid-year, but GrainCorp has moved the process forward to February 2014. Noting this process has now been underway for at

81 See GrainCorp shipping stem, identifier GC18441, loading completed 4/02/2014.

least a month, there has been limited take up of capacity at Carrington. It appears that only allocated long term capacity has been removed from the stem at Carrington.

Comparatively, looking at other East Coast GrainCorp facilities, capacity is fully booked from December 2013 to April 2015 at Port Kembla, from December to May 2015 at Geelong and from February to June 2015 at Portland.

The limited interest in booking capacity at Carrington could, understandably suggest further uncertainty within the industry about the drought. Alternatively it could indicate that grain exporters do not feel constrained or at risk of missing out on capacity and are still considering which port terminal to ship from in 2014-2015. Neither reason suggests wheat exports will over time decrease.

In 2013 GrainCorp also made available to the market long term capacity arrangements. At Carrington limited capacity of the total possible capacity was taken up.[82]

Newcastle Agri Terminal (NAT)

NAT has access to Dyke No.2 berth at the Port of Newcastle. It also has access to existing rail infrastructure at the Port. The facility can manage a range of products including wheat, barley, oats and canola. Despite the drought, NAT has recently finalised its first major shipment of durum wheat.[83] Public statements by NAT indicated that the terminal was due to be officially opened in late March 2014, although this had not taken place at the time of this draft decision.

Its facilities include approximately 60,000 tonnes of storage and offer weighing and testing of grain for classification on receival. The terminal can also provide fumigation services. The ship loading facilities will be able to load up to Panamax size [84] vessels at a rate of 2000 tonnes per hour.[85]

Approved by the Newcastle Port Corporation in March 2012, the proposal for the NAT facility included:

> rail receival facilities, conveyors, 2 x 20,000 tonne silos and 3 x 6,780 tonne silos, shiploading facilities and ancillary office, control rooms, car park, laboratory and inspection and sample rooms.[86]

NAT management has also indicated that NAT will have container packing facilities on site. Bulk wheat delivered to the terminal for packing will either be exported direct from NAT or put on rail to the container terminal at Port Botany.[87]

Cooperative Bulk Handling (CBH), Glencore (which operates Viterra) and Olam (which operates Queensland Cotton) are key investors in the NAT facility. A brief overview of each investor's interests in the Australian grain export industry is below.

- CBH: In Western Australia, CBH operates in all levels of the bulk wheat supply chain. CBH is the largest grain exporter in WA and a medium size exporter in the SA market. Its East Coast exports have been relatively small to date.

  Media reports suggest CBH may be considering expanding its interests in NSW through the purchase of up-country storage facilities within the NPZ and rolling stock. It also recently hosted a

82 GrainCorp Long Term Agreement Capacity Allocations 1 October 2013 – 30 September 2016, http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/, (viewed 17/03/2014).

83 First grain shipment for Newcastle Agri Terminal, Newcastle Agri Terminal, 22 February 2014, http://www.naterminal.com.au/index.php/latest-news/51-media-release-first-grain-shipment-for-newcastle-agri-terminal (viewed 16/03/2014).

84 Panamax size represents the largest acceptable size to transit the Panama Canal; lengths are restricted to a maximum of 275 m, and widths to slightly more than 32 m. The average size of such a ship is about 65,000 deadweight tonnage.

85 Independent agricultural export terminal approved for Newcastle and regional New South Wales, Newcastle Agri Terminal, 30 March 2012, http://www.naterminal.com.au/index.php/latest-news/32-exciting-new-agricultural-development-approved-for-newcastle-and-regional-new-south-wales, (viewed 15/03/2014).

86 Activity Approvals Newcastle Agri Terminal – grain terminal facility, Port of Newcastle, http://www.newportcorp.com.au/site/index.cfm?display=306322, (viewed 15/03/2014).

87 M Foley ,Newcastle Agri-terminal at Newcastle, The Land, 15 August 2013, p.8.

visit to Western Australia from NSW grain farmers and discussed the possible development a cooperative model in NSW.[88]

- Olam International: Olam International Ltd (Olam) is a global supply chain manager and processor of agricultural products (including wheat). In 2007 Olam acquired Queensland Cotton, a medium sized grain exporter on the East Coast with a smaller export profile in SA and WA. Following the acquisition, Olam started marketing grain in 2008. The business continues to trade as Queensland Cotton.

- Glencore: Glencore operates grain storage, handling, port operations and marketing activities in Australia. In 2012 it wholly acquired Viterra and is now the sole bulk wheat port terminal operator in South Australia. In South Australia the Viterra branding has been retained for its infrastructure operations.

  Glencore, under the Viterra branding also owns a packing facility in Narrabri which is within the Newcastle Port Zone.[89]

Louis Dreyfus joint venture with Mountain Industries

Louis Dreyfus has a joint venture with Mountain Industries that provides storage and handling services for Louis Dreyfus at Kooragang Newcastle, with port elevation provided by Qube at Berth 3 Kooragang

Louis Dreyfus Commodities Australia Pty Ltd is a grain trader and a subsidiary to Louis Dreyfus Commodities Group (LD Group). LD Group is a French conglomerate operating in over 50 countries in industries including wheat trading.

Mountain Industries is a storage and logistics company, managing bulk products including minerals, grain and fertiliser. It also provides services to containerise grain at its regional intermodal depots and dispatched by road or rail. Mountain Industries was recently acquired by Asciano.

The storage facility was opened in November 2011 and primarily handles wheat (a separate part of the facility handles fertiliser). The site has approximately 25,000 tonnes of grain storage. GrainCorp submits that the LD facility annually handles 200,000 tonnes of wheat.

Louis Dreyfus brings grain into Newcastle by rail from up-country and can deliver by road to the facility. It uses containers which can move between rail and road. These dual purpose containers are more efficient than manually transferring grain between rail wagons and trucks. Louis Dreyfus is the facility’s only user for grain. Grain is then trucked between the storage shed and the Qube Ports and Bulk elevator service.

The Mountain Industries’ website outlines rail and road intermodal options for moving commodities to and from ships at Newcastle.[90]

As well as the facility at Kooragang, Louis Dreyfus has grain handling and grower receival sites at Moree and Narrabri in NSW. Louis Dreyfus is the sole user of its facilities at the Port of Newcastle.

5.2 GrainCorp and stakeholder submissions

5.2.1 GrainCorp submission

GrainCorp submits that the Port of Newcastle will be the most competitive port for bulk export grain in Australia. GrainCorp estimates the three export facilities will have a combined 4.3 million tonnes of

88 B Thompson, CBH backs eastern exposure, West Australian, 27 February 2014, p64.
89 Packaging and Processing, Viterra, http://www.viterra.com.au/packing-and-processing , (viewed 19/03/2014).
90 Storage, Mountain Industries, http://www.mountainindustries.com.au/storage.htm, viewed 19/03/2014, (viewed 16/32014).

annual elevation capacity (450,000 tonnes per month) to service an average bulk export grain demand of only 1.1 million tonnes and a peak demand of 1.8 million tonnes.[91]

GrainCorp submits the following estimate concerning the shipping from Newcastle based on a 42 week shipping year, comprising:[92]

- 2.5 million tonnes at GrainCorp Newcastle Terminal Elevator, compared to peak exports of 1.8 million tonnes (achieved in 2005) and in line with the stated maximum nominated capacity,
- Say 1.5 million tonnes at NAT, which is their maximum capacity in their public development application and communications, and
- Say 0.3 million tonnes at LDA, compared to 200,000 tonnes of grain exported in recent years.

GrainCorp submits the following information comparing Carrington and NAT:

Capability	Newcastle Agri Terminal (NAT)	GrainCorp
Rail receival	Trains tip at ~2,000 TPH with trains tipped in motion on a balloon loop	Trains tip at ~1,500 TPH with trains shunted into 4 segments
Ship loading	Vessels loaded at ~2,500 TPH with 1 ship loader	Vessels loaded at ~3,000 TPH with 4 manned ship loaders
Berth draft	12.8 metres, service vessels of up to 70,000t	11.6 metres, service vessels up to 55-60,000t
Total storage capacity	56,000 tonnes	140,000 tonnes (excluding small bins)
Fumigated capacity	56,000 tonnes	40,000 tonnes

Source: GrainCorp supporting submission, p. 11.

GrainCorp submits that, over the last ten years, it has exported in bulk from Carrington an average of around 1.1 million tonnes annually and 1.3 million tonnes if the two drought years are excluded. This amounts to around 37% of grain produced in the Newcastle Port Zone in Northern NSW. Exports from the port have ranged from nil to 1.8 million tonnes per year.[93] GrainCorp therefore concludes that there will be excess bulk grain export capacity at Newcastle, including during peak shipping:

- Based on annual elevation capacity of 4.3 million tonnes: The average annual utilisation of capacity, based on past actual annual exports, is 23 % with peak of 43% in 2005 then 38 % in 2012. That is annual capacity exceeds average annual export volumes by a factor by more of 4x.
- Based on monthly elevation capacity of 450,000 tonnes: The average monthly utilisation of capacity, based on past actual annual exports, is 20% with peak of 62% in January 2005 then 54% in August 2006. That is monthly capacity exceeds average export volumes by a factor by more of 5x.

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91 GrainCorp supporting submission, p.13. GrainCorp have referenced total grain elevation capacity vs. GrainCorp exports at Newcastle – annually over the FY2004 to FY2014 period.

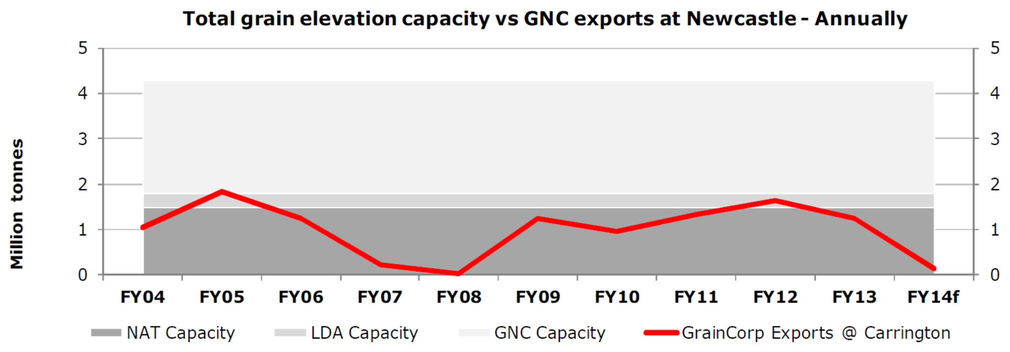
92 GrainCorp, supporting submission, p. 12.

93 ibid. p. 13.

GrainCorp submits therefore that:[94]

> Based on our calculations… the combined capacity of NAT and LDA can comfortably handle the total annual and peak bulk grain export task at Newcastle.

GrainCorp provides the following chart of the historical export task from Newcastle compared to the capacity it submits is available between the three bulk wheat facilities.



Source: GrainCorp supporting submission, p. 13.

Looking forward GrainCorp submits that there will be further constraint on GrainCorp Trading as competition for wheat within the NPZ increases, with:

- CBH, and other grain exporters, seeking to supply wheat to GrainCorp customers,
- Cargill making inroads in the quality conscious North African markets, and
- Glencore making inroads in the price conscious Middle East markets such as Iraq.

In its submission, GrainCorp references ACCC findings contained in the ACCC Final Decision accepting GrainCorp's Port Terminal Services Undertaking in 2011. In particular GrainCorp notes that the ACCC found that:[95]

> GrainCorp's port terminals are subject to a number of competitive pressures, including from domestic users, up-country supply chains, from other ports and the threat of customers by-passing GrainCorp's facilities.

5.2.2 Stakeholder Submissions

Stakeholders have provided limited views on the state of possible competition between the three export operations at the Port of Newcastle. In particular, Emerald's submission does consider the question of capacity constraint at the port. The submission from NSW Farmers considers the possible harm which may eventuate from the withdrawal of access arrangements at Carrington.

In its submission, Emerald has undertaken an analysis of the capacity for bulk grain exports across the Port of Newcastle, including GrainCorp's proposition that there is excess capacity at Newcastle by a factor of 4 times.[96]

Emerald is concerned that the proposed variations provide GrainCorp with control of the stem at Carrington and remove the opportunity for access seekers to seek arbitration; which Emerald 'believe has in the past made a possible genuine negotiation of reasonable access terms'.[97]

When considering the availability of capacity at the Port of Newcastle, Emerald affirms that Louis Dreyfus' operation is exclusively operated for Louis Dreyfus. It also notes that the arrangement 'has a relatively inefficient load rate making it sub-optimal for a long term export strategy out of Newcastle.'[98]

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94 ibid.
95 ibid, p. 2.
96 Emerald, submission in response to issues paper, p. 3.
97 ibid, p. 1.

Emerald then considers the remaining capacity available to the market from the Carrington and NAT facilities. Regarding NAT, Emerald takes into account potential capacity limitations ensuing from NAT's ownership arrangements:[99]

> It not unreasonable to assume that the NAT shareholders will in normal seasons expect or be bound to put in close to 1m- 1.2m tonnes of their own grain purchases across the belt at the NAT Terminal.

Further contributing to this view is Emerald's observation that NAT's investors have also acquired or are planning to acquire new upcountry storage facilities in the Newcastle Port Zone. Emerald notes that Glencore has invested in up-country storage and submits that:[100]

> it can be expected that CBH will also develop or joint-venture up-country storage to justify its port terminal investment and as a focus for its move into accumulation on the Eastern seaboard.

Therefore Emerald calculates:[101]

> there is likely to be only 300K-500K tonnes of available elevation capacity at NAT for independent exporters like Emerald, Cargill and others and the practical availability of stem in the more popular months post-harvest could be much tighter.

On available capacity at the Carrington facility Emerald indicates that:

> GrainCorp's analysis of excess capacity is also predicated on its own capacity being available. However if GrainCorp, is allowed to allocate its elevation capacity in a completely unregulated manner, it has to be assumed that GrainCorp's capacity will be withdrawn, in part or in whole, from the industry.

Emerald acknowledges that GrainCorp has indicated it will provide open access to its ports, but also observes a global trend of introducing closed loop supply chains. Accordingly, Emerald concludes that 'GrainCorp would have greater incentive matched with opportunity to foreclose access to its dominant up-country storage and rail assets in the Newcastle zone'.[102] Emerald therefore calculates that the likely available capacity at the Port of Newcastle must be considered absent the Carrington capacity. This leaves only the aforementioned likely remaining capacity at NAT. Given this situation Emerald suggests:

> it is unlikely that exporters like Emerald, without any significant investment in assets, would take the risk of accumulating grain in the Newcastle port zone, given the likely challenge in competing to accumulate grain up-country and obtaining freight, outside the GrainCorp system.

