

The Senate

Rural and Regional Affairs
and Transport
References Committee

Operational issues in export grain networks

April 2012

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Abbreviations

| | |
|--------|---|
| ABA | Australian Bulk Alliance Pty Ltd |
| ABARES | Australian Bureau of Agricultural and Resource Economics and Sciences |
| ABS | Australian Bureau of Statistics |
| ACCC | Australian Competition and Consumer Commission |
| ACN | Australian Company Name |
| AGEA | Australian Grain Exporters Association |
| AH | Australian Hard |
| APDR | Australian Premium Durum |
| APH | Australian Prime Hard |
| APW | Australian Premium White |
| APWN | Australian Premium Noodle |
| ARA | Australian Railway Association |
| ASFT | Australian Soft |
| ASW | Australian Standard White |
| ASWN | Australian Standard Noodle |
| AWB | Australian Wheat Board |
| AWBI | Australian Wheat Board International |
| BHC | Bulk Handling Company |
| CBH | Co-operative Bulk Handling |
| CCA | <i>Competition and Consumer Act 2010</i> |
| DAFF | Department of Agriculture, Fisheries and Forestry |
| EWC | Export Wheat Commission |
| FEED | Australian Feed |
| FOB | Free on Board |
| GRDC | Grains Research & Development Corporation |
| GTA | Grain Trade Australia |
| MPT | Melbourne Port Terminals |
| MRL | Maximum Residue Limits |
| NATA | National Association of Testing Authorities |
| NGR | National Grower Register |
| NIR | Near Infrared Technology |

| | |
|-------|---------------------------------------|
| NMI | National Measurement Institute |
| PGA | Pastoralists and Graziers Association |
| PRF | Pesticide Residue Free grain |
| QBT | Queensland Bulk Terminals |
| SAFF | South Australian Farmers Federation |
| SAGIT | South Australian Grain Industry Trust |
| WCC | Wheat Classification Council |
| WEC | Wheat Export Charge |
| WQA | Wheat Quality Australia |

List of Recommendations

Recommendation 1

8.27 The committee recommends that, in recognition of the critical role that Wheat Exports Australia is playing in the deregulation of the Australian bulk wheat export market, a continuing and enhanced role for Wheat Exports Australia be further investigated in the inquiry into the Wheat Export Marketing Amendment Bill 2012. This role may include, but not be limited to:

- accreditation of exporters;
- quality assurance to protect Australia's reputation as a quality wheat exporter; and
- performing the role of industry Ombudsman.

Recommendation 2

8.28 The committee recommends that a mechanism for making wheat stockpile information available in an equitable manner to all participants in the bulk wheat export industry be further considered in the inquiry into the Wheat Export Marketing Amendment Bill 2012.

Acknowledgement

The committee would like to acknowledge the invaluable contribution of Senator Judith Adams to this inquiry, who passed away on 31 March 2012. Senator Adams was an active and committed member of the Rural and Regional Affairs and Transport Committee over many years and the committee will miss her insights and dedication.

Chapter 1

Introduction

Inquiry terms of reference

1.1 On 23 March 2011 the Senate referred the following matter to the Senate Standing Committees on Rural and Regional Affairs and Transport for inquiry and report by 2 November 2011:

Operational issues arising in the export grain storage, transport, handling and shipping network, with particular reference to:

- a) any risks of natural, virtual or other monopolies discouraging or impeding competition in the export grain storage, transport, handling and shipping network, and any implications for open and fair access to essential grains infrastructure;
- b) the degree of transparency in storage and handling of grain and the appropriateness of any consequent marketing advantages;
- c) equitable access to the lowest cost route to market, including transport options;
- d) competition issues arising from the redelivery of grain;
- e) the absence of uniform receipt, testing and classification standards and practices and any implications for growers and/or for Australia's reputation as a quality supplier;
- f) equitable and efficient access to the shipping stem; and
- g) any other related matters.

1.2 On 1 November 2011, the Senate granted an extension of time for reporting until 22 March 2012. Further extensions of time were granted on 21 March 2012 until 12 April 2012, and on 12 April 2012 until 16 April 2012.

Conduct of the inquiry

1.3 Notice of the inquiry was posted on the committee's website. The committee also advertised the inquiry in *The Australian* and wrote to key stakeholder groups, organisations and individuals to invite submissions. Following the 2011/2012 wheat harvest the committee wrote to all submitters again asking if they wanted to provide further information.

1.4 The committee received 26 submissions, and six supplementary submissions, which are listed at Appendix 1.

1.5 The committee held four public hearings. These were held in Adelaide on 30 August 2011, in Perth on 31 August 2011, and in Canberra on 16 November 2011 and 20 February 2012. A list of witnesses who appeared at the hearings can be found

at Appendix 2. Copies of the *Hansard* transcripts are available on the internet at www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_c/te/grains_2011/hearings/index.htm.

1.6 It is of note that the inquiry was conducted over a period of more than a year, during which time a number of developments occurred in the process of deregulating the bulk wheat export market. These transformations should be borne in mind when reading the report. Developments included changes in the way that the Bulk Handling Companies (BHCs) do business, including the new access undertakings of each BHC that were accepted by the Australian Competition and Consumer Commission (ACCC) in 2011. Changes also included a government response to a major report by the Productivity Commission on Wheat Export Marketing Arrangements, culminating in the introduction of a bill in the final days of the inquiry. The Productivity Commission report and the government response can be found at www.pc.gov.au/projects/inquiry/wheatexport.

1.7 The bill has been referred to the committee's counterpart committee, the Rural and Regional Affairs and Transport Legislation Committee, which is to report by 18 June 2012. Information on this inquiry can be found at www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_c/te/wheat_export_2012/index.htm. If passed, the bill will continue to significantly change the face of the bulk wheat export market in Australia.

Structure of this report

1.8 The report is structured as follows:

- Chapter 2 provides a background to the Australian wheat industry and the deregulation of the bulk wheat export market from 2008;
- Chapter 3 discusses the question of monopolies in the bulk wheat export market. It also considers equitable and efficient access to the shipping stem;
- Chapter 4 examines the degree of transparency in storage and handling of grain and the appropriateness of any consequent marketing advantages;
- Chapter 5 considers equitable access to the lowest cost route to market, including transport options;
- Chapter 6 covers competition issues arising from the redelivery of grain;
- Chapter 7 discusses the absence of uniform receipt, testing and classification standards and practices and any implications for growers and/or for Australia's reputation as a quality supplier; as well as other matters raised by submitters; and
- Chapter 8 provides conclusions and recommendations.

Acknowledgement

1.9 The committee would like to acknowledge the invaluable contribution of Senator Judith Adams to this inquiry. Senator Adams, who passed away on 31 March 2012, was an active and committed member of the Rural and Regional Affairs and Transport Committee over many years and the committee will miss her insights and dedication.

1.10 The committee also thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.11 References in this report to individual submissions are to those submissions as received by the committee, not to a bound volume. References to the committee *Hansard* are to the proof *Hansard*; page numbers may vary between the proof and the official (final) *Hansard* transcript.

Chapter 2

Background

Introduction

2.1 This chapter commences with an outline of the Australian wheat industry. It also provides an overview of deregulation of the Australian wheat market to date. It discusses the report of the Senate Rural and Regional Affairs and Transport Committee Inquiry into exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008.

