GrainCorp

Annexure A

1. Executive Summary

GrainCorp responds to the ACCC's preliminary exemption assessment of GrainCorp's Portland port terminal facility by reference to the matters to which the ACCC must have regard in clause 5(3) of the Code.

In summary:

› compliance with Parts 3-6 of the Code will significantly reduce GrainCorp's ability to provide operational flexibility to exporters. This is particularly relevant if Riordan Grain Services ("RGS") is assessed as exempt from the relevant parts of the Code while these requirements continue to apply to GrainCorp. This will hinder GrainCorp's ability to compete with RGS for ad hoc or discrete cargoes;

› GrainCorp faces significant competitive constraint at the Port of Portland from RGS; alternative terminals in Melbourne, Geelong and South Australia; containerised shipping and demand from domestic consumers;

› there is significant competition in up-country storage and handling, with GrainCorp's share of Victorian grain production falling significantly in recent years; and

› GrainCorp has no incentive to discriminate against third-party exporters in favour of its own trading department. There is no evidence of this occurring, and in fact, in the large export years of 2014-15 and 2016-17, GrainCorp's export market share at Portland represented less than one-third of exports from the terminal.

GrainCorp has also responded to the ACCC's request for further information in relation to:

› how the Code impacts GrainCorp's operational flexibility, both in general and in the specific circumstances where RGS is exempt but the Code remains fully applicable to GrainCorp (at sections 2.1 and 5 below);

› upcountry storage and transportation (at section 3.3 below); and

› the competitive constraint posed by RGS (at section 3.1 below).

We request that the information in this response be considered in addition to the data and information in our original and supplementary submissions.

2. (a) the legitimate business interests of the PTSP; (e) the promotion of the economically efficient operation and use of the port terminal facility; and (f) the promotion of efficient investment in port terminal facilities

2.1 Operational flexibility

Compliance with Parts 3-6 of the Code significantly reduces GrainCorp's ability to provide operational flexibility to exporters and, accordingly, hinders its ability to compete with an exempted RGS facility for ad hoc or discrete cargoes. This mismatch would be to the detriment of exporters seeking competitive pricing for such opportunities as they arise. This was recognised by the Commonwealth Government in its 2018 review of the Code, which noted the substantial growth of the spot market and stated that Parts 3-6 of the Code may actually become a detriment to exporters as a result.[1]

[1] Australian Government Department of Agriculture and Water Resources, Review of the Wheat Port Access Code of Conduct, 2018, p 28.

International grain trade is highly competitive and global traders will naturally seek to maximise efficiency and commercial advantage when selecting an origin and timing to meet their customer requirements. When global grain inventories are high (as has been experienced in recent years), traders hold lower inventory levels and operate on shorter lead times (on a 'just-in-time' basis), driving opportunistic purchasing and far shorter accumulation and execution lead times. Under the requirements of Parts 3-6 of the Code, GrainCorp's ability to negotiate and compete for 'last minute' capacity is substantially impacted.

While an exempted RGS would be able to negotiate flexibly with its customers, GrainCorp is required to provide the market with 2 weeks' general notice of any additional capacity for allocation. This acts as a deterrent to spot market participants, as it adds to transaction lead-time, potentially telegraphs a participant's intentions to market and offers no certainty that the capacity they are seeking will be secured.

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One impact of the proposed inconsistent treatment of RGS and GrainCorp's facilities is that RGS would become the only feasible provider of flexible, last-minute capacity to exporters. Grain exporters from Victoria, and traders wishing to export from the region, would be disadvantaged by having no competition for such transactions in the region.

3. (b) the public interest, including the public interest in having competition in markets; (g) the promotion of competition in upstream and downstream markets

3.1 Competition at Portland from RGS

GrainCorp notes that since RGS's commencement of operations at Portland, GrainCorp has experienced strong additional competition from the mobile loader. As a consequence, it has lost volume and customers:

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- RGS does not appear to publish its tariff rates to the open market, which provides it a favourable starting position in any negotiation where a customer approaches both parties to negotiate a rate.
- GrainCorp expects that in future it is most likely that all third party export cargoes will be undertaken on a short-term basis, with no customers requiring long-term agreement negotiations. As explained above, terminal operators that are exempt from Parts 3-6 of the Code will be far better placed commercially and competitively to address this changing market dynamic.

As outlined in our original submission, RGS's entry clearly demonstrates the low barriers to entry for new export competitors. The advent of RGS and other mobile operators signals another material shift in Australian grain markets. Further, RGS's business model is based on a significantly lower cost base, which affords it greater flexibility and a strong ability to compete based on cost. RGS has a much reduced cost recovery requirement than GrainCorp and other businesses with long-established fixed infrastructure. Grain traders clearly understand this fixed to variable cost relationship and seek to exploit it whenever possible. RGS poses a significant competitive constraint on GrainCorp, despite having a different model than GrainCorp. In practice, the fact that RGS does not have large, permanent bulk loading infrastructure gives it certain competitive advantages.

