GrainCorp Operations Limited
Submission to the Productivity Commission

Review of Wheat Export Marketing Regulations

November 2009

GrainCorp Operations Limited
Submission to the Productivity Commission
Review of Wheat Export Marketing Regulations
November 2009

Contents

Introduction - Deregulation or Not? 3

1. Accreditation of Exporters 4
2. Port Terminal Access and Services 15
3. Transport and Storage 26
4. Information Provision and Market Transparency 32
5. Wheat Classification and Market Segmentation 33
6. 'Industry Good' Functions 35
7. Performance of the Wheat Export Marketing Arrangements 36

Introduction - Deregulation or Not?

There is a widespread misunderstanding across the Australian grains industry that the removal of the bulk wheat export monopoly led to the 'deregulation' of the wheat sector. The bulk wheat sector has **not** been deregulated (meaning that regulations have been removed), the sector has been de-monopolised.

The regulation that makes it illegal to export wheat without consent of a 'relevant authority', Section 9AAA of the Customs (Prohibited Exports) Act 1958 remains in place, and until this regulation is repealed, the bulk wheat export sector will not have been 'deregulated'.

The repeal of the Wheat Marketing Act (1989), and its replacement with the Wheat Export Marketing Act (2008) (WEMA), removed the exemption on the prohibition of bulk wheat exports granted to AWB International Ltd. It was this exemption, and the ability granted to AWB to operate outside the purview of the Trade Practices Act by the Wheat Marketing Act, that constituted the 'single desk' monopoly.

The introduction of the 2008 Act has actually *increased* the level of regulation across the industry, as, for the first time, the sector has a regulator in the form of Wheat Exports Australia. The predecessor of this organisation, the Wheat Exports Authority, had no powers to regulate the behaviour of AWB international, its role was to merely monitor and report on the management of the monopoly national wheat pool.

The 2008 Act has provided the new industry regulator with a range of broad powers that it can use with a high degree of discretion, resulting in a regulatory regime that is not transparent or predictable.

The bulk wheat exporter accreditation scheme duplicates, at all levels, a range of Acts and Regulations that existed prior to the introduction of the WEMA, and as such the scheme runs counter to several decades of regulatory streamlining undertaken by successive Commonwealth and State governments.

Given that the regulator provides no financial guarantees or warranties to any party transacting business with an accredited bulk wheat exporter, and that the scheme thus provides an 'appearance' of security where none actually exists, it is incumbent upon the Productivity Commission to propose sweeping changes to the way in which the 2008 Act is implemented, to provide a regulatory regime that better fits the needs of a sector that has not been served well by the implementation of the Governments reform agenda to date.

In this submission, GrainCorp proposes –

- Refocusing the implementation of the Act to take account of regulatory and legal duplication.
- Replacement of the current accreditation scheme with a licensing scheme that replicates the bulk barley exporter licensing scheme operating in South Australia to operate from 1st July 2010 to 30th June 2011.
- Removal of the need for the ACCC access Undertakings from 1st July 2010 and their replacement with a Code of Conduct linked to a revised licensing system until 30th June 2011, and then from that date a port terminal access regime consistent with that proposed by the national Competition Council's 'National Access Regime', provided for under a revised Part III A of the Trade Practices Act.
- Repeal of S 9AAA of the Customs (prohibited Exports) Act 1958 by July 1st 2011 and thus full deregulation of bulk wheat exports from that date.
- The creation of an organisation that would oversee a number of 'industry good' and self regulatory functions, including a 'truth in description' scheme for the appropriate use of wheat grade nomenclature.

1. Accreditation of Exporters

Why accredit bulk wheat exporters?

Have market participants benefited from accreditation of bulk wheat exporters?

All market participants, apart from AWB Limited, have benefited from the removal of the bulk wheat export monopoly 'single desk'. Removal of the single desk has allowed up to 20 organisations to participate in the bulk wheat export market. This in turn has precipitated a more active and robust market for the purchase of wheat from grain growers in all regions.

The main benefit for growers, apart from the additional participants in the wheat market seeking to purchase wheat from them, is the removal of the artificial marketing 'deadline' of late January each year imposed by the arbitrary manner in which AWB closed the national pool. Under the single desk monopoly, AWB closed the national pool on or around 20th January each year. This had the effect of compressing the marketing activities of both growers and grain buyers into an artificially short period, which in turn reduced the marketing choices available to growers and to the 'trade', and imposed a completely artificial pricing mechanism in the form of the national pool estimated pool return (EPR).

Growers and buyers that had purchased wheat from growers that was excess to domestic market demand, were forced to sell uncommitted wheat to the AWB national pool by the closing date, as the next alternative, the #2 pool, was generally heavily discounted against the #1 pool EPR.

Removal of the export monopoly removes the artificiality of the previous marketing regime and price setting mechanism, and allows current price signals, particularly those from the export sector, to be more transparently communicated through the trade to the production sector. While some may criticise the 'new' market for being more 'volatile' than it was under the export monopoly, a not unrealistic observation, growers are well equipped to manage price volatility, as they currently do this for the marketing of 'non-wheat' grains, livestock and other commodities.

Growers are increasingly managing price volatility through grain warehousing within the bulk handling systems, and by storing grain on-farm, or by selling their grain to pools, where the pool manager seeks to 'smooth' price volatility over time.

No better indicator of the exercise by growers of their newly found marketing power was the rate at which growers warehoused wheat in late 2008 and early 2009 in the GrainCorp storage network. During this period, growers warehoused up to 96% of wheat for a period of up to an average of 3 weeks prior to making their initial marketing decisions.

Increased price volatility, principally associated with the activities of exporters accumulating wheat cargos, has increased the opportunities for growers to exercise more market power, and to exercise a greater level of marketing choice.

Does the information provided by WEA through accreditation assist growers with their export marketing decisions? Does WEA provide information that cannot be obtained from other sources?

The information made available by Wheat Exports Australia (WEA) is of little relevance to growers making their day to day marketing decisions.

As a general comment, GrainCorp is concerned that a number of assumptions about the 'marketing competence' of growers continue to be made that underestimate growers business acumen. There is an assumption that growers may not be 'capable' of making rational marketing decisions, even though growers now have myriad sources of market intelligence and advice available.

GrainCorp believes that growers are more than capable of making rational marketing decisions, they do so when marketing grains other than wheat, when marketing livestock, cotton and a range of other produce, and do not need their 'hands held'.

GrainCorp sees rational marketing behaviour from thousands of growers every day. Evidence of this can be seen in the rate of grain being warehoused at harvest. At a time when cash prices are traditionally at their lowest, growers are now choosing to warehouse up to 96% of all grain delivered into the GrainCorp storage network at harvest, and many are storing grain on-farm for marketing at a time of their own choosing.

What has not been acknowledged in the debate about the competence of growers to make marketing decisions is the fact that the domestic wheat market was deregulated 20 years ago, when the Australian Wheat Board compulsory acquisition powers for milling wheat were removed.

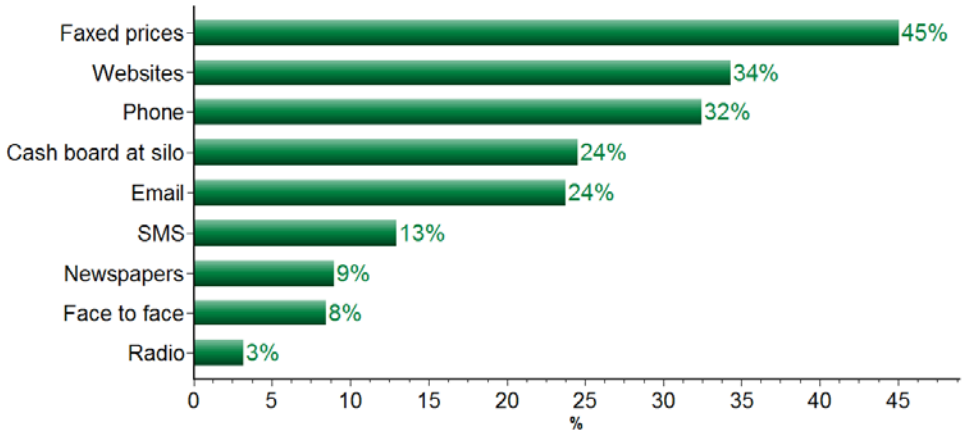
In the period between the removal of compulsory acquisition and the removal of the export single desk in July 2008, growers increasingly sold wheat to buyers other than AWB, to a point where the monopolists market share of purchases of wheat from growers had fallen to as low as 20% of total wheat production. This also led to half or more of the wheat being sold to the AWB national pool being owned by the grain trade, rather than by growers.

Both these facts are counter to the generally accepted 'wisdom' that most growers 'chose' to sell wheat to the monopolist, and that wheat in the national pool was mostly 'owned' by growers.

Across the GrainCorp network, there are at least 6 'field teams' representing major grain accumulators, (GrainCorp, AWB, AGA (Cargill), Glencore, Viterra, etc), and numerous 'local' or regional grain marketers. Most growers have relationships with one or more grain marketing advisor. During, and immediately after harvest, daily pricing information is supplied, per commodity and / or per grade, by fax, email or via the web.

The following graph indicates that growers use a range of information to inform their marketing decisions, many of them supplied on a daily basis from multiple sources.

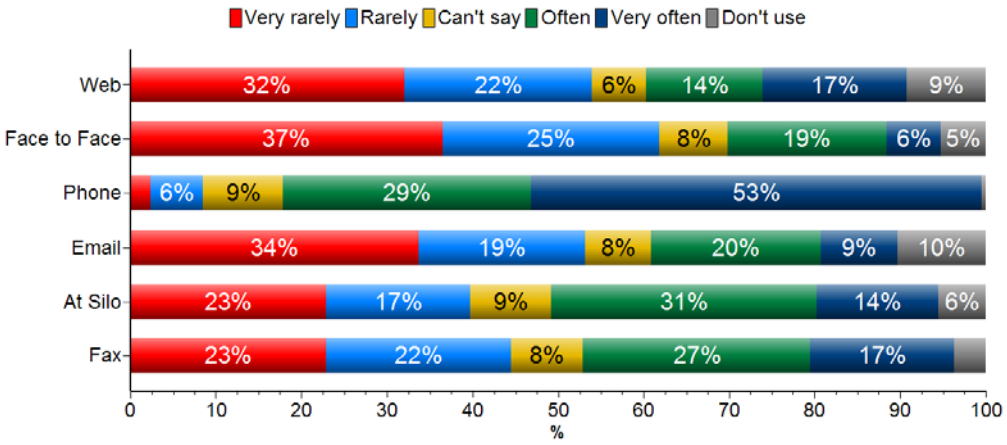
Sources of Grower Marketing Information



Source – Solutions Group research, September 2009 (Unpublished).

Growers also use multiple sources for executing their grain marketing transactions.

Grain Marketing Transactions



Source – Solutions Group research, September 2009 (Unpublished).

The greater number of wheat exporters now operating in the Australian market has increased competition for individual grades of wheat, with the associated price signals being quickly communicated back to growers via fax, email or other means, often to coincide with cargo accumulation price volatility.

What role, if any, does accreditation play in the efficient operation of the wheat export market? Does it alter the incentive to export wheat in bags or containers rather than bulk, or vice versa?

The accreditation scheme places a significant focus on examining the financial security of prospective wheat exporters. While focusing on the financial security of wheat exporters, it provides no form of financial guarantee, or underwriting of any commercial risk.

From a historical perspective, this means that little has changed. The previous national pool was not 'risk free' for pool participants. Pool participants received a pool advance, or a loan, from the pool manager, and these loans or advances were subject to 'claw back' should the value of the pool have fallen below the level of the initial loan or advance. There were no special measures in place that 'protected' pool participants from losses. The former national pool was no more or less secure than the pools offered by other grain marketers prior to or since the removal of the monopoly.

The accreditation system also fails to take into account the existing multiple levels of regulation that apply to the action of financing and purchasing grain from growers or other traders. By imposing an additional level of regulation upon those that currently exist, particularly related to the conduct of financial transactions, for no tangible commercial purpose, the accreditation scheme does reduce the efficient operation of the bulk wheat export market. The current arrangement disadvantages bulk exports compared with the container and bag trade which are unregulated.

Is there an ongoing role for accreditation of some form or is it needed only for a transitional period?

The Australian wheat sector has been undergoing gradual removal of regulation since 1984, and GrainCorp believes that removal of the bulk wheat export monopoly should be quickly followed by full deregulation to allow the Australian grains market to commercially normalise.