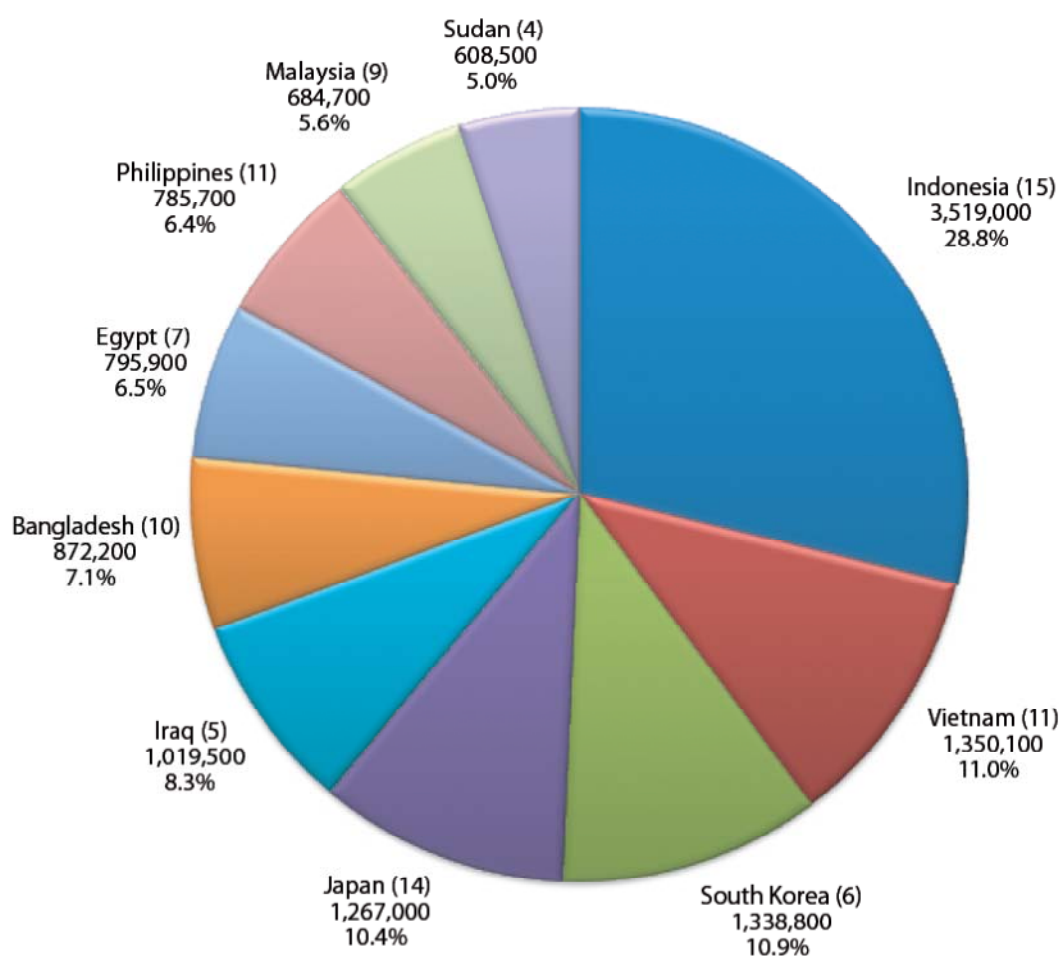
2.2 The chapter also discusses the 2010 Productivity Commission review of wheat export marketing arrangements and the government response. Finally, it addresses the Wheat Export Marketing Amendment Bill 2012 which seeks to implement the findings of the Productivity Commission review, albeit on a somewhat longer timetable.

The Australian wheat industry

2.3 The Australian wheat industry is heavily export oriented, with approximately 60–70 per cent of annual production exported. Australian wheat production has shown a steady increase over the last 50 years. Wheat Exports Australia (WEA) reports that in 2010/11 18.5 million tonnes of the record 27.9 million tonnes of wheat produced was exported to 52 countries, predominantly as bulk export (16.3 million tonnes to 36 countries), although with a significant proportion as non-bulk export (2.2 million tonnes to 40 countries).¹ Figure 1 below shows the top ten export markets for Australian bulk wheat 2010/11 by tonnage and proportion, Figure 2 shows bulk wheat exports by volume and number of destination countries, and Figure 3 shows number of consignees and tonnages exported by year for bulk and non-bulk exports.

1 Wheat Exports Australia, *Report for Growers 2010/11*, p. 3, www.wea.gov.au/ReportForGrowers.php, accessed 26 March 2012.

Figure 1—Top ten export markets for Australian bulk wheat 2010/11 (tonnage and proportion)²

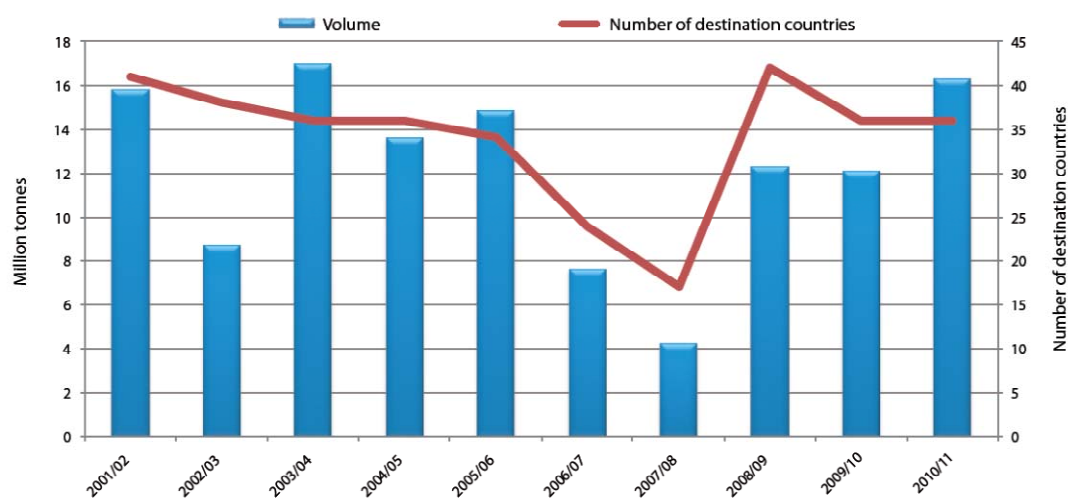


Note 1: Figures in brackets represent the number of accredited exporters that shipped to that country

