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RESPONSE TO ACCC'S DRAFT DETERMINATION REGARDING EXEMPTION OF GRAINCORP'S PORTLAND PORT TERMINAL

This letter provides GrainCorp's response to the ACCC's Draft Determination regarding the exemption of Victorian port terminals from the Port Terminal Access (Bulk Wheat) Code of Conduct (**the Code**).

GrainCorp welcomes the ACCC's exemption of its Geelong Port Terminal and Emerald's Melbourne Port Terminal. This decision will allow these terminals to operate in a more flexible and commercial manner, improving the competitiveness of grain exported from Victoria.

However, GrainCorp is surprised and disappointed with the Draft Determination not to exempt Portland Port Terminal. We note that the Draft Determination provides a strong basis on which to grant an exemption for Portland. In it the ACCC:

- Acknowledges that GrainCorp is **committed to open access** and would "*not likely foreclose access to its facility*" given its need to "*secure ... throughput from other marketers*";¹
- Notes that GrainCorp's Portland terminal is **subject to competitive constraints**:
 - "*GrainCorp would not be in a position to leverage market power from upcountry networks into the market for its Portland terminal services*";²
 - "*Containerised exports provide a level of constraint on the bulk export programme at Portland*";³
 - There is evidence that grain from Western Victoria does move by rail to Melbourne – particularly in containers;
 - There is strong domestic demand for grain.
- Recognises that there is **flexibility in the transport of grain** in Victoria, as "*the significant use of roads in the transportation of grain across Victoria suggests that each of the port terminals' catchment areas is likely to exhibit a degree of flexibility and [is] not strictly linked to established rail lines*";⁴

¹ ACCC Draft Determinations: Exemptions in respect of Emerald's Melbourne Port Terminal Facility, GrainCorp's Geelong Port Terminal Facility & GrainCorp's Portland Port Terminal Facility. 10 April 2015 p. 65

² Ibid. p. 57

³ Ibid. p. 64

⁴ Ibid. p. 40

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- Accepts there are **opportunities for entry for new operators**, including speculation that Quattro is planning to develop a new facility at Portland.

GrainCorp also believes it is significant that the Draft Determination is at odds with feedback from a broad representation of industry participants and in particular, exporters. Of the seven submissions received during the consultation process, six were supportive of exemption, including all the submissions from exporters (see Appendix A). Only one submission was opposed.

The decision by the ACCC to not exempt Portland appears to be based on a view that the freight difference between Portland and other Victorian ports is \$3 per tonne and *"is almost three times the difference when compared to the \$1.02 difference in rail rates from locations to either the Melbourne or Geelong facilities;"*⁵ as well as a finding that *"the catchment area for GrainCorp's Portland facility overlaps only to a limited degree with other existing port terminals, and is to a significant extent separate from other ports' catchment areas."*⁶

This letter provides additional evidence that:

- The freight difference from most silos in the Portland catchment area to other (non-GrainCorp) ports is significantly less and actually represents a tiny proportion – approximately 2% - of the landside supply chain cost.
- The actual and potential catchment overlap between Portland and other terminals in Victoria is greater than that described in the Draft Determination. The data shows that port users drawing grain from western Victoria can readily switch between alternative export channels and are actively doing so.

If the Draft Determination is upheld in the final decision, Portland and those exporters who use it would be placed at a significant disadvantage, as it would be the only regulated export grain channel from Victoria. Portland would be disadvantaged in terms of commercial and operational flexibility, placing further downward pressure on the low proportion of Victorian export grain shipped through the terminal.

Such a regulatory imbalance is of considerable concern, as the other unregulated bulk and container channels for the export of grain from Victoria represent by far the majority (and increasing) share of Victorian grain exports. Portland's share of total Victorian grain exports has declined in the past 10 years from 22% to just 13%.

This letter provides additional arguments and data to support GrainCorp's view that the ACCC should reconsider its draft position on Portland, such that the regulation of this port is brought into line with other ports in the state. These arguments are outlined in the following sections:

- A. Freight differentials between Portland and other ports are not significant.
- B. Portland faces significant competitive constraints.
- C. Different application of the code in Victoria will impact efficiency at Portland.
- D. Discriminatory application of the Code will disadvantage Portland.