CBH notes that as a minor shareholder in NAT, it is unable to be definitive with respect to the extent of the constraint posed by NAT on the GrainCorp Carrington port terminal. [103] However it states that:[104]

> if GrainCorp has provided sufficient evidence of the level of actual or potential constraints, then CBH as a matter of principle has no objections to the access requirements being removed.

CBH also references a trend of new entrants to the bulk wheat export market across Australia. CBH proposes that:

> the application of the access regime to the wheat export port terminal services may no longer be necessary in these markets, where competition is providing constraints.

NSW Farmers expresses concern at the removal of access obligations at the GrainCorp Carrington facility. They submit that open access to GrainCorp's Carrington facility on fair and reasonable

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98 ibid, p. 3.
99 ibid,
100 ibid.
101 ibid.
102 ibid, p. 4.
103 CBH, submission in response to issues paper, p. 2..
104 ibid, p. 2.

grounds remains important to achieving competition at the port. In its submission, it highlights the dominant position of GrainCorp within the NPZ:[105]

> When specifically considering bulk exports from the Newcastle port zone, shipping stem data shows that in the period commencing of the marketing year 2010/11 to date GrainCorp has been the dominant exporter, accounting for 43 per cent of all grain exports and 45 per cent of all exports of bulk wheat.

NSW Farmers acknowledges that GrainCorp does have an incentive to optimise throughput at its facilities in the Newcastle Port Zone, but approaches this argument with caution, and references the Senate's Rural and Regional Affairs and Transport Committee which observed that the need for throughput:[106]

> is not mutually exclusive to behaviour that can impeded competition for farmers' grain by increasing the costs and the risks faced by third party competitors.

NSW Farmers also submits that in light of GrainCorp's market position, coupled with the withdrawal of access obligations, GrainCorp will be able to exclude other access seekers from the stem at the critical post-harvest period. As NSW Farmers details, this is when Australian farmers are best placed to take advantage of Australia's seasonal advantage with the Northern Hemisphere.[107]

NSW Farmers restates NAT's assertion of "independence", and in relation to NAT's ownership structure (albeit more in relation to the access test) states:[108]

> It is also NSW Farmers understanding that none of these entities is able to exert the requisite control over NAT for it be classified as an associated entity of an exporter. Thus on a prima facie analysis it would appear that NAT functions solely as a provider of port terminal services and not required to meet the port test.

NSW Farmers encourages NAT to 'voluntarily adopt some capacity management in a similar fashion to that undertaken by Queensland Bulk Terminals.'[109] With respect to the Louis Dreyfus operation, NSW Farmers makes similar observations to those from Emerald, suggesting that the 'unusual logistical nature of the rail transport and terminal services would make execution difficult for a third party.'[110]

NSW Farmers concludes that a deregulated Newcastle Port market for bulk wheat exports, with the addition of the NAT facility, will:[111]

> … lead to the development of a market characterised by duopoly behaviour. In this circumstance it is likely that the levels of fees and charges for both ports will reach a stable equilibrium on price determined by strategies of GrainCorp and NAT.

5.2.3 GrainCorp's response to stakeholder views

GrainCorp restates key observations about the degree of competition at the Port of Newcastle, including that:[112]

- The 3 export terminals operating at Newcastle have a combined 4.3 million tonnes of annual elevation capacity to service an average bulk export grain demand of only 1.1 million tonnes and peak demand of 1.8 million tonnes.
- The average annual utilisation of capacity at Newcastle, based on past actual annual exports is 23%. The peak utilisation in recent years was 43% in 2005, followed by 38% in 2012.
- The combined capacity of the NAT and LDA terminals can comfortably handle the total annual average and peak bulk grain export task at Newcastle.

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105 NSW Farmers, submission in response to issues paper, p. 4.
106 ibid, p. 9.
107 ibid, p. 13.
108 ibid, p. 11.
109 ibid,
110 ibid.
111 ibid, p. 13.
112 GrainCorp, response submission, p. 4.

5.3 The ACCC's preliminary view

In this chapter, the ACCC will consider the nature of competition among the three bulk wheat export operations at the Port of Newcastle.

5.3.1 Seasonal variability and constraint on bulk wheat exports

As noted above, prior to the development of competition at the port, the level of constraint on the Carrington port terminal has been determined by the size of the harvest and the demands of domestic end-users. This includes both domestic end-users within the zone and in surrounding regions. The constraint has been highly variable, but overall domestic demand remains a significant call on grain in the NPZ. The ACCC considers this further in Chapter 6.

The uncertainty of shipping from Carrington is best illustrated by the unusual, but not isolated, experiences of the 2007-2008 drought and the drought currently underway. Over the 2013-2014 shipping calendar, in the absence of a sufficient harvest to supply both the domestic and export markets, few bulk wheat export shipments were made from Carrington.[113] Looking forward, limited interest has been shown from exporters in securing capacity for the 2014-2015 peak shipping period out of Carrington.

By way of comparison, across the Eastern seaboard GrainCorp's Port Kembla, Geelong and Portland ports first-come-first served allocation has been booked out for the key post-harvest shipping period. At these ports a significant proportion of the capacity available for long term arrangements was also taken up in early 2013.

5.3.2 The development of competing port terminals at Newcastle

The ACCC notes GrainCorp's arguments concerning the changing market for bulk wheat export services at the Port of Newcastle. The ACCC accepts that the NAT, in addition to the Louis Dreyfus export operation, has changed the market structure and the likely degree of constraint for bulk wheat capacity at Newcastle. Significantly, the ACCC notes that all three operations in Newcastle are very geographically proximate, being located in the same port precinct, with the same access from that port precinct into the wider Newcastle Port Zone. However, it is insufficient that the ports are geographically close to each other, and it is necessary for the ACCC to consider the extent of constraint provided by the other facilities, and in particular NAT, in accordance with subsections 44ZZA(3)(aa), (a), (b) and (c).

Overall capacity

As noted above, the three export operations have significantly increased the amount of available capacity at the Port of Newcastle, especially at the peak shipping period from December to May. This capacity is significantly in excess of the typical annual exports from Newcastle and, all other things being equal, should ensure that operators are eager to increase exports through their facilities. The ACCC considers that, having regard to the matters specified in sections 44ZZA(b) and (c), that this increased capacity is in the interests of access seekers, as well as the broader public and competition as whole.

However, it is necessary to consider whether the competing operations will be able to ship significant capacity instead of GrainCorp, and equally whether, should GrainCorp be unable to compete alongside its competitor on equal terms, the level of competition as a whole may be reduced.

The ACCC notes that only a small amount of total possible long term capacity at Carrington was allocated by GrainCorp. It is difficult to separate out the effect of the drought and the effect of competition within the port. However, as GrainCorp notes the long term capacity allocation process occurred prior to the onset of drought and/or knowledge of the drought became known, but when the prospect of NAT was known. It appears from examination of the shipping stem that GrainCorp

[113] GrainCorp shipping stem 2013-2014, NSW Farmers submission p.16

Trading was the access seeker who took up the offer to secure long term capacity at Carrington.[114] Accordingly this suggests that access seekers are not concerned about obtaining access to export facilities in the Port of Newcastle.

GrainCorp is also not currently able to offer long term capacity arrangements. The next opportunity, should the undertakings continue would be in 2016. NAT is not constrained in this way and neither is Louis Dreyfus, should it open up its operations further.

Also as noted above, limited short term capacity has also been sought through the first-in-first-served capacity allocation system for the 2014-2015 shipping calendar.[115] As illustrated on the GrainCorp shipping stem and available capacity table (see Attachments A and B), capacity only appears to have been acquired on a last minute ad-hoc basis. This is not evident at other ports where shipping for the post-harvest period is booked out. The ACCC notes that it is difficult to ascertain to what extent drought conditions or competition are responsible for this scenario, but also notes that the weather conditions are unknown in other areas for the upcoming season. Furthermore, in contrast to Carrington, capacity is no longer available for the 2014-2015 harvest shipping period at other GrainCorp ports at Geelong and Port Kembla, in addition to Portland.

The limited take-up of capacity via both first-come-first served and the long term capacity arrangements suggest there is limited constraint at the port or impetus for commitment with particular port operators. Having regard to subsection 44ZZA3(c), the ACCC considers that this suggests that the needs (and interests) of access seekers will be ably met. This reflects the overall large amount of capacity available across the Newcastle port.

The ACCC notes to some extent this must be considered against the backdrop of the drought conditions. Nevertheless, such uncertainty has not prevented other bulk handlers making commitments up-country in the storage and handling market.

Furthermore, the ACCC also notes that despite the drought, NAT has commenced shipping, and anecdotally is having discussions with potential customers regarding both immediate and longer term shipping plans.

Louis Dreyfus

On the Louis Dreyfus operation, the ACCC notes the storage facility and broader export operation is relatively small but not insignificant. Submissions from Emerald and NSW Farmers express a similar sentiment. The Louis Dreyfus operation does provide an option for growers up country within the NPZ to move their bulk wheat to export.

The ACCC considers that the Louis Dreyfus facility is unlikely to provide significant constraint on GrainCorp's facilities. This is because the facility is relatively small, relies on trucks to transport grain around the port, is not open to other exporters and relies on access to Qube's shiploader. Accordingly, having regard to s. 44ZZA(c), it is unlikely to provide a practical alternative to access seekers other than Louis Dreyfus.

However, the ACCC considers that the facilities and elevator arrangement Louis Dreyfus has in place demonstrates that operators can explore alternative options to establishing a large scale port terminal operation, having regard to section 44ZZA(b) and (c). While this is subject to an exporter securing land at or nearby to the Port, it does demonstrate the feasibility of using alternative arrangements.

Newcastle Agri-Terminal

The ACCC has consulted with NAT and prospective NAT customers, although much of the information provided was considered by those parties to be confidential. Public information about the operation of the NAT facilities is limited. The ACCC notes that NAT did not provide a submission on GrainCorp's Application to Vary. NAT has not disclosed to the public details pertaining to its operating framework, capacity allocation model or access terms. It is possible these arrangements and

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114 GrainCorp shipping stem and available capacity table, GrainCorp website, http://www.graincorp.com.au/storage-and-logistics/ports-and-shipping/shipping#stem (viewed 20/03/2014).

115 Ibid

documents have not yet been finalised. Anecdotally, the ACCC has been told that NAT will operate on open access principles, although the exact nature of such operation is not yet clear.

GrainCorp has also provided limited evidence to confirm the level of constraint by way of lost patronage for Carrington and/or lost contracts for GrainCorp Trading from the Port of Newcastle. However the ACCC acknowledges that the ability to provide this information has been hampered by the lack of shipping from Carrington due to the drought, and the relatively recent commencement of operations by NAT.

Having assessed the available information, the ACCC considers that the NAT port terminal appears comparable to Carrington, and in several respects appears to have better facilities. In addition to being newer, it is optimally designed to facilitate rail receival due to its balloon loop facility. While Carrington has greater storage facilities, NAT's facility can service larger vessels than the Carrington site, which provides a further competitive advantage. The ACCC notes that no submissions argued that NAT was not a comparable facility to Carrington.

The ACCC notes that the NAT facility has only just commenced shipping. This limits to some extent the ACCC's assessment of the facility's effect on the market for bulk wheat exports from the Port of Newcastle. However the first test shipment of durum wheat to Algeria demonstrates an ability to attract and service the requirements of at least a niche marketer shipping specialised wheat. While NAT has only recently entered the market, the ACCC considers that the fact it has made its first shipment demonstrates its ability to compete with GrainCorp's Carrington facility. The access seeker who made the first shipment had the option of using either or both the two competing port terminal operations.

Also, despite the limited shipping activity from NAT to date, the ACCC must in having regard to s. 44ZZA(3) consider likely future effects on competition and the interests of access seekers. It must consider that at this point in time NAT is most likely looking to attract customers and establish a shipping program for the immediate year, next shipping calendar and then longer term. This period prior to the commencement of shipping therefore becomes particularly pertinent to GrainCorp. It is likely that potential customers will be making decisions about which port terminal service provider to enter into arrangements with.

Having regard to s. 44ZZA(3)(aa) and the objects of Part IIIA, the ACCC considers that the entrant of a significant new market participant in the form of NAT will provide considerable constraint on GrainCorp's Carrington site. For example, GrainCorp is currently unable to enter into long term agreements with access seekers for the Carrington site. Given the aforementioned dynamics of the Newcastle bulk wheat export market where there are few significant traders operating from the port, NAT may be in a position to attract GrainCorp's customers. NAT has greater flexibility to offer exporters customised shipping opportunities, priced accordingly. NAT also has the discretion to determine an appropriate capacity allocation model for its facility and can endeavour to meet shipping timing preferences of potential customers. To some extent take up of long term arrangements at the Carrington site were hampered by the drought, and an opportunity to enter new arrangements does not arise for some time.

Overall, the ACCC considers that the ongoing development of competing bulk wheat export operations at Newcastle will allow for the economically efficient operation of, use of, and investment in infrastructure, and thereby the promotion of effective competition in upstream and downstream markets, consistent with the objects of Part IIIA of the CCA.

5.3.3 Possible harm to access seekers

The ACCC acknowledges that the withdrawal of GrainCorp's access obligations at Carrington could facilitate a significant change to port access and shipping. While GrainCorp proposes that it will continue to operate Carrington on an open access basis, the proposed variations if accepted would not require GrainCorp to adhere to that commitment. As such, having regard to s.44ZZA(3)(aa) (objects of Part IIIA) and (c) (interests of access seekers), the Variation has the potential to have a significant effect on access seekers and competition in the export market.

Specifically, GrainCorp would not be required to offer access to third party access seekers or negotiate terms of access, and access seekers would not have recourse to the ACCC on any aspect of access. Access seekers would need to resolve matters of access at Carrington on commercial terms. The general provisions of the CCA would still apply, as they currently do today, but may not mandate access to the facilities.

The ACCC notes that such arrangements are also most likely to be the case at NAT, which is currently unregulated. Access seekers who are not satisfied with terms offered by GrainCorp could approach NAT and pursue, if amenable to both parties, a commercial arrangements for access.

Profile of exporters

In an effort to observe potential harm from the Application to Vary, having regard to s.44ZZA(3)(c), the ACCC has considered the profile of access seekers using Carrington. As outlined above, typically GrainCorp Trading and Cargill ship from Carrington and there are relatively few other exporters with an existing presence at the port. The ACCC notes no disputes have been raised to date concerning access at Carrington, but this may reflect the recourse to arbitration under the Undertaking.

