

AWB submission to the Productivity Commission on the draft report on Wheat Export Marketing Arrangements

Introduction

AWB appreciates this additional opportunity and would offer the key observation that the transition process for the industry is still underway.

While further evolution is going to occur, this review offers a timely opportunity to highlight areas where undesirable developments are occurring that are, and will, continue to impede the operation of fair and efficient market mechanisms as well as identify many positive developments or areas for further improvement.

As a large export participant in both bulk and container sales with a large number of international and domestic customers, AWB has the benefit of experience of operating across all port zones at the local level during this transitional period.

AWB strongly maintains the view that there is a role for the continuation of an amended Wheat Export Marketing Act 2008, to ensure port terminal access protocols remain in force and ensures access to certain sources of information is maintained for the long term benefit of the Australian wheat industry.

However AWB supports the Productivity Commission's recommendation that the operation of the current Wheat Export Accreditation System is not required beyond September 30, 2011.

Chapter 3 - Marketing and Pricing

Draft finding 3.1 (p 49) *The key drivers of the export price of wheat (and the recent commodity price cycle) are:*

- *the global demand, supply and stocks of wheat*
- *the exchange rate*
- *relative transport costs from Australia (and other exporting countries) to export markets.*

AWB agrees with this finding

Draft finding 3.2 (p 49) *The transition period of the current wheat export marketing arrangements has coincided with:*

- *a pronounced commodity price cycle*
- *a short-term increase in the price of wheat of at least 150 per cent just prior to deregulation*
- *the global financial crisis.*

AWB agrees with this finding

Draft finding 3.3 (p 51) *Wheat marketing, and production and price risk management, are more complex in the eastern states (particularly New South Wales). The local wheat price in New South Wales rises above the export price in periods of low production, when local demand absorbs almost all local production, almost no wheat is exported and wheat is imported from other states.*

Wheat marketing in the East Coast has been more complex due to the more frequent occurrence of drought in recent years. This has led to greater price volatility and supply constraints for local and international buyers. However East Coast participants have the benefit of more local marketing options due to domestic demand, a greater number of intermediary participants (traders) and greater competition in the up country supply chain in many locations, existence of competition between road and rail, and in some areas, greater competition at port (Melbourne/Geelong/Port Kembla/Port Adelaide).

Western Australia has benefited from more reliable 'in-season' rainfall over the last decade than the eastern states and closer proximity to most markets for Australian grain by sailing time.

Transparency of pools (page 64)

The commission is seeking further information on the transparency of pools and the relief provided by ASIC.

ASIC relief:

The exemption issued by ASIC to AWB Limited and its wholly owned subsidiaries provides AWB with relief in relation to registration of managed investment schemes, the hawking of financial products, the hawking of managed investment products and the requirements surrounding product disclosure statements. AWB is exempt from applying the following provisions of the *Corporations Act 2001* (Cth) (**Act**).

Section 601ED of the Act is entitled 'When a managed investment scheme must be registered'. A managed investment scheme (**MIS**) is a scheme where people contribute money as consideration to acquire interests to benefits produced by the scheme and where the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the members in the scheme and where the members do not have day-to-day control over the operation of the scheme. Such a scheme must be registered if it has more than 20 members. An exemption was granted in relation to this section on 18 August 2003.

Section 992A of the Act is entitled 'Prohibition on hawking of certain financial products'. A financial product is a facility through which, or through the acquisition of which, a person makes a financial investment, manages financial risk or makes non-cash payments. The hawking of such a financial product is generally prohibited in the course of unsolicited dealings. An exemption was granted in relation to this section on 18 August 2003.

Section 992AA of the Act is entitled 'Prohibition of hawking of managed investment products'. A managed investment product has the same meaning as an MIS. The hawking of such a managed investment product is generally prohibited in the course of unsolicited dealings. An exemption was granted in relation to this section on 18 August 2003.

Part 7.9 of the Act is entitled 'Financial product disclosure and other provisions relating to issue, sale and purchase of financial products'. Predominantly, this provision relates to product disclosure statements (**PDS**). An exemption from providing PDS was granted in relation to this section on 18 August 2003.

Transparency

Since deregulation the number of pool operators and pool products on offer has increased. In general pool operators are offering similar products and have largely gone about setting up operations and products independently and with very little industry or regulatory oversight.

