ATTACHMENT 4

GrainCorp Operations Limited
Specific Drafting Suggestions made by Interested Parties

Submission paragraph reference	Clause	Complaint and drafting suggestion	Response
Riverina Australia Pty Ltd			
Schedule A	Clause 1.2(e)(D)	Delete. Linking the Trading Division's requirements for port services with the Ports and New Business Division of GrainCorp as legitimate business interests encourages: (i) the consideration of the Trading Division as something other than another user of Port Terminals and Port Terminal Services; and (ii) discriminatory treatment between other Users of Port Terminals and Port Terminal Services and GrainCorp's Trading Division.	GrainCorp will remove this clause if required by the ACCC. The Protocols have already been updated to reflect this.
	Clause 2.2	Query. It is curious that the terms of the Schedule prevail over the body of the document, particularly as the Schedules include the Standard Port Terminal Services proposed to be offered. It is submitted that the body of the undertaking should prevail over the schedules and be the primary reference point for understanding the terms of the Undertaking offered which will be binding once finalised. Permitting a schedule to override the principal document does not promote transparency and understanding.	The intention of this clause was to ensure that a provision relating to services provided by a particular port terminal facility prevailed over general terms applying to all port terminal facilities, which are expressed broadly to include "all services provided by use of a port terminal facility". The Schedules do not seek to provide access on less stringent terms to the general provisions of the undertaking. The Schedules were included to ensure that all services, including those only offered at one or more port terminals, were subject to the Undertaking.
	Clause 2.3	Query. If it is necessary for a related Body corporate of GrainCorp to do something, should this not be identified now and that entity also be a party to the Undertaking.	GrainCorp has agreed to amend this clause.
	Clause 3.5(a)(i)	Delete in part "*It is no longer commercially viable for GrainCorp"* or, for the short period for which the Undertaking will be in operation prior to review it is submitted that GrainCorp should be bound to the terms of the Undertaking, Protocols and fees set to permit certainty, transparency and non-discriminatory access amongst competitors in the grain trading market in Australia.	This clause provides that GrainCorp may seek ACCC approval to vary the Undertaking. The Undertaking can only be varied if the ACCC considers it appropriate having regard to the factors set out in section 44ZZA of the TPA. For further information please refer to section 3.4.
	Clause 4.1(b)	Insert after "… Bulk Wheat" "*and all other export grain*".	Please refer to section 4.4.

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	Clause 4.2	Insert a new (f1) - "*any intake and receival services or grain storage and handling services which is required to utilise the Port Terminal Facility.*"	This is adequately provided for in clause 4.2(c) and (d). Clause 4.4(a) is merely descriptive, it does not override clause 4.2, it can be deleted if it causes confusion.
	Clause 4.4(a)(ii)	Insert after (inland) "*other than as referred to at 4.2(f1).*"	Please see response to clause 4.2.
	Clause 4.4(a)(iii)	Insert after "… Port facilities)" "*other than as referred to at 4.2(f1)*".	Please see response to clause 4.2.
	Clause 4.4(b)	Delete in part from 4.4(b)(i) "*in relation to Bulk Wheat*" and insert "*other than as referred to at 4.2(f1)*", insert at 4.4(b)(ii) after "… facilities" "*other than as referred to at 4.2(f1)*", delete 4.4(b)(iii), 4.4(b)(iv) and 4.4(b)(v).	Please see response to clause 4.2.
	Clause 5.1(b)	Delete - "*Unless varied in accordance with clause 5.6,*" and capitalise "the" to read "*The Reference* … etc".	Please refer to section 10.4.
	Clause 5.4(b)	Delete "*and the differentiation is for the purpose of substantially damaging a competitor or conferring upon GrainCorp or its Trading Division any unfair competitor advantage over a competitor in the marketing of Bulk Wheat*" and insert "*unless prior variation to those terms is obtained from the ACCC after receipt of submissions from GrainCorp and affected parties*".	Please refer to section 13.4.
	Clause 5.5	(a) delete (b) delete (h) delete (i) delete (p) delete (u) delete	Please refer to section 13.7.
	Clause 5.6	Delete	Please refer to section 1.3 and 10.4.
	Clause 6.1	Insert definition of exact measures GrainCorp will adopt to be defined as "Good Faith" for the purpose of the Access Undertaking	Please refer to sections 14.2 and 14.4.
	Clause 6.4(b)(iii) and (iv)	Delete This is a subjective measure able to be determined at GrainCorp's sole discretion without review. It also enables GrainCorp to request sensitive commercial information from competitors regarding financial support which would not otherwise be disclosed between competitors.	Please refer to section 14.4.