The ACCC is of the view that the current drought has skewed the more typical shipping activity of the bulk wheat exporters. However, the trend established over the previous years, where GrainCorp and Cargill have been the dominant shippers from Carrington, is therefore a relevant consideration and provides insight into likely profile of exporters.

Exporting from Newcastle may be more difficult generally for access seekers than for other ports where either there is limited competition from a domestic market and/or the distance to port is not beyond the remit of trucks. Making commitments to ship from Carrington and accumulate in the NPZ is also difficult in light of seasonal variability. As explored in the following chapter, in the NPZ, wheat closer to port and more suited to transportation by truck is generally acquired by the domestic market. Wheat a greater distance from port is also typically first optioned by the domestic market. If production levels are sufficient, surplus wheat may be taken up by the container export market and/or the bulk export market. It then will typically need to be sent on rail to port.

Given these parameters, small to medium exporters may not be best placed to compete against the larger grain exporters and handlers. Managing an accumulation strategy in the NPZ would be more difficult for small to medium exporters in light of the variability of the weather, demands of the domestic market and competition from the container export market, in addition to making a commitment to ship via the first-in-first served capacity allocation model at Carrington. The recent shipping data from Carrington confirms that smaller exporters do not generally ship from this port.

As explored further in Chapter 6 smaller grain exporters unlike the larger grain handlers are also less likely to have the capital to spend on up-country storage networks. Consequently they lack the incentive their larger counterparts have to drive wheat and other grains through these upcountry facilities, which in turn supports their own shipping activity from the Port of Newcastle.

Specific exporters

The ACCC notes that with respect to potential harm to access seekers that Cargill is the second largest shipper from GrainCorp's Carrington facility, and hence most potentially vulnerable to access arrangements being removed. Cargill has not lodged a submission to the ACCC's issues paper. However, the ACCC notes Cargill is a member of AGEA who did lodge a submission which did not support the Application to Vary. That said, the ACCC notes that the significant volumes provided by Cargill in the NPZ, as well as more generally along the East Coast, suggest that it would be in a good position to negotiate access to the Carrington (or NAT) facility.

Of the remaining exporters using the GrainCorp Carrington facility, Glencore and Olam/Queensland Cotton as shareholders of NAT are more likely to seek access at NAT. CBH if it recommences shipping from Newcastle is also most likely to ship from NAT.

The ACCC has also considered the impact on other exporters to those listed above, including generally smaller exporters with a more limited presence at the port. In 2012-13 and 2013-14, small amounts of (primarily non-wheat) grain were shipped by Noble, Toepfer, Marubeni, Origin and

PentAG through the Carrington port, although typically these amounts have been small single shipments.[116] Having regard to the interests of access seekers, the ACCC considers that given the excess capacity available across NAT and Carrington, such exporters should be able to obtain capacity at Newcastle. However this is not guaranteed. Such smaller exporters, or ones without existing infrastructure, would be most vulnerable to the removal of access at Carrington. The ACCC notes for example that Emerald in its submission indicates it is not likely to ship from Newcastle if the Application to Vary is accepted. However, the ACCC also observes that Emerald has not to date shipped from Carrington.[117] The ACCC also notes that these past exports of non-wheat grains are not covered by the current undertaking (although in practice elements such as the capacity allocation system may apply to both wheat and non-wheat grains).

However, the ACCC also does not consider that it is necessary that every single exporter can and does export from a particular port, and notes that this does not accord with the current situation out of Newcastle, where smaller exporters have typically not exported or exported only small amounts. Having regard to subsections 44ZZA(3)(b) and (c), the ACCC notes that the public interest in having competition in markets does not necessarily mean that the interests of all access seekers must be protected.

The ACCC notes that the Louis Dreyfus export operation as a whole is operated exclusively for Louis Dreyfus. However the arrangement for elevation services with Qube is not necessarily exclusive. Access seekers could potentially replicate the arrangement.

Closed loops

The ACCC notes potential concern, especially from NSW Farmers, that GrainCorp could implement a closed loop system, and foreclose access to the Carrington port terminal, in conjunction with its up-country storage network across the NPZ. Should the Application to Vary be accepted, the possibility of such an arrangement cannot be ruled out. However, this potential concern with respect to the interests of access seekers must be considered against the possibility that such an arrangement may be in the legitimate business interests of GrainCorp.

The ACCC has observed the trend of grain marketers globally to operate closed loop systems. Closed loop systems may provide the port terminal operator greater efficiencies through increased flexibility and discretion over both the types of agreements the operator can enter into and the manner in which they can run their ports. Such a practice is available to new market entrants not required to satisfy the access test.

It appears that Vicstock and Bunge, in addition to Louis Dreyfus, will operate using the closed loop model. In comparison, QBT in Brisbane, and as noted above NAT, appears likely to operate on an open access basis.

Despite the option of a closed loop system being available to GrainCorp, the ACCC notes that GrainCorp, to date, has not foreclosed access to its upcountry storage network where there is no undertaking in place.

Furthermore, the ACCC agrees that there will be significant spare capacity available within the Port of Newcastle, as well as competition in ports and to a lesser extent upcountry facilities. The ACCC believes GrainCorp will have significant incentives to maintain throughput, both at the ports and across the supply chain, that make a closed loop less likely.

This rationale was noted by the PC in its inquiry into the bulk wheat exporting arrangements as one of several reasons why a light handed approach to regulation would be appropriate. It noted that there were:

116 NSW Farmers, submission in response to issues paper, appendix – Carrington shipping stem.

117 GrainCorp shipping stem data, December 2012-February 2014; NSW Farmers, submission in response to issues paper, appendix – Carrington shipping stem.

benefits to bulk handlers from maximising throughput at port terminals. The capacity of many terminals is greater than the entire annual grain crop for their respective jurisdictions, meaning throughput is critical to the financial viability of the enterprises (especially in drought years).[118]

Potential for favouring GrainCorp Trading

The ACCC agrees with NSW Farmers that a preference for throughput does not prevent the possibility that, should the Application to Vary be accepted, GrainCorp could preference the shipping and logistics needs of GrainCorp Trading ahead of other exporters, especially during the key shipping post-harvest period.

However, the ACCC considers this more unlikely in a situation where there is competition from other facilities. Relevantly, the PC listed others factors which would 'limit the extent of such market power or the ability of the operators to take advantage of it'[119], including:

- the global wheat market is highly competitive
- consumption of grain by the domestic market.
- countervailing power on the part of other major Australian exporters.
- the threat of new port terminal entrants.[120]

The ACCC considers that this threat from the domestic market and other new port terminal entrants is particularly relevant in the case of Newcastle.

The ACCC notes that when a GrainCorp port terminal is constrained by the presence of an alternative bulk wheat exporter operation its fees for port terminal services appear constrained. Examples include:

- GrainCorp allows growers to deliver directly only to its Geelong port. This may be for a range of reasons including the availability of land close to port for additional storage and the large storage capacity available at the port. However, the ACCC does not readily discount this arrangement which would be appealing to growers. There is also parity of intake fees for wheat from GrainCorp storage and wheat from ex third party storage. In the case of Geelong and Portland. GrainCorp charges identical rail intake fee of $5.29/T and a road intake fee of $7.16/T for wheat regardless of its storage origin.

- The Fisherman Islands facility is one of the three Queensland GrainCorp ports. It is subject to competition for port terminal services from QBT also in Brisbane. While fees in Queensland are generally higher overall, at Fisherman Islands the rail intake fee of $9.20/T and road intake fee of $11.07 for wheat from GrainCorp storage facilities are identical to the fees for intake at the port from third party storage. In comparison at Mackay and Gladstone there is a differential of $1.85 between the intake fees from GrainCorp and non-GrainCorp storage.

- Also, at Port Kembla, while the fees are less than in Queensland, they are not identical as per Carrington.

The AEGIC report also observed the effect of competitive constraint between the two ports. Looking across the whole supply chain the report concludes that prices are similar, though Emerald's marginally higher.[121] As such, it seems likely that access seekers will have the benefit of pricing competition in place in Newcastle.

In addition to the pricing issues identified above, it is likely that GrainCorp will also need to compete on non-price terms at Newcastle. NAT are able to provide to customers access to a modern facility

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118 Wheat Export Marketing Arrangements, Productivity Commission Inquiry Report, p.202.
119 Ibid, p.201.
120 Ibid, p.202.
121 The Cost of Australia's Bulk Grain Export Supply Chains, AEGIC Report.

with efficient rail access and the ability to service larger vessels. In order to compete at the port, GrainCorp will need to consider what services will prove appealing to customers. For example, GrainCorp might offer the ability to reserve particular shipping slots for customers, or to provide a greater guarantee of a particular time of day for loading.

In light of the presence of NAT, and the increasing footprint of other access seekers across the supply chain, GrainCorp is also more likely to need to compete on price and non-price terms for access to bulk wheat. If it chooses to preference its own Trading Division with respect to access to stem, it will have even further incentive to compete on price for other users to ensure it can accumulate sufficient grain for the peak shipping period.

Overall

As noted, should the Application to Vary be accepted, GrainCorp would not be obliged to provide access to any access seeker. However, the NAT facility in conjunction with Carrington will provide even greater capacity to the market, a market which traditionally has underutilised capacity across the year as a whole.

Given the significant excess capacity in the market, access seekers with significant countervailing power and large volumes, such as Cargill, may be in a strong position to negotiate with GrainCorp and NAT. Access seekers with interests in their own facilities, such as Glencore, Queensland Cotton, CBH and Louis Dreyfus, will also have alternative options.

Absent the access undertaking and given their limited countervailing market power, small to medium access seekers in particular may not be as able to secure capacity at the Carrington site, and potentially the whole of the Port of Newcastle. However, the increase in capacity could provide GrainCorp and NAT greater incentives to increase throughput at Carrington, thereby providing smaller exporters further opportunities to ship.

The ACCC notes that historically it has been more difficult for small to medium exporters to compete in the NPZ and to ship from Newcastle. Generally such traders can participate when there is significant surplus wheat. The ACCC considers overall that the Application to Vary will not place smaller shippers in a worse position. Rather, the commissioning of NAT, in conjunction with the example of Louis Dreyfus, suggests that:

- The NAT facility in light of its rail arrangements will be better suited to accumulation programs for niche products or quick executions; and

- Smaller operators could consider alternative ways to participate in the market compared to shipping from an existing bulk handler's port terminal; also

Overall, having regard to the matter specified in s. 44ZZA(3)(c), the ACCC considers that the interests of access seekers will not be significantly harmed if the Application to Vary is accepted.

5.3.4 Potential Detriment to GrainCorp if Application to Vary is not approved

As noted at Chapter 3, GrainCorp raises concerns with respect to regulatory inequality in the port terminal services market. As noted, the undertaking obligations do not wholly constrain GrainCorp's operations or ability to enter into commercial arrangements. GrainCorp has flexibility with access seekers (other than GrainCorp Trading) with respect to pricing and terms. However, with the onset of alternative port terminal services and other export arrangements, GrainCorp's activity is constrained by the rules of the Undertaking, in contrast to NAT and LD.

Having regard to the Objects of Part IIIA and the legitimate business interests of GrainCorp, it is relevant to consider whether GrainCorp is unable to guarantee customers the same type and flexibility of access, guarantees and levels to service as NAT and LD can, and whether this is likely to limit the level of competition in the zone.

GrainCorp can only provide customers port terminal services if they have acquired capacity in accordance with its port loading protocols, via a first in first served or long term capacity arrangement. GrainCorp cannot provide a service to the market potentially as dynamic or responsive as NAT may be able to. The ACCC concludes that NAT, and to a lesser extent LD (as a wheat marketer) have some competitive advantage over GrainCorp and GrainCorp Trading. The ACCC notes that this may limit the achievement of the objects of the WEMA (which the ACCC has had regard to as a relevant matter as per section 44ZZAA(3)(e)):

> (a) to promote the operation of an efficient and profitable bulk wheat export marketing industry that supports the competitiveness of all sectors through the supply chain; and
>
> (b) to provide a regulatory framework in relation to participants in the bulk wheat export marketing industry.

GrainCorp must also adhere to the non-discrimination provisions with respect to GrainCorp Trading. The ACCC notes that this may not have much effect with regard to other customers, but may limit GrainCorp Trading's ability to compete with GrainCorp's competitors where there is competition at port. Having regard to the Objects of Part IIIA, this means that competition might be limited in the related exporter market.

As noted above NAT has greater scope to offer customers a range of port terminal services. One trend in the industry is the preference for long term agreements. While there was limited take-up of long term arrangements at Carrington, this does not exclude the possibility that NAT may now be able to secure contracts, including long term arrangements, with key shippers. This could include Cargill, GrainCorp's second largest shipper from Carrington. The ACCC believes the potential for harm to GrainCorp's interests as an access provider in such a situation is not insignificant.

While there is limited public information available, the ACCC's assessment is that, given their shareholdings, it is likely that CBH, Olam and Glencore will ship from NAT. It is not clear under what terms and conditions they will be privy to. However they are less likely to be as constrained as GrainCorp Trading when going to the market.

The ACCC notes GrainCorp is not able to offer, and GrainCorp Trading is not able to take up, arrangements that would better allow it to compete with customers shipping from NAT who can offer guaranteed shipping to potentially long term customers for specific shipping dates. At Carrington the first-in-first-served allocation method and rules specified in the port loading protocols, in conjunction with GrainCorp's inability to currently offer customers long term arrangements, constrain GrainCorp and GrainCorp Trading's participation in the market for bulk wheat exports from the Port of Newcastle. Furthermore, the ability to offer tailored access and port operations to key shippers is not currently available to GrainCorp.

In February, CBH CEO Andy Crane provided a statement concerning CBH's investment in NAT, which included the following:

> The CBH Group has made an investment in the Newcastle Agri Terminal (NAT) to support our ability to reliably execute shipments from the eastern seaboard to our loyal customers internationally.[122]

The reference to reliable execution of shipping suggests CBH envisages it will be able acquire capacity at NAT in order to execute shipments to customers.

The ACCC considers that the current regulatory arrangements in place at the Port of Newcastle are no longer operating as originally envisioned in the WEMA. While the onset of competition in the form of NAT at the Port is still developing, it is no less a critical time for the development of the market and client customer relations.

The matter may be less time critical if the drought continues and limited supply of wheat and/or other grains is available for export over the 2014/2015 shipping period.