⁵ Ibid. p. 41

⁶ Ibid. p. 67

A. FREIGHT DIFFERENTIALS ARE AROUND \$1.50 PER TONNE

The ACCC's draft determination states:

"The rail freight costs from western Victoria to Emerald's Melbourne port appear to be distinctly higher than from western Victoria to Portland. As noted above, for a selection of sites in Table 6, there are significant differences in the order of \$5 or \$10 dollars per tonne in the Location Differentials for Western Victorian sites to Portland compared to Melbourne or Geelong.

GrainCorp submits actual rail rates from Dimboola (in western Victoria) to Emerald's MPT are \$2.84 per tonne more than the actual rail rate to Portland. While the ACCC notes GrainCorp's supplementary submission which suggests that up to a \$3 per tonne freight difference is small, this is almost three times the difference when compared to the \$1.02 difference in rail rates from locations to either the Melbourne or Geelong facilities."⁷

Portland does not have a material freight advantage over Melbourne (for rail) and Bunge (for road) for most grain received into country silos within its catchment area. In fact, the weighted average freight difference is only \$1.50 per tonne.

In reaching its view of the freight difference in its Draft Determination, the ACCC has used our rail rate difference of \$2.84 per tonne. However as noted in our letter of 25 February 2015, shippers could access lower transport rates as "*Melbourne and Geelong have access to the higher standard ARTC interstate line, allowing lower cost and higher payload wagons*" and "*the difference in rail and road rates is not significant in Victoria given the short distances and access to fertiliser backload business.*"

As noted by the ACCC, the weighted average GTA Location Difference is around \$6 per tonne (see Appendix B). However, the ACCC is also correct in pointing out that the differential in the GTA rates between Portland and Melbourne does not reflect actual transport costs.

By taking into account the higher rail payload to Melbourne and lower road rates into Bunge at Geelong (with the use of backload freight), these port terminals can and do access lower and more competitive transport rates against Portland. Appendix C provides site-by-site details.

Around 78% of the grain received into major silos in the Portland catchment area have access to rail. While the nominal variable train rates for Portland are lower than Melbourne, the **actual** rail cost per tonne is significantly less for country sites that are located on the main ARTC rail line. This takes into account:

- The Portland branch line weight limit is 19 tonnes per axle, making the best wagon carrying capacity 55 tonnes (i.e. 76 tonnes gross, less 21 tonne tare).
- The Melbourne (and Geelong) main line weight limit is 23 tonnes per axle, making the best wagon carrying capacity for the newer wagons (as currently used by Cargill, Qube and others) around 68 tonnes (i.e. 92 tonnes gross, less 24 tonne tare).

Taking these payload benefits into account, the weighted average difference in actual rail cost between Portland and MPT is only \$0.85 per tonne. It is less than \$1 per tonne (and in many cases can be cost favourable) for 64% of average grain receivals at major silos.