Under the WEMA, Wheat Exports Australia (**WEA**) is responsible for licensing and monitoring accredited wheat exporters. However, the WEMA does not monitor the management of pool operators unless the pool operators are accredited bulk wheat exporters.

The Australian grains industry would benefit from pool operator guidelines to enhance and promote further transparency in the industry. Pool clients or prospective clients should be provided with greater information about the pool operator and the products offered by the operator. Grain Trade Australia (GTA) has outlined industry guidelines for the operation of pools in the recently published Australian Grain Industry Code of Conduct (Chapter 2.4).

AWB believes that, under the guidance of GTA a more detailed set of operating guidelines should be designed to avoid introducing significant costs to pool operators and those who utilise the pool marketing option. Higher cost and greater compliance obligations may limit the competitiveness of the pool marketing option and if onerous on operators may result in an environment where only large scale operators remain competitive.

Ultimately the results achieved by pool operators in the deregulated market will have the greatest influence on the future development and success of pool products. AWB believes that transparency can be improved through setting guidelines in relation to pool operator disclosures and allowing market participants to make assessments against these guidelines.

In relation to setting guidelines, AWB supports industry guidelines promoting further transparency in the following key areas:

- Clearly defined strategy and objectives;
- Regular and timely pool reporting;
- Segregation and separation of pool assets; and
- Independent scrutiny of pool accounts.

1. Strategy and objectives

It is important that growers who commit to a pool have access to information that defines how the pool manager intends to manage pool assets. Further transparency in this area ensures that a grower can differentiate between products offered by different pool operators or product offered within the same pool manager.

A pool product strategy may include the following components:

- Defines how the pool operator will manage key price risk components, foreign exchange, commodity derivatives and physical price environments for each pool operated, and,
- Outlines objectives in relation to product payment performance.
- Understanding the risk profile or product strategy will assist growers with assessing grain marketing options and promotes more informed decision making within the industry.
- A clearly defines strategy also provides a mechanism against which a pool operator may report and can be measured by the industry.

2. Regular and timely reporting

It is important that pool participants receive meaningful information about how the pool operator is progressing with executing strategy and meeting stated product objectives.

To ensure the market remains fully informed, information must be timely and relevant.

Reporting intervals should be determined with reference to the grain production cycle. For instance the market may benefit from:

- Weekly reporting and price updates during harvest when marketing decisions are made, and
- Monthly reporting at other times to ensure pool participants remain fully informed.

The AWB reporting model focuses on providing regular information in relation to quoted pool return estimates and detailed quarterly reporting discussing the marketing environment and disclosing key information in relation to key price risk components.

3. Segregation and separation of pool assets

Many pools are operated by entities whose principal businesses also involve other grain industry related activities. Other activities may include owning and managing supply chain assets through to operating cash trading businesses.

AWB suggests that the following disclosures will enhance market transparency:

- Information defining the applicable corporate structure and within what legal structure a pool resides;
- Information explaining whether and how pool assets are segregated from other commercial activities; and
- Articulation of the governance and risk frameworks in place to safeguard pool assets.

4. Independent scrutiny

AWB accepts that independent scrutiny is beneficial to the market, however scrutiny should ultimately focus on assessing accuracy of equity derived and final pool returns. Pool operators should not be expected to accept a level of scrutiny that is not consistent with other industries or corporations.

To demonstrate this point, AWB Harvest Finance engages independent external auditors to undertake a financial audit of pool accounts. This process is completed in advance of AWB declaring final pool returns.

In AWB's opinion this approach should be a mandatory requirement for pool operators.

Assessing pool performance

AWB believes the industry remains focused on price and final pool returns; however there are other considerations that need to be used when assessing whether a pool operator has achieved stated objectives and executed the defined strategy.

Any move to introduce industry performance standards must focus on whether a pool operator has delivered against commitments communicated to growers.

Commitments may include an assessment of:

- Strategy execution;
- Currency hedge performance relative to market;
- Commodity hedge performance relative to market; and
- Product payment performance relative to operator estimates.

Pools are generally seasonal in nature and operate in a transparent market environment. Pool returns are largely a function price achieved for sales, profit or loss from hedging activities less costs incurred in storing, moving and shipping grain. It would be possible to determine how a pool has performed with reference to key pool price attributes (currency and commodity markets) however due to different strategies adopted by pool operators AWB urges caution in relation defining industry specific performance measures.