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[122] L Jose, CBH considers expanding east coast investments, WA Country Hour ABC, 7 February 2014, http://www.abc.net.au/news/2014-02-06/cbh-group-looks-east/5243790 (viewed 19/3/2014).

The ACCC believes it would be in the interests of the bulk wheat export market for the Port of Newcastle to establish a consistent framework by which port terminal operators and bulk wheat exporters participating in the Newcastle Port Zone are not subject to inconsistent treatment.

5.3.5 Conclusion

Primarily all three export operations at the Port of Newcastle are constrained by the domestic market for bulk wheat in the NPZ. The domestic market's ability to pay a higher price than the export market and incur less transportation costs is a significant advantage. The variability of wheat production in the NPZ is a further constraint and significant risk the two port terminal operators and Louis Dreyfus must consider. The container market also providers a further alternative for growers in the NPZ (as discussed in Chapter 6).

Accordingly, having regard to the matters specified in subsections 44ZZA(3)(a) and (b), the ACCC has arrived at the following draft conclusions:

- The establishment of the NAT, in conjunction with the LD operation at the Port of Newcastle, will overall lessen the constraint GrainCorp's Carrington port terminal has on shipping from Newcastle and sufficiently protect competition.

- Having regard to the interests of access seekers, the ACCC does not consider GrainCorp will be in a position at the port such that the interests of access seekers will be damaged. Access seekers may also benefit from more flexible arrangements being available to access seekers at Newcastle.

- It is in the legitimate business interests of GrainCorp, and in the public interest, that competition in the market develop without having one participant regulated when others are not.

- It would not be in the public interest to restrain GrainCorp from operating and competing as per other market participants within the Port of Newcastle, or restrict its operations upstream and downstream by regulating it at the port. This would distort the market, and limit GrainCorp's ability to compete with NAT and the bulk wheat exporters who operate storage within the NPZ and ship from the Port of Newcastle.

These views overall lead the ACCC to its draft decision in Chapter 7, having regard to all relevant matters as per the decision making framework.

6 Newcastle Port Zone

In this chapter, the ACCC examines the relationship between the market for bulk wheat export port terminal services at the Port of the Newcastle and associated markets upstream and downstream from the port. The chapter does not consider the full competitive situation upcountry, but concentrates on its potential to limit port competition.

The ACCC's consideration of the relationship between the market for bulk wheat export port terminal services at the Port of the Newcastle and associated markets upstream and downstream from the port will contribute to the ACCC's view on whether, against the decision making framework of s.44ZZA, the GrainCorp Application to Vary is appropriate.

The ACCC's draft view is that there are sufficient upcountry alternative options in storage and handling and transport, and competition provided for bulk wheat by other competing non-bulk-export markets, such that competition at the port level will not be reduced.

6.1 Overview and key issues

In making its draft decision, the ACCC needs to consider to what extent access seekers at the Carrington Port, and the competitive options available to those access seekers, are constrained by GrainCorp's presence in the upstream market. Likewise, the draft decision will also consider the extent of the constraint on GrainCorp in the markets it operates in, and competing markets within, the Newcastle Port Zone (NPZ).

This is a relevant consideration because, were GrainCorp able to use its market position in upcountry markets to effectively limit the ability of competitors to compete in provision of port services, it may not be appropriate to reduce the level of regulation on GrainCorp's port facilities. Furthermore, the ACCC must consider competition in upstream and downstream markets. If upstream producers have alternative options for selling grain outside of for export, this may suggest that any GrainCorp market strength at port is of limited impact.

At a general level, AEGIC has noted that:[123]

> GrainCorp operates in a more competitive environment than CBH and Viterra, with Emerald owning 15 receival sites, rolling stock and one port, and Cargill owning 22 receival sites across NSW, SA, Vic and Qld and rolling stock. Wilmar Gavilon also operate a port in Qld which has capacity to export around 0.5MMTpa.

The AEGIC table below highlights some additional key constraints on GrainCorp's ports activities across the Eastern seaboard. The report notes that for 2012-2013 GrainCorp exports 28% of eastern Australian exports. Other constraints detailed in the table include the level of domestic consumption, number of receival sites and the presence of on-farm storage.

[123] AEGIC, *The cost of Australia's bulk grain export supply chains - An information paper*, January 2014, p. 11.

	CBH (WA)	GrainCorp (eastern Australia)	Viterra (SA)
Average annual harvest (MMT)	10.3	20.0	6.0
Approximate domestic consumption (MMT)	1	9.5	1.2
% of harvest exported	92	50	90
Number of receival sites	197	70 + 200 on 'as-required' basis	92 (including 3 in Vic)
Market share — up-country	Receives and stores ~90% of WA's grain	Handles ~75% of east coast grain	80% market share of SA up-country grain storage (by no. of sites)
Storage (MMT)	20 (effective 15)	20	10
On-farm storage (MMT)	2.6	11.8 (NSW: 6.4, Vic: 3.5, Qld: 1.9)	1.2
Port ownership	4	7	8 (6 operating)
Market share — port throughput (%)	100	80-90	100
Market share — export tonnage (%)	48% WA bulk exports (2012-13)	28% eastern Australian exports (2012-13)	46% SA exports (2012-13)

Source: AEGIC, *The cost of Australia's bulk grain export supply chains - An information paper*, January 2014, p. 11.

However, the above figures are at a broad level. It is necessary for the ACCC to consider the more specific upcountry area relevant to Newcastle. The area upstream from the port, the NPZ, is the most likely source of originating wheat for the Carrington port and now competing port terminal services at the Port of Newcastle. In relation to this area, the draft decision will consider:

- wheat production
- domestic end-users
- export container trade
- up-country storage and handling services
- transportation: road and rail.

6.1.1 Northern NSW bulk wheat market

Wheat production

The Newcastle Port Zone (NPZ) encompasses the geographic region of Northern NSW, including the larger towns of Narrabri and Moree. Within the NPZ, wheat grown closer to Newcastle on the Liverpool Plains (250 -350km from Newcastle) tends to move by road into the domestic market; as growers can secure a higher price for their wheat while paying less for transportation. Wheat grown further afield within the NPZ relies on rail transportation to cover the long distance between storage and port.

The table below from GrainCorp's submission outlines a number of key indicators concerning Northern NSW wheat production and export. It is compiled from data from 2004 to 2013, including information from the two years of drought in 2007 and 2008.

Volume Metrics - Northern NSW

	AVG (Million tonnes)
Grain Production	2.94
Winter share	77%
GNC Receivals	**1.95**
Est non GNC receivals	0.98
GNC Country Share	66%
GNC Bulk Exports	**1.08**
Rail Share	92%
Est Domestic & Containers	1.85
Est Bulk Export Share	37%

Source: GrainCorp supporting submission, p. 7.

ABARES recent forecast acknowledges the impact of reduced rainfall on declining production levels across Northern New South Wales.[124]

At the GrainCorp Annual General Meeting in February 2014, Chairman Don Taylor noted:

> The drought conditions that have prevailed in northern NSW and Queensland had a big impact on growers and their crops – substantially reducing the volumes coming into our network. Coupled with an export program that is heavily skewed to the first months of this financial year, much of our country network will stand almost empty for the second half of our financial year.

As noted in Chapter 5, since 2011 several bulk wheat exporters have shipped from Carrington. In light of multiple and relatively recent periods of drought, the amount of grain accumulated from the NPZ has been widely variable. During the limited supply in drought years, increasing demand from the domestic market and accordingly higher prices dictate there is limited wheat available for export. The presence in the NPZ however is increasing as many exporters explore options to operate up-country storage and handling facilities.

Domestic end-users of wheat

In the 2011/12 financial year, domestic demand on the East Coast accounted for 25% of total demand, and for around 35% of total demand in NSW. This compares to numbers in the order of approximately 10% in SA and WA.[125] GrainCorp submits that this is higher again in Northern NSW, where 63 per cent of grain production, amounting to two million tonnes is consigned into the domestic and container markets. As noted by GrainCorp domestic end users situated in or near the zone include Manildra Grain, Allied Mills and Weston Milling. Feedlots also acquire significant quantities of wheat and other grains, particularly during periods of drought.

The AEGIC report into bulk grain supply chains reports the finding of ABARES 2013 Australian Crop Report, including that:

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124 ABARES Agricultural Commodities Report, March Quarter 2014.

125 Wheat Exports Australia, *Report for growers 2011-12*, December 2012, p. 10

> Of the 35 MMT of grain produced annually, about 10–11 MMT is consumed domestically, leaving about 25 MMT available for export. Most of the domestic consumption (see Figure 4) occurs in eastern Australia. Annual grain production in NSW, Vic and Qld has averaged 19.5 MMT/yr during the past 10 years, with approximately 50% of production available for export.[126]

Export container trade

The container market has expanded as a competitor for bulk wheat across Eastern Australia. In 2013 it was reported at a Grain Trade Australia forum that 'non- domestically consumed wheat in containers accounted for 11% of all wheat exports or 2,232, 000 tonnes, the majority of which is shipped from the East Coast. [127]

Container packer services in the Newcastle Port Zone are offered by Glencore, Cargill and Louis Dreyfus. There are also a number of smaller packers in the Newcastle Port Zone, including Namoi Cotton at Wee Waa. At the Port of Newcastle NAT and Louis Dreyfus offer container packing services. GrainCorp does not operate container packing facilities in the NPZ.

Up-country storage and handling services

Within the NPZ are a range of up-country storage and handling facilities. These are mostly located around the aforementioned large towns, Narrabri and Moree, but also along the rail corridors throughout the region, including at Beanbri and Bellata. Within the NPZ, GrainCorp reports it has 25 country silos including at Moree, Narrabri and Wee Waa. More broadly, GrainCorp own and operate an extensive network of upcountry facilities, including a network of over 70 storage sites situated on branch and main rail lines.

However, these figures need to be considered in light of the fact that GrainCorp has indicated it has plans to rationalise its up-country storage and handling network. GrainCorp recently made the following statement in regards to storage:[128]

> GrainCorp continues to carefully balance the needs of its grower customers while also ensuring the long term sustainability of the business for shareholders. The vast majority of the grain we receive – over 90% – now comes into a core of about 65% of our sites. Growers are already clearly indicating which sites they prefer and this means there is a growing number of sites that receive less and less grain each harvest. Given their higher operating and supply chain cost these smaller silos are becoming less competitive.
>
> We are currently assessing how we strengthen our network and free up capital to allow investment in the core sites that growers strongly support. This will involve some sites growing, some sites shifting focus, and some unviable sites closing. It's a process we are working through carefully, methodically and in close consultation with our customers.
>
> In order to sustain a profitable and efficient network, GrainCorp must always consider the location and efficiency of all its sites, and where commercially appropriate, rationalisation of the network.

Also operating across the Eastern seaboard is Cargill's wholly owned subsidiary Grain Flow. Within the NPZ it has two sites at Beanbri and Bellata and a broader network across NSW. As noted above Cargill also offer container packing facilities. Cargill's network also carries wheat for the domestic market, given its joint venture with GrainCorp in Allied Mills.

A number of the bulk wheat exporters have also expanded their operations into up country storage and handling facilities in the NPZ. Louis Dreyfus has two facilities at Narrabri and Moree, while Viterra has a container packaging facility at Narrabri. The facility has capacity to process 11,000 containers, a large storage area with a combination of shed, bunker and silo storage. Containers are delivered to Botany with rail siding on site.[129]

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126 AEGIC, *The Cost of Australia's Bulk Grain Export Supply Chains*, p.9.

127 Grain Trade Australia Export Container Forum May 2013, http://www.graintrade.org.au/sites/default/files/file/Export%20Container%20Forum/Conference%20Forum%20Flyer%2016%20April13%20V2.pdf (viewed 19/03/2014).

128 GrainCorp, *FY13 Annual General Meeting – Shareholder Questions and Answers,* 28 February 2014. p. 2.

129 Packaging and Processing, Viterra, http://www.viterra.com.au/packing-and-processing , (viewed 19/03/2014).

Media reports suggest CBH is considering storage and handling options within the NPZ.[130] A further number of SMEs are also located across the NPZ, including storage and grain packing firm AgriPark at Moree and AMPS Storage and Handling at Premer.

Additionally, for some growers, on-farm storage is a potential alternative to bulk handling and storage facilities and networks, although they may likely need to use bulk handling facilities at some stage. A grower may use on-farm storage as an interim measure before making a decision to sell grain. On-farm storage also provides an option for growers to by-pass to the bulk storage and handling networks, particularly when they:

- are selling to a domestic end-user
- have a niche product for export which cannot be co-mingled with the more generic bulk wheat varieties; and/or
- are accumulating for container exporting.

The PC also considered on farm storage in the course of its inquiry into Wheat Export Marketing Arrangements in July 2010. It noted:[131]

> On-farm storage capacity also makes up a relatively greater proportion of the total storage in the eastern states than in Western Australian and South Australia which rely more heavily on bulk handers for grain storage.

AEGIC also noted that an Australian Bureau of Statistics (ABS) farm survey showed that at June 2010:[132]

> the on-farm grain storage capacity in Australia was over 14.3 MMT. On-farm storage capacity in WA alone was 2.35 MMT and was forecast to grow to 4.2 MMT by 2012, or about 35% of average annual production1. By comparison, industry sources estimate on-farm storage capacity across the eastern seaboard (NSW, Vic, Qld) totals around 11 MMT or about 60% of average annual grain production.

Historically the majority of grain destined for bulk export has found its way into GrainCorp's bulk storage and handling network within the NPZ. This then allows the grain to be sent by rail to Carrington or to domestic end-users like the millers Allied Mills (Tamworth and Sydney), Manildra (Gunnedah and Nowra) and Weston Milling (Sydney).

Transportation: road and rail

Rail transportation is particularly relevant for growers located further from port in the NPZ; given the distances involved it is unlikely to be cost efficient to use road transport to move wheat to port. Road transport is a viable alternative for some growers fulfilling contracts with domestic end-users within the NPZ or those located closer to end-users within the Liverpool Plains.

The rail network in the NPZ is varied, and operates under a number of access regimes. Within the NPZ the ARTC operated rail lines run from the Queensland border at Boggabilla, to Moree and Narrabri then through Gunnedah, Werris Creek, Muswellbrook to Newcastle. The ARTC rail lines are accessed via an open access arrangement operated by the ARTC, overseen by the ACCC.