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		Replace with provision by Applicants with a non-refundable deposit bond to be offset against future costs as evidence of fulfilment of prudential requirements. Set at say $10,000.	
	Clause 6.7 (b)(i)	Delete "*subject to the Applicant satisfying the Prudential Requirements*".	Please refer to section 14.4.
	Clause 7.3	Mediation - delete sub-clauses (a) through to (b) inclusive and renumber (c) as (a) etc. For the new (a) delete "*after being referred to the chief executive officers under clause 7.3(b),*" as these paragraphs have been deleted. If good faith negotiations between the parties have been unsuccessful it is unlikely informal mediation between the CEOs of the parties will resolve the matter and adds an extra step in a process that would unnecessarily delay speedy resolution of disputes. Access to an independent third party mediator to facilitate dispute resolution with authorised representatives in a formal mediation process immediately after negotiations are unsuccessful would bring an objective, neutral third party to facilitate dispute resolution in a timelier manner.	Please refer to section 14.2.
	Clause 7.5	Delete "*ACCC*" and replace with "*IAMA*". The ACCC does not need to be responsible for appointing arbitrators which an independent body may do without any requirement for ACCC involvement. Obligations for notification to the ACCC of such disputes are already contained in the Undertaking.	Please refer to section 15.2 and 16.6.
	Clause 7.6(c)(vii)	Delete. This should not be mandatory but be left to the discretion of the arbitrator.	Please refer to section 14.2. GrainCorp agrees to delete this clause.
	Clause 8.2(e)	Delete	This is contrary to other submissions which demand the port terminal protocols be fixed.
	Clause 8.4(d)(i)	The mechanism for assessing the "likely availability of sufficient Bulk Wheat at the Port Terminal" is not stated. To remove this assessment being totally subjective to GrainCorp, it is submitted a mechanism of seeking confirmation from the Applicant of availability of wheat and a non-refundable bond to be offset against Port Terminal Service fees would be a preferable mechanism to enable certainty and transparency in assessment.	Please refer to section 18.4.
	Clause 8.4(d)(iii)(A)	Similarly the mechanism suggested above should be applied to this clause.	See previous response.

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	Clause 8.4(d)(iii)(K)	Delete. This is simply a matter of scheduling and should not be a factor due to the discriminatory nature of this as a criterion.	Please refer to section 18.4. This is necessary to meet the efficiency objectives of the Undertaking and Part IIIA of the TPA.
	Clause 11.1	delete the following definitions: Credit Support, Parent Guarantee, Prudential Requirements, Solvent.	Please refer to the response to clause 6.4(b)(iii) and (iv).

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Schedule B - Terms of Standard Port Terminal Services	Clause 2.1 - delete in part "that in GrainCorp's absolute opinion".	For efficient port operation it is necessary to be able to make a decision about what facilities meet the required standards or not. GrainCorp has updated the definitions in the WPTS Agreement to read: **"Approved Bulk Handling Company** means those silos, not operated by GrainCorp, that have ISO 9001 or similarly acceptable accreditation for the storage, handling, and transportation of export quality Wheat and GrainCorp has formally recognised that company by exchange of relevant correspondence."
	Clause 2.4 (b)(ii)(A) - delete as this discriminates against those Users who can make alternate arrangements for delivery of grain to Port Terminals. delete in its entirety as this only introduces uncertainty into the provision of services and potentially discriminatory practice in granting access.	This is reasonable for the efficient operation of the port. The intent of this clause is not to preclude the receival of wheat at the Port Terminal in differing volumes to those stated in this clause but determines the minimum level which is required to access the services at the quoted fees. Wheat delivered outside of these parameters is subject to a separate negotiation which may, or may not, result in the same fees.
	Clause 2.4 (b)(ii)(F) - delete "before rail".	GrainCorp supports the removal of the reference to rail and will redraft to include the receival of wheat via all transport.