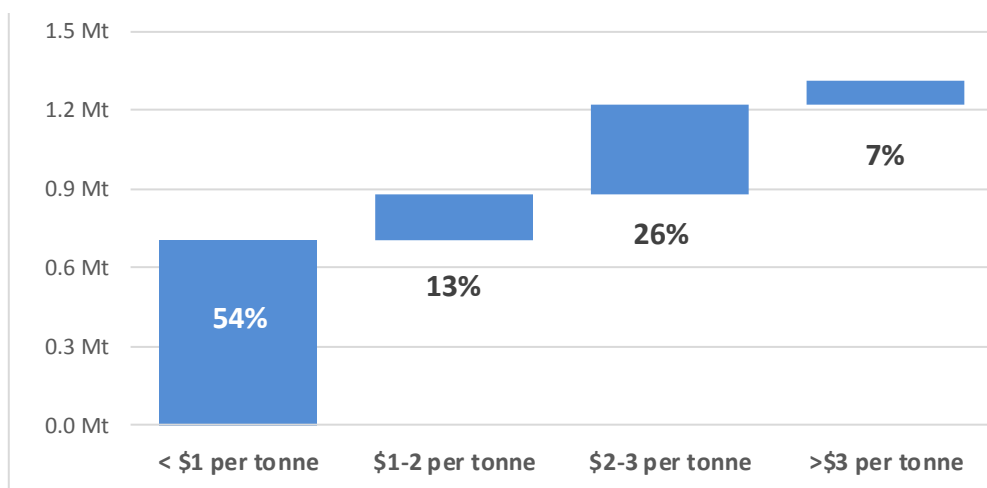
⁷ Ibid. p. 41

Around 22% of grain in the Portland catchment area is received into major silos that have access to road only. Grain moved to Geelong by road have access to relatively lower freight rates given fertiliser back-loading, as Geelong is the largest source of fertiliser and other farm inputs into this area. The weighted average difference in road cost between Portland and Geelong Bunge port terminal is \$3.83 per tonne. It is less than \$2 per tonne for almost half (48%) of average grain receivals at major silos.

In aggregate, as shown in Figure 1, the majority (around 55%) of the grain in the Portland’s catchment can access either Melbourne (rail) or Bunge Geelong (road) for a freight differential of less than \$1 per tonne compared to Portland. And around 90% of the grain in the Portland’s catchment has a freight differential of less than \$3 per tonne to a competing port terminal.

From an economic and competition perspective this level of potential substitution is extremely large, particularly when the Portland terminal is already heavily under-utilised. GrainCorp could not afford the risk of losing 50% or more of its volume by reducing service quality or increasing prices.

Figure 1: Freight differential freight rate to MPT or Bunge from Portland area



B. PORTLAND FACES SIGNIFICANT COMPETITIVE CONSTRAINTS

The ACCC’s Draft Determination states:

“...due to the limited competitive constraints noted above in relation to port terminal services at GrainCorp’s Portland facility, the ACCC considers that it is possible granting an exemption may allow GrainCorp to leverage its monopoly position at the Portland facility to the detriment of some or all of its upcountry storage provider competitors. Therefore, while there is currently competition in the provision of storage and handling services, in the absence of a competing port terminal facility this level of competition may not be promoted if GrainCorp were granted an exemption at its Portland facility.”⁸

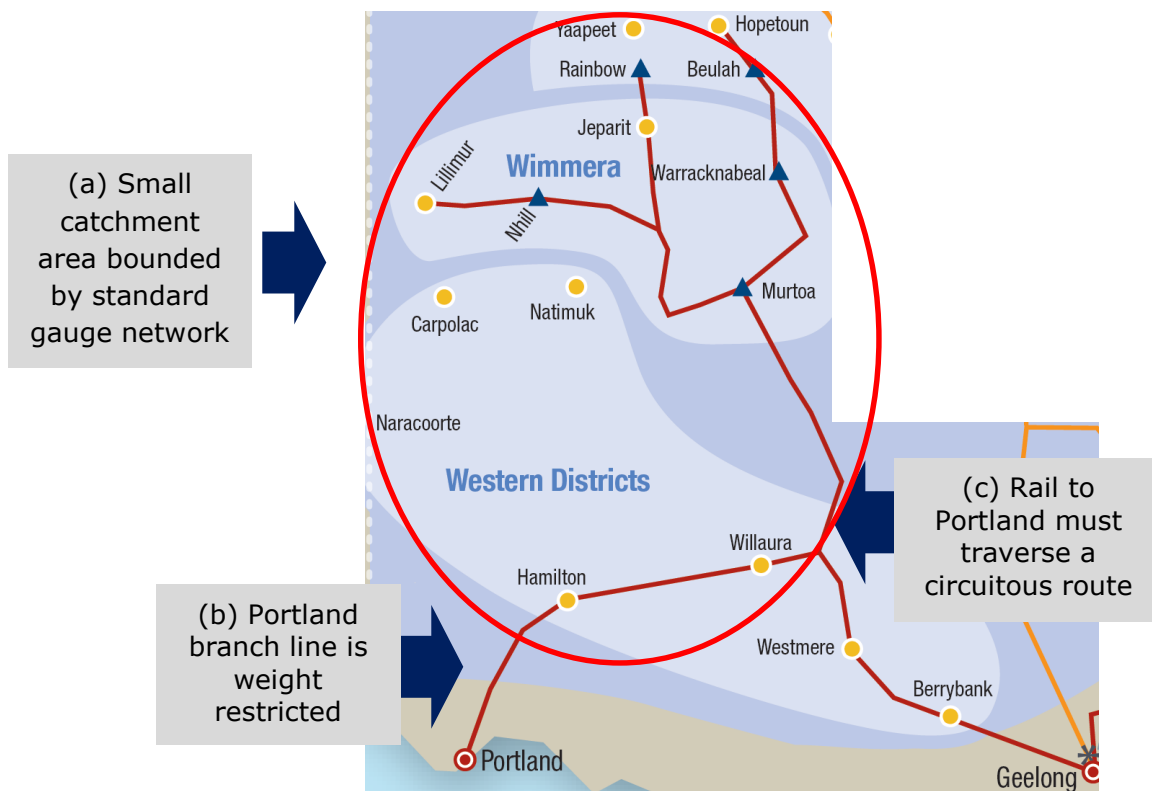
Portland faces the real threat that if Melbourne and Bunge Geelong are exempt from the Code and Portland is not, these competitor ports could contest the majority of the export grain from the Portland catchment area through differential and flexible commercial terms and operations.