GrainCorp believes that it is very important that regulation of any aspect of the Australian agricultural industry allows parties to compete on a level playing field. In addition, GrainCorp believes that great care

should be taken in regulating export facilities so that distortions are not created that discourage investment or that create inefficiencies.

The current structure of the bulk wheat export accreditation regulations is contrary to statements made by members of the Federal Government in support of a more light handed and consistent national regulatory approach. As recently as 27 March 2008 at the Economic and Social Outlook Conference, the Federal Treasurer, Wayne Swan, when outlining the Government's long term plan for national federalism, said the following:

> *'The Rudd Government has also taken significant steps to address regulatory burdens which are stifling productivity, innovation and geographic mobility. Businesses must comply with multiple regulations when operating across state borders. Complying with this maze of regulation costs time and money. The Productivity Commission has estimated that compliance costs could be as high as four per cent of GDP per annum. Through the COAG reform process we are working to lower the regulatory burden on businesses across this country...*
>
> *By increasing competition and enhancing the role of market mechanisms in energy and the provision of key economic infrastructure, and removing inefficient and duplicative business regulation, we can lift productivity and the economy's growth potential'.*

Prime Minister Rudd, at the same conference, also acknowledged that in pursuing its economic reform agenda, the Government has '*identified 27 areas for deregulation and red tape reduction to improve efficiency and reduce the regulatory burden on the economy*'. This includes the development of a nationally consistent regulatory environment for public infrastructure (including the National Access Regime discussed later in this submission).

The Finance Minister, Lindsay Tanner, in discussing the Government's reform agenda for regulation of 'producer industries' (such as grain) stated that '….*exercising deregulatory discipline across the length and breadth of government is central to the task'.* He notes that *'…excessive regulation tends to have a regressive effect*'.

The ITS Global report prepared for AWB and released in November 2006 proposed that

> *"(deregulation) …. carries a high risk of obstructing access to foreign markets for a significant number of Australian farmers, who would not be competitive without the Single Desk to stabilise their returns. The farmers hardest hit would be those on smaller farms (with gross income of less than A$ 500,000 per year). Of Australia's 16,300 grain-only growers, 12,500 gross less than A$ 500,000 per annum and 6,500 have revenues of less than A$ 200,000 per annum. Crop growers had average farm cash income margins (income after all farm cash costs but before interests, tax and depreciation) of around 20 percent in 2004-05. To avoid significant dislocation in rural communities, structural adjustment would be required immediately to support these farmers. Structural adjustment would evidently be significantly more costly if it was needed to take farmers from their current positions off the land immediately, than if it were provided after farmers had undertaken several years of planning in view of future change. The costs of this would be very large, many times higher than the A$ 1.76 billion adjustment package provided to the dairy industry a few years ago."*
>
> *(ITS Global, November 2006, Sustaining Australia's wheat export markets. Pg 65)*

Prior to the removal of the wheat export monopoly, much was made of the 'disaster' that would befall the grains industry. as predicted, no evidence has emerged that any of the of 'doomsday' economic scenarios, and here has been no 'significant dislocation of rural communities' as a result of the removal of the monopoly as proposed by at the time by AWB through ITS Global. Further regulatory reform will not precipitate any such 'dislocation', or precipitate the need for any form of 'adjustment package' as proposed by ITS Global.

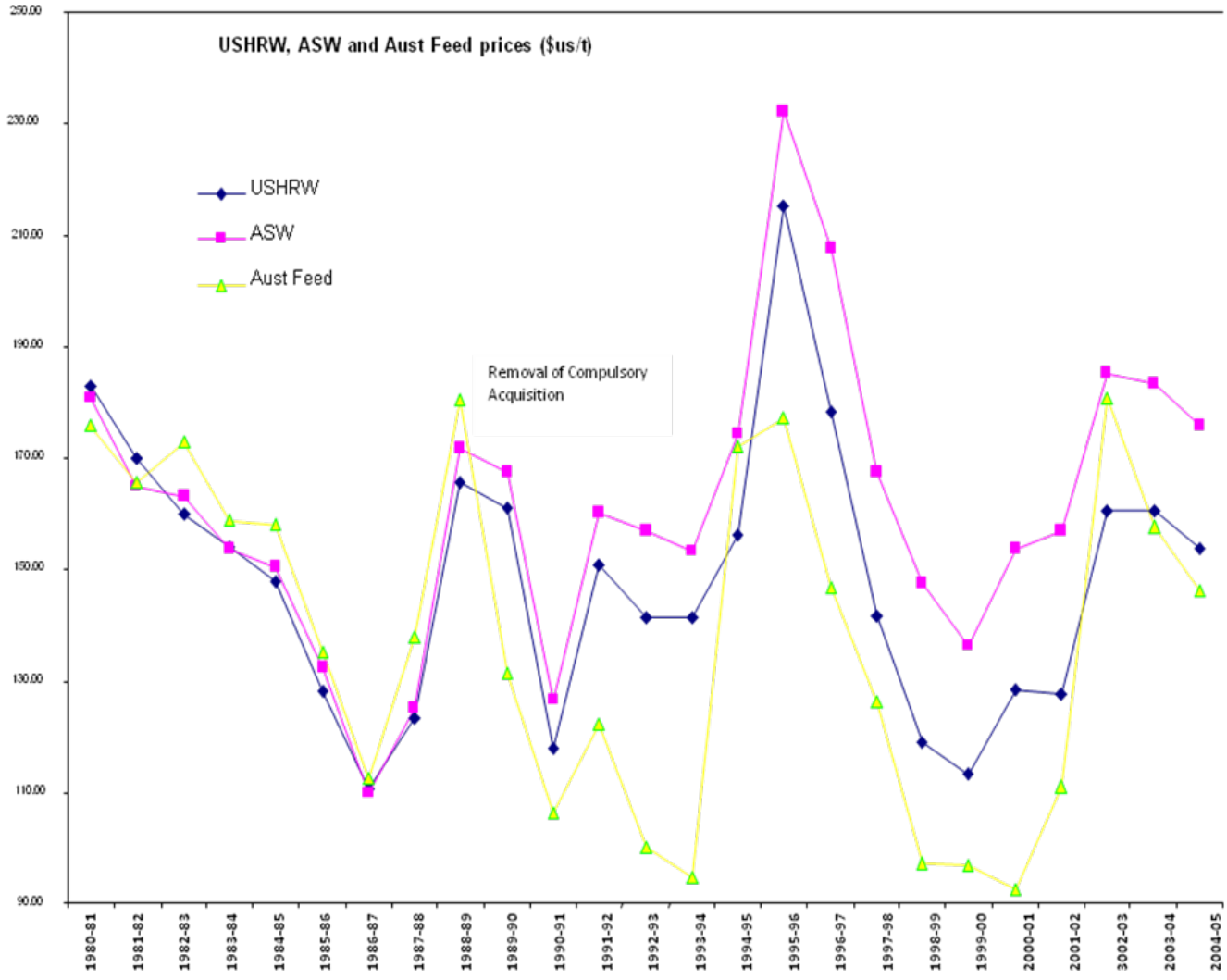
If ongoing accreditation is required, are there alternative options for accreditation that would deliver better outcomes? What are the costs and benefits of alternative options for accreditation?

No empirical need for continued regulation of grain exports, or indeed the increase in regulation that has occurred, has been supplied to date.

We believe that any form of regulation, above that which applies to normal commercial practice encompassed by the Corporations Act, the Trade Practices Act, and other related Acts and Regulations, is not warranted on any rational or factual basis.

Experience from within the industry indicates the benefits of the removal of regulation. When compulsory acquisition of feed grade wheat was removed in 1984, the price, artificially set above that of export milling wheat by the Australian Wheat Board, fell and prompted a significant increase in domestic consumption. This dramatically changed the nature of the grains industry in eastern Australia, to the benefit of all industry participants.

Graph Showing the Impact on Feed Wheat Prices After Removal of Compulsory Acquisition



Source – ABS, ABARE.

Removal of regulations controlling the export of wheat in containers in August 2006 prompted an increase in this trade, as multiple exporters were able to participate in the deregulated container trade.

Since the removal of the bulk wheat export monopoly, up to 20 bulk wheat exporters have participated in the market, selling wheat to a range of markets and customers that were never serviced by the monopoly.

Is it appropriate that bulk wheat exporters be subject to an accreditation process when those in industries such as the following are not:

- **non-bulk exports of wheat and other grains**
- **domestically traded wheat and other grains**
- **Other bulk export grains?**

GrainCorp makes this submission on the premise that existing laws and regulations (excluding the Wheat Export Marketing Act) provide sufficient legal protection for all parties operating in the Australian wheat market.

Existing laws and regulations that apply across the community that apply to the conduct of normal commercial activities apply equally to the wheat industry and ensure that transactions are carried out in a proper and legal manner. Were they are not, legal sanctions apply.

For example, the conduct of normal commercial trade in barley, (an export sector that is not regulated except in South Australia through a light handed export licensing system) should be no different to wheat. Where an exporter loads a vessel with both wheat and barley, these grains are subject to two different regulatory regimes.

Similarly, the purchase of wheat on the domestic market for sale into the domestic market should be subject to the same laws and regulations as those governing the sale of similar wheat into the export market.

Bulk wheat exports should not be treated differently from the bulk export of barley, other cereals, sorghum, oilseeds or pulses, or differently from bagged or containerised wheat exporters.

If ongoing accreditation is not required, what is an appropriate time for it to end?

It would be appropriate for the current level of regulation to be realigned to better reflect the existing commercial and business regulation that governs the conduct of normal commercial trade in line with the following timetable.

- Replacement of the current accreditation scheme with a licensing scheme that replicates the bulk barley exporter licensing scheme operating in South Australia to operate from 1st July 2010 until 30th June 2011.
- Removal of the need for the ACCC access Undertakings from 1st July 2010 and their replacement with a Code of Conduct linked to a revised licensing system until 30th June 2011, and then from that date a port terminal access regime consistent with that proposed by the national Competition Council's 'National Access Regime', provided for under a revised Part III A of the Trade Practices Act.
- Repeal of S 9AAA of the Customs (prohibited Exports) Act 1958 by July 1st 2011 and thus full deregulation of bulk wheat exports from that date.

What would be the consequences of removing accreditation?

As previously described, GrainCorp contends that the wheat market after 25 years of 'free trade' in feed grains, 20 years after milling wheat deregulation and 18 months of 'de-monopolisation', has normalised.

Removal of the current regulations, in line with the timetable proposed above, would have little or no negative material impact upon the wheat market. Wheat growers would still have a considerably higher degree of market power and choice than they were able to exercise when the wheat export monopoly was in place. Wheat growers will also have the advantage of a more competitive market into which they can sell their wheat.

Wheat growers will not be losing any degree of financial security or guarantees, as the current accreditation scheme provides them no measure of this sort of security. Growers derive financial security from the application of existing contract and credit law, the Trade Practices Act, and specific Acts and Regulations that apply to grain trading. The WEMA provides no form of 'security' for growers or any other party, and any argument that proposes that it does is fallacious.

In the absence of accreditation, would regulation of other aspects of bulk wheat exporting still be required? If so, which aspects? Is there anything particular about the wheat industry that requires additional regulations that other grains and commodities are not subject to?

If the current bulk wheat export accreditation was removed, or significantly altered as proposed by GrainCorp, exporters would still have to comply with the following regulatory requirements that pre date the 2008 Act and are independent from it;

- AQIS inspection requirements.
- The payment of levies required under the [Primary Industries Levies Collection Act] and the Taxation Act.
- All matters that relate to quarantine and biosecurity requirements made by the importing country.
- Normal obligations under contract law for the payment of money when grain is purchased.
- All relevant matters related to the Corporations Act, Trade Practices Act, etc.
- Appropriate ASX and ASIC regulations that apply to publicly listed companies.

There is no aspect of the Australian wheat industry that requires regulation in a manner or form that varies from other bulk grain exports, or other commodities.

Criteria and Conditions

Are the eligibility criteria for and conditions imposed on, accreditation of bulk wheat exporters appropriate? If not, what changes need to be made? What is the appropriate duration of accreditation? If accreditation is ongoing, should there be more stringent tests for initial accreditation than for renewals?

The scheme provides no financial guarantees or warranties to any parties selling wheat to, or buying wheat from, accredited exporters, and on this basis, the regulation provides no guarantee or 'protection' or thus any value to market participants.