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	Clause 3.1 references to the Access Agreement which may be different for each user of facilities promoting uncertainty and lack of transparency on access requirements. It is submitted that testing and sampling are generic requirements that should be applied equally to all users and therefore as uniform measures incorporated directly into the Standard terms.	Please refer to section 18.2. Testing and sampling services are not generic. Wheat received via GrainCorp country storage has already been tested, treated and subsequently stored to the appropriate standard (and transparency) by GrainCorp and therefore requires reduced testing at Port Terminals. Wheat delivered from other sources direct to port has not been prior tested by GrainCorp therefore requires full testing services at Port Terminals.
Schedule B - Initial Port Terminal Services Protocols	Clause 3.3.2 - delete, as this discriminates against Users utilising non-approved storage facilities. Where other measures relating to grain grade, testing and other issues are met through the proscribed measures in the standard terms this is not required and introduces discriminatory treatment.	Please refer to sections 13.5 and 18.2. This clause does not discriminate "non-approved" storage, rather allows GrainCorp to manage risk associated with receiving wheat from sources that have neither the appropriate quality accreditation in place nor a transparent grain treatment regime. It protects both GrainCorp risk and export markets. The planning of capacity and resource allocation requires thorough knowledge of grain to be delivered and mode of transport. GrainCorp's experience to date of unsolicited deliveries directs to port further support the need for this clause.
Schedule B - Ring fencing rules	As discussed unless the uncommitted upcountry grain data is shared to all users in a timely manner it is submitted that the definition of restricted information should be expanded to cover all uncommitted upcountry grain data.	Please refer to section 17.2.

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AGEA			
4.16		BHCs should be required to provide AWEs with timely information relating to: (a) port capacity; (b) stock on hand at port; (c) daily receivals by grade; (d) the accumulation programme at port; (e) stock movements; (f) allocation and changes to vessel loading slots; (g) weight, quality and AQIS compliance; (h) all other necessary information for AWEs to assess whether BHCs have met the performance criteria.	Please refer to sections 11.2 11.4 and 18.4.
4.17 (a)		The undertaking should include the prices for services.	Please refer to section 10.2 and 10.4.
4.17(b)		The undertaking should include specified circumstances in which higher charges may apply.	Please refer to section 10.2 and 10.4.
4.17(c)		The undertaking should include binding price and non price terms for the duration of the contract.	Please refer to section 10.2 and 10.4.
4.17(d)		The undertaking should include limited opportunity to vary price and non-price terms, subject to 6 months notice.	Please refer to section 10.3 and 10.4.
4.17(e)		The undertaking should include provisions which require the terms and conditions to be applied to wheat of specific grades or quality specifications which require segregation from other parcels throughout the port terminal facility.	The terms and conditions (and relevant fees) of the access undertaking are for standard handling, storage and shiploading services. It would be impractical to list terms and conditions for multiple scenarios which cannot reasonably be foreseen. Access seekers who require additional services that do not form part of the open access undertaking are able to approach GrainCorp and request such services as part of an open negotiation,