3.2 Competition from other ports

GrainCorp submits that the ACCC's Draft Determination incorrectly concludes there is insufficient competitive constraint from alternative terminals in Melbourne, Geelong and South Australia, and that this conclusion is driven by an over-reliance on analysis based on Grain Trade Australia ("GTA") Location Differentials.

GTA Location Differentials do not accurately reflect the cost of freight or execution. Their primary function is as an agreed reference point for industry participants to price contracts, regardless of destination. The limitations of Location Differentials are material and are clearly pointed out by GTA in the attached Fact Sheet and on their website.

GTA further advises that the price of freight is market driven and subject to continual change, depending on a range of factors including:

- crop size and available freight capacity;
- total volumes being booked;
- rail availability or disruptions; and
- time of year.

GrainCorp is concerned that the Draft Determination's extended analysis based on Location Differentials and number of country sites owned by GrainCorp within a port zone is fundamentally flawed and based on an outdated view of the market and grain flows. This change to grain flows is explored further in Section 3.3 below.

The variabilities outlined above make drawing a meaningful comparison between Location Differentials and actual freight rates highly difficult and subjective.

GrainCorp notes that zero tonnes have been moved by rail to the Portland terminal in the current shipping year. While this is partially related to rail disruption and drought, in any year the rail-road split will be determined by the grain purchasing strategy and freight rates of the individual exporter, who determine the method of accumulation.

Accumulation by road is more flexible than rail, as lead times are substantially less, little or no forward commitment is required and there is greater flexibility of end destination.

GrainCorp's customer who recently negotiated the discounted elevation (see section 3.1 above) has advised that all the grain for the cargo has been purchased on a delivered port basis, all deliveries are expected to be delivered by road and sourced outside of GrainCorp's up-country network. GrainCorp has little or no visibility as to where the grain is being sourced and will only be able to monitor accumulated tonnes against the vessel's Estimated Time of Arrival.

3.3 Competition in up-country storage and handling facilities

GNC disagrees with the ACCC's findings about GNC's market power resulting from vertical integration in upcountry storage and handling.

GrainCorp acknowledges that historically, grain generally followed a structured path to market: it was harvested, immediately delivered to a nearby bulk handler site then stored for a period until it was sold, with much of it ultimately being loaded at the closest port.

However, in the years since deregulation of bulk wheat exports, grain flows have changed substantially and continue to evolve. In addition to the many exporters with global scale and presence who are looking to meet their customers' needs in the most efficient manner, farmers are increasingly vertically integrated and have invested significant amounts in on-farm storage. Grain flows to where its value is maximised.

These factors have resulted in a fundamental change to the market and have had a significant impact on grain flows. They effectively render redundant any analysis of a "natural port terminal" for up-country sites. Farmers want to extract maximum value for their grain and are much more active in deciding the destination of their grain. Increasingly, they are choosing to keep their grain on-farm and deliver to where they get the best return. This will generally be on a just-in-time basis and will not necessarily be to the nearest bulk handler's country site. Often it is delivered direct to a domestic consumer or direct to port.

The recent Australian Export Grain Innovation Centre ("AEGIC") report states:

> *"Industry experts estimate that over the past five years the amount of grain stored in good quality steel silos in NSW, Qld and Vic has doubled…More than 70 per cent of an average harvest can now be placed in permanent farm storage in northern NSW and Qld"*
>
> *Growers in eastern Australia have diversified marketing choices for their grain and are incentivised to invest in farm storage. The likelihood of persistent drought in eastern Australia gives mixed-enterprise farmers strong incentive to store grain on-farm to maintain the condition of their animals and to facilitate retention of a core breeding flock or herd during drought. Grain-only farmers have incentive to store grain on-farm to capitalise on a spike in grain prices when droughts occur. Additional farm storage also facilitates harvest logistics.*[2]

Reflecting these changes, the proportion of Victorian grain production stored in GrainCorp's network has diminished substantially. Over the past three completed seasons, the share of Victorian production received by GrainCorp storage facilities has ranged between 36-39% (from 59% in 2010-11).

Figure 1: GrainCorp share of Victorian grain harvest[3]

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18 s	18/19 f
Production	7,625,000	7,352,000	6,886,000	6,773,000	5,111,000	3,566,000	9,509,000	7,652,000	4,314,000
Delivered to GNC	4,500,317	3,601,390	2,898,234	2,801,740	2,175,766	1,290,437	3,697,372	2,763,650	1,295,567
GNC share	**59%**	**49%**	**42%**	**41%**	**43%**	**36%**	**39%**	**36%**	**30%**

s = Estimate, **f** = Forecast

AEGIC's report has also noted that "…with the rapid move to on-farm storage in eastern Australia, GrainCorp now receives less than 50 per cent of the harvest, and this proportion continues to decline each year."[4]

GrainCorp operates an open access country network and, as such, there is little or no restriction on farmers, buyers, or other end users in utilising our storages and no restrictions on the outload destinations. An outcome of this open access regime is that grain outloaded from a GrainCorp storage facility may be destined for delivery to competing terminals such as Melbourne Port Terminal for either bulk or container trade, RGS Geelong or Portland for bulk or to any of the many container packing operations that operate throughout Victoria.