The more remote Country Regional Network runs over a number of branch lines from Moree to Weemelah and from Narrabri through Burren to Walgett and Merrywinebone. Many GrainCorp storage facilities are located along these lines. The arrangements for the network are as follows:

> Up until 1 July 2012 the CRN was owned by the Country Rail Infrastructure Authority (CRIA) at which time CRIA functions and its assets and liabilities transferred to TfNSW. Since January 2012, the CRN has been operated and maintained under contract by John Holland Rail. As TfNSW's agent, John Holland is also the first point of contact with third party operators in relation to access to the network, which is covered by the NSW RAU and the terms and conditions of the CRN standard access

130 B Thompson, CBH Prepares for Push East, West Australian, 25 March 2014, p1.

131 Productivity Commission, *Wheat Export Marketing Arrangements,* 1 July 2010, p. 68.

132 AEGIC, *The cost of Australia's bulk grain export supply chains - An information paper*, January 2014, p. 14.

> agreement. However access agreements are between operators and TfNSW – on terms approved by TfNSW.[133]

At the port end of the rail network, GrainCorp's Carrington facility has rail and road receival facilities on site. Pacific National and Aurizon are the primary rail operators operating in the zone. GrainCorp does not provide a bundled storage, rail and port product. Previously GrainCorp has subleased rail capacity directly to bulk wheat exporters.

GrainCorp's rail arrangements at port as outlined above in Chapter 5 are less efficient than those at the NAT facility, though more efficient than the arrangement at the Louis Dreyfus storage facility. The NAT's rail receival facilities include a passing balloon loop which allows a train discharging wheat to efficiently continue through the site. This arrangement compares favourably to the rail arrangements in place at Carrington which requires a train to be broken into several segments before it can be moved through the rail receival facilities.

While NAT did not initially plan truck facilities, all three bulk wheat export operations have truck receival facilities.

In addition to providing port terminal services, NAT states that it will provide supply chain services:

> We exist to provide better grain supply chain solutions for exporters and to increase farm gate returns for growers. NAT has a clear focus on facilitating efficient supply chain operations and is not involved in grain marketing.[134]

As outlined above, the Louis Dreyfus operation at the Port of Newcastle utilises rail and road facilities. It employs specialised containers which can transfer between train and truck. LD moves the wheat by road from the storage shed to the Qube elevator at Kooragang 3 Berth, a distance of several kilometres. The Louis Dreyfus and the Mountain Industries websites outline the receival facilities:

> Louis Dreyfus operate rail assets direct to port facilities in Newcastle from up country sites to maximise efficiencies and directly supply quality high protein grains to international markets and end users.[135]

The ACCC understands that bulk grain exporters operating in the NPZ also have access to rail resources to move their grain from the NPZ to port. Some own rolling stock, while others enter third party take or pay type arrangements for the various rail lines using the aforementioned rail providers such as Pacific National. GrainCorp in its submission to the Senate Rural and Regional Affairs and Transport References Committee into Ownership Arrangements in Grain Handling reported it spends $40 million annually in take-or-pay rail capacity.

AEGIC observed that production volatility affects freight rates in that 'the uncertain freight volume makes planning more difficult and risky, which is reflected in higher freight rates.'[136] In light of the variability of production and competing interests for both wheat and rail resources from the domestic market the likelihood of smaller operators accessing rail and accumulating wheat from the NPZ is a difficult task.

133 Review of NSW Rail Access Regime - Issue Paper, Transport for NSW, p8.
134 About, Newcastle Agri Terminal, http://www.naterminal.com.au/index.php/about, (viewed 18/03/2014).
135 Louis Dreyfus Australia, http://www.louisdreyfus.com.au/index.php?id=1541 and Storage, Mountain Industries, http://www.mountainindustries.com.au/storage.htm
136 AEGIC, *The cost of Australia's bulk grain export supply chains - An information paper*, January 2014, p. 18

6.2 GrainCorp's and stakeholder supporting submissions

6.2.1 GrainCorp's views

The market for bulk wheat

GrainCorp defines the NPZ as the area from where grain moves to Newcastle, this includes towns on the Narrabri to Moree rail line and from country silos on the branch lines to Weemelah, North Star and Walgett. GrainCorp notes that:[137]

> bulk grain exports from country solos on the Coonamble and Nyngan rail lines in Central NSW are usually consigned to Port Kembla but can be consigned to Newcastle by rail for a small additional cost vie the longer rail route via Binnaway, (due to restricted access via the shorter rail line via Ulan).

The following table from GrainCorp's submission illustrates likely destinations of Northern NSW wheat.[138]

Grain Source	Destination
Liverpool Plains	Predominately sold to the local feedlots or the large poultry consumers in Newcastle.
Golden Triangle Moree to North Star	Can be sold for export via Newcastle or Brisbane or sold to large feedlots in Southern QLD.
Main lines Narrabri to Moree & Narrabri to Walgett	Given its higher protein profile, supplies a large portion of the wheat to the flour mills; Manildra (Gunnedah and Nowra mills), Allied (Tamworth and Sydney) and Westons (Sydney).
Residual Narrabri to Moree & Narrabri to Walgett	Sold for export in bulk via Newcastle or in containers from the large number of local country packers.

GrainCorp submits the following about the NPZ market and its market share:[139]

> Growers in Northern NSW enjoy a very competitive grain market with ready access to a large number of buyers for their grain.
>
> …
>
> Around 75% of the 3 million tonne average grain production comprises winter crops, predominately mid to high protein wheat. Around 25% of grain production is summer crops, predominately sorghum.
>
> - GrainCorp receives 66% of this grain production from Northern NSW, around 2 million tonnes, into its country silos. The volume of grain bypassing GrainCorp country silos ranges from 850,000 tonnes to 1.2 million tonnes. GrainCorp's share of country grain has trended down from 70-80% and it expected to decrease with the growth of competing country silos. A large portion of the grain that is received into GrainCorp silos is consigned to the major flour millers.

GrainCorp submits that the domestic market has the 'first claim' on wheat from Northern NSW and this provides a further constraint on GrainCorp's export activities out of Newcastle. GrainCorp suggest that 63% of grain production (around 2 million tonnes) is used in the domestic and container markets.[140]

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[137] GrainCorp supporting submission, p. 5..
[138] ibid, p. 6.
[139] ibid.
[140] ibid, p. 6-7.

GrainCorp submits that it faces competition from 8 local container packers with an estimated capacity of 1 million tonnes. This includes packers owned by major grain exporters Glencore and Louis Dreyfus.[141]

Up-country storage and handling services

GrainCorp submits that the large range of marketing options in northern NSW has in turn led to the development of a range of storage options in the NPZ.[142] GrainCorp submits it operates 25 country silos in northern NSW and faces competition from 10 major country silos owned by Cargill, Glencore and Louis Dreyfus. GrainCorp submits:

- These competing independent country silos have an estimated capacity of 800,000 tonnes and directly compete against 60% of GrainCorp's average receivals.
- Most of these competing independent country silos have access to bulk or containerised grain trains, contracted by the owner of the facility or the exporter.
- The 4 competing Narrabri country silos, located on a major rail and road transport hub, have the potential to service a larger catchment area, including grain from the western branch lines.

GrainCorp also submits it faces significant competition from on farm storage.

Transportation: road and rail

GrainCorp outlines that Northern NSW is part of the NSW standard gauge rail network and is serviced by a number of competing train services contracted by grain exporters from a range of rail providers. GrainCorp submits that 'around 90% of bulk export grain is moved by rail transport into Newcastle, from both GrainCorp and third-party country silos'.[143]

GrainCorp submits that the NPZ is serviced by a number of competing train services contracted by grain companies from a range of rail providers including Pacific National, Qube and Aurizon. A number of exporters contract rail services directly from a number of operators in the state and from across the East Coast. GrainCorp submits that 'over 50% of domestic and containerised grain is also moved by rail'.

GrainCorp estimates:[144]

> there are 17 standard gauge export trains in NSW which can service northern NSW of which GrainCorp currently own or contract eight of these trains. In addition to export trains, domestic customers also operate 7 trains in NSW which also service grain from Northern NSW.

GrainCorp notes that 'trains can be moved around the East coast depending on seasonal conditions', but caveats this noting that 'most contracts with rail providers include take or pay' component regardless of volume moved'.

Container Exports

GrainCorp cites the container market as a constraint on sourcing bulk wheat for export across Eastern Australia.[145]

6.2.2 Stakeholders' views

NSW Farmers submission outlines its understanding of the Newcastle Port Zone as follows:[146]

> The Newcastle port zone is considered to include the grain origination areas located between Dubbo and the Queensland border; however trains from Narromine to Nyngan can be diverted to either port

141 ibid, p. 8
142 ibid, p. 7.
143 ibid, p. 8-9.
144 ibid, p. 9.
145 ibid, p. 8.
146 NSW Farmers, submission in response to issues paper, p. 5.

dependent on freight costs and the export cargo assembly needs.[147] This is reflected in Grain Trade Australia's location differentials where these grain receival and storage locations are listed as having Newcastle as their Natural Terminal Port.

The behaviour of farmers in the planning of harvest logistics should be considered as that of rational economic actors; that is all things being equal, they will coordinate where they will deliver grain based on what will deliver the highest return. Factors included in this are:

- price received;
- cost of delivery to silo/domestic user;
- FOB costs; and
- other transaction costs such as the speed of turnaround at receival point and the impact this has on the progression of harvest.

On this basis, NSW Farmers note that volume alone is not an adequate measure of competition within the NPZ. NSW Farmers suggests the ACCC should also consider proximity to where the crop is grown as a measure of potential constraint.[148]

In relation to the NPZ and its interaction with the Port of Newcastle, NSW Farmers submits that:[149]

> The presence of NAT by itself is not enough to enable the development of greater competition for farmers' grain. This is because of the broad dominance that GrainCorp retains in the market for storage and handling of grain, both up country and at the major bulk exports ports across the east coast.
>
> It is the view of NSW Farmers that further efforts are still needed to ensure that other grain marketing companies are able to compete on a level playing field with GrainCorp's marketing business.

NSW Farmers also indicates concerns with GrainCorp's operations in the area of storage agreements, swaps, execution difficulties, port capacity management inflexibilities and information asymmetry.[150]

NSW Farmers submission also references the findings of the Grain Freight Review Taskforce, which found that 'containerised sector is unlikely to have a significant impact on the bulk export sector.' Furthermore the Review considered the inter-related nature of the domestic and international markets with respect to pricing.[151]

On transport within the NPZ, although the NSW Farmers indicate that rail is the 'most cost efficient' means to move accumulated grain to port, they also submit that:[152]

> GrainCorp is presently licenced by the NSW Government to provide open access above rail services on the NSW country rail network, which it undertakes in partnership with Pacific National. The majority of those storage and handling providers outlined as competitors to GrainCorp's network in the issues paper are located on the ARTC track, limiting the ability to provide viable competition to much of the port zone. This reinforces the view that NSW Farmers has taken with regard to the natural monopoly network operated by GrainCorp.

6.2.3 GrainCorp's response to stakeholder views

GrainCorp responds to the NSW Farmers submission specifically, submitting that it addresses industry issues as a whole rather than the Application to Vary. GrainCorp submits it has addressed these issues in the course of previous undertaking assessments. Specifically, GrainCorp 'rejects the

147 Strategic design and development 'Grain supply chain pilot study' (Staqe One Final Report , National Transport Commission December 2006)48. 'as quoted in NSW Farmers submission p.5

148 NSW Farmers, submission in response to issues paper, p. 5.

149 ibid, p. 9/

150 ibid. pp. 9-10.

151 NSW Grain Freight Review, Australia Government, http://investment.infrastructure.gov.au/publications/reports/pdf/NSW_Grain_Freight_Review_Final_report.pdf (viewed 19/03/2014).

152 NSW Farmers, submission in response to issues paper, p. 5-6.

assertion that it holds a natural monopoly position (particularly in the East Coast of Australia) in relation to wheat storage and handling'.[153]

GrainCorp reiterates the observations in its initial submission concerning the container market, including its ability within Northern NSW 'to handle around 33% of average production'.[154]

GrainCorp disagrees with NSW Farmers' suggestion that GrainCorp could exclude other exporters from obtaining capacity during the immediate post-harvest period. GrainCorp, as per its comments on the Emerald submission note as 'Newcastle only operates at 23% capacity utilisation GrainCorp has the incentive to maximise shipments'. GrainCorp then notes:

> even if our GrainCorp Marketing division could use all the shipping capacity at Newcastle during this period, we would still face significant competition from NAT and LDA (which can comfortably accommodate the total annual average and peak bulk grain export task) and have a combined export capacity of 150,000 per month. [155]

6.3 ACCC's preliminary view

In this chapter, and in accordance with the decision making framework, the ACCC examines the level of constraint on the bulk wheat export market from competing markets for bulk wheat operating in the NPZ.

6.3.1 Level of constraint from domestic end-users

The ACCC has observed the competing demands for bulk wheat produced in the NPZ. There are a number of markets competing for bulk wheat, and competition within and between those markets.

Considering the matters set out at section 44ZZA(3)(aa), (b) and (c), being the objects of Part IIIA, the legitimate business interests of the provider and the interests of the access seeker, it is significant to note that export through the Newcastle port, including through GrainCorp's port terminal service at Carrington, is not the sole destination or even necessarily the preferred destination for wheat grown in the NPZ. The ACCC notes that depending on wheat production levels export may in some seasons be the likely destination for bulk wheat, but this is not always the case.

As noted in submissions, the domestic market has the first call on wheat. GrainCorp, in its submission submits that:

> The majority of the grain from Northern NSW, (63% of grain production and around 2 million tonnes), is consigned into the domestic and container markets. GrainCorp does not have access to statistics for the domestic and container split, but estimates that in excess of 0.5 million tonnes would be handled by the local container packers.

Taking into account domestic demand, variable production both within the NPZ and surrounding regions and the state of the export market, the percentage of the total wheat crop available for export on average, as submitted by GrainCorp is approximately 37 per cent. As noted above, in periods of drought there have been zero exports from Newcastle.

The ACCC notes GrainCorp itself services the domestic wheat market. It also through its joint venture with Cargill in Allied Mills is an end-user of the bulk wheat.

The split between wheat for export and wheat for domestic consumption is significantly different to many other wheat growing regions across Australia, particularly in South Australia and Western Australia. In the NPZ, growers have the opportunity to consider a range of marketing options and a variety of end-users from the domestic milling sector, feed lot operators, container packers and bulk-wheat export marketers.

[153] GrainCorp response submission, p. 8.
[154] ibid.
[155] ibid, p. 9.

The ACCC considers that this constraint from the domestic market places a significant level of constraint on GrainCorp's Carrington facility, as well as the NAT and LD operations. This is consistent with observations that the ACCC has made more generally about the East Coast market in previous undertaking decisions.