There are also numerous independent industry consultants and groups who monitor and undertake pool return based comparisons. It is likely that a pool operator would be required to respond to queries in relation to significant discrepancy or differences identified between pool operator returns.

AWB does not consider that setting industry or pool specific performance measures are necessary in a deregulated market. The inherent risk with defining performance measures is that they fail to recognise the difference between products and strategies.

ASIC retains the right to review the appropriateness of the current exemptions. AWB believes that an increased level of rigour in self-regulation under the guidance of a more robust GTA code should produce a higher level of transparency on pool performance and assist potential pool participants to undertake more rigorous scrutiny of the pool offerings in the market.

Chapter 4 - Accreditation of exporters

Draft recommendation 4.1 (p120): *The Wheat Export Accreditation Scheme 2008 should be abolished on 30 September 2011. This timing would coincide with the end of the 2010- 11 marketing year and give the Australian Government sufficient time to put the required changes in place.*

AWB agrees with the recommendation.

Draft recommendation 4.2 (p120): *Regulation 9AAA of the Customs (Prohibited Exports) Regulations 1958, which prohibits bulk exports of wheat unless exported by an accredited wheat exporter, should be repealed on 30 September 2011.*

AWB agrees with the recommendation

Draft recommendation 4.3 (p122): *If the Australian Government decided not to abolish accreditation, a system similar to that administered by ESCOSA for bulk exports of barley in South Australia would be the next best alternative.*

- ***A less attractive alternative would be to amend the Wheat Export Accreditation Scheme 2008. As outlined in this report, this would include streamlining the level of assessment employed by Wheat Exports Australia to reduce the regulatory and compliance costs of accreditation.***

Any amended or new arrangements put in place by the Australian Government should be reviewed after no more than five years.

AWB agrees with the recommendation

Draft recommendation 4.4 (p214): *Wheat Exports Australia should be abolished on 30 September 2011.*

AWB agrees with the recommendation

Draft recommendation 4.5 (p215): *The Wheat Export Charge should be abolished on 30 September 2011.*

- ***If the Australian Government decides to retain some form of accreditation in the bulk wheat export market, the application fees and the Wheat Export Charge would need to be reviewed. A Cost Recovery Impact Statement should be formulated, in line with the Australian Government Cost Recovery Guidelines. The Wheat Export Charge should no longer be levied on exports of wheat in bags and containers, as they are not covered by the accreditation scheme.***

AWB agrees with this recommendation.

Quality control (page 108)

The commission is seeking further feedback on quality control. Are quality control problems with container wheat exports widespread? If so, is there evidence to support this? Is there any specific evidence of quality control issues emerging in bulk wheat export shipments since deregulation? What about other grains?

From time to time it should be expected that quality issues that have not been detected at load port will arise. This occurred infrequently during the operation of the Single Desk System (SDS) and no marketing system is capable of completely eradicating these issues. However in AWB's opinion there has been a marked increase in instances of 'quality issues' being identified at the point of destination since the commencement of container market deregulation. This has been mirrored since the commencement of bulk export deregulation.

There are several causes of these undesirable and damaging instances:

- A lack of uniform control over quality assurance for container and bulk exports.
- A substantial increase in the volume of inferior grade wheat being blended with better quality wheat to meet minimum specifications.
- An increase in inappropriate blending of Australian wheat grades (e.g. noodle grades and feed grades being blended into bread wheat grades).
- An increase in off grade wheat being sold as prime milling grade wheat (e.g. shipping AH9 grade wheat, which is essentially feed wheat, against Australian Prime Hard (APH) contracts.
- There is no independent verification that the quality of grain accumulated into a terminal is the same quality being out-turned for export. Export terminals do not provide individual silo quality information and do not provide results from incremental testing conducted throughout loading.
- Inexperience in the management of fumigation by new entrants to the container packing sector

Customer feedback has generally detected an increase in variability between cargoes being secured. This latter point is to be expected to a degree given the uncoordinated nature of the export task now that the market has deregulated and competitive forces are at work.

However there are also increasing instances of grain quality only just meeting quality specifications and quite a number of instances where sellers have failed to meet quality specifications in bulk vessels. There are also a number of well reported instances of the quality of wheat in container sales failing to meet the importing country's chemical residue requirements. Recent incidents in Thailand, Taiwan and India are the most recent examples that AWB is aware of.