⁸ ACCC: op cit. p. 64

In fact, Bunge is building its port at Geelong based on competitive road transport costs, given the large volume of fertiliser backloads from Geelong. This is discussed below.

GrainCorp’s Portland facility is not in a “monopoly” position and GrainCorp cannot leverage its position at Portland to the detriment of others, as Portland only services a small catchment area, determined by the standard gauge rail network (Figure 2). The catchment includes 14 GrainCorp country sites and four major competitor sites, supplemented by substantial on-farm and merchant storage capacity.

Figure 2: Portland catchment area



As outlined in Section A, Portland terminal operates at a significant rail disadvantage to Melbourne (and Geelong) in Victoria and to a growing extent to Outer Harbour in Adelaide as:

- Portland only has access to a small proportion of the Victorian crop via the smaller standard gauge rail network;
- Portland’s ability to compete for grain is constrained by a weight restricted rail line;
- The rail connection from Western Victoria to Portland traces a circuitous route via Ararat, meaning grain is forced to travel further.

(i) MPT and Bunge have significant capacity to contest Portland

MPT and Bunge port terminals have significant excess capacity, and as exempt Port Terminals, will have the capability to offer flexible commercial and operating services to attract a large portion of grain from country silos in the Portland catchment area.

MPT and the new Bunge Terminal will have a combined capacity of around 2 million tonnes. This capacity (plus the excess capacity at Geelong) will have the ability to handle the entirety of Portland exports.

MPT and the new Bunge Terminal, following Code exemption, would be free to contest most of the grain in the Portland catchment area through commercial terms and operations. As outlined earlier, the cost of the freight differentials to Portland represents only a small portion of the land side supply chain cost to the vessel.

Significant volumes, often more than the entire exports of Portland, could be handled by the other Victorian ports. Even if some degree of capacity constraint exists at certain times, the ACCC should remain mindful of the large proportion of time where there is no capacity constraint.