6.3.2 Level of constraint from container markets

While it is difficult to establish what percentage of the wheat produced in the NPZ is taken up by the container market, the evidence available suggests it is a constraint on the bulk wheat export market across the East Coast.

The presence of container packing facilities at the competing ports at Newcastle and along the NPZ supply chain suggest growers have an alternative option to the domestic market and an alternative to the bulk wheat export market.

However, the ACCC notes that growers may not always have the option of determining what will be the end use of their grain. Nevertheless the presence of multiple shippers and packers in the NPZ in the storage and handling market suggests growers will be able to make marketing decisions on a range of factors. That said, the ACCC considers the container market to be a lower level of constraint than the domestic users in the NPZ. It notes in that regard the submissions made by NSW Farmers.

6.3.3 Storage and handling services

Having regard to s. 44ZZA(3)(aa) and the effect of the Application to Vary on related markets, the ACCC considers that growers' options for marketing their wheat have increased as additional grain traders enter the NPZ market for up-country storage and handling. Growers will increasingly have the opportunity to make marketing decisions at the point of selecting storage and handling service up-country. An increase in storage and handling and additional marketing options is of benefit to growers as the sellers into the market for grain acquisition.

Grain marketers including Glencore (Viterra's Narrabri facility), Louis Dreyfus and Cargill now have receival sites in strategic locations across the NPZ. Media reports suggest CBH is considering acquisitions within the NPZ.

Some of the storage providers also provide a container packing service. At the port, both NAT and LD offer a packing service. This adds an additional constraint on GrainCorp's storage and handling network, and more broadly on GrainCorp's operations downstream at the Carrington port terminal, as the opportunities for bypass are increased.

Across the NPZ, other market participants in storage and handling do not have the established or extensive facilities of GrainCorp. However, as highlighted by GrainCorp, a lot of its sites are not efficient.[156] Many are small and unlikely to receive and also discharge significant quantities of wheat in an efficient manner. Choosing to close a site for a harvest or permanently is an ongoing source of conflict between growers and GrainCorp.

Furthermore, in relation to GrainCorp's storage network, the positioning of many smaller sites primarily on the up-country Country Regional Network would appear to be sub-optimal. While the Transport for NSW Review of NSW Rail Access Regime noted that 'discussion on the viability of the grain lines and the CRN is beyond the scope of this review,'[157] it still highlights key concerns with the operation of the lines. The review referenced an IPART estimate about the network, which indicated 'that access revenue covers only 2.3% of the current costs incurred in operating and maintaining the grain lines'.[158]

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156 GrainCorp, 2013 AGM Chairman's Address (FY13), , http://www.graincorp.com.au/investors-and-media/presentation-and-events/annual-general-meetings, viewed 17/03/2014.

157 Transport for NSW, Review of NSW Rail Access Regime - Issue Paper, , p.18.

158 Transport for NSW, Review of NSW Rail Access Regime - Issue Paper, , p.18. See also IPART, Review of access pricing on the NSW grain line network, Final Report, April 2012 p.5.

Taking into account the inefficiencies of such arrangements across the NPZ, a new market entrant would not seek to replicate GrainCorp's storage and handling network. Maintaining such a network comes with significant costs.

Despite the limitations of GrainCorp's network, the ACCC does note that the scope for competition in storage and handling has been less likely in the more remote towns within the NPZ. In these locations GrainCorp is more likely to have less competitive constraint on its storage and handling operations, but not necessarily on port terminal services.[159] That said, while the ACCC notes NSW Farmers' submission that proximity to storage is important to farmers, it is not evident to the ACCC that the complete network of smaller sites is likely to be maintained in the longer term, as noted below.

Also, bulk wheat is still most likely to be acquired across the NPZ by domestic end-users than bulk wheat exporters. Furthermore, GrainCorp has continued to offer open access to its up-country storage network to date. All bulk wheat exporters have had the opportunity to secure wheat for accumulation from across the GrainCorp storage sites within the NPZ.

6.3.4 Rationalisation of storage and handling services

As noted in the NSW Farmers' submission, growers are likely to make storage and handling and marketing decisions on price. To date, taking into account transport costs, the closest sites have traditionally been the cheapest site to deliver to. GrainCorp's dominant position in the more remote storage locations is likely to deliver the Carrington port and its customers some advantage upstream. However, going forward this situation and GrainCorp's dominance is likely to change.

In making this decision, the ACCC notes the significant change experienced by the bulk wheat export industry over the last five years. During this period bulk handlers have had to assess the efficiency of their networks, from storage facilities up-country to shipping activities at the port.

Bulk handlers and port operators Viterra in South Australia and CBH in Western Australia have already sought to rationalise their up-country operations. This is through concentrating investment in strategic key receival sites and providing growers a range of price incentives to utilise those facilities. In addition, the bulk handlers' trading arms often post higher prices for wheat at these strategic sites or only provide certain rail services at key sites.

AEGIC notes that Viterra recently introduced a tier-based pricing structure applying a $0.75/t surcharge to Tier 2 (less efficient) receival sites[160] and suggests that:

> Such rationalisation will cause remaining sites, on average, to receive higher volumes, thereby lowering per tonne fixed costs, increasing capacity turnover ratios and providing the opportunity to increase site efficiency. However, offsetting these lower unit costs of receival will be additional transport and road damage costs incurred by grain producers hauling their grain over longer distances. Hence, some cost shifting will accompany any consolidation of receival sites.

Viterra also offers growers the choice of delivering to Export Select only sites which it notes 'have been allocated to ensure smooth supply chain operations, and result in cost savings for grain buyers and ultimately growers.'[161] At these sites, growers must not wish to retain physical ownership upcountry of their grain. Viterra also incorporates an efficiency rebate into the fees structure for growers using the Export Select product.[162]

CBH also has previously priced elements of its supply chain differentially, though it is currently charging both tier 1 and tier 2 sites the same fee. As noted in the AEGIC report CBH stated in 2009 that 73 of its 197 sites (37% of sites), received about 80% of the grain, which AEGIC suggest implies:

> that 124 sites (63%) were being operated or maintained to receive just 20% of the grain and one could argue the industry's supply chain would be more efficient if sites were consolidated.

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159 NSW Farmers submission, p. 5.
160 AEGIC The Cost of Australia's Bulk Grain Export Supply Chains, , p.6
161 Viterra Grower Harvest Information South Australia 2012-13, p5
162 Viterra Grower Harvest Information South Australia 2012-13, p20

While some growers will incur additional costs, investment at key sites has also led to more efficient truck receival, wheat and other grain handling and rail discharge. Improvements in truck processing times are an offset for growers as they seek to minimise the time their trucks spend at the receival sites.

GrainCorp has not provided specific details on rationalisation as part of this Application to Vary. However, the ACCC notes the GrainCorp has indicated publicly it is likely to pursue rationalisation of its storage and receival network. Not dissimilar to the experiences of the other bulk handlers, as noted above GrainCorp has indicated it 'receives over 90% of its grain receivals now comes into a core of about 65% of our sites'.[163]

The ACCC concludes that GrainCorp's position in the up-country market for storage and handling is likely to decrease over time, as exporters taking advantage of the increased available capacity at the Port of Newcastle pursue both a greater presence up-country through direct investment in storage and handling and/or increase accumulation strategies in the NPZ through third party services. At the same time, rationalisation is likely to reduce GrainCorp's market advantage in location of sites.

Furthermore, the increase in competition for bulk wheat in the NPZ should have a positive effect for growers as exporters are likely to compete on price and service.

6.3.5 Transportation

The ACCC must, in having regard to the matters set out in section 44ZZA(3), consider the effect of the Application to Vary on the upstream and downstream aspects of the supply chain within the NPZ.

Submissions on the state of competition within the transport sector within the NPZ have varied, both in this process and in other forums. GrainCorp submits that there are rail resources allocated to the NPZ or able to be repositioned into the NPZ, and that it does not have a dominant position in rail. NSW Farmers submits that GrainCorp has a licence for open access for the Country Regional Network.

The ACCC notes that Cargill's GrainFlow facility at Belatta is on the ARTC network, while its facility at Beanbri is on the Country Regional Network. Cargill utilises rail assets to move its bulk wheat both the Port of Newcastle for bulk export, and to service its domestic operations.

Louis Dreyfus facilities are also located at Narrabri and Moree are also on the ARTC network. As noted above, Louis Dreyfus moves bulk wheat (and other grains) to the Port of Newcastle via rail before transferring it by road to the Louis Dreyfus/Mountain Industries storage shed.

The ACCC understands that other exporters operate train services through NSW, including within the NPZ.

Viterra also operates a container packaging facility at Narrabri, with capacity to process 11,000 containers. It has a large storage area with a combination of shed, bunker and silo storage. Containers are delivered to Botany with rail siding on site.[164]

The ACCC concludes there are rail operators available within the region which are more often accessed by the larger wheat exporters. The ability of small to medium operators to access rail resources is a challenge not isolated to the NPZ, as the traditional take-or-pay arrangements may be beyond the resources of smaller operators. In an area as far from port as NPZ and with the level of competition for bulk wheat from competing markets it is a difficult market generally for a smaller bulk exporter. Also wheat generally destined for shipping closer to ports that can be moved by truck, in the NPZ is taken up by the dominant domestic market. However, LD demonstrates custom operations should not be beyond the reach of small to medium operators in the NPZ.

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163 GrainCorp, FY13 AGM Shareholder Q&A, , GrainCorp, http://www.graincorp.com.au/investors-and-media/presentation-and-events/annual-general-meetings, (viewed 17/03/2014).

164 Packaging and Processing, Viterra, http://www.viterra.com.au/packing-and-processing, (viewed 19/03/2014).

6.3.6 Conclusion

Overall, where GrainCorp once held a dominant position up-country in the market for storage and handling the ACCC concludes this is increasingly not the case within the NPZ. GrainCorp's storage and handling facilities are likely to face increasing competition for market share of the total wheat crop within the NPZ.

The significant degree of competition within the NPZ for bulk wheat makes the level of port competition a lesser concern. The ports influence on the upstream market is generally limited by the domestic market, on-farm storage and the container trade. The presence of a number of grain traders at the port and up-country suggests it will be less likely that any one grain trader or port operator will dictate trade along the supply chain.

Increased shipping capacity at the port is likely to generate further demands from a greater number of exporters for the NPZ wheat crop. In addition to the presence of a number of grain marketeers in storage and handling within the NPZ there may also be an increase in wheat and other grain traders accumulating from the zone. Given the increase in capacity available at the port and the greater flexibility that NAT can provide its clients, it is likely that exporters will see barriers to accumulation in the NPZ as having been lowered.

The ACCC notes the instability of the market given the variability of the weather and growing conditions. However this uncertainty and reduced supply tends to lead to further constraint on the bulk wheat export market. In periods where wheat produced is excess to the needs of the domestic market, growers are likely to have access to an increasing range of both storage and marketing options.

Considering the interests of access seekers wanting to ship from the Port of Newcastle, as per subsection 44ZZA(3)(c), the establishment of NAT and the likely expanding footprints of its key shareholders CBH, Glencore and Olam across the NPZ will provide growers in NPZ further storage and marketing options for their wheat.

Overall the ACCC considers there are sufficient upcountry alternative options in storage and handling, transport and other markets competing for bulk wheat, such that competition at the port level will not be reduced.

These views overall lead the ACCC to its conclusion in Chapter 7, having regard to all relevant matters as per the decision making framework.

7 Draft Decision

The ACCC has considered the Application to Vary provided to the ACCC by GrainCorp on 12 November 2013, pursuant to subsection 44ZZA(7) of the CCA.

For the reasons outlined in Chapters 3, 4, 5 and 6, the ACCC's draft decision is that, having regard to the matters listed in subsection 44ZZA(3) of the CCA and having considered the submissions received in response to the ACCC's Issues Paper, it is appropriate for the ACCC to consent to varying GrainCorp's 2011 Undertaking as proposed in GrainCorp's Application to Vary.

The ACCC seeks views from interested parties on its draft decision.

Attachment A (GrainCorp Shipping Stem – 9 April 2014) and Attachment B (GrainCorp Elevation Capacity Available – 9 April 2014)