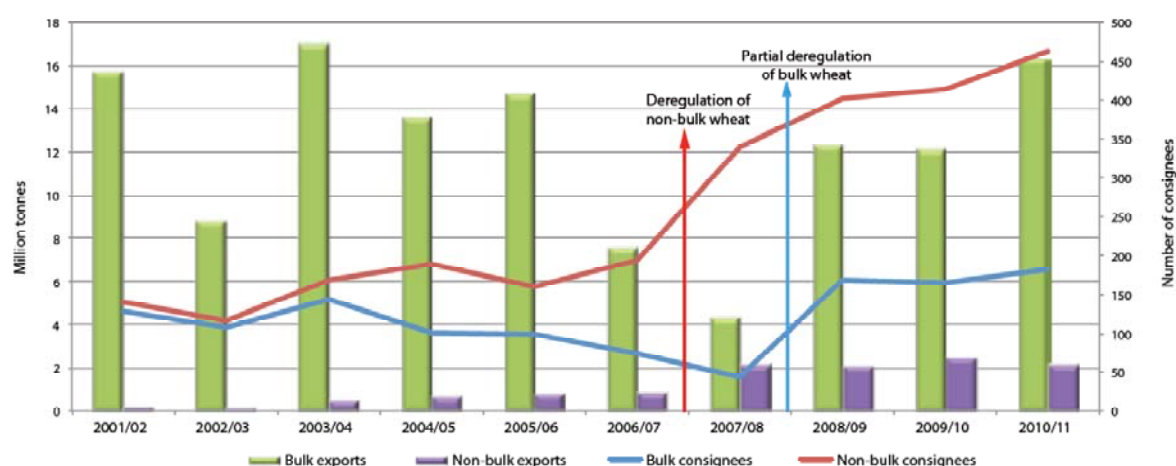
Note 2: Figures under each country are the tonnages imported

Note 3: Percentages represent the proportion of the total 12.2 million tonnes shipped to the top 10 countries

2 Wheat Exports Australia, *Report for Growers 2010/11*, p. 5, www.wea.gov.au/ReportForGrowers.php, accessed 5 April 2012.

Figure 2—Bulk wheat exports by volume and number of destination countries³

Source: WEA analysis and ABARES

Figure 3—Consignees and tonnages exported by year for bulk and non-bulk exports⁴

Source: WEA analysis

2.4 Historically Australia has been one of the top five major wheat exporting countries. In 2010/11 Australia was the third largest wheat exporting nation, up from fifth in 2009/10.⁵

2.5 Wheat is grown in Western Australia, South Australia, Victoria, New South Wales and Queensland, primarily in areas with rainfall averaging between 400mm and 1000mm per year. A limited domestic market in South Australia and Western Australia means these states are more export oriented. Variable production levels and

3 Wheat Exports Australia, *Report for Growers 2010/11*, p. 7.

4 Wheat Exports Australia, *Report for Growers 2010/11*, p. 7.

5 Wheat Exports Australia, *Report for Growers 2010/11*, p. 20.

high domestic demand in Victoria, New South Wales and Queensland result in a greater variation in exportable surplus.⁶

2.6 Australia's top ten export markets are Indonesia, Vietnam, South Korea, Japan, Iraq, Bangladesh, Egypt, the Philippines, Malaysia and Sudan. Australian wheat is well regarded by international markets due to very low screenings (undersized wheat that will pass through a 2mm slotted screen), low moisture content and the production of white flour.⁷

2.7 A number of wheat varieties are grown in Australia with different end use characteristics. Varieties with similar characteristics are placed in the same class.⁸ Classes of wheat in Australia include Australian Prime Hard (APH), Australian Hard (AH), Australian Premium White (APW), Australian Standard White (ASW), Australian Soft (ASFT), Australian Standard Noodle (ASWN), Australian Premium Noodle (APWN), Australian Premium Durum (APDR), and Australian Feed (FEED).⁹

2.8 Wheat Quality Australia (WQA) explains that wheat classes are different to 'receival standards', which are established by Grain Trade Australia (GTA). WQA explains that receival standards are applied by storage agents when wheat is presented for delivery:

Receival standards assess the grain's physical characteristics, which are largely determined by the environment, for example, protein content, moisture, contaminants and test weight.¹⁰

2.9 WQA go on to explain that:

By combining wheat classification and receival standards, wheat parcels that can be stored, transported and processed together without unacceptable quality loss are identified. This is essential in Australia where parcels from different owners are centrally stored, transferred and exported by rail through one of 19 national ports.¹¹

6 Wheat Exports Australia, *Report for Growers 2010/11*, p. 11.

7 Wheat Exports Australia, *Report for Growers 2010/11*, p. 11.

8 Wheat Exports Australia, *Report for Growers 2010/11*, p. 11.

9 Wheat Quality Australia, *Wheat Classification Guidelines, Version: April 2011*, p. 8, www.wheatclassificationcouncil.com.au/content/images/documents/WQA%20Wheat%20Classification%20Guidelines%20April%202011.pdf, accessed 8 March 2012.

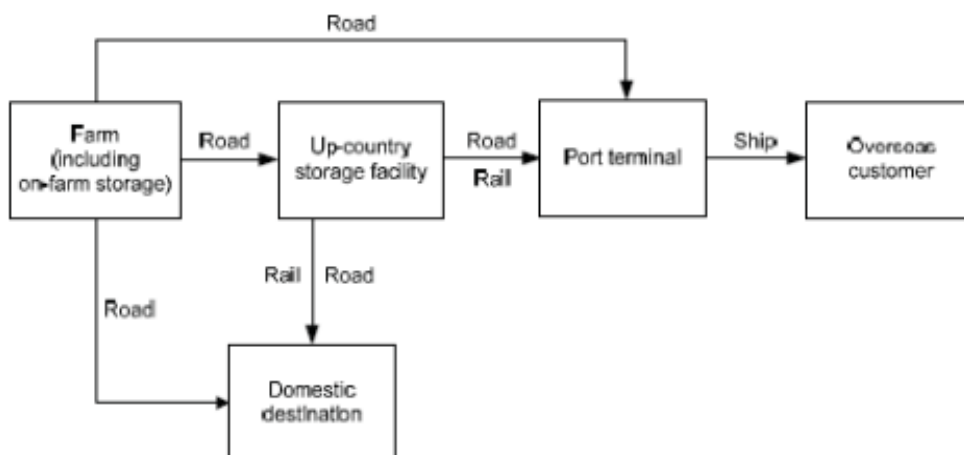
10 Wheat Quality Australia, What We Do, www.wheatclassificationcouncil.com.au/info/wheatqualityaustralia/aboutus#variety, accessed 8 March 2012.

11 Wheat Quality Australia, What We Do, www.wheatclassificationcouncil.com.au/info/wheatqualityaustralia/aboutus#variety, accessed 8 March 2012.

The supply chain

2.10 As described above, the majority of Australia's export wheat is supplied through the bulk grain handling system. The network is comprised of "up-country" receival facilities connected by rail and road transport to population centres and port facilities.¹² This is illustrated in Figure 4 below.

12 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 66.

Figure 4—Bulk grain supply chain¹³

2.11 There are three major regionally based bulk handling companies:

- GrainCorp Operations Limited in New South Wales, Victoria and Queensland;
- Viterra Operations Limited in South Australia; and
- Co-operative Bulk Handling in Western Australia.

2.12 In addition, there are two large independent bulk handling companies: AWB Limited has operations in South Australia, New South Wales and Queensland; and Australian Bulk Alliance Pty Ltd (ABA), a wholly owned subsidiary of Emerald Group Australia Pty Ltd, has operations in New South Wales and Victoria. Finally, a number of smaller independent storage and handling facilities complement the larger bulk handlers.¹⁴

2.13 The major bulk handling companies are often vertically integrated, meaning that they tend to operate services along the entire supply chain from bulk receipt sites to ownership of export cargo ships. A number of other changes are occurring in the supply chain, due to deregulation, privatisation and competition in both the transport and storage of grain.¹⁵ These issues are discussed further in chapters 3 to 6.