Cost of complying with the accreditation process (p 113)

The commission is seeking further feedback from accredited exporters on the costs associated with complying with accreditation processes. How much did complying with accreditation cost in 2008-09, and in 2009-10 to date. What are the ongoing annual costs of compliance expected to be?

In AWB's case there was a significant compliance cost due to the additional burden placed on both AWB entities seeking accreditation. The time taken by the staff and management, the external legal assistance and the internal resources that were invested in the initial application, engagement with WEA Board and management representatives, half and full year audits as well as spot audits as required by WEA were demanding and expensive. AWB estimates the cost being \$0.5 million for the 2008/09 financial year.

For the 2009/10 financial year to date the costs have been substantially reduced due primarily to the reduced burden of compliance specifically imposed on the three accredited entities of AWB. Compliance costs are likely to be substantially less, potentially in the vicinity of \$0.2 million for the 2009/10 financial year.

However AWB retains the view that the compliance regime applied is unnecessary given the lack of demonstrable benefit to the wheat export industry beyond assisting with the facilitation of the bulk export market deregulation.

Chapter 5 - Access to port terminal facilities

Draft recommendation 5.1 (p152) – The current 'access test' under the Wheat Export Marketing Act 2008 should be abolished on 30 September 2014. Between now and 30 September 2014, changes to the undertakings of the bulk handlers should be kept to a minimum. From 1 October 2014, access matters would be dealt with by the National Access Regime in Part IIIA of the Trade Practices Act.

AWB disagrees with the recommendation.

Draft recommendation 5.2 (p153) – The Australian Government should proceed with the scheduled independent review of the National Access Regime. This review should commence no later than 31 December 2011.

AWB agrees with the recommendation.

Draft recommendation 5.3 (p158) – While the 'access test' contained in the Wheat Export Marketing Act should be abolished on 30 September 2014, operators of wheat port terminals should still be required to publish daily shipping stems and port access protocols on their

websites. Ideally, these requirements would be supplemented by a voluntary code of conduct from that date.

AWB disagrees with the recommendation.

Draft recommendation 5.4 (p159) *The Australian Government should amend the Wheat Export Marketing Act 2008 (or use another legislative instrument) to ensure port terminal owners and operators face a sanction if they fail to meet the access test requirements from 1 October 2011 to 30 September 2014.*

- If it were determined that accreditation was to continue past 30 September 2011, the link between accreditation and the access test should be broken.
- If it were determined that the access test were to continue past 30 September 2014, it should be reviewed after no more than five years.

AWB agrees with the recommendation.

Draft finding 5.1 (p160) *Price monitoring of port terminals is not an appropriate mechanism to deal with matters relating to port access.*

AWB agrees with the finding.

Draft finding 5.2 (p166) –*Section 46 of the Trade Practices Act is unlikely to deal adequately with matters relating to port access.*

AWB agrees with the finding.

WEMA and the access test

AWB is firmly of the view that given the current uncertainty regarding the performance of the BHC's and the lack of effective alternative sanctions, that the access undertaking requirement should be retained and the link to accreditation be in place until September 2011, and after this time the ACCC should review the undertakings on an annual basis to ensure fair access conditions are being proposed and provided to all exporters.

AWB notes that the three largest bulk handling companies (**BHCs**) were forced, at the very end of the period in which they were able to submit formal undertakings, to make substantial adjustment to their initial access undertaking offering.

At the time of this submission, AWB had completed only one negotiation regarding port access protocols. AWB has received a draft of the protocols from two other BHC's and is in the process of negotiation with two other BHC's.

At this stage of these negotiations, AWB holds grave concerns about the fairness of the proposed port access protocols.

When taken in consideration with the storage and handling models being applied by these two BHC's, this does raise AWB's concerns about the future prospect of BHC's retaining fair and acceptable access to all exporters.

AWB retains the position it held in the early submission to the Productivity Commission, that Part IIIA of the TPA is not an appropriate mechanism to rely upon to create certainty of access to port terminal facilities for all exporters.

Fair access or spare capacity?

AWB believes that the Productivity Commission has misinterpreted the intent of the WEMA regarding the provision of fair access under the act.

The Productivity Commission has adopted the National Competition Council's (**NCC**) interpretation (p 140) that the TPA provisions should be applied to cover access negotiations for the spare capacity available outside of the BHC's trading arm's own utilisation.