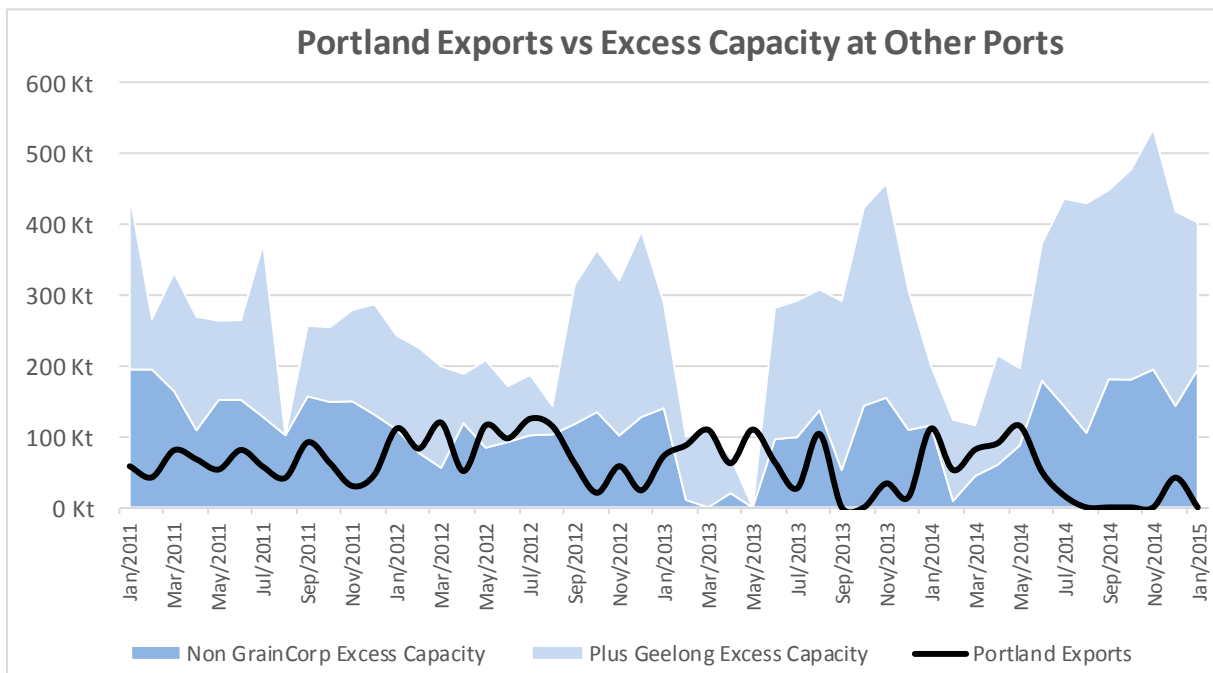
As demonstrated in Figure 3 and 4 (and detailed in Appendix D),

- On an annual basis, MPT and Bunge have average excess capacity that is 2.55 times average Portland exports. This increases to 6.27 times if Geelong is included.
- On a monthly basis, MPT and Bunge can handle most of Portland’s exports.

Figure 3: Average excess bulk capacity vs. Portland bulk exports

Average Kt	Capacity >FY09 <FY06		Average Kt	Capacity >FY09 <FY06			
MPT Excess Capacity	1,500	815	652	MPT Excess Capacity	1,500	815	652
New Bunge Capacity	450	450	450	New Bunge Capacity	450	450	450
Portland Exports	495	620		Geelong Excess Capacity	3,400	1,839	2,328
Coverage	255%	178%		Portland Exports	495	620	
				Coverage	627%	554%	

Figure 4: Monthly excess bulk capacity vs. Portland bulk exports



In this context it is important to reinforce the point made in Section A: that the weighted average freight differential from Portland catchment area for the majority of grain is negligible (and is in fact only \$1 per tonne for around 90% of grain). Figure 5 shows this represents only 3% of an average \$50 per tonne supply chain cost from the country silo to the vessel.

Figure 5: Average freight differential cost relative to total supply chain cost

Portion of Grain	Freight Differential	Cumul Weighted Avg	Supply Chain Cost	Portion of Supply Cost
54%	< \$1.00 /T	-\$0.04	\$50	-0.1%
67%	< \$2.00 /T	\$0.35	\$50	0.7%
93%	< \$3.00 /T	\$1.00	\$50	2.0%
100%	ALL	\$1.50	\$50	3.0%

(ii) GrainCorp Geelong also contests Portland

Portland is also constrained by GrainCorp’s Geelong port terminal, where Geelong will be placed in a position where it will also be competing for grain from the Portland catchment area.