The current scheme was established after a Senate enquiry. The resultant report did not establish any empirical evidence that the new level of regulation was needed for economic or legal reasons. Also, at no stage was the need for current regulation, in the form of regulation by the ACCC of grain export port terminal access, ever established to a level that would have satisfied the established National Competition Council process for evaluating the need for imposing an access undertaking of the type required under the Wheat Export Marketing Act 2008 (WEMA 2008).

The Productivity Commission, in its 2007 Draft Research Report, *Annual Review of Regulatory Burdens on Business: Primary Sector*, recommended that the wheat marketing arrangements then in place (bulk wheat export monopoly) should be *subject to a review in accordance with National Competition Policy principles as*

soon as practicable. This advice was ignored by the Howard Governments review of wheat marketing regulation, and was again ignored by the 2008 Senate Inquiry.

GrainCorp believes that the current bulk wheat export regulations should be the subject of such a review, and that National Competition Policy principles should be used as the measure of the appropriateness of the form and application of the WEMA, the bulk wheat accreditation scheme, and the need for access Undertakings.

To date, no such objective measurement has taken place. It is GrainCorp's belief that should these principles be applied to the WEMA, the scheme and the requirement for ACCC access Undertakings, these three components of the current regulatory regime would be found to be inconsistent with those principles.

Given the anticipated desire by both the Government and Opposition to continue regulatory intervention at some level as a 'transitional' or political measure, GrainCorp proposes that a balance be struck between the much higher cost model currently imposed by Wheat Exports Australia and the ACCC, and the low cost approach used in South Australia to regulate bulk barley exports from that state.

A regulatory regime mirroring that currently in place in South Australia administered by the Essential Services Commission of South Australia (ESCOSA) should have the effect of;

- Reducing the cost of regulation from the current estimated direct level of >$20 million PA.
- Reducing the cost of the regulatory authority from the current >$4.2 million PA.
- Allowing the removal or reduction of the Wheat Export Charge of $0.22 / T paid by growers from approximately $3 million PA.
- Removing barriers to the entry of new exporters.
- Allowing growers to export their own wheat without having to gain accreditation.
- Increasing regulatory certainty for exporters.
- Removing regulatory duplication.

The current cost burden of >$20 million is ultimately carried by growers in the form of passed back charges and reduced efficiency. Removing the current regulations, or lessening the cost burden in the short term, would be a saving of approximately of $1.00/T.

Removal, or realignment of the current regulations, would not impact on the financial security of growers and others selling wheat, as the current scheme administered by Wheat Exports Australia provides no such guarantee.

Should a licensing system similar to the ESCOSA system be put in place, it could be administered by the Department of Agriculture, Fisheries and Forestry (DAFF).

Is there an overlap between the accreditation criteria (and conditions) set out in the Act and regulations of other existing regulations such as the Corporations Act 2001 (Cwlth)?

GrainCorp believes there is significant overlap between the Wheat Export Marketing Act 2008 and the Corporations Act, Trade Practices Act and a range of other Acts and Regulations that bind accredited exporters of wheat to act in a lawful manner.

The above mentioned Acts and Regulations apply to all business dealings that relate to the trading of wheat in the domestic Australian market, and to the trading of non-regulated grains in both the domestic and export markets. In many instances, these Acts and Regulations have primacy over the Wheat Export Marketing Act 2008.

All of the matters that Wheat Exports Australia require for both their 'fit and proper' test, and for the 'notifiable matters', are matters that duplicate provisions under the Corporations Act 2001, and for listed companies, ASX listing rules.

Other criteria contained within the scheme, including the financial disclosures, duplicate requirements under a range of Acts and Regulations that apply to accredited companies.

The bulk barley export licensing scheme administered by ESCOSA requires an organisation to attest to the fact that relevant laws and regulations are being observed, that is, that the company is observing laws that apply to it.

Should a company make a false declaration to the issuer of the licence, that licence can be withdrawn. Under this system, the license applicant is assumed to be complying with relevant laws and regulations and is thus acting in a lawful manner. We support a transition to this approach for the period 1st July 2010 to 30th June 2011.

The Wheat Exports Australia scheme requires an applicant to provide evidence that the applicant is not in contravention of existing laws and regulations. Under the wheat accreditation scheme, the accreditation applicant **is assumed not to be complying** with relevant laws and regulations, and is thus required to 'prove' to Wheat Exports Australia that they are acting in compliance with a range of non wheat export related laws and regulations.

The ESCOSA barley licensing system recognises the primacy of existing laws and regulations. The Wheat Exports Australia scheme essentially duplicates existing legal compliance.

Table 1: Comparison of South Australian barley export regulation to WEA bulk wheat regulation

Activity	**South Australian barley export regulation**	**Wheat Exports Australia bulk wheat regulation**
Cost	Low	High
GrainCorp approx. annual cost	<$10 K PA	Initial year >$250 K
		Second year >$1 million including ACCC related compliance costs
Length of legal grant	Annual	Initial 1 year. Second year 2 years.
Basis of application	Legal attestation to compliance with relevant regulations	Submission of more than 1000 pages of application and support material to date
Level of regulatory duplication	Nil	Multiple
Penalty	Loss of right to export barley in bulk	Loss of right to export wheat in bulk
Financial guarantee or warranty	Nil	Nil
Cost of operating regulatory scheme	Approx. $200 K PA	Approx. $4.3 million PA
Cost to industry	Approx $200 K PA	Approx $20 million PA

The outcome of both the Wheat Exports Australia and ESCOSA schemes is the same, but the manner in which they are imposed is different. The former is onerous and costly, the latter is reasonable and low cost.

The end result and level of 'protection' afforded to parties transacting business with an accredited or licensed exporter is the same – none.

Competition or 'access' related concerns that led to the imposition of new competition regulation through the ACCC could be dealt with under a revised bulk wheat export scheme, by requiring a 'access code of conduct' as part of a revised accreditation scheme until 30th June 2011.

From that date, a regime consistent with that proposed by the National Competition Council's 'National Access Regime', provided for under a revised Part III A of the Trade Practices Act, should be put in place.

Such a code of conduct would replicate key elements of the current port access undertakings, but would not require the involvement of the ACCC and the associated costs.

Level of Assessment

Is the level of assessment and number of audits undertaken by WEA commensurate with the expectations of market participants?

It is GrainCorp's position that the level of assessment and auditing undertaken by Wheat Exports Australia is onerous and not commensurate with the expectations of market participants. If the accreditation scheme did provide a level of 'assurance' or a financial guarantee in the case of payment default to parties transacting business with accredited exporters.

GrainCorp was also concerned that at times Wheat Exports Australia sought information which that GrainCorp believed was of no relevance to the conduct of the accreditation scheme, and that 'regulatory over-reach' added cost and complexity to what should be a relatively simple regulatory task.

The fact that accreditation of an exporter provides no financial guarantees or warranties to anyone transacting business with such an exporter, is central to assessing the appropriateness of assessment.

Essentially the assessment undertaken by Wheat Exports Australia assures that accredited exporters have *met the conditions of accreditation*, and nothing else. As such the scheme is completely self serving and provides no tangible benefits to any party other than the regulator.

What benefits are provided by the current level of assessment, including audits?

The current level of assessment and auditing has increased the cost of running the accreditation scheme and the cost of complying with the scheme. As a result, the scheme is burdening the wheat export sector with additional costs and imposing significant inefficiencies, in the form of needless compliance activities. GrainCorp believe that no benefits are provided by the current level of assessment and audits.

What compliance costs are associated with accreditation for bulk wheat exporters?

GrainCorp has submitted around 1000 pages of compliance documents to Wheat Exports Australia at a total approximate cost to date of up to $1 million.

GrainCorp is expecting legal costs of up to $500,000 related to the publish-negotiate-arbitrate system under the ACCC access Undertaking.

What regulatory costs do WEA incur from running the accreditation scheme?

Wheat Exports Australia public accounts indicate that the approximate annual cost of the regulator is >$4.3 million PA.

Could accreditation present an unnecessary barrier to entry for potential exporters of bulk wheat?

The current onerous level of accreditation may act as a barrier to entry to potential bulk wheat exporters. The cost and complexity of the scheme is too high when compared to the benefits to both the exporter and the industry at large.

As an owner of port terminal elevators, GrainCorp is subject to a significantly higher level of compliance and related costs than other exporters, and as such the scheme imposes a significantly 'un-level' playing field, where the owners of infrastructure are penalised.

How might the compliance and regulatory costs of accreditation change as the Scheme matures? Is renewal of accreditation a less onerous process than initial accreditation? Should it be?

As previously stated, GrainCorp has to date incurred up to $1 million in new legal and compliance costs, including those related to securing an access undertaking approved by the ACCC.

GrainCorp found that the accreditation renewal process was in fact more onerous than the original accreditation process and has the effect of potentially driving export market participation away from eastern states.

The regulator had included a significant number of new criteria, requiring applicants to provide significantly more information in order to meet accreditation requirements. No explanation was forthcoming from the regulator as to why additional information, particularly significant financial information, was required.

Given that the accreditation scheme provides no financial guarantees or warranties to anyone transacting business with an accredited exporter, and that current contract and other laws regulate normal commercial transactions, collection of the detailed financial information required by Wheat Exports Australia (much of it commercially sensitive) appears pointless.

Wheat Exports Australia requires a range of reporting that is onerous and disproportionate and its powers are broad and somewhat arbitrary. The requirement to supply the regulator with correspondence relating to notifiable matters is a good example. No explanation has been provided as to why the range of matters that are seen by Wheat Exports Australia as being 'of relevance', when in fact most of the matters that fall within their broad requirements have little or no relevance to the conduct of normal business, in particular the buying of wheat from growers or the provision of grain elevation services.

Role and Funding of WEA

Is there an ongoing role for WEA? If so what should the nature of that role be and how should ongoing functions be funded?

GrainCorp believes there is no ongoing role for Wheat Exports Australia. The wheat export sector should be deregulated in the following manner;

- The requirement for accreditation of bulk wheat exporters should either be removed or significantly reduced to the level mentioned previously from 1st July 2010.
- Section 9AAA of the Customs (Prohibited Exports) Act 1958 should be repealed by 1st July 2011.

Are there any other organisations that could take on the role of accreditation? Is there scope for tendering out accreditation? If so, would this reduce the cost of the accreditation process?

The previously described alternative licensing scheme should be administered from within DAFF. The cost of this administration, estimated to be approximately $200 K PA, could be recovered through an annual licensing fee of approximately $10 K PA.

Are the current funding arrangements for WEA appropriate and sustainable?

GrainCorp believes that, with the proposed adjustment of the regulatory regime to a more appropriate level, regulatory costs would reduce significantly.

Are market participants getting value for money in the services provided by WEA?

No.

Can Australia learn from the approach that other countries take?

The manner in which the South African wheat market was deregulated in the mid 1990's provides an effective case study for Australia. This sector moved very quickly from price controls over grain storage, grain, flour and bread, to a deregulated market. Following deregulation, wheat production expanded.

To assist with the transition from a managed to an open market, the industry and Government formed the South African Grain Information Service (http://www.sagis.org.za/) for the provision of industry information. This model, where regulation has been removed and cooperative self regulation has been introduced, represents a template for a pragmatic 'next step' for the Australian grains industry.

2. Port Terminal Access and Services

How significant are competition concerns relating to port access? Is there evidence of owners of port facilities gaining a trade advantage over rival exporters?

There is significant cost attached to providing the scale of infrastructure provided by bulk handlers. In GrainCorp's case, the port terminals the company owns have an annual elevation capacity of some 15 million tonnes, an annual fixed cost in the region of $25 million, and an average annual export task of approximately 5 million tonnes.

Given the relatively low throughput usage of these terminals, and the high fixed annual costs, GrainCorp is not in a position to 'exclude' the elevation requirements of competing exporters and has never done so.

The distinguishing feature of the grain and wheat industry in eastern Australia, when compared with other regions, is the focus on the supply of grain to domestic customers. From an average grain production of 16 million tonnes in eastern Australia, only around 5 million tonnes is exported in bulk, representing less than 35% of production.

The domestic grain market in eastern Australia consumes up to 10 million tonnes of grain PA. This demand is relatively consistent from year to year.

Over 100 end users consume grain in eastern Australia, where:

- Flour millers consume around 2.3 million tonnes of wheat for the production of flour
- Oilseed crushers consume around 0.6 million tonnes of canola for the production of edible oils
- Maltsters consume around 0.5 million tonnes of barley for the production of malt; and
- Stockfeed consumers (made up of compound producers, poultry, feedlots, piggeries and dairy) consume up to 6.5 million tonnes of all grains. These users can substitute between all grains including barley.