SHIPPING STEM
Wednesday, 9 April 2014

													Commodity								
GC Fin Year	Month	Port	Date ETA of Grain Loading Commencement	Name Of Ship	Exporter	Unique Slot Reference Number	Date of Which Nomination was Received	Time at which Nomination was received	Date at which Nomination was accepted	Time of Which Nomination was accepted	Status	Date Loading Complete	Wheat	Barley	Sorghum	PEAS	Canola	Cottonseed	Woodchip	other	Grand Total
2013/14	3	Portland	8/04/2014	MV MASSALLIA	VITO	20765	20/05/2013	9:51:00 AM	21/05/2013	8:10:00 AM	LOADING	(blank)	30000								30000
			12/04/2014	MV VOGE WEST	GCOP	18618	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	10000								10000
		Portland Sum											40000								40000
	3 Sum												**40000**								**40000**
	4	Gladstone	11/04/2014	TIEN FEI	PENT	18031	23/05/2013	1:27:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)				15500					15500
		Gladstone Sum														15500					15500
		Carrington	(blank)	TBA	GCOP	20843	6/02/2014	4:10:00 PM	7/02/2014	8:36:00 AM	Accepted	(blank)	24000								24000
		Carrington Sum											24000								24000
		Port Kembla	14/04/2014	YUTAI AMBITIONS	CARG	18213	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	40000								40000
						19650	22/05/2013	10:56:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)	30000								30000
			24/04/2014	MV HEPHAESTUS	GCOP	21568	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)					16500				16500
			(blank)	TBA	GCOP	18119	23/05/2013	12:47:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	45000								45000
		Port Kembla Sum											115000				16500				131500
		Geelong	30/03/2014	VITAKOSMOS	TOEP	19406	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	COMPLETED	3/04/2014		30000							30000
			10/04/2014	MYKALI	NOBL	18059	21/05/2013	3:44:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	27000								27000
			13/04/2014	THREE SASKIAS	CARG	18713	4/06/2013	5:14:00 PM	5/06/2013	8:15:00 AM	Accepted	(blank)					9000				9000
						21691	7/03/2014	8:47:00 AM	7/03/2014	1:48:00 PM	Accepted	(blank)					17000				17000
								8:48:00 AM	7/03/2014	12:57:00 PM	Accepted	(blank)					19000				19000
			17/04/2014	MV HEPHAESTUS	GCOP	18139	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)					50000				50000
			(blank)	TBA	GLEN	18197	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	35000								35000
					TOEP	21579	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)					13000				13000
				MV SANTA PHEONIX	GCOP	18106	23/05/2013	11:48:00 AM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
		Geelong Sum											112000	30000			108000				250000
		Portland	12/04/2014	MV VOGE WEST	GCOP	21659	23/05/2013	2:47:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	8000								8000
			26/04/2014	OPERA WHITE	CHH	woodchip	7/04/2014	12:53:00 PM	7/04/2014	2:04:00 PM	Accepted	(blank)							23000		23000
			(blank)	THREE SASKIAS	CARG	18313	30/05/2013	10:54:00 AM	31/05/2013	8:09:00 AM	Accepted	(blank)					10000				10000
				MYKALI	NOBL	18061	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	27000								27000
				STAR CHALLENGER	EMGA	18198	23/05/2013	3:03:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
		Portland Sum											65000				10000		23000		98000
	4 Sum												**316000**	**30000**		**15500**	**134500**		**23000**		**519000**
	5	Mackay	(blank)	TBA	PENT	18033	23/05/2013	1:29:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)			12000						12000
		Mackay Sum													12000						12000
		Fisherman Islands	18/05/2014	SEA PRINCESS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			20/05/2014	DAWN PRINCESS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			(blank)	TBA	PENN	19067	4/07/2013	4:51:00 AM	4/07/2013	8:12:00 AM	Accepted	(blank)						28000			28000
						19174	4/07/2013	4:51:00 AM	4/07/2013	8:12:00 AM	Accepted	(blank)						2000			2000
							10/07/2013	4:37:00 AM	10/07/2013	10:51:00 AM	Accepted	(blank)						20000			20000
								4:43:00 AM	10/07/2013	10:51:00 AM	Accepted	(blank)						2000			2000
							7/03/2014	8:32:00 AM	7/03/2014	9:15:00 AM	Accepted	(blank)						2000			2000
								8:36:00 AM	7/03/2014	9:17:00 AM	Accepted	(blank)						2000			2000
		Fisherman Islands Sum																56000			56000
		Carrington	(blank)	TBA	PENT	21574	23/05/2013	1:27:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)			20000						20000
		Carrington Sum													20000						20000
		Port Kembla	(blank)	TBA	CARG	18214	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	10000								10000
					EMGA	18182	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	18120	23/05/2013	12:47:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
						18125	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	70000								70000
					GLEN	21070	13/02/2014	12:05:00 PM	14/02/2014	8:57:00 AM	Accepted	(blank)	30000								30000
		Port Kembla Sum											190000								190000
		Geelong	(blank)	TBA	CARG	18322	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)		50000							50000
					EMGA	19233	21/05/2013	3:45:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	27000								27000
					GCOP	18107	23/05/2013	11:51:00 AM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
						18444	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	40000								40000
						21457	23/05/2013	11:51:00 AM	23/05/2013	4:23:00 PM	Accepted	(blank)	10000								10000
							19/02/2014	2:59:00 PM	20/02/2014	8:09:00 AM	Accepted	(blank)	20000								20000
					GLEN	18478	27/05/2013	9:02:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	22500								22500
						21887	27/05/2013	9:02:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20500								20500
					TOEP	21787	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)					15000				15000
				OCEAN EAGLE	QCOM	21831	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	15000								15000
		Geelong Sum											185000	50000			15000				250000
		Portland	(blank)	TBA	GCOP	18625	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
						18624	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
					TOEP	18100	22/05/2013	11:18:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)					14000				14000
						21648	22/05/2013	11:18:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)	16000								16000
		Portland Sum											56000				14000				70000
	5 Sum												**431000**	**50000**	**32000**		**29000**	**56000**			**598000**
	6	Mackay	(blank)	TBA	GLEN	18196	23/05/2013	3:01:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	10000								10000
		Mackay Sum											10000								10000
		Gladstone	1/06/2014	MAINTENANCE		SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	30 DAYS	(blank)									
		Gladstone Sum																			
		Fisherman Islands	21/06/2014	PACIFIC PEARL	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			29/06/2014	SEA PRINCESS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			(blank)	TBA	PENN	21684	7/03/2014	8:32:00 AM	7/03/2014	9:15:00 AM	Accepted	(blank)						28000			28000
					RIVB	18328	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	25000								25000
		Fisherman Islands Sum											25000					28000			53000
		Carrington	(blank)	TBA	GCOP	21782	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	22000								22000
		Carrington Sum											22000								22000
		Port Kembla	(blank)	TBA	CARG	18216	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	70000								70000
					EMGA	18172	23/05/2013	2:51:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
					GCOP	18121	23/05/2013	12:48:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
						19618	21/08/2013	5:19:00 PM	22/08/2013	8:00:00 AM	Accepted	(blank)	13000								13000
					GLEN	18180	23/05/2013	2:53:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	60000								60000
					NOBL	18055	21/05/2013	3:32:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	27000								27000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	CARG	18326	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	50000								50000
					CHIN	18660	31/05/2013	1:29:00 PM	31/05/2013	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	18108	23/05/2013	11:51:00 AM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
						18621	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	30000								30000
						18620	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
					GLEN	19258	15/07/2013	3:46:00 PM	16/07/2013	8:02:00 AM	Accepted	(blank)	5000								5000
					ORIG	18830	14/06/2013	10:39:00 AM	17/06/2013	9:12:00 AM	Accepted	(blank)	10000								10000
					TOEP	18095	22/05/2013	11:03:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)	16000								16000
						18580	28/05/2013	1:22:00 PM	28/05/2013	2:30:00 PM	Accepted	(blank)	14000								14000
						19112	8/07/2013	5:55:00 PM	9/07/2013	8:16:00 AM	Accepted	(blank)	25000								25000
		Geelong Sum											250000								250000
		Portland	(blank)	TBA	CARG	18315	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
					GCOP	18168	23/05/2013	2:48:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
					GLEN	19458	6/08/2013	2:34:00 PM	7/08/2013	9:15:00 AM	Accepted	(blank)	20000								20000
					TOEP	19711	20/05/2013	1:52:00 PM	21/05/2013	8:10:00 AM	Accepted	(blank)	30000								30000
		Portland Sum											100000								100000
	6 Sum												**657000**					**28000**			**685000**
	7	Mackay	(blank)	TBA	GLEN	18448	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
					PENT	18036	23/05/2013	1:33:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)			30000						30000
		Mackay Sum											20000		30000						50000
		Gladstone	1/07/2014	MAINTENANCE		SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	31 DAYS	(blank)									
		Gladstone Sum																			

GRAINCORP SHIPPING STEM

GrainCorp Operations Ltd ABN 52003875401

GC Fin Year	Month	Port	Date ETA of Grain Loading Commencement	Name Of Ship	Exporter	Unique Slot Reference Number	Date of Which Nomination was Received	Time at which Nomination was received	Date at which Nomination was accepted	Time of Which Nomination was accepted	Status	Date Loading Complete	Commodity: Wheat	Barley	Sorghum	PEAS	Canola	Cottonseed	Woodchip	other	Grand Total
2013/14	7	Fisherman Islands	(blank)	TBA	GCOP	21783	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	5500								5500
					PENN	21688	7/03/2014	8:36:00 AM	7/03/2014	9:17:00 AM	Accepted	(blank)						28000			28000
		Fisherman Islands Sum											5500					28000			33500
		Port Kembla	(blank)	TBA	CARG	18220	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	40000								40000
					EMGA	18185	27/05/2013	9:03:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	18127	23/05/2013	12:51:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	20000								20000
						18140	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	28000								28000
						20268	9/12/2013	11:37:00 AM	10/12/2013	5:53:00 PM	Accepted	(blank)	22385								22385
					NOBL	19220	23/05/2013	2:53:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											170385								170385
		Geelong	(blank)	TBA	CARG	19581	16/08/2013	12:22:00 PM	19/08/2013	8:23:00 AM	Accepted	(blank)	50000								50000
					EMGA	19234	21/05/2013	3:49:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	27000								27000
					GCOP	18109	23/05/2013	11:52:00 AM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
						18124	23/05/2013	12:50:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	40000								40000
						18623	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	30000								30000
						18622	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
					GLEN	19307	19/07/2013	11:39:00 AM	22/07/2013	8:06:00 AM	Accepted	(blank)	8000								8000
					RIVB	18335	27/05/2013	9:02:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	25000								25000
		Geelong Sum											250000								250000
		Portland	(blank)	TBA	CARG	19508	7/08/2013	11:03:00 AM	7/08/2013	3:15:00 PM	Accepted	(blank)	50000								50000
					GCOP	18131	23/05/2013	12:53:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	20000								20000
		Portland Sum											70000								70000
	7 Sum												**515885**		**30000**			**28000**			**573885**
	8	Mackay	(blank)	TBA	PENT	18035	23/05/2013	1:32:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)			30000						30000
						19301	18/07/2013	3:37:00 PM	19/07/2013	8:00:00 AM	Accepted	(blank)			20000						20000
		Mackay Sum													50000						50000
		Gladstone	1/08/2014	MAINTENANCE		SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	SHUTDOWN	31 DAYS	(blank)									
		Gladstone Sum																			
		Fisherman Islands	12/08/2014	PACIFIC PEARL	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			(blank)	TBA	PENN	19175	10/07/2013	4:43:00 AM	10/07/2013	10:51:00 AM	Accepted	(blank)						28000			28000
		Fisherman Islands Sum																28000			28000
		Port Kembla	(blank)	TBA	EMGA	20183	23/05/2013	2:48:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
						20552	9/01/2014	4:52:00 PM	10/01/2014	8:27:00 AM	Accepted	(blank)	10000								10000
		Port Kembla Sum											40000								40000
		Geelong	(blank)	TBA	EMGA	18164	23/05/2013	2:45:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
					GCOP	18114	23/05/2013	12:46:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	24475								24475
						18132	23/05/2013	12:54:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	50000								50000
					GLEN	19266	16/07/2013	9:53:00 AM	18/07/2013	7:50:00 AM	Accepted	(blank)	20000								20000
						19935	19/07/2013	11:39:00 AM	22/07/2013	8:06:00 AM	Accepted	(blank)	63525								63525
					NOBL	18064	21/05/2013	3:53:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	30000								30000
					QCOM	20410	21/05/2013	3:42:00 PM	22/05/2013	8:34:00 AM	Accepted	(blank)	10000								10000
					TOEP	20642	17/01/2014	11:46:00 AM	20/01/2014	8:12:00 AM	Accepted	(blank)		22000							22000
		Geelong Sum											228000	22000							250000
		Portland	(blank)	TBA	CARG	18666	31/05/2013	10:44:00 AM	31/05/2013	12:22:00 PM	Accepted	(blank)	20000								20000
					EMGA	18158	23/05/2013	2:31:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
					GCOP	18626	27/05/2013	9:00:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	20000								20000
		Portland Sum											70000								70000
	8 Sum												**338000**	**22000**	**50000**			**28000**			**438000**
	9	Fisherman Islands	3/09/2014	PACIFIC PEARL	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
		Fisherman Islands Sum																			
		Geelong	(blank)	TBA	BUAA	18533	27/05/2013	3:54:00 PM	27/05/2013	5:00:00 PM	Accepted	(blank)	16000								16000
					GCOP	18166	23/05/2013	2:47:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	22000								22000
					GLEN	18175	23/05/2013	2:51:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	60000								60000
						21766	22/05/2013	10:52:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)	2975								2975
					NOBL	19218	23/05/2013	2:47:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
						19219	23/05/2013	2:49:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
					TOEP	18094	22/05/2013	10:59:00 PM	23/05/2013	7:56:00 AM	Accepted	(blank)	30000								30000
						20015	23/05/2013	2:52:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	30000								30000
		Geelong Sum											220975								220975
		Portland	(blank)	TBA	CARG	18309	27/05/2013	9:01:00 AM	27/05/2013	12:00:00 PM	Accepted	(blank)	30000								30000
					EMGA	19996	24/10/2013	1:14:00 PM	25/10/2013	7:51:00 AM	Accepted	(blank)	30000								30000
					GLEN	18170	23/05/2013	2:49:00 PM	23/05/2013	4:23:00 PM	Accepted	(blank)	10000								10000
		Portland Sum											70000								70000
	9 Sum												**290975**								**290975**
2013/14 Total													**2588860**	**102000**	**112000**	**15500**	**163500**	**140000**	**23000**		**3144860**