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4.17(f)		The undertaking should include the specification of minimum performance criteria which BHCs are required to meet including: (i) acceptance of vessel nominations regardless of stock entitlements within 24 hours; (ii) changes to vessel slots and cargo accumulation; (iii) unloading of trains/road transport within six hours; (iv) load rates and time to count as per Austwheat 2008 charterparty (as amended from time to time); (v) benchmark criteria for grading, fumigation, weighing, compliance with AQIS requirements, loading to receival standards. The grain loaded to the ship should be of a standard not less than that delivered to the port terminal by or on behalf of the exporter. The terminal should provide running samples and/or analysis during loading so that any deviation from the required quality is known by the exporter prior to the completion of loading. (vi) settling despatch demurrage at the applicable vessel rate.	Please refer to sections 11.2 and 11.4.
4.17(g)		The undertaking should include an effective right for AWEs to recover their loss and damage against BHCs if BHCs breach the terms and conditions of the port terminal services;	Please refer to section 11.4.
4.17(g)		The undertaking should include a shipping protocol which provides: (i) that if AWEs pay the vessel nomination fee and are allocated an estimated load date, BHCs must provide the necessary services to allow AWEs to load the vessel (**within a three day spread**), failing which BHCs will be liable for any loss or damage AWEs may suffer; (ii) transparency as how the BHCs accept vessel nominations and provided vessel slots; (iii) mutual rights to terminate on the grounds of force majeure; (iv) a dispute resolution mechanism whereby disputes may be referred to an independent 'umpire' for a binding and timely decision; in order to be effective, this will require decisions to be made within 24 hours of one party notifying the other of a dispute;	Please refer to sections 18.2 and 18.4. It is the AWE's obligation to ensure that sufficient cargo is available at the Port Terminal by the estimated load date GrainCorp has minimal control over cargo availability and no control over vessel delays, regulatory survey failures and weather. In addition, as highlighted by AGEA, GrainCorp has no visibility of charter party costs and demurrage rates and it is unreasonable to expect GrainCorp to accept any liability on that basis.

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4.17(i)		The undertaking should include an obligation on BHCs to provide AWEs with information relating to weight, quality and AQIS compliance and all other necessary information to assess whether BHCs have met the performance criteria within 24 hours of the information being available;	Please refer to sections 11.2 and 11.4.
4.17(j)		The undertaking should include an obligation on BHCs to allow AWEs' superintendent (or independent third person nominated by AWEs) access to the port to sample AWEs' wheat and inspect the loading of AWEs' stock onto vessels;	Please refer to sections 19.2, 19.6 and 19.8.
4.17(k)		The undertaking should include an obligation on BHCs to provide AWEs with daily updates on: (i) stock on hand at port; (ii) daily receivals by grade into port; (iii) the port's capacity; (iv) wheat accumulation; (v) unloading from upcountry transporters into port; (vi) stock movements.	Please refer to the response to paragraph 4.16 of the AGEA submission above.
4.17(l)		The undertaking should include an obligation on BHCs to take running samples (for testing in relation to quality and specifications) as the grain is loaded onboard vessels.	Please refer to sections 11.2, 11.4 and 19.
4.17(m)		The undertaking should include an obligation on BHCs to notify AWEs promptly if there is a problem or BHCs expect that they might not be able to perform their obligations.	Please refer to sections 11.2 and 11.4.
4.17(n)		The undertaking should include a complaints procedure to an independent body.	Please refer to sections 11, 14, 15 and 16.
4.17(o)		The undertaking should include a requirement that BHCs engage an independent auditor to undertake an audit of BHCs' compliance with the undertaking at such times as the ACCC may reasonably direct, but at least once in any 12 month period.	Please refer to sections 11.2 and 11.4.
4.17(p)		The undertaking should include an entitlement on the part of the ACCC to investigate any matters arising out of or relating to any complaints or the audit.	Please refer to section 11.2 and 11.4.
4.17(q)		The undertaking should include a dispute resolution mechanism which allows for the speedy resolution of disputes, including a mechanism to refer any disputes under the undertaking to arbitration by the ACCC.	Please refer to section 14, 15 and 16