Including the period prior to the removal of the bulk wheat export monopoly, no evidence of any anti-competitive behaviour on the part of GrainCorp has ever been proven.

In the absences of access regulation, what is the likelihood of 'regional monopolies' being formed? Is the 'access test' under the Wheat Export Marketing Act necessary?

The spectre of the formation of 'regional monopolies' was raised by AWB initially in the ITS Global 'Sustaining Australia's wheat export market' (November 2006) and in subsequent presentations to the Senate Rural and Regional Affairs and Transport Committee Inquiry into the Wheat Export Marketing Bill 2008.

The matter was initially raised as part of the campaign to defend the wheat export monopoly. The 'regional monopoly' spectre then became a key focus of lobbying for the imposition of new regulatory controls upon grain storage, handling and export elevation infrastructure, after the Rudd Government introduced the Wheat Export Marketing Act (2008) to Parliament.

No credible evidence has ever been presented to indicate the company has ever sought to extract monopoly rents or to form a 'regional monopoly'. The structure of the grains industry in eastern Australia militates against the formation of a regional monopoly, and as such there is no requirement for regulation to prevent the formation of what the market will never allow to form.

- Grain growers enjoy a competitive market where only 30% of grain produced in the eastern states is exported from GrainCorp port terminals. Over 50% of grain produced is consumed by the domestic market.
- A significant portion (up to 25%) of grain is exported from competing facilities, including the containerisation of grain.
- GrainCorp has no incentive to hinder access given that its terminals average shipping utilisation is only 15% and only 24% usage in a maximum year. Our business model requires us to maximise throughput as demonstrated by GrainCorp's track record of providing public access rates to others without the need for regulation.
- GrainCorp's business model is based on open access. GrainCorp has no history of refusing access or of acting in an anti-competitive manner in respect of grain export terminals. For example, GrainCorp voluntarily engaged with the NSW Government to allow multiple licences for export barley and canola when it acquired the NSW Grain Board export rights in 2003.

What is the prospect of rival port terminal facilities being built? Does this vary across jurisdictions?

There are no non-regulatory barriers to the entry by any party into the provision of port elevation services for grain export (other than those now imposed by the Act and the ACCC).

A commercial company that is not willing to pay a commercial charge for a commercial port elevation service is free to by-pass the established service providers, and to invest in infrastructure that will meet their own needs.

The September 2009 purchase of the former Brisbane Sugar terminal by Wilmar Gavilon, clearly indicates that if commercial interests are attracted to a particular investment, in this case a port elevator that is capable of handling grain, relevant investment decisions will be made.

The investment by Sumitomo in the Melbourne Port Terminal, and the building of the 'outer harbour' terminal by ABB Grain (now Viterra), indicate that there is very real, or potential for real, competition for provision of grain elevation services in eastern Australia that acts as a natural anti monopolistic measure.

Should a commercial party seek to establish alternative grain elevation capacity in Mackay, Gladstone, Brisbane, Newcastle, Port Kembla, Geelong or Portland (the sites of GrainCorp operated grain elevators) there are no known restrictions existing in any or all of these ports to the establishment of new grain export terminals.

Could access to port terminals be adequately regulated using only Part IIIA of the Trade Practices Act (without any link to bulk export accreditation)?

Yes. GrainCorp believes that the Trade Practices Act provides adequate protection against unfair or discriminatory behaviour by infrastructure owners. It is GrainCorp's position that the imposition of the current access undertakings could not be sustained were it not for the requirement for such undertakings under the Wheat Export Marketing Act 2008, as the infrastructure cannot be considered to be 'essential' under the terms used by the National Competition Council to define such infrastructure.

Proposed revisions to Part IIIA of the TPA, to create a National Access Regime, reinforces the point made above.

Regulatory intervention in the Australian grain industry continues to hamper investment and diversification, and continues to encourage non-commercial behaviour on the part of industry participants. Removal of regulatory imposts, including those newly imposed by the Wheat Export Marketing Act 2008, will allow the wheat sector, and thus the whole of the Australian grains industry, to commercially, and economically, normalise. This will encourage investment, industry diversification and growth.

Provision of port terminal services, and the costs charged for those services, should be a matter for commercial contractual negotiation between GrainCorp and the consumer of such services. There should be no regulatory intervention into the provision of services at what is not 'essential infrastructure'.

Would the port terminals be declared under the National Competition Council process if the requirement for accreditation were removed? If not, why is there a requirement for access undertakings under the Act? What would be the consequences of removing the 'access test' from the Act?

As previously stated, grain elevation infrastructure would not meet the criteria set out by the National Competition Council (NCC) for declaration as 'essential'. In its submission to the Productivity Commission, the NCC noted the following,

> *"Despite the perseverance of the regulation of the wheat export industry, it has never been clearly established that such regulation is warranted. By contrast, following NCP reviews of arrangements in other grain markets, governments have removed unwarranted restrictions on competition. For example, in 2001 Victoria deregulated its monopoly barley export marketing arrangements and in 2002 Queensland ended its monopoly wheat and barley export marketing arrangements. Western Australia partially deregulated its grain industry marketing arrangements in 2002 when it introduced a scheme under which grain exporters could obtain a licence to export prescribed grains (barley, lupins and canola) in competition with Grain Pool Pty Ltd, which led to a significant increase in the number of entities providing export marketing services. Following a review by the Economic Regulation Authority the Western Australian Government fully deregulated the grain export market on 23 October 2009. Similarly, South Australia introduced a barley export licensing scheme in July 2007 to facilitate a three year transition period prior to the full deregulation of the state's barley exporting arrangements. Since the introduction of the barley export licensing scheme, the Essential Services Commission of South Australia has issued barley export licences to 15 entities. As is the case with these other grain markets, the wheat export market is becoming increasingly diverse. This is evident from the increase in the number of wheat exporters from a single desk to 23 accredited wheat exporters within a period of 12 months.*

In the Council's view, to date little if any evidence has been provided to establish that it is necessary to regulate access to port terminal services for bulk wheat export. The increasingly deregulated environment and the greater number of market participants militate against the exercise of monopoly market power by wheat marketers that own handling facilities. There is also a question as to whether some of the transport and handling facilities used to provide wheat export services, particularly up-country grain storage and handling facilities but also some port storage and handling facilities, have natural monopoly characteristics.

In such circumstances, the Council considers that it is undesirable and risky to continue imposing access regulation to port terminal services (or to introduce any additional access regulation other than where the processes and requirements of Part IIIA of the TPA are met). In the absence of clear evidence of a need for regulated access, unnecessary costs and regulatory burdens are likely to be imposed on wheat export marketers and other participants in wheat markets. In particular, inappropriate access regulation could restrict investment and innovation, and impede desirable change. In a period where the wheat industry is emerging from a period of regulated monopoly, it is important that the processes and structures which arose in that period are not cemented by unnecessary regulation that introduces rigidities and barriers to change.

In the event that access regulation is needed the Council's view is that access to port terminal services can be appropriately regulated under the National Access Regime.

(National Competition Council, submission to the Productivity Commission 'Inquiry into Wheat Export Marketing Arrangements', 11th November 2009.

The 2009 review of port terminal regulation carried out by the Essential Services Commission of Victoria noted that grain export terminals were not essential infrastructure, and as such should not be regulated and subject to pricing control. The Victorian ESC, as a result of its review of the *Grain Handling and Storage Act 1995 (Vic)*, 'deregulated' export grain elevators from 1st October 2009.

Part III A of the Trade Practices Act contains within it sufficient provisions and significant enough penalties to discourage or eliminate anti-competitive behaviour on the part of infrastructure owners such as GrainCorp. The current access undertaking has significantly increased the cost of providing port terminal services, and reduced the flexibility with which these services can be provided. GrainCorp believes that the cost of complying with the new port terminal protocols will increase exporters' costs, and as such there is no significant benefit to any party, from growers to export customer, from the new level of regulation.

As grain elevation services are provided under commercial contracts to grain exporters, removal of regulated port terminal access would fall back to being governed by the commercial contractual arrangements between service provider and service user, and to the relevant TPA provisions.

A port elevator operator acting in an unfair manner would be subject to the full force of the law, should evidence exist of such behaviour. As such, there is no need for additional regulation sitting above the TPA.

How significant are the compliance costs (to exporters and others) and regulatory costs (to the ACCC) associated with the requirements to have access undertakings?

To date, GrainCorp has incurred approximately $1 million in additional compliance costs related to the wheat export accreditation scheme and the ACCC Undertaking.

Have export opportunities for bulk handlers been disrupted due to the uncertainty stemming from the access process? Has the uncertainty around the access undertakings affected other exporters?

The access process imposes significant additional regulatory cost on GrainCorp. To date, approximately $1 million additional compliance cost has been imposed upon the company. The commencement of the 'publish – negotiate – arbitrate' process is likely to impose up to an additional $500,000 in legal costs related

to the requirement to negotiate with up to 20 parties over the terms and conditions with the Bulk Wheat Port Terminal Services Agreement.

This requirement is an unreasonable impost upon companies that own port terminals, and is further proof of the discriminatory nature of the current legislation and its bias against those companies that own heavy assets such as export terminals.

GrainCorp worked diligently between July and November 2009 to reduce the uncertainty over the imposition of the new ACCC regulation. We believe that there was minimal 'real' uncertainty for wheat exporters. The port terminals were always going to be operating and providing elevation services. The major uncertainty related to the exact terms and conditions under which the services would be delivered.

GrainCorp sought to alleviate this uncertainly by publishing early drafts of the Port Terminal Protocols, which were eventually adopted by the ACCC in a form that was largely unchanged from the early drafts.

The major uncertainty was experienced by the GrainCorp Trading business, which was unable to provide clarity to trading partners, particularly for sales during the October and November 2009 period.

Is the requirement for port terminal access undertakings affecting investment on port facilities? If so, how?

GrainCorp believes that the regulation of port by both the ACCC and Wheat Exports Australia is a disincentive to investment. This belief is supported by the findings of the Federal Government's Export Infrastructure Taskforce who found that:

> "*The greatest impediment to the development of infrastructure necessary for Australia to realise its export potential is the way in which the current economic regulatory framework is structured and administered. It is adversarial, cumbersome, complicated, time consuming, inefficient and subject to gaming by participants. There are too many regulators and regulatory issues are slowing down investment in infrastructure used by export industries*".[1]

In his address to the 'In the Zone Conference' University of Western Australia Perth, 9 November 2009, Minister for Small Business, Independent Contractors and the Service Economy Minister for Competition Policy and Consumer Affairs Minister Assisting the Finance Minister on Deregulation Craig Emerson, Mp, said,

> *"At present the private sector is responsible for less than half of national investment in economic infrastructure. The policy challenge is to improve private sector incentives for investing in infrastructure, especially export infrastructure".*
>
> *"But crucially, we will need to ensure that there are strong private sector incentives to invest in vital export infrastructure. The regulatory arrangements governing access by third parties to public and private infrastructure are set out on Part IIIA of the Trade Practices Act. These arrangements were developed in the mid-1990s as an important part of the national competition policy reforms. Building on the liberalising microeconomic reforms initiated in the 1980s, the national competition policy reforms were the second wave of reforms in fashioning Australia's open, competitive economy. The national competition policy reforms were largely directed at government-owned enterprises, moving them to a position of competitive neutrality with private investment projects and operations. While the National Access Regime was intended to apply access rules regardless of whether infrastructure was publicly or privately owned, much of the focus was initially on publicly-owned infrastructure. But a wave of subsequent privatisations means that much of that infrastructure is*

[1] Report to the Prime Minister by the Exports and Infrastructure Taskforce, May 2005, page 2.

now privately owned. These considerations led to regulatory arrangements that promoted more efficient use of existing infrastructure, but arguably less emphasis was placed on ensuring strong private incentives to invest in new infrastructure. If this analysis is correct, it might be timely to revisit the National Access Regime to ensure it is consistent with the imperative of meeting Australia's colossal infrastructure challenge".

As the current regulations stand, if a port terminal is established and operated by an organisation that is a related body corporate to an accredited exporter, that infrastructure will have to be subject to an access undertaking approved by the ACCC and all parties will have to be granted 'fair and open access'.

It may be possible for a company to establish grain elevation infrastructure that is capable of assembling individual cargos, loading vessels and handling sufficient grain to meet an individual exporters requirements. A commercial case for the establishment of such infrastructure could be made, with relatively attractive risk/reward metrics.