GrainCorp does not agree with the ACCC view that: *"While GrainCorp’s other terminal in Geelong is the closest alternative to Portland and may be accessible at a similar transport cost from certain upcountry locations, the ACCC does not consider there to be any significant competitive constraint directly between these two ports given that both terminals are owed by GrainCorp."*⁹

As acknowledged by the ACCC, Geelong is competitively constrained by MPT at Melbourne and Bunge at Geelong. In this environment, GrainCorp must provide commercial and flexible services and operations to compete against these other port facilities. Accordingly in this competitive environment, MPT and Bunge’s competitive activities will be mirrored by GrainCorp’s Geelong terminal, reinforcing their reach into and competition in the Portland catchment area.

(iii) Almost half exportable grain surplus lost

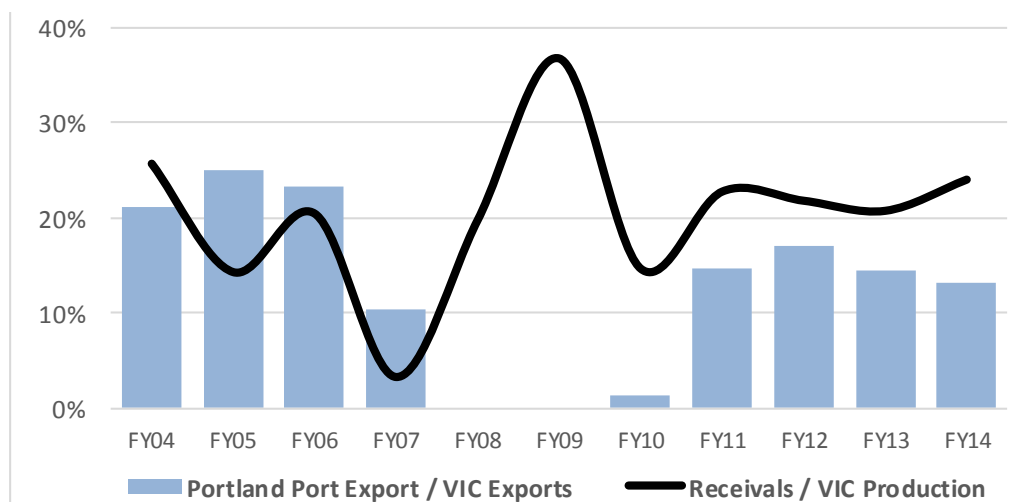
Portland’s lack of strong competitive position for export grain is demonstrated by the low and declining proportion of shipping through the port (compared to total Victorian grain exports).

Firstly, Portland is not a major export facility relative to the grain delivered to silos in its catchment area. Country sites in the Portland area have received an average of 1.3 million tonnes over the past 6 years. Meanwhile Portland itself has only exported an average of 0.5 million tonnes during that period (See Appendix E). This shows that even in present market circumstances (where competition is limited by regulation) the majority of grain is dealt with outside of the Portland terminal.

Secondly, Portland’s role as an export facility has declined by 50%. Where tonnes handled by the major country silos in Portland’s catchment area has consistently represented around 23% of Victoria’s grain production, the volume of grain exported through Portland has fallen from 22% to just 13% after export deregulation (Figure 6).

⁹ ACCC: op cit. p. 62

Figure 6: Portland Zone bulk handler receival share and bulk exports share



This level of significant leakage demonstrates that GrainCorp does not have the ability to exercise significant market power at this terminal. In fact, the low export volume and rate of utilisation of the Portland terminal has prompted GrainCorp to seek alternative products (woodchips) to export from Portland.

Whilst the quantum of the leakage is understood, it is difficult to ascertain an accurate breakdown of the nature of leakage due to lack of data. The lower proportion of exports from Portland indicates that grain from the region is being:

- Exported through an alternative bulk port in Victoria or South Australia;
- Exported in containers, through Melbourne or Adelaide; and
- Consumed by the domestic market.

Furthermore, bulk grain exports from Portland could be further contested following the construction of the \$17.5 million Wimmera Intermodal Freight Terminal at Dooen. The terminal will provide another transfer point for containerised freight from road to rail and is strategically located at the junction of the Western, Wimmera and Henty Highways and connects with the Melbourne-Adelaide rail line. That terminal would have a capacity in excess of 20,000 containers representing substantial additional competitive pressure on Portland.