In AWB's view, the intent of the WEMA is based on placing a priority of ensuring fair access to all exporters through port terminal facilities.

The ownership of these facilities has moved from state government hands to publicly owned corporations or remains in the hands of grower cooperatives. In all cases, through recent episodes of privatisation and grain market deregulation, the BHC's who operate all port terminal facilities have evolved to their current state whereby these port terminal operators have developed or acquired related commodity trading divisions. By providing these trading entities with privileged access to the first pick of constrained capacity (shipping slots), competition will be constrained, leading to reduced returns to growers.

AWB would argue that the NCC interpretation is flawed. In AWB's view, given the evolution of the industry and the unique position that the BHC's have achieved as the industry has evolved, there is a strong argument for the continuation of the current access test as required under the current WEMA.

Port utilisation is a function of both physical asset availability (available grain, rail freight, road freight, and ocean freight and port storage capacity) as well as price competitiveness of the grain relative to other origins into export channels. However given the size of the Australian export task relative to the existing port capacity, there is sufficient capacity to manage the current and foreseeable future projected task.

There is limited incentive for the development of new export terminal facilities specifically targeting bulk grain exports in most port zones across the grain belt of Australia. A persuasive argument exists that all bulk exporters should be provided with fair and equitable access to avoid the development of overcapacity in port infrastructure that will lead to suboptimal investment in unnecessary infrastructure, which inevitably will result in reduced returns on existing infrastructure and a gradual diminution of services to growers and exporters. To avoid this outcome BHCs should recognise it is in their long term interest to create fair and equitable access to port terminal facilities.

AWB supports the implementation of an independently operated process for allocating shipping slots, as the best mechanism to provide the necessary support for fair and equitable access to port terminal facilities. AWB believes that Grain Trade Australia (**GTA**) is the most suitable organisation to administer a uniform and independent process to allocate shipping capacity for all AQIS licensed grain terminal facilities.

The exporting sector has operated through the 2009/10 harvest and first half of the exporting season while finalising negotiations with some (not all) port access protocols for each BHC. It is premature to draw any final conclusions; however, there are certain observations that can be made regarding the

effectiveness of the application of various rules and processes governing the BHC's formal undertakings to provide fair access to port terminal facilities.

In AWB's experience the following issues need clarifying to ensure the consistent and effective application of processes to underpin the fair and optimal utilisation of port terminal facilities:

- Inconsistency in rules across the industry: To reduce the risk to users of port facilities Australia wide, it would be preferable for all terminals to adopt the same protocols.
- Lack of clarity on how rules will be interpreted by port terminal operators: During the initial year of access undertakings there have been revisions to the rules applied unilaterally by the BHC operating port facilities. This may be as a result of a trial and error process, however to reduce the risk to users and provide confidence to export customers, the industry needs to establish proven protocols to provide greater assurance regarding the fairness of the system to all participants, otherwise there is a risk of suboptimal decisions on related investment and the erosion of Australia's competitiveness as an exporter of wheat and other grains.
- Lack of effective secondary markets for shipping slots: A liquid market that encourages exporters to trade uniform shipping slots would be a significant benefit to the industry. To achieve this, an independent umpire is required to oversee the application of acceptable rules that encourage the efficient allocation and re-allocation of available shipping slots to maximise the capacity of the bulk export sector. GTA should be the independent umpire in AWB's view.
- Lack of transparency on how capacity is allocated to port operators associated trading entities: It is not clear how the process for allocating shipping slots is determined for BHC's own trading arms versus other customers of the BHC who are legitimate exporters.

CBH auction process

AWB supports the adoption of a consistent and independent process for the allocation of shipping capacity. In AWB's view an effective auction process is preferable to a 'first come, first served' basis. AWB does not believe the current CBH system is effective and has resulted in significant market discrepancies which are not in the long term interests of the industry.

AWB understands CBH is reviewing the process that was initially adopted this season and would encourage significant changes to substantially improve on the current process.