However if an exporter were forced by regulation to grant access to other parties, the infrastructure planned may not be of sufficient capacity to handle requested demand, thus making it necessary that construction be of such a scale that would accommodate additional potential users. This would inflate the initial cost and reduce the commercial return that could be expected from such a project.

This is highly likely to ensure that any company seeking to gain some commercial advantage from making a significant investment in port elevation infrastructure will not do so.

It may be possible for an exporter to work with an organisation, by providing finance for building a port terminal and thus operation under an exclusive long term arrangement that is not a related body corporate, thus circumventing the requirement for ACCC regulation of access.

In this case, a port terminal could be operated for the exclusive use of one or two parties. This would then create a situation where GrainCorp, Viterra and CBH would each be subject to costly and onerous access regulation, and other infrastructure providing essentially the same services could be managed without the imposition of such a regime.

If the former Brisbane Sugar terminal, now owned by Wilmar Gavilon begins to handle wheat, and if the owners of the infrastructure are accredited wheat exporters, they should become subject to the requirement to have in place an ACCC approved access Undertaking. This may have an impact on the manner in which the new owners of the elevator manage it.

The decision by Wheat Exports Australia to exempt Melbourne Port Terminal from the access requirements creates the environment for such a situation to occur. The decision sets a precedent that allows a port terminal that is managed by a company that is not an accredited wheat exporter, but which is owned by multiple accredited wheat exporters, to escape the requirement for ACCC regulation. This is 'form over substance' and discriminates against GrainCorp.

Having established this precedent, a decision that GrainCorp believes to be in error and inappropriate, the way is now open for companies to repeat this structure in other places. The decision by Wheat Exports Australia to establish a 'two tiered' regulatory system is anomalous and should be reviewed. This decision also indicates the arbitrary nature of the accreditation regime, the lack of consistency with which the system is applied, and the complexity inherent in what is a needlessly complex and costly regulatory regime.

Should terminal access arrangements be consistent across all grains? If so what should be the nature of those arrangements? If not, what are the consequences, if any, of bulk wheat being treated differently?

As previously posited, the current regulations should be lifted to a point that will remove disincentives to investment and provide clarity, fairness and certainty for all parties, where the regulatory regime is applied equally to all regulated parties, not unevenly as it is at the moment.

Port elevators are expensive to maintain and operate. It has often been stated by GrainCorp and other bulk handlers that grain handling infrastructure, like any other infrastructure that handles large volumes of goods, require throughput to generate revenue.

The basic logic that applies to all heavy infrastructure of this sort is that more tonnage equals more revenue, which in turn should equate to profitability. A company that restricts tonnage being put through infrastructure that relies on throughput for earnings is commercially damaging their own interests.

For this reason, GrainCorp is applying the same Port Terminal Protocols to the elevation of all grains at the company's seven bulk terminals. No discrimination is applied to any particular grain, and no priority is given to wheat, even though it is the only regulated export grain.

There is no need to extend the regulatory regime from wheat to other grains, as doing so will not lead to an increase in efficiency, certainty for growers or exporters, or any other commercial consideration.

Broadening the spread of the current regulation may lead to increased costs and a further loss of port terminal management flexibility and is counter to successive Governments desire to lessen the burden of regulation on business.

GrainCorp maintains that the current regulatory impost is too onerous and unfairly penalises companies that have the liability of billions of dollars invested in infrastructure, while allowing companies that have no such liability to be regulated at a much less onerous level.

Is the publish-negotiate-arbitrate approach to access regulation the best approach? If not, what would be better?

GrainCorp believes that the current regulatory system is flawed, unfair and needlessly costly. It is placing an unfair cost on the owners of infrastructure and has constructed a system that allows grain exporters, most of them multi-national companies with no investment in Australia, to use the regulatory system to commercially disadvantage the infrastructure owners.

As previously mentioned, GrainCorp is estimating the future additional cost of the 'publish – negotiate – arbitrate' process at $500,000 over a three month period. GrainCorp has been forced to commission a full econometric model of its port terminal business in preparation for claims by exporters against the current pricing model.

The inevitable arbitration process between GrainCorp and grain exporters, who will claim to the ACCC that prices for port terminal services are too high and should be reduced, is simply a mechanism for these commercial companies to seek to gain a commercial advantage over GrainCorp.

Are charging mechanisms used by bulk handlers transparent? Do they advantage wheat exporting by bulk handlers?

GrainCorp's charging mechanisms are transparent. GrainCorp has a track record of providing access to port elevators to third parties in a manner that ensures maximum utilisation of our infrastructure. This is demonstrated by the following:

- GrainCorp has always published tariff charges and conditions for use of our port terminals by other parties;
- There have been no complaints following sorghum market deregulation in Queensland, and barley market deregulation in Victoria and NSW did not lead to any allegation of abuse of port terminal ownership.

Even if GrainCorp was to have the ability to engage in a foreclosure strategy on other exporters, it would not have the economic incentive, because the scale of the likely losses the company would face from its storage and handling business would far outweigh any gains that could reasonably be made from trading.

For example:

- In 1989, following domestic grain deregulation, GrainCorp offered private storage arrangements for all grain buyers outside of the regulated statutory boards. This led to the introduction of grain 'commingling' and new storage and handling arrangements, that are still in place today;
- in 1991 GrainCorp offered warehousing to all growers, giving them the flexibility to separate their grain storage and marketing choices;
- In 1994 GrainCorp offered grain buyers the option of buying grain for cash at its silos. In 2000 it also allowed buyers to offer cash prices and the ability to transfer grain from buyer to buyer through GrainCorp's own website without approval from, or involvement of, GrainCorp); and
- In 2009 GrainCorp entered into an arrangement with the CLEAR online grain market place to enable an independent third party to provide a grain exchange to growers with grain in warehousing. Today up to 95% of grain is now delivered directly into warehousing by growers at harvest.

It should be noted that GrainCorp continued to provide these 'open access' services to all domestic and export grain buyers when GrainCorp commenced trading grain in 1996 and when it acquired Allied Mills in 2002.

Is the ACCC well placed to deal with access disputes? Should another body be available to facilitate negotiation and arbitration of day to day issues where prompt resolution is important to exporting opportunities?

It may transpire that one or more exporters seek to 'engineer' an access dispute, as part of a strategy to place additional regulatory pressure upon port elevator owners that are also accredited to export wheat in bulk. This strategy may involve seeking the ACCC to us its power to regulate port elevation service prices, as a means of placing a port operator at a commercial disadvantage.

GrainCorp believes that, as a function of the transparency measures introduced by the company in the lead up to and following the acceptance of the access Undertaking by the ACCC, there is little likelihood of *genuine* access dispute arising, as the ACCC has approved both the indicative access agreements and the port terminal protocols.

Having commented extensively on both these documents during the access Undertaking consultation phase, exporters should be fully cognisant of the application of the regulated access regime and thus should be capable of genuinely operating within the bounds of the system that has been approved by the ACCC.

It is of great concern that the manner in which 'compliance' measures will be applied only focus on the access provider. There is no process for ensuring that access seekers also comply with the requirements of the regulatory regime imposed by the ACCC and Wheat Exports Australia. GrainCorp and other port terminal service providers (except Melbourne Port Terminal) can be prosecuted, fined and have export accreditation suspended or revoked, while no such sanction is applied to a service user that doesn't comply with the access regulations.

This is another example of the iniquitous, unfair and ill judged structure of the accreditation scheme and the manner in which it is imposed, and further justification for significant change being made to the system as soon as possible.

Should the bulk handlers have their wheat exporting businesses 'ring fenced'? If so, what form should ring fencing arrangements take?

No credible rationale has been established for the call to 'ring fence' GrainCorp's export wheat trading business and no evidence of an 'unfair' advantage has ever been produced.

The relationship between GrainCorp's grain trading business and the provision of grain handling and port elevation services has been examined by the ACCC on at least four prior occasions. Each time this matter has been examined, no credible evidence of 'unfair competitive advantage' has been presented.

In several submissions to the ACCC during 2009, GrainCorp dealt with the matter of the allegation that the company derives an unfair advantage in the market place.

There are several basic commercial facts that put a lie to the allegation that GrainCorp derives an unfair advantage, and they include;

- To buy grain from growers in an open, transparent, deregulated market such as the current domestic wheat market, GrainCorp has to have on public offer the most attractive price or payment terms. If as a buyer GrainCorp is not able to offer growers the best deal, growers will not sell grain to the company.
- The fact that GrainCorp doesn't have a dominant market position, the company trade between 2 and 3.5 million tonnes of grain from an average annual production of approximately 16 million tonnes and approximately 1.3 of the 5 million tonnes elevated through GrainCorp port terminals in 2009, indicates that competition is such that the company is not able to (or in fact willing to) 'monopolise' the market by offering the highest price to growers all day, every day.
- The fact that GrainCorp is not able to purchase all exportable wheat due to market competition indicates that the market is working, and robust competition is providing wheat sellers adequate choice.
- The fact that 80% or more of the grain that is stored and handled through the GrainCorp storage network is owned by third parties indicates that the company is not in a position to either unfairly discriminate against growers or grain buyers.
- The fact that during 2008/09 GrainCorp exports through the company's port terminal only accounted for less than 1/3 of the total tonnage elevated indicates that GrainCorp is heavily reliant on the activities of other exporters for a significant part of the revenue from the operation of this infrastructure.

To what extent would ring fencing result in a loss of economies of scope from a more vertically integrated business? Would it affect investment and innovation decisions?

It is possible to postulate a theoretical advantage to GrainCorp from the vertical integration of the business. The AWB Limited funded the Allens Consulting Group report, *Competition in the export grain supply chain,* presented to the 2008 Senate Inquiry, postulates the development of 'regional monopolies', and thus proposed the introduction of the regulation of port terminal access by the ACCC.

The nature of the domestic and international grain market means that, regardless of the structure of the rest of the GrainCorp business, the Trading operation derives little or no advantage from vertical integration for the following reasons;

- The value of grain is known and established in Australia as a function of domestic supply, demand and other related factors.

- The prices offered for grain are known, either through direct communication to growers, or via websites.
- The terms and conditions of financing grain procurement are known in the form of advertised loan rates, estimated pool returns and so forth.
- The cost of transporting grain from farm to storage site, and from storage site to domestic user or to port terminal is known.
- The cost of shipping from Australia to country of destination is known via publicly available ship charter rates.
- The value of international grain is known through the various commodity exchanges and via numerous market intelligence services.
- The prices charged by GrainCorp to GrainCorp Trading for receival, storage, handling, transport, port elevation and other services are at commercial rates with no cross subsidies.

Thus it can be established, in light of the factors outlined above that the nature of the market and its transparency is such that there is no 'unfair advantage' that can accrue to GrainCorp Trading, and no 'vertical integration' benefit to the grain trading business.

The major benefit GrainCorp derives from having a trading business is via the storage and handling business unit. By being able to offer prices to growers at GrainCorp country receival sites, the company is able to attract grain deliveries, and thus competing buyers, creating a 'market place' at each site.

GrainCorp is often criticised by growers for often having the lowest prices on offer at the company's own sites. GrainCorp does this, not because it wants to purchase grain, but to create an environment where competitors to GrainCorp Trading (many of whom are customers of GrainCorp Storage and Logistics) can compete more robustly more for grain, thus benefiting growers significantly.

The imposition of 'ring fencing' requirements would place a further cost burden on GrainCorp and similar companies, and further discriminate against companies with heavy infrastructure. If ring-fencing measures were imposed on GrainCorp, it is possible that the trading business could become commercially unviable, due to the costs of duplicating core corporate, back-office, or operational functions. The imposition of such requirements would put at risk GrainCorp entire business model and would thus negatively affect shareholders.

This would have the undesirable outcome of actually reducing competition in the Australian market and thus competition for the purchase of grain from growers would be reduced, as would grower choice, and further entrench the competitive position of multi-national grain traders, which would of course be a desirable outcome for those companies.

While much has been said about the competitive position of companies like GrainCorp, no focus has been applied to the competitive position of the global companies that operate in Australia. Companies such as Cargill, Glencore, Louis Dreyfus, Nobel Resources, Marubini, Itochu, Toepfer Grain, (and possibly soon Gavilon, formerly ConAgra Trade Group, should they purchase a stake in AWB Limited), use Australia as a small part of an international grain trading complex.

The value of Australian wheat, and other grain exports, is subject to pricing that reflects the vertical integration of the businesses these companies conduct internationally.

This weakens Australian companies like GrainCorp through the excessive imposition of domestic regulation. It reduces any advantage from owning or operating infrastructure, or competing in the grain market as a buyer/trader, and ultimately is to the long term strategic disadvantage of the Australian grains industry.