2.14 Of significance for this inquiry is that on 20 March 2012, the company Glencore announced its intention to acquire Viterra. A joint press release from the two companies, announcing the acquisition, stated that:

¹³ Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 253–4.

¹⁴ Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 66–7; and Australian Bulk Alliance, *Our Company*, www.bulkalliance.com.au/Our-Company, accessed 12 April 2012.

¹⁵ Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 66–7.

Glencore is one of the world's leading integrated producers and marketers of commodities, headquartered in Baar, Switzerland, and listed on the London and Hong Kong Stock Exchanges. Glencore has worldwide activities in the production, sourcing, processing, refining, transporting, storage, financing and supply of Metals and Minerals, Energy Products and Agricultural Products.¹⁶

2.15 In the lead up to the announcement there was considerable speculation in the rural press regarding the takeover. For example, in an article in *The Land* Mr Malcolm Bartholomaeus, a grains analyst is quoted as saying that Glencore currently have 15 per cent of national wheat exports and Viterra has 12 per cent. If merged, with a combined total of 28 per cent, the company will become the biggest wheat exporter in Australia. Mr Bartholomaeus went on to note that this would be most pronounced in South Australia where Viterra has 30 per cent of the market and Glencore has 19 per cent, making a total of close to 50 per cent of the market.¹⁷

2.16 Once wheat is harvested it can be stored on farm, delivered to one of about 570 up-country storage facilities by road, or delivered directly to port by road. There is currently a wider range of storage services in the eastern states and parts of South Australia than in Western Australia.¹⁸

2.17 The storage of grain on farms can occur in a number of ways. It can be stored in bags holding between 200 and 220 tonnes of wheat, and filled and emptied using specialised machinery. This method, however, is more common for the domestic wheat market. Wheat can also be stored in sealed grain silos, or sheds or bunkers.¹⁹

2.18 From up-country receival facilities export grain is transported either by road or rail, with approximately 75 per cent of this occurring by rail with variability in use according to state. Even within a state there can be considerable variation in rail use. As an example, in Western Australia, the port of Esperance receives about 90 per cent of its grain via road, whereas the port of Kwinana receives approximately 90 per cent by rail.²⁰ Although a number of companies provide road haulage, the options for rail transport are restricted to a small number of operators.

16 Glencore International and Viterra, 'Glencore to acquire Viterra', Press Release, www.glencore.com/documents/Acquisition_Release.pdf, accessed 25 March 2012.

17 Paula Thompson, 'Glencore tipped as favourite', *The Land*, 15 March 2012, p. 3.

18 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 67, 256 and 263.

19 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 255–6.

20 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 256–8.

2.19 Over time the share of wheat transported by road has increased and the share transported by rail has decreased. The Productivity Commission cites a number of reasons for this change including that:

- the cost efficiency of road compared to rail has improved;
- whereas the flexibility and efficiency of road freight has improved, this is not the case for rail; and
- deregulation of the wheat market has changed the dynamics of the supply chain due to diversified grain requirements, competition amongst exporters, rationalisation and relocation of up-country storage, and changes in the basis of pricing—all of which have favoured road over rail.²¹

2.20 All but three of Australia's 19 active export grain terminals in Australia are owned and/or operated by the three major bulk handlers.²² The three exceptions are Melbourne Port Terminals (MPT) which is operated by ABA, Queensland Bulk Terminals (QBT), a wholly owned subsidiary of Wilmar Gavilon Pty Ltd. This is in addition to a joint venture between Louis Dreyfus Commodities Pty Ltd and Mountain Industries Pty Ltd at Kooragang in Newcastle which established and accumulation and storage facility coupled with a non-exclusive arrangement with an independent ship loader.²³

2.21 There are three main types of fit for purpose cargo vessels used to export Australian wheat:

- Handysize (deadweight of 25 000 to 43 000 tonnes);
- Handymax (deadweight of 43 000 to 55 000 tonnes); and
- Panamax (deadweight of 65 000 to 80 000 tonnes).²⁴

2.22 In addition the larger Capesize vessels, with a deadweight of 80 000 to 160 000 tonnes, are occasionally used but are subject to port facility restrictions.²⁵

Senate Rural Affairs and Transport Committee report of 2008

2.23 In 2008 the Senate Standing Committee on Rural and Regional Affairs and Transport conducted an inquiry into exposure drafts of the Wheat Export Marketing

21 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 263–4.

22 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 12; and Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 66.

23 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 12.

24 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 25.

25 Wheat Exports Australia, *Report for Growers 2010/2011*, p. 25.

Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008. The report of the inquiry was tabled in the Senate in April that year.²⁶

2.24 The purpose of the Wheat Export Marketing Bill 2008 was to establish Wheat Exports Australia (WEA) as a statutory entity to regulate the export of bulk wheat from Australia through a wheat export accreditation scheme. Consequential on this bill the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008 was intended to repeal the *Wheat Marketing Act 1989* with consequential amendments to six other acts and transitional provisions.²⁷

2.25 The committee reported on a number of issues that were raised by witnesses at that inquiry. Those issues are considered briefly in the following paragraphs.

2.26 Collective marketing was considered desirable by some witnesses. Those witnesses were concerned that, in a deregulated market, growers would be in competition with one another, that they would lose certainty and that they would receive lower returns.²⁸ Other witnesses considered, however, that competition among a number of exporters would likely lead to increased returns for growers.²⁹

2.27 Some witnesses were concerned that regional pools would close early and could disadvantage growers in the affected regions. Other witnesses pointed out, however, that the Australian Wheat Board (AWB) had operated different pools in the past.³⁰

2.28 Additionally, it was thought by some that growers would risk uncertainty of payments and would be adversely affected because they would lack collateral for obtaining finance. Some witnesses told the committee that a national pool established a floor price which ensured security of payments. It was also considered that the role of the single desk as 'receiver of last resort' provided extra security, especially for

26 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008,

www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_ctte/wheat_2008/index.htm, accessed 26 March 2012.

27 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, p. 1.

28 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, p 5.

29 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, p 6.

30 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, p 6.

smaller growers who might not have the capacity to store grain. It was also thought that the single pool provided a market for growers on high production years and acted as a buyer of substandard grain. However, there was evidence that Australian Wheat Board International Limited (AWBI) was not obliged to purchase substandard grain and, as regards the role of estimated pool returns providing collateral for obtaining finance, there was evidence that banks loaned monies against the viability of the farm rather than on the basis of a guaranteed pool return.³¹

2.29 Other witnesses were concerned that 'industry good' functions such as market development and promotion and plant breeding, would not be financed.³² Submitters raised concerns that individual growers would not be able to access market information, providing the integrated grain handling companies with a significant advantage over other exporters. Some witnesses considered that many farmers might lack the necessary marketing/hedging skills to cope with a deregulated environment.³³ The committee noted concerns expressed that there had been insufficient consultation with growers by the government in developing the proposed changes.³⁴

2.30 Having considered these and other issues, the committee recommended that the bills should proceed and be passed by the Senate, but it also recommended that the bills should address a number of issues raised at the inquiry including:

- the role and operation of the proposed WEA;
- exporters' access to bulk storage and infrastructure;
- legislative provision for review of the legislation; and
- provision of transitional education and counselling for existing producers.³⁵

2.31 Liberal party senators agreed with the report's recommendations but made additional comments relating to the following:

31 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 7–9.