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5.4(a)	5.4(a)(ii)(c)	Clause 5.4(a)(ii)(c) allows BHCs to discriminate on price and non price terms where such different terms are consistent with the objectives of the undertaking.	Please refer to section 13.6.
5.4(b)	1.2(e)(i)(A) and (D)	Clause 1.2(e)(i)(A) and (D) provide that one of the objectives of the undertaking is to reach an appropriate balance between the legitimate business interests of the BHC's including *'recovery of all reasonable costs" and BHC's ability to meet its own or its Trading Divisions' reasonably anticipated requirements for Port Terminal Services.*	GrainCorp will delete clauses 1.2(e)(i)(D) if required by the ACCC.
6.5	2.3	The "reasonable endeavours" obligation is not sufficient. There should also be an obligation for the BHCs to indemnify any party that suffers loss or damage as a result of the breach.	GrainCorp agrees to modify this clause.
7.3	3.4(a)	Contrary to Cl 3.4(a) of the GrainCorp undertaking, any disposal of a port terminal that is the subject of an access undertaking should be strictly on terms that access to its services continues.	Please refer to section 3.4.
7.4	3.6(a)	Clause 3.6(a) requires three months' notice of intention to submit a new undertaking. GrainCorp should be required to submit a statement to the ACCC at least 6 months before the expiry of the undertaking outlining whether it intends to submit a new undertaking to the ACCC.	Please refer to sections 3.2 and 3.4.
8	5.1 and Schedule 2	(a) The geographic boundaries of the port terminal facility should at least begin at the point where the wheat arrives and include every other point until the wheat is loaded into the ship's hold; (b) The port terminal services covered by the undertaking must include: (i) daily intake to port by grade; (ii) information of stock on hand at port; (iii) port capacity; (iv) stock movements back out of port (prior consultation with marketer in question); (v) managing port-related stock swaps; (vi) weighing of wheat upon receival by BHCs and again upon outturn onboard vessel; (vii) unloading; (viii) storage; (ix) fumigation and management - quality of grain is to be maintained	Please refer to section 4.4.

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		at the same level as when it was delivered to the BHCs "quality in = quality out" over the rail; (x) segregating/blending as directed by AWE; (xi) accumulating; (xii) elevating to ship; (xiii) sampling of wheat upon receival by BHCs and again upon outturn onboard vessel; (xiv) loading, stowing and trimming; (xv) access by independent superintendent/surveyor; (xvi) documentation evidencing the process: (A) weight; (B) quality; (C) AQIS compliance; (xvii) managing vessel nominations and shipping stem on a timely basis; (xviii) notifying problems and respond to requests from marketers on a timely basis e.g. daily report on quality loaded. (xix) Storage facilities outside the geographic boundaries of the port terminal facility are so closely connected to the services provided at the port terminal facilities that they should also be covered by the access undertakings. For example, the ports of Esperance and Thevenard both have their bunkering supplies stored outside the geographical parameters of the port.	
8.10(a)	Schedule 2 Clause 2.1	It is not appropriate that GrainCorp has an absolute discretion as to whether to provide services in relation to the intake of wheat from non-GrainCorp sites. The services should be provided to all exporters that receive accreditation from WEA.	Please refer to sections 13.2 and 13.4. This not the effect of the clause. This clause only provides a definition.
8.10(b)	Schedule 2 Clause 2.4(b)(i):	there is no transparency in relation to GrainCorp's vertical storage capacity and this clause could be used to refuse access to services.	Please refer to section 18.2. This clause does not preclude the receival of wheat into sheds and bunkers (if available) at Port Terminals, however the prices as included in the undertaking are for vertical storage. If additional capacity is required it is subject to separate negotiations on price.