The profitability of the sector will decline, opportunities for investment will reduce, in effect, the current level of regulation, if it is not reduced and applied fairly across all industry participants, may well lead to the loss of control of the Australian industry to the large global grain traders, a trend that has already started with the purchase of ABB Grain by Canadian based Viterra Inc, and the purported 60% purchase of AWB grain trading operations in Australia by USA based Gavilon LLC.

What is the relationship between the 'access test' under the WEMA and state legislation relating to bulk handling companies? Do interactions between the Acts create unnecessary regulatory costs?

The access test is a disproportionate response to the recommendations made by the Commonwealth Governments 2007 Industry Expert Group which simply sought to ensure that there is an open access policy for wheat exporters at grain terminals.

- The access test is an inconsistent and uneven response given that non wheat grains and other services (for example bulk export rail) are not subject to an access arrangements.
- The access test runs the real risk of replacing one form of regulation (for export wheat) with another form of regulation (for port terminals). This will lead to significant additional costs and inefficiency being added to Australian wheat exports and potentially reduced returns to growers for no corresponding benefit.

Is there evidence of land banking by bulk handlers? If so is it of concern.

GrainCorp rejects any accusation of 'land-banking'. GrainCorp only holds freehold title to the land upon which two terminals are located; the remaining five are leased from the relevant Port Authority. The company does not own any land adjacent to any grain terminal that could be construed as a 'barrier to entry' for new service providers.

Are there any issues raised by the exemption of the Melbourne Port Terminal from the access undertaking requirements? Is the exemption appropriate? What are the likely consequences?

This matter has been commented upon under the response to the question about barriers to entry by new service providers. GrainCorp believes that the decision to exempt Melbourne Port Terminal (MPT) from the access requirement was fundamentally incorrect and indicates one of many flaws in the current regulatory regime.

The above view is supported by ESC in their 2008/09 Determination (p64):

- *The MPT had established itself as a major participant in the industry, enabling at least the larger marketers (but perhaps not smaller marketers to the same extent) to substitute between terminals, i.e., access to a particular terminal may not be essential,*
- *Although the increased degree of integration of the grain supply chain has assumed increased importance, and is coupled with wheat market deregulation which lessens the countervailing power of grain marketers, this has blurred the degree to which the grain terminals themselves are to be considered bottleneck facilities, and to what extent integrated supply chains form the relevant bottlenecks,*
- *Other supply chain options such as containerisation, appear to provide viable alternative options for marketers of some minor grains.*

Given this degree of substitutability between terminal services or supply chains, in the Commission's preliminary assessment:

- *Several factors highlighted by the Commission in its 2006 inquiry and in the present review suggest that obtaining access to prescribed services at a particular terminal may not be necessary to permit effective competition in an upstream or downstream market,*
- *The existence of more than one unaffiliated facility and a significant degree of substitutability between services provided by them may constitute an effective duplication of the services.*

Are the shipping problems experienced in the first year of deregulation likely to persist? To what extent were they teething problems in the first year of deregulation? Or are they symptomatic of broader problems, or typical of a peak load situation?

GrainCorp maintains that the industry is effectively no longer in transition. The industry has been undergoing regulatory change since 1984, and the market has effectively normalised following the removal of the bulk wheat export monopoly.

GrainCorp did not experience any logistical or shipping 'teething' problems in the first post monopoly year. No significant delays to shipping that were not related to vessel survey failure were experienced.

What role did Grain Express arrangements play in alleviating (or exacerbating) these logistical problems?

Did these logistical problems impede Australia's export performance?

Will the new CBH (auction based) shipping allocation system in WA work adequately to allocate port capacity at times of peak load? Could the scheme be improved?

GrainCorp does not intend to make any comments about the management of port terminals or shipping operations by CBH.

Are similar problems likely to emerge in other states when those states have larger harvests?

Similar logistical problems to those that occurred in Western Australia are unlikely to occur in eastern states, even during large harvests. GrainCorp's terminals operate on an average utilisation of less than 1/3 of full capacity and exports of grain during the period 1st October 2008 to 30th September 2009 elevated through GrainCorp terminals were not subject to any unusual shipping delays or inefficiencies.

The main cause of shipping delays, the failure of vessels to pass marine survey or quarantine inspection, did not occur at a rate higher than average during the past year and to the extent they occurred were due to the fitness of vessels chartered by exporters .

3. Transport and Storage

Do upcountry facilities exhibit natural monopoly characteristics?

GrainCorp has made up to six submissions to the ACCC over the past 13 years on this matter. GrainCorp storage does not constitute a regional monopoly and no credible evidence has been presented to support such a claim.

The raising by AWB of the 'regional monopoly' argument in the lead up to and during the 2008 Senate Inquiry has been dealt with. The report commissioned by AWB raised the theoretical possibility of the emergence of regional monopolies. No tangible evidence exists that would satisfy a relevant competition assessment process, such as that used by the National Competition Council for the evaluation of infrastructure for the imposition of compulsory access regimes.

The NCC notes in their 11th November 2009 submission to the Productivity Commission,

> *In the Council's view it is critically important that regulation of access is predicated on the declaration criteria being met. If not, there is no basis for confidence that such regulation is likely to enhance competition or efficiency.*

The above mentioned competition assessment process is accessible to all parties. The fact that no individual or company has sought to have the GrainCorp network subject to such an evaluation provides a strong counterbalance to the regional monopoly argument.

Are alternative transport and storage arrangements being inhibited by the current arrangements? If so at what cost?

In the eastern Australian states, more than 10 million tonnes of storage has been erected by non bulk handler storage operators and by grain producers. This proves that there is no inhibition on infrastructure investment by those not wishing to use the GrainCorp bulk handling network.

No additional regulation should be imposed upon the grain storage and handling supply chain, unless or until it can be proved using a credible evaluation process that the infrastructure is of such national significance that access and or pricing should be regulated.

GrainCorp supports the passage of the *Trade Practices Amendment (Infrastructure Access) Bill 2009* and the introduction of the National Access Regime. This Regime will provide a very clear set of criteria for examination of the need for any further regulation of the grain supply chain. It will also proved a clear pathway for decision making based on sound competition principles and should be the basis for any access regulation considerations, including those imposed at port.

That fact that an individual or a company do not wish to pay for a service, or believe that the cost of a service is 'unreasonable', is no rational reason for imposing regulation.

The NCC in their 11th November submission to the Productivity Commission observe,

> *The criteria for declaration are an essential element of Part IIIA and ensure access regulation is applied in situations where it is likely to enhance competition and economic efficiency. In particular criterion (b) seeks to confine regulatory intervention to services provided by facilities that exhibit natural monopoly characteristics such that the construction of multiple such facilities would be likely to waste national resources. It is not designed to capture services provided by facilities merely because they are costly.*

Do the terms and conditions of access to upcountry facilities represent a barrier to entry for potential exporters?

There are no 'barriers to entry' into the grain storage market. Any organisation or individual is free to purchase or lease land and to build grain receival, storage and out loading infrastructure, subject to relevant state or local planning or land-use restrictions.

What is the prospect of competing facilities emerging? Does it vary across jurisdictions?

Evidence of this is demonstrated by AWB's building of the 'GrainFlow' up-country storage silos at strategic sites immediately adjacent to GrainCorp silos, thereby bypassing GrainCorp silos. As previously mentioned, it is estimated that more than 10 million tonnes of permanent on-farm storage has been built over the last decade.

In total across eastern Australia, it is estimated that the 'supply' of grain storage exceeds 33 million tonnes. The average annual grain crop across the same region is approximately 16 million tonnes.

Is there any evidence of owners of upcountry facilities gaining an advantage over rival exporters?

AWB spent several hundred million dollars building approximately 2.5 million tonnes of storage capacity. When AWB was the bulk wheat export monopolist, AWB GrainFlow charged AWB International the highest storage and handling fees of any bulk handler.

Over the past six years GrainCorp's share of storage has significantly declined with the entry of new competitors. Today there is substantial (excess) capacity in upcountry storage and port terminals which has and will continue to drive competition in both grain storage and marketing.

Should upcountry facilities be subject to access regimes? Can access issues be addressed through Part IIIA of the TPA? What about for grains other than wheat?

GrainCorp believes there is no evidence supporting the proposition that up-country grain storage and handling facilities should be regulated.

Such a proposition has not been tested against the relevant NCC criteria, and if such a test were undertaken, the case for regulated access would fail.

If upcountry facilities were subject to access regimes, what would be the impact on the efficiency of the transport and storage system as a whole? Would it distort the transport system as a whole? Would it distort the transport system in favour of road and container transport?

GrainCorp believes that any additional regulation would increase costs and decrease efficiency, as the provision of services to customers would become less flexible and thus less able to meet the needs of a dynamic market.

Additional regulation would impact upon the competitiveness and profitability of grain production, and would be counter to the Governments stated aim to reduce the burden of regulation on business.

Do the Grain Express arrangements raise competition concerns? If so to what extent do these offset benefits of economies of scale and scope provided by Grain Express?

GrainCorp does not intend to make any comments about the management of port terminals or shipping operations by CBH.

Is the rail system a problem for the export wheat industry? Has deregulation changed this in any way?

The current rail infrastructure 'plight' existed prior to the removal of the bulk wheat export monopoly. Problems with rail infrastructure in eastern states stem not from removal of the wheat 'single desk', but from :

a) the growth of the domestic grain consumption since 1984 drawing grain away from the bulk handling and rail system that was established primarily to store and transport grain to port for export, and

b) long term underinvestment by successive Commonwealth and State Governments in rail infrastructure.

Are limitations of the rail, road and receival and storage systems impeding Australia's wheat export performance?

The grains industry in eastern Australia is the beneficiary of significant subsidies in the form of maintenance, repairs and upgrades to the rail network in Queensland, NSW and Victoria. The community at large, via Government, has to evaluate the benefit derived from the current level of subsidy and to make a relevant judgement on the desirability of hauling grain by rail or road.

Hauling grain more than 100 kilometres by road is significantly less efficient than using rail. Port elevators in eastern Australia have been designed to receive between 80 and 100% of grain for elevation by rail.

Rail intake rates are significantly higher than road rates. For example, the most efficient rail intake in the GrainCorp system is located at Port Kembla, where a 2200 tonne train can be unloaded in less than an hour. Other port terminals have rain intake rates of between 1000 and 2000 tonnes per hour. The road intake rate

at Port Kembla is approximately 240 tonnes per hour (TPH), and at Fisherman Islands is up to 400 TPH, where the rail intake rate is approximately 2000 TPH.

For GrainCorp, the cost of unloading trucks is approximately three times that of unloading rail, due to the combination of additional staff required at sample stands and unloading grids, and the tonnes per man hour that results from the lower intake rates.

If forced to increase the truck receival capacity at its port terminals, GrainCorp would have to spend up to $3 million per port terminal (times 7 terminals). This would translate into the need to impose higher service fees.

Given the absence of commercial returns on many rail lines, can large scale investments be justified? To what extent is the system in need of rationalisation?

The perceived absence of commercial return on some rail lines needs to be weighed against the costs and externalities incurred through the greater use of road transport. This places greater externalities on the general public.

GrainCorp believes a sustainable rail transport solution can be developed for grain in NSW and more widely. This would involve keeping the 'grain only' lines open at a low maintenance 'fit for purpose' standard. This would give NSW and other states the best long term economic outcome taking into account:

- The cost of road maintenance;
- Higher grain prices to growers from access to lower cost transport with sufficient capacity;
- A viable export grain industry with job creation in supporting industries; and
- Externalities such as carbon emissions and road safety benefits.

Could the rural road system cope if some rail lines were closed?

Road transport does not have the capacity to move substantial volumes of grain over long distances at harvest. The cost of road transport at harvest attracts a substantial premium and is therefore predominately used for short hauls during harvest.

As already discussed, road transport slows the receival rate of grain at site and all subsequent handling in the supply chain. Additional capital expenditure is being incurred currently and in the future such as in operating truck marshalling areas. This is required to comply with legislation such as Chain of Responsibility provisions in NSW.

Are rail logistics a more significant problem on the East Coast? If so, to what extent does the road system alleviate this?

Is truck access to port facilities a problem?

The lower capacity of road receivals can causes delays. Port congestion is increased, as this grain is received in an un-coordinated manner creating truck queues and delays to trucks that have been scheduled from country silos. The acceptance of a range of grains and grades at a port terminal reduce intake speed, as the port terminals only have one receival hopper and limited intake grain segregation space.