C. DIFFERENT APPLICATION OF THE CODE IN VICTORIA WOULD IMPACT EFFICIENCY

The ACCC’s Draft Determination correctly notes that Portland is often used as a top-up terminal for exports from Geelong and Melbourne.

GrainCorp (and other industry participants) are concerned that the application of different regulatory arrangements for Portland would limit its ability to provide an effective top-up service to exporters. Accordingly, as shown in Figure 7, around 50% of vessels loaded at Portland (representing 33% of export volumes) are for less than 25,000 tonnes.

Figure 7: Size and commodity distribution of Portland vessels

Vessel Size	% vessels	% volumes	Commodity	% vessels	% volumes	Vessel Size
> 35 KT	8%	14%	Wheat	54%	57%	24,880
25-35 Kt	42%	51%	Barley	27%	23%	25,142
15-25 KT	35%	28%	Canola	19%	20%	29,549
< 15 KT	14%	6%				

Top-ups involve additional operational and segregation complexity that can negatively impact the optimal utilisation of port capacity, including a higher risk of block outs. The additional complexity comes from the need to handle:

- Smaller parcels of grain, that are subject to change depending on loading at a prior port;
- Greater spread of segregations (creating storage capacity constraints), again dependent on the cargo to be topped up; and
- More variable arrival times, that are subject to sailing at a prior port

Maintaining a higher level of regulation at Portland would limit optimal capacity allocation and constrain elevation capacity and port operations to provide a top-up service, for example:

- The prescribed booking process creates difficulties in managing changing load requirements;
- Inflexibility around slot allocation increases the difficulty and complexity around managing late vessels; and
- Prescribed notice periods increase the difficulty of managing *ad hoc* small vessels.

To compete for grain in a competitive market, in particular for top-ups, it is imperative that GrainCorp is able to offer all customers a flexible and timely port elevation service. Placing Portland in a position where it is operationally restricted by the Code, but must work with ports that are exempt from the Code, risks placing GrainCorp in a difficult (and undesirable) position where it must operate outside of the port protocol to maximise port utilisation so it can provide an effective service to its customers. It also risks GrainCorp losing shipping volume to other competing ports, such as Adelaide and the Quattro terminal at Port Kembla.

D. DISCRIMINATORY APPLICATION OF CODE DISADVANTAGE PORTLAND

GrainCorp is concerned that should the ACCC uphold its Draft Determination, Portland would be placed at a further disadvantage, as regulation will be discriminatorily applied to GrainCorp’s Portland facility but not to other bulk ports and containers in Victoria, including a planned new operator at Portland.

The ACCC has acknowledged that a new port facility at Portland is being explored by the Port of Portland. This – and experience in other regions – confirms that the barriers to entry for a port facility are not high.

An uneven regulatory environment would allow the proponent of a new port facility at Portland to offer flexible commercial and operating services to one or more exporters to support its construction. This would include arrangements such as flexible LTAs and capacity allocation, as was used in Port Kembla for the new Quattro facility and used in Newcastle for the new Agri-Terminal. Similarly, flexibility to win new customers will also exist for other Victorian port operators.

GrainCorp at Portland on the other hand will not have the ability to compete, including against a planned port facility, by offering flexible commercial and operating services to its exporter customers.

In relation to a new entrant, the Code constrains GrainCorp's ability to compete until **after** a new port facility is built and operational. At that point, GrainCorp will most likely not be in a position to contest effectively the new port terminal's business.

The distorting effect of this unequal application of regulation is contrary to the industry's interest, as pointed out by the Australian Grain Exporters Association (AGEA) in its submission: *"the industry will be best served by all parties being subject to **an equivalent** and minimal level of regulation."*¹⁰

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¹⁰ Submission: Australian Grain Exporters Association [emphasis GrainCorp's].

APPENDIX A: SUPPORTIVE INDUSTRY COMMENT

Australian Grain Exporters Association (AGEA):

"AGEA supports the applications by GrainCorp and Emerald for exemption from provisions of the Port Terminal Access Code. AGEA's support for this exemption is on the basis that we believe that the industry will be best served by all parties being subject to an equivalent and minimal level of regulation."