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8.10(c)	Schedule 2 Clause 2.4(b)(ii)(A):	GrainCorp is entitled to refuse to provide services for deliveries that do not exceed 500 tonnes per day. This unfairly discriminates and does not take into account unforeseen delays, or delays cause by the BHC itself, such as trucks being delayed in queues.	This is reasonable for the efficient operation of the port. The intent of this clause is not to preclude the receival of wheat at the Port Terminal in differing volumes to those stated in this clause but determines the minimum level which is required to access the services at the quoted fees. Wheat delivered outside of these parameters is subject to a separate negotiation which may, or may not, result in the same fees.
8.10(d)	Schedule 2 Clause 2.4(b)(ii)(C):	There is no justification for refusing to provide services where the parcel of wheat to be loaded does not exceed 5,000 tonnes.	This clause refers to direct deliveries to port. AGEA's point is not unreasonable. However, as wheat received ex "other" sources is segregated at Port Terminals to mitigate risk, consideration is given to small parcels that underutilise Port capacity. As a result, GrainCorp requires negotiation with the customer to determine whether Port capacity is effectively utilised.
8.10(e)	Schedule 2 Clause 2.4(b)(ii)(D) and (E):	AWEs will be restricted if they cannot commence deliveries prior to 21 days. GrainCorp is paid for the service and the use of its facilities, and is therefore compensated for the longer accumulation times. The requirement to provide a vessel name is a detail that is not relevant to the provision of the BHCs's port terminal facilities. To require this level of detail imposes a burden on AWEs to book vessels further ahead of time than is usual practice. This results in AWEs incurring greater costs as result of having to charter vessels with longer lead time and reduced flexibility in marketing strategies.	GrainCorp agrees to modify this clause to remove the requirement for the name of the vessel. Nominations are still required at a minimum of 21 days. 21 days is the custom and practice accumulation process for Port Terminals. Finite capacity at Port Terminals limits the amount of time available for the stock to remain in Port.
8.10(f)	Schedule 2 Clause 2.4(b)(ii)(F):	proof of prior treatment is unreasonable and an AWE might not be able to provide such proof in respect of harvest shipping where they do not treat.	Please refer to section 13.8. Proof of prior treatment is a requirement for the protection of Australian wheat export markets and GrainCorp OH&S obligations.
8.10(g)	Schedule 2 Clause 2.4(b)(ii)(G):	wheat protection by GrainCorp should be an option.	This clause does not preclude the treatment of wheat, simply the terms under which the undertaking pricing will apply . Treatment options will be available and negotiated directly with the customer.

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8.10(h)	Schedule 2 Clause 2.4(b)(ii)(H)	It is not clear how delivery inspection would work, who would pay for the service and whether this clause could be used by GrainCorp to prevent accumulation.	This clause is included as a risk mitigation option for GrainCorp and the protection for Australian Export Markets. There are no fees applied to the customer. GrainCorp would accept independent advice from a certified inspector, however recognises that may add cost to the exporter.
10	Clause 5	Clause 5.4 gives GrainCorp complete discretion to decide whether discrimination is consistent with the objectives of the undertaking and therefore justified.	Please refer to sections 13.2 and 13.7.
10.3	5.4(b)	Clause 5.4(b) offers no protection to potential applicants and port users because it would be impossible to provide a subjective requirement that the discrimination was for the purpose of substantially damaging a competitor or conferring upon the Port Operator or its Trading Division any unfair competitive advantage.	Please refer to section 13.2.
10.4	5.5	Clause 5.5(a), (d), (f), (k), (p), (r), (v) are unsatisfactory.	Please refer to section 13.7.
10.5		to ensure BHCs comply, and have an incentive to comply, with their obligations, the undertakings must also contain a complaints and audit procedure which: (a) allows complaints in relation to actual or suspected breaches of the undertaking to be made to an independent person who must investigate the complaint and report to the ACCC on the outcome of the investigation; (b) requires BHCs to engage an independent auditor to undertake an audit of BHCs compliance with the undertaking at such times as the ACCC may reasonably direct, but at least once in any 12 month period; (c) allows the ACCC to investigate any matters arising out of or relating to complaints or the audit.	Please refer to sections 11.2 and 18.4.
11.5	6.4(b)(iv)	It is unnecessary for BHCs to require AWEs to satisfy additional "Prudential Requirements" when they have already satisfied WEA's requirements in that regard under the WEM Act (see GrainCorp clause 6.4(b)(iv) and compare section 13(1) of the WEM Act).	Please refer to sections 14.2 and 14.4.
11.6	6.2	GrainCorp clause 6.2 of the proposed access undertaking does not effectively protect an AWE's confidential information and only applies during the negotiation process. Clause 6.2 of the Undertaking in relation to confidential information should; • indemnify BHCs for any loss or damage suffered by an AWE as a result of breach of confidentiality;	Please refer to section 14.4.