Rail logistics are not any more a problem on the East Coast than anywhere else. However, most export grain has to be pre-accumulated at country silos, as it is not practical to manage the receival of large volumes of grain from on-farm storage direct to the port terminal given;

- Grain quality assurance cannot be managed. The receival of out of specification grain at the port terminal (for example in terms of quality, pesticide residues and insects) negatively impact:

- Port capacity, as this grain has to be segregated to enable post receival pesticide analysis and quality certification reducing available bin space capacity. If this grain is found to be out of specification and cannot be shipped, available bin space capacity is further reduced with the port terminal being used in a highly inefficient manner;
- Shipping costs, from cargo accumulation delays to allow for grain fumigation. This in turn results in demurrage for the grain owner and flow-on delays to subsequent vessels; and
- GrainCorp's AQIS export premises accreditation, as a grain infestation at the port terminal could lead to a suspension in our license while the terminal is being cleaned down, resulting in further shipping delays.

Do bulk handlers use the prospect of additional charges to discourage use of rival upcountry supply chains? To what extent are additional charges justified?

The ACCC has previously reviewed several transactions involving grain facility operators and has consistently reached the conclusion that there is no ability for the operator to leverage any market position into grain trading (absent an export single desk monopoly) or into downstream product markets. In particular, this was the conclusion in the GrainCorp/Allied Mills, ABB/ABA AusBulk and GrainCorp/Ridley transactions.

Focus has been placed on GrainCorp up-country storage and handling facilities. GrainCorp does not have the ability to foreclose on competitors, or to discriminate against them, for the following reasons;

- There are alternative storage facilities available including competitor facilities and on-farm storage which have capacity to meet most of the annual grain production requirements. These facilities would enable growers and grain buyer to by-pass GrainCorp facilities.
- GrainCorp has strong constraints on its ability to target its competitors use of its facilities due to factors found previously by the ACCC including;
- Ownership of grain in GrainCorp facilities is not fixed and changes without the knowledge of GrainCorp, such that GrainCorp is unable to determine with certainty the ownership of grain within its facilities;
- GrainCorp does not know the end customer or end user who the grain is destined for when it is received into the facility or during the time it is held in the facility;
- GrainCorp's knowledge of its rivals operations, volumes and prices is incomplete because rivals use alternative storage, contract in other parties' names and price and other commercially sensitive information is determined in private contracts and not known by the facility provider; and

GrainCorp does not have the incentive to discriminate against its competitors in the use of its storage facilities due to the alternative facilities that are available. This gives rise to the risk of bypass and loss of volume which would render the GrainCorp facilities unprofitable, in circumstances where upwards of 80% of the volume of grain stored in GrainCorp's facilities is owned by grain growers and GrainCorp's competitors.

The GrainCorp storage and handling business depends on high volume throughput and therefore has the incentive to attract and retain as much throughput as possible.

Where price differentials are charged, for example at a port elevator where grain sourced from non GrainCorp storage is subject to higher receival fees, these fees reflect,

a) The higher risk of grain failing quality, pest or chemical residue testing.

b) The higher risk of cargo accumulation delays leading to vessel loading delays and subsequent losses.

c) The higher cost of unloading receivals from non GrainCorp sources, particularly road deliveries direct to port ex-farm.

These pricing differentials are not structured in a manner that would 'force' the use of GrainCorp storages.

To what extents do bulk handlers continue to have relatively flat charging structures? Does this have efficiency implications?

GrainCorp's country and port terminal fees and charges are not 'flat charging structures'. GrainCorp publishes a schedule of fees that are transparent and detailed.

If the company is unable to operate grain storage sites in a manner that returns a commercial return to shareholders, the company will,

a) Not have sufficient capital to invest in repairs and maintenance, and

b) Not have sufficient capital to invest in site upgrades and efficiency enhancements.

If GrainCorp is unable to commercially operate grain storage sites, or port terminals, the overall efficiency of the existing infrastructure will decline to the point where the infrastructure either collapses, or becomes inefficient to the point where the competitiveness of grain exports is impacted.

Is there a need for rationalisation of supply chains and are current pricing practices impeding this?

GrainCorp believes that the matter of supply chain efficiency should be left to the commercial market to sort out. The imposition of any or additional regulation to that currently imposed, will only exacerbate any inefficiency that do exist, as regulation clouds or distorts the clarity of market signals.

Does the ownership structure (or previous ownership structure) of some bulk handling companies lead to supply chain inefficiencies? Does it make it difficult to price efficiently? Does it make rationalisation of uneconomic receival and storage facilities more difficult?

The inefficiency of 'grain handling only' businesses was the primary reason why the previously Government owned bulk handling authorities were privatised. Tinkering with the ownership of grain handling companies, or imposing regulation to 'split' various functions, is counter to the established economic principal that integrating 'like' businesses drives efficiencies and removes duplication.

Rather than seeking to impose a solution through regulation to any problems that may (or may not) exist in the grain sector, a historically unsuccessful manner in which to solve complex economic problems, Commonwealth and State Government should remove regulatory intervention and let the market operate. Markets and commercial forces are the most appropriate mechanisms for determining the appropriate allocation of capital.

Bulk Handlers faces several business challenges. Revenues are unduly exposed to changes in weather patterns and climatic conditions with healthy revenues in years with good grain crops and lower revenues during drought.

Are issues of legal liability (transport) related) constraining trade in wheat? How might this problem be solved?

GrainCorp believes that the current liability limits placed on the transport of grain are appropriate. There is no justification for forcing bulk handling companies to assume a greater proportion of risk simply to allow the owner of the grain to reduce their own risk exposure.

4. Information Provision and Market Transparency

Is the information currently provided by the ABS and ABARE useful and timely?

If timeliness is a problem, are there any mechanisms to facilitate more timely provision of information?

What amount and type of market information should be provided?

With what frequency should information be provided?

The market information provided by ABS and ABARE is useful to the industry for purposes such as budgeting and strategic planning. As already stated daily pricing information on a commodity and per grade basis can be sourced by fax, email, or the web, from local or regional grain marketers.

There are multiple businesses (Australian Crop Forecasters, Pro Farmer, Fox Commodities, Callum Downs, newspapers, online information services, etc) that provide daily or weekly market summaries and / or crop forecasts / summaries. Private enterprise should be left to meet the information or market intelligence needs of the industry, not Government.

Is there a role for WEA to provide information on the performance of accredited exporters? Would this assist growers in making decisions?

If as with other industries, this information is provided by the ABS, or published publicly as required by publicly listed companies, there should be no need for WEA to provide is.

What are the requirements of disclosure of information on the amount and type of stocks held at grain receival facilities? Should they be changed?

GrainCorp is required to cooperate with the ABS for the collection of grain stocks information. These requirements should not be changed.

Do industry participants have sufficient knowledge of how to use market information?

As already noted, the Australian wheat market has been deregulated for more than twenty years. In this time industry participants have gained access to more timely information and have developed the ability to utilise this information in a number of different ways.

Regulation is not required for, nor is it a good way of achieving, rational behaviour by market participants. Grain growers are effective grain marketers, and the manner in which they are exercising market power since the removal of the bulk wheat export monopoly validates this belief.

Who is best placed to provide market information and why? Can the industry deal with the provision of market information itself (for example, with a code of conduct)? Or is government involvement required? If so, what form should that involvement take? Regulation? Funding? Provision?

The industry itself is the best source of data, as it is at the 'coal face' of the market. However industry participants should not be expected to disclose any information which would breach a confidentiality obligation or which it considers (acting reasonably) is commercially sensitive in relation to its own operations.

ABARE and ABS are best placed to provide meaningful industry wide information as it is their specialisation to maintain records and produce these statistics.

5. Wheat Classification and Market Segmentation

Is the WCC adequate for ensuring wheat quality and the usefulness of Wheat Classification?

Wheat classification plays an important role in meeting the needs of all customers. Without adequate standards, incorrect declaration of grades may become more common, and this may impact on the attractiveness and competitiveness of Australian wheat exports.

It is expected that the WCC will be effective. However, it has only just been formed but has strong commitment from the industry.

Could the market deal with these issues without such a body?

There is an argument that a laissez fair approach to industry development, where exporters seek commercial advantage based on their ability to best meet the quality requirements of customers, may be the best way for dealing with wheat classification matters.

There is an alternative view that sees the existence of a 'cooperative' effort to structure matters such as wheat classification as being more desirable. As the industry has a history of such 'centralised' action, this approach may be more appropriate in the medium term.

It may be possible to include, within the revised export licensing system proposed earlier, a provision that wheat exporters adhere to a 'truth in description' provision.

- Under such a provision, exporters would gain 'approval' to use Australian wheat grade nomenclature if they undertook to formally provide evidence, as a condition of licensing, of having correctly used wheat grade nomenclature.
- Adherence would bring with it the right to use an appropriate trade mark (similar to the Australian Heart Foundation 'Tick', or the Assured UK Malt program).
- Such a system could simply and effectively be promoted to wheat consumers through an extension program that would outline the benefits of dealing with an exporter that has 'Grade Certified Australian Wheat', with the assurance that appropriate use of wheat grade nomenclature would come with the use of the 'trademark'.

Once the licensing provisions are removed, the program described above would become the foundation for the self regulation by industry of grade description and appropriate use of wheat grade nomenclature.

However, there is no rational argument that can be sustained for regulating quality of variety classification matters. In countries where such regulation exists, particularly Canada and the USA, the flexibility needed to adjust to rapid market changes does not exist.

Does the market differentiate adequately between qualities of grain? Is the current level of co-mingling activity appropriate?

There is a balance that must be struck between the desire to create multiple segregations for customers and the number of segregations storage and handlers operate.

The current Australian system is a good balance, where the main wheat classification, Australian Standard White (ASW), is similar to US Soft Red Winter (SRW) wheat, Australian Premium White (APW), to low protein US Hard Red Winter (HRW), Australian Hard (AH), to high protein HRW and Australian Prime Hard (APH) to US Spring wheat.

Beyond these major classifications there are a number of minor grades. Certain customers are often willing to pay for a specific grade/quality and it is up to the market to decide if the additional cost can be recouped from the customer.

GrainCorp believe the balance between major classes/grades is well suited to current market requirements, and the smaller niches are left to the market participants.

Is there adequate scope for marketing of particular types of wheat to service niche markets that are more narrowly specified than GTA standards? Does exporting through containers and bags provide a satisfactory way to exploit non-standard marketing opportunities?

Yes. Bags are not so relevant, but containers and individual vessel hatches both provide opportunities for meeting individual customer special needs.

Eastern Australia is well positioned to export wheat in containers given access to a surplus supply of empty containers that need to be back-loaded to China, Japan and South East Asia. Currently, container shipping rates are comparable to bulk shipping rates, and in recent years, the container rate has been significantly less expensive.

Containerisation of grain is done by a large number of packers, with an estimated packing capacity of 2.5 million tonnes per annum. Major container packers include ABB Prograin, ABA MPT, Riordan Grain, Agrinational, IPS, Agrigrain, Woods Grain and GrainCorp. It is estimated that GrainCorp's share of the eastern Australian container packing market is less than 20%.

Are growers able to extract an adequate value for the quality of their wheat?

Growers are able to extract adequate value for the quality of their wheat. They now have access to price and sale options from many more grain buyers and exporters. They are able to weigh these sale options against delayed sale and use of storage. Fewer options were available under the bulk wheat export monopoly.

Can quality control be left to market driven forces, with commercial incentives placing a check on the quality delivered to overseas buyers?

Provided there are sensible standards set and adhered to, market forces will be sufficient to ensure that quality standards will meet the requirements of customers. In a free market, those exporters (and domestic suppliers) that fail to meet contracted quality standards will find it difficult to compete against suppliers who offer customers predictable quality product.

The 'truth in description' and 'trademark' proposal outlined earlier, where exporters would have to pay an annual subscription or license fee to use the 'Grade Certified Australian Wheat' trade mark and would have to meet strict criteria for use of the mark, would form the basis of an effective self regulatory mechanism.

Calls for AQIS to play a role in 'regulating' quality are misguided and inappropriate. AQIS plays an important role in ensuring that Australian grain exports meet the biosecurity requirements of importing countries.

To assume a quality enforcement role, AQIS would require a complete restructure, a significant expansion in budget and manpower, and a wholesale revision of its charter and relevant Acts and Regulations. The cost of doing this would run into the ten's, if not hundreds, of millions of dollars. Such a change in the role of AQIS may have ramifications for the manner in which the organisation executes its biosecurity role, and as such may precipitate unintended government-to-government market access problems.