32 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 9–11.

33 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 11–13.

34 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 15–18.

35 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 57–8.

- the purpose of the bill;
- eligibility for accreditation, in particular to exempt wheat growers who wished to directly export their own wheat to a third party;
- minimum standard trading terms including truth in pricing and minimum standard payment schedules;
- classification of pool products as financial products under appropriate financial legislation;
- application of the proposed access test to 'up-country' storage facilities, port storage facilities, shipping stem and information about grain stocks;
- access undertakings to be dealt with through the Australian Competition and Consumer Commission (ACCC) under the powers provided for in Part IIIA of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*);
- improved collation and dissemination of information to ensure that market participants can properly price their product and services;
- external audits to be financed by WEA; and
- establishment of a peak body based on the Australian Wine and Brandy Corporation.³⁶

2.32 National Party senators and the Country Liberal Party senator for the Northern Territory dissented from the report's recommendations.³⁷ The dissenting report argued that 'the draft bills lack sufficient safeguards to prevent regional monopolies from arising'.³⁸ The dissenting senators also expressed a number of other concerns, including the following:

36 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, Additional Comments provided by Liberal Senators, April 2008, pp 59–65.

37 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, Dissenting Report by Senator Barnaby Joyce, Senator Fiona Nash and Senator Nigel Scullion, April 2008, pp 67–72.

38 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, Dissenting Report by Senator Barnaby Joyce, Senator Fiona Nash and Senator Nigel Scullion, April 2008, p. 67.

The draft bills have not, in any way, taken into consideration that the majority of Australian wheat growers want the retention of a grower owned and controlled wheat marketing system.³⁹

2.33 The bills that were subsequently introduced in the Senate incorporated some of the matters raised by the committee. They included, for example, a provision for review of the legislation.⁴⁰

Deregulation of the bulk wheat export market

2.34 The *Wheat Export Marketing Act 2008* (the Act) and the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008* were given Royal Assent by the Governor General on 30 June 2008. This marked the commencement of the deregulation of the bulk wheat export market in Australia. The domestic market for wheat had already been deregulated in 1989, and the non-bulk export market was deregulated in 2007.⁴¹

2.35 Until the enactment of these Acts, there was a monopoly on the export marketing of wheat in bulk through a 'single desk'. Between 1939 and 1999 this occurred through the Australian Wheat Board (AWB), and from 1999 to 2008 it occurred through the AWB's privatised successor, Australian Wheat Board International Limited (AWBI).⁴² At this time a statutory authority known as the Wheat Export Authority was established as a government regulator to:

- Monitor and report on AWBI's performance in managing the National Pool;
- Control the export of wheat in containers and bags by non-AWBI exporters through issuing export consents; and
- Issue licences for bulk wheat exports, although AWBI maintained a power of veto over the issuing of a bulk licence.⁴³

39 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, Dissenting Report by Senator Barnaby Joyce, Senator Fiona Nash and Senator Nigel Scullion, April 2008, p. 67.

40 Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law, Second Reading Speech, *Wheat Export Marketing Bill 2008 and Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, *Senate Hansard*, 16 June 2011, pp 2130–5.

41 The Allen Consulting Group, *Competition in the export grain supply chain: access and information asymmetries*, Report to AWB Limited, March 2008, p. 19; and Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 44.

42 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 45.

43 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 48–9.

The legislative base for this regulated system, generally referred to as the 'single desk', was the *Wheat Marketing Act 1989*.

2.36 On 1 October 2007 the Export Wheat Commission (EWC) was established, under amendments to the *Wheat Marketing Act 1989*, with three primary functions. The EWC was responsible for:

- *control of bulk wheat exports*. Exporters, other than AWBI, wanting to export wheat in bulk from Australia were required to apply to the EWC for a bulk export consent;
- *performance monitoring and reporting to growers*. The EWC independently monitored the AWBI's export performance and remuneration arrangements, and reported on the benefit of that performance to growers; and
- *administration of the Non-Bulk Wheat Quality Scheme*. The purpose of the scheme was to ensure that wheat exported in bags or containers corresponded with the relevant contractual description of the wheat.⁴⁴

2.37 The *Wheat Marketing Act 1989* and the single desk were repealed by the enactment of the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008*.

Accreditation

2.38 By abolishing the single desk, the government enabled wheat growers to sell to accredited exporters of bulk wheat. The accreditation of exporters was made the responsibility of a new Commonwealth Government agency, Wheat Exports Australia (WEA), who administers the Wheat Export Accreditation Scheme (the Scheme). The export of bulk wheat without accreditation from WEA was prohibited by an amendment to the Customs (Prohibited Exports) Regulations 1958 made by the *Wheat Export Marketing (Repeal and Consequential Amendments) Act 2008*.

2.39 The establishment of the Wheat Export Accreditation Scheme is provided for under subsection 8(1) of the Act. As the Scheme was required to commence on the same day as the Act, 1 July 2008, the former Export Wheat Commission formulated the Scheme under transitional legislative arrangements.⁴⁵

2.40 The Scheme established an export accreditation system for regulating bulk wheat exports from Australia, with exporters of bulk wheat required to be accredited

44 Export Wheat Commission, *Role & Functions of the Export Wheat Commission*, www.wea.gov.au/Archived/Mediapre2008/Publicationspre2008/Fact%20Sheets/EWC/FS001%20-%20Roles%20and%20Functions%20of%20the%20EWC.pdf, accessed 7 March 2012.

45 ComLaw, *Wheat Export Accreditation Scheme 2008, Explanatory Statement*, www.comlaw.gov.au/Details/F2008L02313/Explanatory%20Statement/Text, accessed 10 March 2012.

under the Scheme in order to export. The eligibility criteria considered by WEA in assessing an applicant under the Scheme include requirements that:

- the applicant is a company or co-operative and a trading corporation;
- WEA is satisfied the company is 'fit and proper' in relation to financial resources, risk management arrangements, business record, trust and candour, experience and ability of executive officers, compliance with applicable Australian and foreign laws, compliance with designated sanitary and phytosanitary measures, and compliance with applicable United Nations sanctions provisions; and
- the applicant is not under external administration.⁴⁶

2.41 Where a port terminal service is provided by the applicant or associated entities, a port terminal access undertaking must have been accepted by the ACCC and the applicant must comply with continuous disclosure rules.⁴⁷

2.42 WEA can issue accreditation for up to three years. During this period the exporter may apply for a variation of conditions. A register is maintained on the WEA website listing the name and Australian Company Name (ACN) of each accredited exporter and their conditions of accreditation.⁴⁸ As at March 2012, 26 exporters are currently accredited by WEA.⁴⁹

Access undertakings

2.43 As discussed above, if an exporter, or an associated entity of an exporter, is the provider of one or more port terminal services, WEA must be satisfied that they pass the access test in order for the exporter to be eligible for accreditation. The test is set out in section 24 of the Act.

2.44 Before 1 October 2009 it was a condition of accreditation by WEA that wheat exporters publish a statement on their websites outlining the terms and conditions on which they will allow other accredited exporters access to their port terminal facilities. Accreditation before 1 October 2009 did not require the involvement of the ACCC.⁵⁰

2.45 To gain accreditation from 1 October 2009, an exporter with one or more port terminal services for wheat export must have a formal access undertaking in operation that relates to the provision of access to port terminal services for accredited wheat

46 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

47 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

48 Wheat Exports Australia, *Report for Growers 2010/11*, p. 28.

49 Wheat Exports Australia, Register of Accredited Exporters, www.wea.gov.au/wheatexports/RegisterOfAccreditedWheatExporters.htm, accessed 13 March 2012.