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		• be extended to cover the third parties; • impose an obligation upon BHCs to notify the relevant AWE of any event that has or could likely result in a breach of the confidentiality obligation as per s17 of the Wheat Exports Act 2008.	
13.2		For general disputes, the dispute resolution procedure must provide that: (a) either party may notify the other party of a dispute; (b) representatives of the parties must meet within 48 hours and endeavour to resolve the dispute; (c) if the dispute cannot be resolved, either party may give notice to the ACCC that a dispute exists under the undertaking and may refer the dispute to arbitration, which is to be conducted by the ACCC; (d) the arbitration must be conducted in accordance with arbitration rules to be specified in the undertaking, which must include an obligation to keep confidential any information disclosed during the arbitration; (e) the arbitration must be heard and concluded within 14 days of the notice of referral to the ACCC and the ACCC must endeavour to make a determination within 14 days; (f) BHCs must take reasonable steps to mitigate loss, including continuing to provide port terminal services during, and pending the determination of, any dispute. There are certain disputes such as substitution of vessels in shipping stems or any dispute affecting the timing of a vessel's loading that require a resolution within 24 hours. For these types of disputes, there must be a clear dispute resolution mechanism whereby disputes may be referred to an independent umpire for a binding decision within 24 hours.	Please refer to sections 14.2 and 14.4.
15.1	8.4(d)(i)	entitles BHCs to make Operational Decisions to give priority to vessels based on the "*lead time given between nomination and vessel ETA and likely availability of sufficient Bulk Wheat at the Port Terminal prior to vessel ETA*". BHCs control the movement and accumulation of wheat at port.	Please refer to sections 18.2 and 18.4. This is reasonable for the efficient operation of the port terminal facilities. In any case, GrainCorp must still comply with the requirements of the port terminal service protocols.
15.2	8.4(d)(ii)	Provides opportunities for BHCs to restrict access to port terminal services and is vague and uncertain.	Please refer to sections 18.2 and 18.4.

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15.4	8.4(d)(ii)(B)	as a BHC controls the movement and accumulation of wheat at port, it is within its means to show that the throughput of bulk wheat is maximised by loading its vessels in priority to other AWEs.	Please refer to sections 18.2 and 18.4.
15.5	8.4(d)(ii)(A)	in the normal course of events, BHCs are not aware of the AWE's vessel demurrage rate. In any event, a AWE's ability to negotiate a low demurrage should not result in that AWE being penalised by having another vessel being given priority at berthing, because it has a higher demurrage rate.	Please refer to section 13.7 (in relation to clause 5.5(n) of the Undertaking) and section 18.4.
15.6	8.4(d)(iii)	provides BHCs with very broad entitlements to vary a cargo assembly plan or queuing order of a vessel. BHCs control the movement and accumulation of wheat at port facility (clause 8.4(d)(iii)(A) BHCs should not be entitled to vary a cargo assembly plan or queuing order as a result of vessel congestion (clause 8.4(d)(iii)(A)]).	Please refer to sections 18.2 and 18.4.
16.2	Clause 2 Schedule 5	The definition of restricted information is too narrow.	Please refer to section 17.4.
16.3	Clause 3 Schedule 5	The prohibition on disclosing restricted information to its Trading Divisions or other entities involved in trading bulk wheat should apply to any disclosure to any entity.	Please refer to section 17.4.
16.4	Clause 3(b) Schedule 5	Clause 3(b) incorporates a subjective element that entitles GrainCorp to access or use Restricted Information so long as it is not *for the purpose of substantially damaging a competitor or conferring upon it or its related bodies corporate any unfair competitive advantage over a competitor in the market in bulk wheat.*	Please refer to section 17.4. This clause is in addition to other objective restrictions on information flows.
16.5	Clause 4(b) Schedule 5	Clause 4(b) reservation of right to pass on information in aggregate.	Please refer to section 17.4.

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	Clause 3 Schedule 5	Information which cannot be passed between GrainCorp and its Trading Division should include: (a) Emails (b) Meetings (c) Reports (d) Boardmeetings/papers (e) Committee meetings/papers (f) Staff movements (g) IT systems (h) Databases (i) Consultants (j) Secondees	Please refer to section 17.4. This is adequately addressed by the ring fencing rules.