Has deregulation affected the reputation of Australian export wheat?

GrainCorp has not received any tangible market feedback that the quality of bulk wheat exported from eastern Australia has declined. The impact of severe drought in the last few years has meant many buyers

have had to find alternative sources of wheat. Flour millers can be conservative and don't want to change their wheat grist unless they are sure of at least 3-6 months' supply, so with the resumption of exports from eastern Australia, significant effort has been expended to regain markets.

There have however been some problems with the quality of wheat exported in containers, particularly from Western Australia. These quality problems are not related to removal of the bulk wheat export monopoly, as containerised exports were effectively deregulated in 2006.

The proposal for the development of a 'Grade Certified Australian Wheat' trademark would address most of the problems associated with the presentation of 'out of specification' grain under commonly used grade nomenclature.

Has deregulation and co-mingling of stocks increased bio-security risks?

Importing country phytosanitary and biosecurity requirements, and similar export regulations, were not linked to the bulk wheat export monopoly. Therefore the removal of the monopoly has not changed any of these requirements.

As grain is received to the same standards as it was under the monopoly, and exported under the same regulations, removal of the monopoly is not relevant to this part of the supply chain.

Is quality control more of an issue for container wheat exports than it is for bulk wheat exports?

Container exports enable farmers to load direct from farm to containers. This can provide benefits for the farmer, however it means that quality can be highly variable. Flour millers require grain quality consistency and when containerised grain is consigned direct to millers 'ex-farm', quality can vary significantly from container to container. This will cause a miller to experience significant flour quality inconsistency, but it is not a problem that can be, or should be, addressed through regulation.

A presentation by Mr. Tim Dewan of Global Grain on behalf of the Soon Group, a flour miller in Malaysia and long time customer of Australian wheat, to the Australian Grain Industry Conference in Melbourne in July 2009, highlighted the issues they have had with containerised grain during 2009. The presentation also highlighted a very high range of protein ranges outside contract specifications and that this was much wider than previously.

Customers have made it clear to GrainCorp, and to other groups including BRI Research, that quality control in containers has fallen dramatically from many suppliers. Our feedback is buyers are quickly identifying the good suppliers and poor suppliers.

This is evidence of the market working effectively and should not be used as justification for the introduction of regulated quality standards. This development does however bolster the argument for the development of a program such as the 'Grade Certified Australian Wheat' trade mark described earlier.

Is quality control an issue in the domestic market?

Generally no. The industry works very closely with domestic consumers to meet their standards and receives a clear message when quality falls below accepted standards.

6. 'Industry Good' Functions

Does the list above represent legitimate 'industry good' functions? How should industry good functions be defined?

These are functions that can, and in many cases are, being addressed by the commercial market. There are however some instances of 'market failure' (wheat classification is an example) where cooperative effort on the part of major and minor industry players is addressing problems as they arise.

Are there currently gaps in the provision of 'industry good' functions? If so can these be left to the market to provide? Or is government involvement required? If so how these should be funded?

There are currently gaps in the provision of 'industry good' functions and some evidence of market failure. However matters such as industry strategic planning, technical market support, wheat promotion, branding, trade advocacy, regulatory advocacy and general industry peak representation are matters that will be addressed by the industry over time, in a manner that best suits the prevailing market conditions.

GrainCorp believes it is not appropriate for the Government to seek to impose a 'solution' onto the industry. A number of initiatives are already being discussed to ensure that industry good market failure is addressed.

Is there scope to use other grains or other agricultural industries as case studies for how 'industry good' functions could be delivered to wheat? Is there potential for synergies in shared provision of 'industry good' functions. Across industries?

Yes, Australian Oilseed Federation (AOF), Barley Australia (BA) and Pulses Australia (PA) are some examples of models that work well for the delivery of 'industry good' functions.

GrainCorp and a number of other companies are discussing the feasibility of establishing an organisation that would largely replicate the activities of Barley Australia (http://www.barleyaustralia.com.au/) for the wheat sector.

The grains industry should be very careful initiating any discussions about 'amalgamating' current industry development organisations such as those mentioned above. Such discussions can very quickly become sidetracked by 'political' considerations. As the grains industry has a history of 'political tribalism', it will be important to ensure that potentially divisive initiatives are not promulgated.

Is there anything to learn from the way that other countries deal with the provision of industry good functions in the wheat industry? Or other industries?

The US Wheat Associates provides an 'ideal' model for the development of a 'full service' industry good organisation. However any initiative developed for the Australian wheat sector would have to be of a significantly smaller scale, given the much smaller size of our industry.

It may be possible to develop a number of on-going 'industry good' projects that could be funded as part of the grains industry's broader research and development investment.

7. Performance of the Wheat Export Marketing Arrangements

Does the market provide sufficient signals to growers to enable them to make informed decisions about growing and selling wheat?

As previously mentioned the market now allows price signals, particularly those from the export sector, to be transparently communicated through the trade to the production sector.

How easy is it for growers to enter into a contract with an accredited exporter? Are transaction costs an issue?

Growers can easily enter into contracts for the sale of grain, and have been able to for many years. There are additional participants in the wheat market seeking to purchase wheat from them. Transactions cost are low and requirements clear. In addition the artificial marketing 'deadline' of late January each year previously imposed by the AWB closing the national pool no longer 'compresses' the market to an artificially short period and marketing choices.

Has deregulation opened opportunities not previously available to Australian wheat growers? Has deregulation enabled growers to extract a premium for their wheat that was previously unavailable? If not, is there potential for this to occur in the future?

Removal of the bulk wheat export monopoly has provided greater access to markets and marketers, niche market opportunities, and new marketing products and services, such as grain brokers, the CLEAR online market platform, GrainCorp's Warehouse Cash flow and a number of new variations to grain pool products. This allows growers to better manage their price risk and to market grain in more than one way simultaneously.

The matter of 'premium extraction' can be difficult to define, or in fact be illusory. If a tonne of a particular grade/variety of wheat is worth a particular amount on a particular day (as determined by the market), a grower with a tonne of that wheat can expect to sell that grain for 'market value', thus is it not possible to sell grain of a certain quality at a particular time for more than what it is worth.

What the market is now doing is allowing that grower more marketing alternatives, so rather than extracting a 'premium', the grower is better able to manage their price risk and price volatility. This may mean that over time, a grower using more than one marketing method is able to extract a 'better return' than another grower that doesn't actively manage price risk and market volatility.

Has deregulation presented new challenges for growers? Have any developments been unexpected?

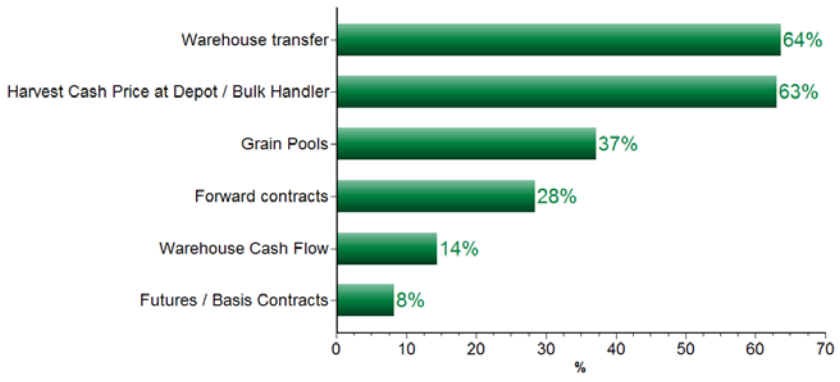
As discussed above, growers have access to more information about domestic and international grain markets than they have ever had. New products and services are also being made available that allows growers to better manage price risk and market volatility.

In short, growers have a more diverse range of marketing options, price risk management tools and buyers from which to choose. Grower marketing alternatives are no longer constrained as they were under the export monopoly. This is particularly the case in regions where export grain dominates, such as South Australia and Western Australia.

The increased volatility of the wheat market post 1st July 2008 was expected and has been managed by growers through a combination of greater use of grain warehousing and multiple marketing strategies.

The following graph indicates how growers assess their marketing alternatives and execute their marketing strategies.

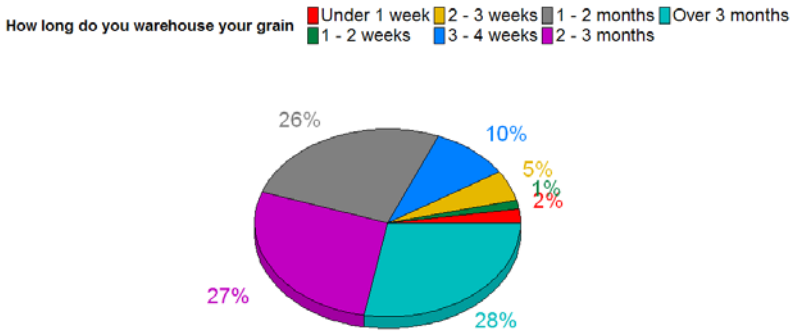
Growers Use of Marketing Alternatives



Source – Solutions Group research, September 2009 (Unpublished).

Growers are also becoming more adept at using grain warehousing to aid their grain marketing strategies.

Period of Time Growers Warehouse Grain



Source – Solutions Group research, September 2009 (Unpublished).

Has deregulation affected large and small growers in the same way? Are smaller growers able to receive the same prices that larger growers receive? Have the distributional impacts varied across jurisdictions or regions?

Large and small growers have access to the same price signals, information sources and marketing opportunities. GrainCorp is not aware of any negative impacts from the removal of the bulk wheat export monopoly impacting upon any particular group of growers. The research carried out by the Solutions Group in August 2009 did not indicate that any particular demographic had any problems adjusting to the removal of the national wheat export pool.

Does the effectiveness of the current bulk wheat export arrangements vary across jurisdictions or regions?

GrainCorp does not believe that the new bulk wheat export regulations are 'effective'.

Has the global financial crisis had an impact on the operation of the new wheat exporting marketing arrangements?

No. GrainCorp had no problems securing grain inventory finance for the 2008/09 grain harvest. The company has not experienced any problems securing finance for the 2009/10 harvest. The Australian wheat sector represents approximately 3% of world wheat production, so the relatively small amounts of capital required, and the fungible nature of the commodity, mean that banks are attracted to funding grain acquisition in Australia.

What have the costs of transition to the new arrangements been? How do these compare with the benefits of the new arrangements?

As previously stated, GrainCorp has incurred up to an additional $1 million in compliance costs, and anticipates up to an additional $500,000 in legal costs from the 'public-negotiate-arbitrate' process associated with the ACCC port terminal access Undertaking.

Has deregulation altered trends in the share of wheat exported in bulk and in bags and containers? If so, will the trend continue to change if current arrangements remain in place?

The tonnage of grain exported from year to year varies significantly in line with production, as in eastern states export grain is generally that which is not consumed locally.

The tonnage of grain exported in containers has increased in recent years, driven partly by the excess supply of empty containers that needed to be returned to Asia, and increases in bulk freight rates.

In GrainCorp's experience the trend in share of wheat exported in containers vs. bulk has had more to do with the deregulation of wheat in containers since August 2007. This coupled with excellent summer and winter crops in central and southern Queensland, and competitive container freight rates, grew the market rapidly to August 2008. After this time, bulk freight rates came down, making it more economical to ship in bulk.

Containerisation is expected to decline due to;

- Removal of the bulk wheat export monopoly
- More market participants seeking to export in bulk
- Decrease in bulk freight rates and the narrowing of the spread between bulk and container rates

Container packing is still expected to play a role in grain exports more due to:

- Customers requiring less working capital
- Containers reducing price exposure and risk (the value of each consignment is less)
- Infrastructure investment

Given the relatively recent introduction of such major changes, how do you see developments in the wheat sector in the medium to long term under the existing arrangements? Do you consider that there is still some way to go in allowing the arrangements to 'bed' down and for industry participants to adapt to, and further exploit, the opportunities that a more open marketing arrangement allows?

If some form of regulation is required only for a transition period, how long should this transition period last?

GrainCorp has already stated that the market has quickly adjusted and 'normalised'.

Experience from the wheat sector in the 1980's and 1990's shows that the sector has benefited from the lifting of regulation. This experience is consistent with experience from other sectors of agriculture and other sectors of the economy.

There is no empirical or other data that shows the industry will benefit from the further application of regulation, and GrainCorp has proposed both a timetable for the removal of regulation and the modification of existing regulatory arrangements.