50 Australian Competition and Consumer Commission, *Accreditation of wheat exporters—the access test*, www.accc.gov.au/content/index.phtml/itemId/868797, accessed 13 March 2012.

exporters. This access undertaking is assessed by the ACCC under the requirements of Part IIIA of the *Competition and Consumer Act 2010* (CCA).⁵¹

2.46 The ACCC can accept or reject proposed undertakings. If the ACCC accepts the undertaking, it is binding and can be enforced by the Federal Court. The access provider can seek to vary an undertaking that is in force or it can withdraw the undertaking, but only with the ACCC's consent.

2.47 In late September 2009 the ACCC accepted port terminal access undertakings from the following BHCs: Co-operative Bulk Handling Ltd, AusBulk Ltd (now Viterra), and GrainCorp Operations Ltd (GrainCorp). Revised undertakings from these companies, together with an undertaking from ABA were accepted in 2011. More detail on these undertakings is provided in chapter 3.

Productivity Commission's review of Wheat Export Marketing Arrangements

2.48 The Act required that a review of the new arrangements would be commenced by 31 December 2010. Accordingly, on 29 September 2009, the Assistant Treasurer referred the matter to the Productivity Commission. The Commission was required to commence its review by 1 January 2010 and report before 1 July 2010. The report was presented to the minister on that date and was tabled in the Senate on 16 November 2010.⁵²

2.49 Although the Commission reported that some growers wanted a return to the single desk arrangements, it observed that its terms of reference led it to consider possible improvements to the existing arrangements rather than to compare the current arrangements for wheat exports with those that previously existed.⁵³

2.50 The Commission's report identified eleven key points. Many of these issues were canvassed again in evidence during the committee's inquiry. The points included:

- The transition to competition in the exporting of bulk wheat has progressed relatively smoothly, particularly given difficult international trading conditions—a pronounced commodity price cycle, the global financial crisis, and exchange rate appreciation;
- The regulatory arrangements for marketing bulk wheat exports have been beneficial during the transitional phase since deregulation. They

51 Australian Competition and Consumer Commission, *Accreditation of wheat exporters—the access test*, www.accc.gov.au/content/index.phtml/itemId/868797, accessed 13 March 2012.

52 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp iv–v, www.pc.gov.au/projects/inquiry/wheatexport accessed 26 March 2012; and *Journals of the Senate*, No. 9, Tuesday 16 November 2010, p. 294.

53 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 3–4.

have given growers confidence in adjusting to deregulation and facilitated the rapid entry of 28 accredited traders, with 12 million tonnes exported to 41 countries in the first year after deregulation;

- A range of marketing options have become available since deregulation. However, some growers prefer the previous single desk arrangements;
- The benefits of accreditation of traders will rapidly diminish in the post-transitional phase, leaving only the costs. The accreditation scheme, Wheat Exports Australia and the Wheat Export Charge should be abolished on 30 September 2011;
- The port terminal access test has provided greater certainty for traders and made access easier, timelier and less costly than it could have been by relying on potential declaration under Part IIIA of the *Trade Practices Act 1974*.⁵⁴
- However, there are still some transitional issues associated with port access and contestability in the logistics supply chain. The access test accordingly should remain a condition for port operators to export bulk wheat until 30 September 2014.
- The benefits of the access test will diminish and could become costly in the long term without the checks and balances of Part IIIA of the *Trade Practices Act 1974*. From 1 October 2014, regulated access should rely on Part IIIA, with continuation of mandatory disclosure, supplemented by a voluntary code of conduct by all port terminal services operators.
- There is evidence that increasing on-farm storage, and competition between road and rail, are leading to improvements in supply chain efficiency. However, it is important that the regulatory arrangements enhance efficiency in the transport and storage market by facilitating contestability.
 - The Commission supports the decision by the ACCC to review the exclusive dealing notification in relation to Grain Express in Western Australia.
- The level and allocation of investment in road and rail infrastructure by governments should be based on rigorous cost-benefit analysis, with a focus on developing economically and socially efficient logistics chains.
- Monthly information by state on stocks, exports and domestic uses facilitates an efficient wheat market. Industry should consider funding its continuation.

54 The *Trade Practices Act 1974* has been replaced by the *Competition and Consumer Act 2010*.

- The provision of most other 'industry good' functions is best left to the industry.⁵⁵

2.51 The eleven recommendations contained in the Productivity Commission's report can be found at Appendix 3.

Government Response to the Productivity Commission Report

2.52 The government responded to the Productivity Commission recommendations on wheat export marketing arrangements on 23 September 2011. The government agreed in principle with the Productivity Commission's recommendations to abolish the Wheat Export Accreditation Scheme, WEA and the Wheat Export Charge (WEC) on 30 September 2011, and remove the access test requirements for grain port terminal operations on 30 September 2014.⁵⁶

2.53 However, while expressing in principle support for these recommendations, the government was of the view that 'the supply chain is not yet of a structure that provides for an efficient and effective model in a commercial environment'. The government stated that:

...this is not surprising given that bulk wheat exports are coming from a highly regulated environment that had been in place for more than 60 years until the changes in 2008 that introduced new arrangements that the Commission subsequently reviewed.⁵⁷

2.54 The government outlined the approach it would take:

...a three stage approach will be a more effective transition to full market deregulation and will help ensure that the full advantages of the 2008 changes are realised.⁵⁸

2.55 The three stages outlined were:

55 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 2.

56 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1, www.daff.gov.au/agriculture-food/crops/wheat/government-response-to-the-productivity-commission-recommendations-on-wheat-export-marketing-arrangements, accessed 8 March 2012.

57 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions–Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, p. 2, www.daff.gov.au/_data/assets/pdf_file/0016/2021713/faqs.pdf, accessed 21 March 2012.

58 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

1. introduction of a 'lighter touch' accreditation scheme, operating under existing legislation from 1 October 2011 until 30 September 2012;
2. the accreditation scheme, WEA and the WEC will be removed from 1 October 2012, the access test will be maintained until 30 September 2014; and a voluntary code of conduct which includes continuous disclosure rules for port terminal operators that export wheat will be developed and implemented by 30 September 2014;
3. from 1 October 2014, full market deregulation, access issues governed by general competition law, voluntary code of conduct in effect.⁵⁹

2.56 The government explained that the rationale for this staged transition is that:

In the short term, accreditation and a linked access test provide comfort to growers and customers, while reducing the level of investigation and compliance activities to bring these arrangements more in line with those for other agricultural commodities.⁶⁰

2.57 The government has stated that the removal of the accreditation scheme will increase competition within the wheat marketing industry with benefits for growers including:

- More buyers competing for wheat will help growers to get prices that reflect market forces;
- Marketers will be forced to improve the services they provide to secure supplies of wheat and drive marketing innovation; and
- After 30 September 2012 growers will no longer pay the 22 cents per tonne wheat export charge on bulk and container exports that was used to fund the WEA.⁶¹

2.58 However, the government has sought to reassure growers that mechanisms will still be in place to ensure port access and to reassure international buyers that any Australian exporter will be able to meet supply commitments. The government has stated that this in turn will help to protect Australia's reputation as a wheat exporter.