GRAINCORP SHIPPING STEM

GrainCorp Operations Ltd ABN 52003875401

													Commodity								
GC Fin Year	Month	Port	Date ETA of Grain Loading Commencement	Name Of Ship	Exporter	Unique Slot Reference Number	Date of Which Nomination was Received	Time at which Nomination was received	Date at which Nomination was accepted	Time of Which Nomination was accepted	Status	Date Loading Complete	Wheat	Barley	Sorghum	PEAS	Canola	Cottonseed	Woodchip	other	Grand Total
2014/15	11	Mackay	(blank)	TBA	GCOP	20951	11/02/2014	9:59:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	20000								20000
					PENT	20896	10/02/2014	11:57:00 AM	11/02/2014	3:19:00 PM	Accepted	(blank)				30000					30000
		Mackay Sum											20000			30000					50000
		Gladstone	(blank)	TBA	PENT	20892	10/02/2014	11:53:00 AM	11/02/2014	3:19:00 PM	Accepted	(blank)				30000					30000
		Gladstone Sum														30000					30000
		Fisherman Islands	6/11/2014	RHAPSODY OF THE SEAS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			16/11/2014	DIAMOND PRINCESS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
		Fisherman Islands Sum																			
	11 Sum												**20000**			**60000**					**80000**
	12	Mackay	(blank)	TBA	PENT	20898	10/02/2014	12:05:00 PM	11/02/2014	3:19:00 PM	Accepted	(blank)	30000								30000
		Mackay Sum											30000								30000
		Gladstone	(blank)	TBA	GCOP	20946	11/02/2014	9:57:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	20000								20000
					QCOT	20973	11/02/2014	5:56:00 PM	12/02/2014	10:34:00 AM	Accepted	(blank)	30000								30000
		Gladstone Sum											50000								50000
		Fisherman Islands	6/12/2014	VOYAGER OF THE SEAS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			12/12/2014	DIAMOND PRINCESS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			19/12/2014	SEABOURN ODISSEY	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			26/12/2014	RHAPSODY OF THE SEAS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
			(blank)	TBA	GCOP	20922	11/02/2014	9:42:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Fisherman Islands Sum											40000								40000
		Carrington	(blank)	TBA	GCOP	20923	11/02/2014	9:43:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Carrington Sum											40000								40000
		Port Kembla	(blank)	TBA	CARG	21214	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	30000								30000
						21718	11/03/2014	1:13:00 PM	11/03/2014	3:45:00 PM	Accepted	(blank)	30000								30000
					GCOP	20924	11/02/2014	9:43:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20955	11/02/2014	10:02:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21005	12/02/2014	12:13:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
						21010	12/02/2014	12:26:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					TOEP	21030	12/02/2014	1:24:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	CARG	21518	21/02/2014	3:14:00 PM	24/02/2014	9:23:00 AM	Accepted	(blank)	46000								46000
					GCOP	20925	11/02/2014	9:44:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						21378	11/02/2014	9:57:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21017	12/02/2014	12:43:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
						21023	12/02/2014	1:01:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
		Geelong Sum											200000								200000
		Portland	(blank)	TBA	CARG	21150	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	20000								20000
					PHAR	21544	24/02/2014	2:29:00 PM	25/02/2014	9:50:00 AM	Accepted	(blank)	15000								15000
							7/03/2014	11:03:00 AM	10/03/2014	8:29:00 AM	Accepted	(blank)	7000								7000
		Portland Sum											42000								42000
	12 Sum												**652000**								**652000**
	1	Fisherman Islands	(blank)	TBA	GCOP	20926	11/02/2014	9:44:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
					QCOT	21405	12/02/2014	9:50:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	8000								8000
		Fisherman Islands Sum											48000								48000
		Carrington	(blank)	TBA	GCOP	20927	11/02/2014	9:45:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Carrington Sum											40000								40000
		Port Kembla	(blank)	TBA	CARG	21157	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	60000								60000
					EMGA	21049	13/02/2014	8:42:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20928	11/02/2014	9:45:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20961	11/02/2014	10:05:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21007	12/02/2014	12:19:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					TOEP	21031	12/02/2014	1:28:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	CARG	21185	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	19000								19000
					GCOP	20929	11/02/2014	9:46:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20962	11/02/2014	10:05:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21018	12/02/2014	12:45:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
						21027	12/02/2014	1:08:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
					NOBL	20983	12/02/2014	9:57:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
		Geelong Sum											200000								200000
		Portland	(blank)	TBA	EMGA	21059	13/02/2014	9:05:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20963	11/02/2014	10:10:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	30000								30000
					GLEN	21012	12/02/2014	12:31:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					PHAR	21183	18/02/2014	10:01:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	10000								10000
		Portland Sum											100000								100000
	1 Sum												**638000**								**638000**
	2	Gladstone	(blank)	TBA	QCOT	20979	12/02/2014	9:35:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	30000								30000
		Gladstone Sum											30000								30000
		Fisherman Islands	(blank)	TBA	GCOP	20930	11/02/2014	9:47:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Fisherman Islands Sum											40000								40000
		Carrington	(blank)	TBA	GCOP	20931	11/02/2014	9:47:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Carrington Sum											40000								40000
		Port Kembla	(blank)	TBA	CARG	21175	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	60000								60000
					EMGA	21050	13/02/2014	8:46:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20932	11/02/2014	9:48:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20957	11/02/2014	10:03:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21008	12/02/2014	12:22:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					TOEP	21032	12/02/2014	1:31:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	DREY	21149	18/02/2014	10:00:00 AM	18/02/2014	5:15:00 PM	Accepted	(blank)	50000								50000
					GCOP	20933	11/02/2014	9:48:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20958	11/02/2014	10:03:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	36000								36000
					GLEN	21019	12/02/2014	12:46:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
					NOBL	20984	12/02/2014	9:59:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
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					TOEP	21039	12/02/2014	1:52:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Geelong Sum											250000								250000
		Portland	(blank)	TBA	CARG	21178	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	13000								13000
					GCOP	20964	11/02/2014	10:11:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	30000								30000
					NOBL	20991	12/02/2014	10:11:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
					TOEP	21042	12/02/2014	1:59:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Portland Sum											100000								100000
	2 Sum												**710000**								**710000**
	3	Fisherman Islands	(blank)	TBA	GCOP	20934	11/02/2014	9:49:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Fisherman Islands Sum											40000								40000
		Carrington	(blank)	TBA	GCOP	20935	11/02/2014	9:49:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Carrington Sum											40000								40000
		Port Kembla	(blank)	TBA	CARG	21186	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	30000								30000
					EMGA	21051	13/02/2014	8:50:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20936	11/02/2014	9:50:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20953	11/02/2014	10:00:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21002	12/02/2014	12:10:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
						21009	12/02/2014	12:24:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					TOEP	21033	12/02/2014	1:34:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	DREY	21216	18/02/2014	10:00:00 AM	18/02/2014	4:32:00 PM	Accepted	(blank)	50000								50000
					GCOP	20937	11/02/2014	9:50:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20954	11/02/2014	10:01:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000

GRAINCORP SHIPPING STEM

GrainCorp Operations Ltd ABN 52003875401

													Commodity								
GC Fin Year	Month	Port	Date ETA of Grain Loading Commencement	Name Of Ship	Exporter	Unique Slot Reference Number	Date of Which Nomination was Received	Time at which Nomination was received	Date at which Nomination was accepted	Time of Which Nomination was accepted	Status	Date Loading Complete	Wheat	Barley	Sorghum	PEAS	Canola	Cottonseed	Woodchip	other	Grand Total
2014/15	3	Geelong	(blank)	TBA	GLEN	21020	12/02/2014	12:49:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
					NOBL	20985	12/02/2014	10:01:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
						20990	12/02/2014	10:09:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
					TOEP	21037	12/02/2014	1:46:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	19000								19000
		Geelong Sum											250000								250000
		Portland	(blank)	TBA	GCOP	20959	11/02/2014	10:04:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
					QCOT	20982	12/02/2014	10:01:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	30000								30000
		Portland Sum											70000								70000
	3 Sum												650000								650000
	4	Fisherman Islands	(blank)	TBA	GCOP	20938	11/02/2014	9:51:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Fisherman Islands Sum											40000								40000
		Carrington	(blank)	TBA	GCOP	20939	11/02/2014	9:51:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	40000								40000
		Carrington Sum											40000								40000
		Port Kembla	(blank)	TBA	CARG	21198	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	50000								50000
					EMGA	21052	13/02/2014	8:53:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20940	11/02/2014	9:52:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20949	11/02/2014	9:58:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21013	12/02/2014	12:34:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	40000								40000
					TOEP	21034	12/02/2014	1:37:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											250000								250000
		Geelong	(blank)	TBA	EMGA	21270	18/02/2014	10:00:00 AM	18/02/2014	4:32:00 PM	Accepted	(blank)	40000								40000
					GCOP	20941	11/02/2014	9:52:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21021	12/02/2014	12:58:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
						21025	12/02/2014	1:04:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	27000								27000
					NOBL	20981	12/02/2014	9:55:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
						20986	12/02/2014	10:04:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
					QCOT	20980	12/02/2014	9:50:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	22000								22000
					TOEP	21036	12/02/2014	1:43:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Geelong Sum											250000								250000
		Portland	(blank)	TBA	CARG	21172	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	13000								13000
					EMGA	21060	13/02/2014	9:09:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20965	11/02/2014	10:11:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	30000								30000
					NOBL	20987	12/02/2014	10:06:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
		Portland Sum											100000								100000
	4 Sum												680000								680000
	5	Fisherman Islands	(blank)	TBA	GCOP	20942	11/02/2014	9:53:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	10000								10000
		Fisherman Islands Sum											10000								10000
		Carrington	(blank)	TBA	GCOP	20943	11/02/2014	9:55:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	10000								10000
		Carrington Sum											10000								10000
		Port Kembla	(blank)	TBA	EMGA	21053	13/02/2014	8:54:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20944	11/02/2014	9:56:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						20947	11/02/2014	9:57:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	10000								10000
						20956	11/02/2014	10:02:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	4000								4000
						20960	11/02/2014	10:04:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
					GLEN	21014	12/02/2014	12:36:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
						21026	12/02/2014	1:06:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	17000								17000
					NOBL	20989	12/02/2014	10:08:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	27000								27000
					TOEP	21035	12/02/2014	1:40:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											248000								248000
		Geelong	(blank)	TBA	CARG	21176	18/02/2014	10:00:00 AM	18/02/2014	5:15:00 PM	Accepted	(blank)	50000								50000
					CHIN	21181	18/02/2014	10:01:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)		30000							30000
					EMGA	21056	13/02/2014	8:59:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20945	11/02/2014	9:56:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						21396	11/02/2014	10:03:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	30000								30000
					GLEN	21016	12/02/2014	12:41:00 PM	12/02/2014	2:11:00 PM	Accepted	(blank)	30000								30000
					TOEP	21038	12/02/2014	1:49:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Geelong Sum											220000	30000							250000
		Portland	(blank)	TBA	GCOP	21496	20/02/2014	12:17:00 PM	20/02/2014	3:12:00 PM	Accepted	(blank)	10000								10000
					QCOT	20988	12/02/2014	10:10:00 AM	12/02/2014	10:34:00 AM	Accepted	(blank)	30000								30000
					TOEP	21043	12/02/2014	2:02:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	30000								30000
		Portland Sum											70000								70000
	5 Sum												558000	30000							588000
	6	Gladstone	(blank)	TBA	PENT	20900	10/02/2014	12:10:00 PM	11/02/2014	3:19:00 PM	Accepted	(blank)			30000						30000
		Gladstone Sum													30000						30000
		Port Kembla	(blank)	TBA	EMGA	21054	13/02/2014	8:56:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
		Port Kembla Sum											30000								30000
		Geelong	(blank)	TBA	CARG	21504	20/02/2014	5:05:00 PM	21/02/2014	1:57:00 PM	Accepted	(blank)	50000								50000
					EMGA	21057	13/02/2014	9:01:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	30000								30000
					GCOP	20950	11/02/2014	9:59:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	50000								50000
						21445	19/02/2014	12:35:00 AM	19/02/2014	6:42:00 PM	Accepted	(blank)	22000								22000
					TOEP	21397	12/02/2014	1:46:00 PM	12/02/2014	2:26:00 PM	Accepted	(blank)	11000								11000
		Geelong Sum											163000								163000
		Portland	(blank)	TBA	EMGA	21819	13/02/2014	8:58:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	20000								20000
					GCOP	20966	11/02/2014	10:12:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	30000								30000
						21437	19/02/2014	12:14:00 AM	19/02/2014	7:12:00 PM	Accepted	(blank)	20000								20000
						21443	19/02/2014	12:24:00 AM	19/02/2014	7:17:00 PM	Accepted	(blank)	30000								30000
		Portland Sum											100000								100000
	6 Sum												293000		30000						323000
	7	Mackay	(blank)	TBA	GLEN	21230	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	20000								20000
					PENT	20901	10/02/2014	12:14:00 PM	11/02/2014	3:19:00 PM	Accepted	(blank)			30000						30000
		Mackay Sum											20000		30000						50000
		Gladstone	(blank)	TBA	GLEN	21213	18/02/2014	10:00:00 AM	18/02/2014	11:20:00 AM	Accepted	(blank)	10000								10000
		Gladstone Sum											10000								10000
		Port Kembla	(blank)	TBA	EMGA	21055	13/02/2014	8:58:00 AM	13/02/2014	2:00:00 PM	Accepted	(blank)	10000								10000
		Port Kembla Sum											10000								10000
		Portland	(blank)	TBA	GCOP	21375	11/02/2014	9:59:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	18000								18000
		Portland Sum											18000								18000
	7 Sum												58000		30000						88000
	8	Mackay	(blank)	TBA	GCOP	20952	11/02/2014	10:00:00 AM	11/02/2014	3:26:00 PM	Accepted	(blank)	20000								20000
					PENT	20899	10/02/2014	12:08:00 PM	11/02/2014	3:19:00 PM	Accepted	(blank)	30000								30000
		Mackay Sum											50000								50000
	8 Sum												50000								50000
	10	Fisherman Islands	22/10/2014	RADIANCE OF THE SEAS	cruise ship	cruise ship	PASSENGER	(blank)	SHIP	(blank)	depart 1800hrs. CRUISE	(blank)									
		Fisherman Islands Sum																			
	10 Sum																				
2014/15 Total													4309000	30000	60000	60000					4459000
Grand Total													6897860	132000	172000	75500	163500	140000	23000		7603860

ELEVATION CAPACITY AVAILABLE															
As At Wednesday, 9 April 2014															
Year	**Month**	**Mackay**		**Gladstone**		**Fisherman Islands**		**Carrington**		**Port Kembla**		**Geelong**		**Portland**	
2013/14	April	50,000	Y	34,500	Y	150,000	Y	176,000	Y	118,500	Y		N	25,000	Y
	May	38,000	Y	50,000	Y	150,000	Y	180,000	Y	60,000	Y		N		N
	June	40,000	Y		N	125,000	Y	178,000	Y		N		N		N
	July		N		N	144,500	Y	200,000	Y	79,615	Y		N		N
	August		N		N	150,000	Y	200,000	Y	210,000	Y		N		N
	September	50,000	Y	100,000	Y	150,000	Y	200,000	Y	250,000	Y	29,025	Y		N
2014/15	October	50,000	Y	50,000	Y	150,000	Y	200,000	Y	100,000	Y	100,000	Y	80,000	Y
	November		N	20,000	Y	150,000	Y	200,000	Y	250,000	Y	100,000	Y	80,000	Y
	December	20,000	Y		N	110,000	Y	160,000	Y		N		N	28,000	Y
	January	50,000	Y	50,000	Y	102,000	Y	160,000	Y		N		N		N
	February	50,000	Y	20,000	Y	110,000	Y	160,000	Y		N		N		N
	March	50,000	Y	50,000	Y	110,000	Y	160,000	Y		N		N		N
	April	50,000	Y	50,000	Y	110,000	Y	160,000	Y		N		N		N
	May	50,000	Y	50,000	Y	140,000	Y	190,000	Y	2,000	Y		N		N
	June	50,000	Y	20,000	Y	150,000	Y	200,000	Y	220,000	Y	87,000	Y		N
	July		N	40,000	Y	150,000	Y	200,000	Y	240,000	Y	250,000	Y	52,000	Y
	August		N	50,000	Y	150,000	Y	200,000	Y	250,000	Y	250,000	Y	70,000	Y
	September	50,000	Y	50,000	Y	150,000	Y	200,000	Y	250,000	Y	250,000	Y	80,000	Y