AWB's experience and observations of the CBH auction process to date are as follows:

- Too much capacity was auctioned too early in the season while the crop quality was not known. The default position was that CBH would retain any unpurchased slot for its own trading arm. This forced other exporters to act irrationally, to buy too many shipping slots and to pay too much for most slots. Subsequently there have been distortions created in export markets by exporters who paid too much and bought too many slots. These distortions have, from time to time, depressed Australian bulk export wheat (and other grain) prices well below fair market value.
- The costs applied are required to be fully paid in advance of the service being applied. Fobbing charges inclusive of fixed and variable costs are charged irrespective of whether the Fobbing service is utilised and a very opaque system exists to re-distribute cost savings to export participants at the end of every season which will penalise more efficient exporters who use CBH's port terminals,

- The secondary market to trade shipping slots has been unnecessarily constrained and rendered ineffective due to the charging of unjustified capacity transfer fees and application of inflexible rules relating to the transfer of shipping slot ownership (e.g. a shipping slot must retain the supply chain options originally nominated).
- A tolerance on tonnage booked by slot should be applied. This will increase flexibility for both exporter and BHC in operating port and related supply chain assets and is in line with practices adopted in the sale of grain.
- The ability to trade a shipping slot in the secondary market should align with the nomination process operating under Grain Express (or any shipping nomination process). Shipping slots should be able to be traded within the shipment period to create the most liquid and flexible market to encourage participation, subject to the common rules that should be established prior to a season commencing.
- The auction system, without an associated despatch and demurrage system, forces the exporter to take all the risk of execution given that Freight On Board (**FOB**) contracts and Charterparty agreements do not and will not accept the risks naturally borne by the BHC or the shipper of record. A fairer system should include a despatch and demurrage system, which encourages efficiency and consistency in operations by both the BHC and the exporter. AWB understands CBH are considering the introduction of despatch and demurrage.
- The shipping slot lengths (15 days) are relatively tight and the rules that apply to the implementation of 'grace period' need greater definition. For example, the application of a grace period needs to define how poor weather or logistical difficulties within the BHC will be considered in comparison to an exporter's failure to present a nominated vessel.
- AWB is not aware of any valid reason for CBH to require early notice from exporters to nominate Grains Express or direct port access. AWB expects greater utilisation of the direct port access option in the future as on farm storage volumes increase in the future. AWB is concerned that the linkage of Grain Express nomination to shipping slots will diminish liquidity in the necessary secondary market.
- The management of the initial allocation and subsequent secondary market for shipping slot allocations needs to be administered by an independent administrator according to rules established by the relevant BHC prior to the offer of any shipping allocation process. Rules should not be able to be changed unless caused by an instance of force majeure. Exporters need certainty and fairness regarding the application of the rules to create the necessary liquidity to generate the secondary market.

In AWB's opinion the issues identified above need to be addressed in order to create a more effective and fairer system to allocate port terminal capacity in a manner that is consistent with the intent of the WEMA.

Legal liability of bulk handlers

AWB believes that the limitation of liability is a key driver of the behaviour of BHC's. The lack of effective despatch and demurrage systems similarly reflects the desire of the BHCs to adopt an 'all care, no responsibility' approach despite their custody of the grain owned by exporters and their physical control of the supply chain from receipt point to ships' rail.

AWB has been a vocal critic of some of the practices being adopted that are destroying the inherent value of the quality of Australia's wheat crop after grain has been received in storage systems while BHC's is enjoying the protection afforded by 'limited liability' clauses. AWB is in a view that these practices cause the long term detriment of the Australian grain industry.

The lack of recourse for the exporter to the BHC that was created by these limited liability terms constitutes an abuse of market power in AWB's opinion however exporters are being forced to accept them under duress in the absence of alternative services.

AWB notes that some BHC's identified the possibility of transferring liability to their own insurer under their insurance policy. AWB supports this approach.

Light handed vs heavy handed regulation

AWB notes that the Productivity Commission recommends a 'light handed' regulatory approach through legislation. Under this approach, the Productivity Commission recommends that BHC's are required to continue to publish daily shipping stems for each port and publish the applicable port access protocol for each facility.

AWB supports the retention of relevant clauses of the WEMA that require a formal access undertaking to be maintained and for a review of the effectiveness of the access undertakings to be assessed by the ACCC after five years.

However AWB does not believe that a sufficiently open and fair market for port terminal services will be achieved without the retention of a WEMA that continues to require formal access undertakings be provided and approved by the ACCC.

In AWB's opinion, the structure of the industry requires the retention of this regulation for the foreseeable future.

Chapter 6 – Transport, storage & handling

Draft finding 6.1 – *Up-country storage facilities do not exhibit natural monopoly characteristics. There is no case to consider changing the current arrangements regarding third party access to up-country storage facilities.*

AWB does not agree with this finding.