59 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

60 Australian Government, *Australian Government response to the Productivity Commission recommendations on wheat export marketing arrangements*, 23 September 2011, Minister for Agriculture, Fisheries and Forestry Senator the Hon. Joe Ludwig, p. 1.

61 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, www.daff.gov.au/agriculture-food/crops/wheat/government-response-to-the-productivity-commission-recommendations-on-wheat-export-marketing-arrangements/frequently_asked_questions, accessed 28 March 2012, p. 4.

The government has explained that the mechanisms to ensure these processes will include the retention of access undertakings until October 2014, followed by the implementation of a code of conduct.⁶²

2.59 The government also explained that there is an incentive for port terminal operators to provide fair and transparent access to their facilities after 1 October 2012 because if a required undertaking is not in place, those port terminal operators will not be able to export bulk wheat. In practice, this will mean that the ACCC will advise Customs if a grain port terminal operator that requires an undertaking does not have one in place. This will be the trigger for Customs to refuse exports for that exporter only (with other wheat exporters handled by that port terminal not affected).⁶³

2.60 A voluntary code of conduct that will include the key elements of the existing access undertakings, such as continuous disclosure rules, will be in place from 1 October 2014 and will provide security of access for other exporters and help ensure the throughput needed for operators to attract the level of return on investment required to keep port terminals viable.⁶⁴

2.61 In relation to WEA's role under the 'lighter touch' scheme the government has said that:

WEA will continue to assess the 'fit and proper' status of exporters in maintaining or seeking accreditation to export bulk wheat from Australia under the 'lighter-touch' accreditation scheme. The changes will focus on reducing the level of 'red tape' for industry and the associated compliance costs, and will not compromise WEA's ability to administer or monitor the effective operation of the accreditation scheme.

While the scheme will be less onerous on accredited exporters and WEA itself, WEA will retain its capacity to respond to any issues that may relate to the accreditation of an exporter.⁶⁵

62 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, p. 4.

63 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, p. 7.

64 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangement – the Government Response*, 30 September 2011, p. 7.

65 Department of Agriculture, Fisheries and Forestry, *Frequently Asked Questions – Wheat Export Marketing Arrangements, Productivity Commission Report into Wheat Export Marketing Arrangements – the Government Response*, 30 September 2011, p. 6.

Wheat Export Marketing Amendment Bill 2012

2.62 On 21 March 2012 the Wheat Export Marketing Amendment Bill 2012 was introduced in to the House of Representatives. The bill implements the Australian Government's response to the Productivity Commission review of wheat export marketing arrangements.⁶⁶ The bill has been referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 18 June 2012. Details of the inquiry are available on the committee's inquiry page: www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=rrat_c/te/wheat_export_2012/index.htm.

2.63 The Explanatory Memorandum notes that the Bill will 'abolish the Scheme and the WEC on 30 September 2012, and wind-up WEA on 31 December 2012'. The Explanatory Memorandum clarifies that:

...this will give WEA time to complete outstanding tasks such as its final Annual Report and the 2012/13 Report for Growers. The requirement for providers of grain port terminal services to pass the access test as a condition for exporting bulk wheat will be retained until 30 September 2014. The access test will then be abolished, on the condition that a non-prescribed voluntary industry code of conduct covering access to grain export terminals is in place.⁶⁷

2.64 The Explanatory Memorandum goes on to make clear that if a voluntary industry code of conduct is approved this will mean that:

...the market will move to full deregulation from 1 October 2014. All aspects of the industry will be subject to general competition law administered by the Australian Competition and Consumer Commission (ACCC) and complemented by the code. If a code is not approved [by the Agriculture Minister], the access test will continue.⁶⁸

66 Explanatory Memorandum, Wheat Export Marketing Amendment Bill 2012, p. 2.

67 Explanatory Memorandum, Wheat Export Amendment Marketing Bill 2012, p. 2.

68 Explanatory Memorandum, Wheat Export Amendment Marketing Bill 2012, p. 2.

Chapter 3

The question of monopolies

Introduction

3.1 This chapter examines any risks of natural, virtual or other monopolies discouraging or impeding competition in the grain storage, transport, handling and shipping network, and any implications for open and fair access to essential grains infrastructure. It discusses the question of whether there are natural monopolies that have emerged on a regional basis. The chapter also considers equitable access to the shipping stem.

3.2 'Monopoly' is defined by the Oxford English Dictionary as 'the exclusive possession or control of the trade in a commodity, product, or service; the condition of having no competitor in one's trade or business'.¹

3.3 As well as considering the question of monopolies, the committee considered the related question of potentially anti-competitive behaviour as it pertains to a number of facets of the export grains industry. These include the issues of access to information about storage and handling of grains (in chapter 4); equitable access to the lowest cost route to market (in chapter 5); fees charged during redelivery of grain (in chapter 6); and the inconsistent, and possibly inequitable, application of grain standards (in chapter 7).

3.4 When introducing the bills in 2008 for the Acts which began the deregulation process, the minister stated that 'one of the concerns identified during consultation was the risk of a single wheat export monopoly being replaced by three regional monopolies'.² The government proposed to address this risk by imposing specific requirements on those exporters that operate bulk grain terminals at ports, stating that these are the facilities with natural monopoly characteristics.³

3.5 The minister explained that for the period until 1 October 2009, accredited exporters who operated bulk grain terminals at ports would be required to publish the terms and conditions under which they will provide access to other users. After 1 October 2009, they would be required to have an approved access undertaking with the ACCC. The minister stated that the reason for the different conditions before and

1 Oxford English Dictionary, Online Version, December 2011, www.oed.com, accessed 14 March 2012.

2 Senator Nick Sherry, Minister for Superannuation and Corporation Law, Second Reading Speech, *Senate Hansard*, 16 June 2008, p. 2133.

3 Senator Nick Sherry, Minister for Superannuation and Corporation Law, Second Reading Speech, *Senate Hansard*, 16 June 2008, p. 2133.

after 1 October 2009 was that it was unlikely that the ACCC could receive, process and approve access undertakings in time for the 2008/09 marketing season.⁴

3.6 The government did not impose similar regulations on other links in the supply chain. While it acknowledged the Senate Committee's concern that, potentially, bulk handling companies might restrict access to up-country storage facilities, the government stated that it did not intend to impose regulation at that level of the chain. It argued that, if regulation were imposed on the more than 500 up-country facilities, substantial compliance costs would result 'which would almost certainly be passed back to growers'.⁵ The minister stated that the government would 'continue to monitor the ability of exporters to access up-country storage facilities and that it would take steps to remedy any problems including if necessary the development of a Code of Conduct'.⁶

3.7 The minister did not address transport issues between up-country receipt and storage facilities and ports.

Monopolistic behaviour

3.8 Some submitters told the committee that the concerns expressed that deregulation would result in one monopoly being replaced by three regional based monopolies have, in fact, been realised.⁷

3.9 Several submitters described a number of mechanisms through which competition in the export wheat market can be impeded or discouraged. Examples of impediments provided by submitters included high costs or restrictive access policies to networks and in particular to the ports.⁸

3.10 Mr John Crosby, former Chairman of the Wheat Expert Committee, noted that it had been foreseen that shipping schedules could be monopolised 'to increase the cost of competitors through demurrage⁹ and extra holding charges'.¹⁰ Mr Crosby went on to detail a range of other mechanisms that can be used to impede or discourage competition including:

4 Senator Nick Sherry, Minister for Superannuation and Corporation Law, Second Reading Speech, *Senate Hansard*, 16 June 2008, p. 2133.