[2] AEGIC Oct 18 report grain supply chains p. 38

[3] Source for 18-19 production: http://www.agriculture.gov.au/abares/research-topics/agricultural-commodities/australian-crop-report/victoria

[4] AEGIC op cit. p. 39

3.4 Competition from containerised shipping and domestic demand

As the ACCC is aware, the proportion of grain being exported from Victoria in containers (as opposed to in bulk) has increased significantly. This is due to a range of factors:

- Availability of containers through the Port of Melbourne, which is the major hub for the export of food and commodities via containers.
- Low cost, due to the large number of empty containers that require back-loading to Asia.
- Low financial barriers to entry for container packers, coupled with the rapid increase in on-farm storage throughout eastern Australia, providing a flexible and available source for loading.

GrainCorp's data shows that container volumes are relatively steady notwithstanding crop size, while bulk volumes are more volatile and fluctuate in line with the exportable surplus and the value of bulk grains in global markets. Containers account for an average share of approximately 44% of all exports since the 2016 shipping year and 61% of grain exported by container in the 2019 shipping year.

Figure 2: Victoria grain export share: bulk vs. container

Export Type	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
	4,751,334	**6,298,864**	**4,269,365**	**4,779,915**	**3,087,776**	**2,168,428**	**6,568,422**	**3,638,999**	**344,176***
Bulk	3,630,696	4,551,026	3,029,724	3,133,029	1,636,174	985,627	4,848,927	2,338,884	132,878*
Bulk %	76%	72%	71%	65%	53%	45%	74%	64%	39%
Container	1,120,638	1,747,838	1,239,641	1,646,886	1,451,602	1,182,801	1,719,495	1,300,116	211,298*
Cont'r %	24%	28%	29%	35%	47%	55%	26%	36%	61%

Data from Australian Crop Forecasters to May 2019

Further, we note the commentary from AEGIC: "Victoria exports the most wheat in containers, accounting for about half of all containerised wheat exports from Australia since 2010. Over this period, about 51 per cent of Victoria's total wheat exports have been in containers compared to 30 per cent and 37 per cent for Qld and NSW respectively and less than 4 per cent for WA and SA."[5]

As previously noted, there is also extremely strong demand from the domestic market in Victoria (and further abroad in periods of drought as being experienced currently). The domestic market generally consumes approximately 40% of Victoria's average grain production.

GrainCorp is concerned that, while the presence of competition from containers, on-farm storage and the domestic market is acknowledged in the Draft Determination, there is no data or detailed analysis referred to and the commentary is more focused on bulk exports arriving from up-country sites only.

[5] Ibid. p.10 – note reference is to wheat exports specifically, as opposed to all grains, as outlined in Figure 2

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4. (c) the interests of exporters who may require access to port terminal services; and (d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services; (h) whether the port terminal service provider is an exporter or an associated entity of an exporter

GrainCorp disagrees with the ACCC's finding that it would be likely to discriminate against third-party exporters in favour of its own trading department. GrainCorp has a high fixed cost base and underutilised assets. Its motivation is to maximise the use of its infrastructure and to sell to the highest bidder. It would be illogical and uncommercial for GrainCorp to allocate capacity to its vertically integrated export business when a third party has offered to pay a higher rate.

These commercial imperatives are evidenced by actual performance. In the large export years of 2014-15 and 2016-17, GrainCorp's export market share at Portland was less than 30%.

We note there have been no exporter complaints in relation to GrainCorp's application for exemption.

The ACCC's Draft Determination acknowledges that "*where there has historically been a significant reliance on other users of the facility for throughput, it seems unlikely that GrainCorp would act in a way that would completely exclude access by grain marketers who are of sufficient scale*"[6] and that "*GrainCorp would not likely foreclose access to its facility entirely*"[7].

We note further that the ACCC's own analysis concedes that it is difficult to identify or predict a "peak" period for exports from Portland.

5. (i) whether there is already an exempt service provider within the grain catchment area for the port concerned

The ACCC's draft determination in respect of Portland proposes to grant the RGS mobile ship terminal an exemption from Parts 3-6 of the Code, while denying GrainCorp's application for the same exemption. GrainCorp is concerned that this will impose a significant competitive disadvantage on GrainCorp, the impact of which will ultimately be borne by exporters.

Substantial inequity would arise if RGS were granted an exemption from Parts 3-6 of the Code and GrainCorp were not. This has been explored above in Section 2.1, however to reiterate, a requirement on GrainCorp to publish additional information, particularly during high capacity/low demand situations, would place GrainCorp at a substantial competitive disadvantage in negotiations as all customers would be able to use GrainCorp's pricing and information as a benchmark for discussions.

Further, publishing capacity figures would mean exporters would be more likely to favour RGS in order to avoid having their shipping volumes publicised. Published capacity can impact grain value and place substantial upward pressure on prices for exporters, particularly in periods where time and availability are constrained.

[6] ACCC Draft Determination p. 34

[7] Ibid. p. 32

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