There are regions of the grain belt where this statement holds true. However in other regions recent developments have created the situation whereby the natural monopoly characteristics of the port have been transferred to tributary up-country storage facilities.

AWB believes that there are elements of the Grain Express system in WA that have created anti-competitive constraints to accessing and utilising CBH's up-country facilities. Under the terms of the 'direct access' alternative path created by CBH, exporters are charged more than Grain Express to re-enter CBH's port terminal facilities for Fobbing access.

Draft recommendation 6.1 – *Unless there is a strong case to retain access regulation on regional grain rail networks, governments should seek to abolish existing access regulation. In those jurisdictions where regional grain rail lines are vertically separated from above rail operators,*

government s should independently examine whether their vertical separation provides net benefits and, if not, examine the prospects for re-integration.

AWB agrees with this recommendation.

Draft finding 6.2 – Competition in the supply chain requires that participants have the ability to by-pass the bulk handling system.

AWB agrees with this finding.

Draft recommendation 6.2 - When considering investment in road and rail infrastructure for the transportation of grain, decisions should be based on thorough cost-benefit analysis. Where possible, analysis should consider the benefits that can be obtained throughout other parts of the grain supply chain.

AWB agrees with this recommendation.

Draft finding 6.3 - Investment in transport infrastructure should be funded by those who benefit from the investment, which in many cases is likely to be both the community and industry. Where governments make investment in rail infrastructure based on perceived social benefits, payments should be made in the form of community service obligations.

AWB agrees with this recommendation.

The commission would like further information from participants regarding the efficiency of Grain Express and the degree of contestability. Are there any impediments to alternative supply chains developing? What difficulties do traders have in trying to develop their own supply chain?

Would growers prefer to use a supply chain other than Grain Express? How easy is it for growers to use on-farm storage and their own trucks to by-pass Grain Express? To what extent is this occurring?

Are there any market developments since the ACCC's decision not to oppose the exclusive dealing notification by CBH that would now warrant a review of the Grain Express arrangements?

Grain Express

AWB has been opposed to the Grain Express system since inception.

Since its operation commenced AWB notes that most exporters now agree that Grain Express is anti-competitive, stifled the development of alternative supply chains (most notably for alternative road and rail providers) and has led to an increase in unjustifiable charges on exporters.

Most importantly it is the transport sector that must be given access to up-country storages on reasonable terms and charges in order for competition to flourish.

It is most likely that 'supplementary' supply chains will develop with increasing on-farm storage rather than completely 'alternative' supply chains. Exporters will rely upon grain being stored in both CBH and on-farm or private storages (as is the case in the East Coast), and reasonable access should be provided to these market participants to up-country storage as well as reasonable and fairly priced access to port terminal facilities.

Chapter 7 - Information Provision

There is now more information available from BHC's than was provided prior to deregulation of the bulk wheat export market. Given the potential for conflicts of interest within the BHCs who are also operating trading arms, there should be a requirement for certain information to be provided regularly to either the Wheat Classification Council (**WCC**) (or its successor), Grains Research & Development Corporation (**GRDC**), or the Australian Bureau of Statistics (**ABS**), depending on the nature of the information.

AWB supports the provision of the following data:

1. Information on the volume should name of wheat varieties delivered into bulk handling systems at the point of delivery. The WCC should be the custodian of this information and provide it for a fee to companies who require it, such as wheat breeding companies, trading houses and flour millers.

It is particularly important for the long term success of the industry to produce commercial quantities of wheat varieties that meet the needs of targeted customers. A critical factor in the success of these endeavours is the provision of accurate varietal data within a defined and meaningful geographic area. This information is used by wheat breeding companies, who have a long (8 to 10 year) lead time to develop new traits in grain physiology that meet market requirements or plant genetics to improve production characteristics.

It is for this reason that this information should be made available. The Productivity Commission has not recognised the substantial market efficiencies that will arise from the provision of this information.

2. Cumulative receival volumes by grade by port zone. The GRDC should be custodians of this data, and contract the ABS to publish it weekly and make this publicly available online.
3. Stocks on hand by grade by port zone on a monthly basis. The GRDC should be custodians of this data and should contract the ABS to publish it monthly and make this publicly available online.