Cooperative Bulk Handling Ltd (CBH):

"CBH supports the submissions by GrainCorp and Emerald to be exempted from Parts 3 – 6 of the Code on the basis of regional competition constraints and low barriers to entry. In this situation, CBH believes the need for regulation is unclear given both the ability for new entrants to build new terminals as shown by Bunge's proposed terminal in Geelong, as well as the competitive constraints from existing competing terminals."

The submissions by Emerald and GrainCorp indicate that GrainCorp's Geelong and Portland terminals face significant competition from Emerald's Melbourne terminal and vice versa, as grain that is to be exported through these terminals flows from the same geographical region.

At the same time one of Emerald's major customers, Bunge, has announced its intention to build its own port terminal at Geelong....

These arguments and evidence provided clearly indicate that barriers to entry are low and that growers have alternative supply chain options. In particular, there are no barriers for new entrants to build port terminal services in Victoria. Actual and potential new entrants provide a competitive constraint on existing grain export terminals. Based on these arguments CBH supports both GrainCorp and Emerald's submissions to have their Victorian wheat port terminals exempt from Parts 3 – 6 of the Code."

Grain Industry Association of Victoria (GIAV):

"GIAV submits that the grain export sector will be better supported by reduced regulation and lower compliance costs. Local and international experience suggests that market forces will be placed to manage the competing interests of port terminal operators and bulk wheat exporters...."

The GIAV agrees with the submissions made by GrainCorp and Emerald, which relate to the competition between each other's terminals as well as that with the domestic market, upcountry handling, transport, containerization and interstate export terminals."

Glencore Grain / Viterra:

"We believe full deregulation is the best policy for the Australian grains industry to maximise its competitiveness in the global market."

Barriers to entry for other export ports are low, as evidenced by recent new grain export terminal developments across Australia, despite surplus capacity already existing.

If regulation is applied, then it must be at a consistent level, applied across all port terminals and operators in Australia...

We believe that all port terminals should operate under minimal and an equitable level of regulation and therefore support the exemptions of GrainCorp Operations Limited's Geelong and Portland port terminals and Emerald Logistics Pty Ltd's Melbourne port terminal."

GrainGrowers

"GrainCorp faces a competitive market in Victoria with significant excess capacity in most years. A number of grain supply chain alternatives are available to grower and buyers.

In Victoria, GrainCorp faces competition from competing alternative domestic and container packing markets, combined with excess country and packing capacity, for the majority of Victorian grain. Granting an exemption to GrainCorp will place GrainCorp on a level playing field with alternative and competing markets (the majority being domestic and container packing markets) that are not subject to regulation.

GrainCorp also faces competition in the provision of port elevation services for bulk grain from Emerald's Melbourne Port Terminal (MPT), and the planned Bunge Terminal (Bunge Port Terminal) at Geelong, combined with competition from Glencore Port Terminals in Adelaide. Granting GrainCorp an exemption will likely enhance, and promote grain industry competition, by allowing GrainCorp to provide competitive services to exporters for bulk grain exports.

Excess port elevation capacity (and excess country storage capacity) where GrainCorp is commercially incentivised to maximise throughput from all users at its Port Terminals. Granting GrainCorp an exemption may therefore help lower supply chain costs by allowing GrainCorp to operate its Port Terminals flexibly and invest in improving its port and supply chain infrastructure.

In light of the above points highlighted in this submission, GrainGrowers consider there will likely be sufficient competition in the grain catchment area in question, to warrant exemption under these two applications."

APPENDIX B: GTA LOCATION DIFFERENTIALS

[Redacted]

APPENDIX C: PORTLAND ZONE SITES FREIGHT RATES TO MPT AND BUNGE

[Redacted]

APPENDIX D: EXCESS PORT CAPACITY VS PORTLAND RECEIVALS

[Redacted]

APPENDIX E: PORTLAND ZONE RECEIVALS AND EXPORTS

[Redacted]