AWB disagrees with the Productivity Commissions analysis regarding the significance of the benefit that a BHC has in relation to the asymmetry of access to grain volume and quality information. It is premature to assess the impact that this information will provide those companies who understand how to apply this information and have access to it.

Additionally the Productivity Commission has offered a view that it is acceptable for the BHCs to share this information with their trading operations (p 240) which is unacceptable in AWB's view as it will reinforce the dominant market position of the BHC's in their respective territories which is not in the long term interests of creating an efficient and competitive market across Australia's grain production regions.

This information should be made available to all market participants willing to pay the cost to access it, except where Privacy Act requirements prohibit this occurring.

Draft finding 7.1 *The ABS and ABARE should continue to provide core, long-term wheat market information, in line with what is currently provided by these agencies for other Australian grains and agricultural commodities. Government funding for this purpose is appropriate.*

AWB agrees with this recommendation however we would highlight the three classes of information identified in this submission as being additional necessary requirements.

Draft finding 7.2 *The cessation of government funding provided to the ABS and ABARE for additional wheat data collections and publications on 30 June 2011 is appropriate.*

AWB agrees with this recommendation

AWB supports the principle of user pays. AWB believes the primary beneficiaries of this information are spread across all sectors of the industry – growers, BHC's, processors, wheat breeders and traders. AWB does not expect the cost of providing this information to be significant given the data is already captured and available to each grain buyer in a disaggregated form.

Draft recommendation 7.1 If the industry wants the ABS to produce stocks information by state, it should pay for it. The cost of producing this information is not expected to exceed \$1 million annually. The most efficient approach to finding this information would be via an existing compulsory industry levy.

AWB agrees with this recommendation.

The GRDC has the means to fund the collection of information that is deemed to be significant and within its mandate. AWB believes the GRDC is the proper custodian of the information and has the respect of the industry to protect and utilise the information in the long term interests of the industry and the community.

Chapter 8 - Wheat Quality Standards

AWB is aware of, and has been actively involved in industry efforts, under the direction of the WCC, to create an effective system to guide the development and implementation of wheat quality standards.

AWB believes these efforts will result in a workable solution being introduced before the commencement of the 2010/11 season however an extension of temporary Federal Government funding support may be required to provide sufficient time and resources to correctly establish the long term solution.

AWB supports the GRDC assuming the responsibility for establishing wheat quality standards, which would include the roles currently undertaken by the WCC, VCP and WQOB.

GTA should remain responsible for determining receival standards on behalf of the industry.

Between GTA facilitating the adoption of national receival standards across the supply chain and GRDC establishing the technical benchmarks for varietal quality and approval of varieties to grade classifications, there is an effective existing structure to manage this important task

Some adjustment to the mandate and governance of each organisation may be required but this is the most desirable outcome in AWB's opinion.

Draft finding 8.1 The design, delivery and funding of a wheat classification function is most appropriately undertaken by the industry. The Commission has not identified a role for government in this process.

AWB disagrees with this recommendation.

GRDC needs to be provided with the Commonwealth Government mandate to oversee and fund the process required to establish wheat variety classification into receival grades.

AWB also supports the introduction of a user pays approach to funding of the Variety Classification Panel. Wheat breeding companies are the initial beneficiary of securing industry approval to accept a variety into a recognised grade, and can then recoup the cost of this investment through the End Point Royalties system already in place.

Chapter 9 - Other industry good functions

AWB agrees with the Productivity Commissions comment on page 296 of the Draft Report, which states that '...the Commission expects that the industry first needs to determine precisely what it wants with respect to industry good functions and how to achieve constructive, industry-wide cooperation'.

AWB believes that sufficient industry bodies already exist to undertake the required roles to secure the long term prosperity of the Australian wheat industry.

Specifically AWB views the roles of the GRDC and GTA as being critical to the future success of the industry.

GTA should be the representative industry body responsible for organising the decision making forums to apply rules and regulations that govern the operation of the industry and undertake the required industry advocacy where necessary and appropriate.

GRDC should be the custodian of sources of technical data captured for the good of the industry, provide technical recommendations to the GTA to adopt regarding wheat quality, coordinate the technical expertise required to develop new varieties and facilitate the development of new processing, production technology or farming practices to support increased productivity in the on-farm production as well as the storage, transport and processing of Australia's wheat production.

If Federal Government support is required, it should be provided temporarily and create the mandate to define how the industry organises itself around and through the organisational structures of the GRDC and GTA.