5 Senator Nick Sherry, Minister for Superannuation and Corporation Law, Second Reading Speech, *Senate Hansard*, 16 June 2008, p. 2133.

6 Senator Nick Sherry, Minister for Superannuation and Corporation Law, Second Reading Speech, *Senate Hansard*, 16 June 2008, p. 2133.

7 For example see Mr Kim Halbert, *Submission 2*, [p. 1].

8 For example see Grain Growers Ltd, *Submission 24*, p. 2.

9 The Oxford English Dictionary defines "demurrage" as: detention of a vessel by the freighter beyond the time agreed upon; the payment made in compensation for such detention.

10 Mr John Crosby, *Submission 25*, [p. 3].

- Charging a higher fee for deliveries to port from an upcountry storage not belonging to the port storage owner;
- Charging growers an extra fee for direct delivery to port.
- Using information systems to the benefit of their trading arm;
- Locking up rail capacity on over-burdened lines, requiring competitors to use road, usually at a higher cost;
- Leaning on port authorities to make it hard for competitors to find suitable alternative arrangements. This occurs as a result of the port authority not wanting to upset a major customer, and deals on volume;
- Reducing competition by keeping up-country fees lower, but then overcharging where they have the monopoly at the port; and
- Offering a rebate of about \$2/T to buyers who allow the handler to ship from any site rather than the grain specifically bought by the buyer.¹¹

3.11 Mr Kim Halbert, a grain grower from the North Midlands in Western Australia, submitted that monopolistic behaviour is possible through the use of business rules and BHCs' control of operations, utilising a variety of mechanisms. These include:

- virtual stocks (this causes issues especially with canola oil increments);
- moving grain around receival sites;
- fumigation;
- port fees to introduce grain to the BHCs' system when you have used road freight to port;
- booking out sections of the shipping stem;
- use of grower stocks information;
- rail agreements; and
- accumulation and pricing of grain at port (FOB [Free on Board] pricing).¹²

3.12 Grain Growers Ltd submitted that as much of Australia's port infrastructure for grain handling was built with government support and then privatised, on often favourable terms, there is an expectation that there should be reasonably competitive access to port facilities.¹³

11 Mr John Crosby, *Submission 25*, [p. 3].

12 Mr Kim Halbert, *Submission 2*, [p. 1].

13 Grain Growers Ltd, *Submission 24*, p. 4.

Committee comment

3.13 The committee is of the view that the concerns of the then Minister, as cited at paragraph 3.4, are beginning to be realised, albeit with some regional variation. BHCs are displaying some monopolistic behaviour to the detriment of the industry. Acknowledging some geographic variations, the BHCs behaviour that demonstrates some monopolistic tendencies are evident in the:

- poor contestability of services;
- inadequate governance systems that lack transparency and cannot be independently monitored;
- control and transparency of stocks information;
- ability to influence and manipulate shipping auctions (although the committee notes the marked improvements that auctioning systems deliver);
- high barriers to entry as a consequence of the cost of developing port infrastructure;
- port logistics market which is being serviced by a single company/seller; and
- price discrimination used to change the price and quality of the port logistic services.

3.14 The repeal of the *Wheat Export Marketing Act 2008* will remove the threat to BHCs' loss of marketing arm in cases of misbehaviour. In conjunction with BHCs' ability to continue frustrating the market through information asymmetry and anticompetitive fee structures to access key infrastructure may deteriorate the gains made to date.

Export market developments to date

3.15 As at March 2012 there were 26 accredited exporters of wheat under the Wheat Export Accreditation Scheme, 19 of whom were actively exporting.¹⁴ According to Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia:

The scheme has been in operation for three years and to date no single exporter has dominated the bulk wheat export market. For the 10 months of the 2010-11 marketing year to date, the two largest exporters have

14 Wheat Exports Australia, Register of Accredited Exporters, www.wea.gov.au/wheatexports/RegisterOfAccreditedWheatExporters.htm, accessed 13 March 2012; and Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 20 February 2012, Adelaide, p. 9.

accounted for 31.2 per cent of bulk wheat exports. The top nine have accounted for 88.5 per cent, or 11.9 million tonnes.¹⁵

3.16 Mr Woods went on to note that three of the accredited exporters are bulk handlers, who have an associated entity which operates a port terminal service requiring an ACCC access undertaking. He explained that:

...the marketing arms of the port terminal service providers have in general seen a deterioration in their share of the bulk wheat export market for the ports they own. Viterro Limited in 2008-09 had 37 per cent of the South Australian bulk wheat exports compared to 24 per cent for the 10 months of the 2010-11 marketing year. CBH Grain Proprietary Limited has been relatively constant at 38 or 39 per cent share. GrainCorp Operations Limited achieved 38 per cent in 2009-10 and 31 per cent for the 10 months of this marketing year.¹⁶

3.17 The bulk handling companies stated that their marketing arms did not monopolise the market in their regions. By way of example GrainCorp has stated that:

No evidence has been presented to support a view that GrainCorp has not provided fair and open access on commercial terms to parties seeking access to GrainCorp's grain storage, handling, or port elevator infrastructure.¹⁷

3.18 GrainCorp went on to assert that 'several enquiries have confirmed that GrainCorp does not have monopoly advantage at its country network, including the recent Productivity Commission review'.¹⁸

3.19 Market shares however do not tell the whole story. Ownership and control of grain handling facilities, particularly port facilities where there are high barriers to entry, may result in significant market power. The ACCC has noted that:

A vertically integrated operator may have an incentive to utilise bottleneck infrastructure it controls to hinder access by competitors in upstream or downstream markets in order to gain market share at the expense of access seekers. The strength of such an incentive will be influenced by the existence or threat of competition to the operator's position. Where actual or potential competition exists, the incentive to hinder competitors is

15 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 30 August 2011, Adelaide, p. 1.

16 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 30 August 2011, Adelaide, p. 2.

17 GrainCorp Operations Limited, *Submission 12*, p. 4.

18 GrainCorp Operations Limited, *Submission 12*, p. 4.

moderated by the threat that the hindering behaviour may instead result in loss of throughput to an alternative supply chain or use.¹⁹

Shipping stem arrangements

3.20 Part (f) of the committee's terms of reference asked the committee to inquire into grain exporters' equitable and efficient access to the shipping stem. In this context 'shipping stem' refers to the movement and loading of ships.

3.21 The competitive advantage of the integrated BHCs depends largely on their (almost exclusive) ownership and operation of port handling facilities and their associated activities as major exporters of grain. The Productivity Commission has reported that access to ports is the most critical issue in ensuring the success of deregulation.²⁰

3.22 As discussed in chapter 2, the *Wheat Export Marketing Act 2008* required that the BHCs, if they are to receive accreditation as exporters of wheat, must pass an 'access test' to ensure that all potential exporters (including their competitors in the market) have reasonable access to the port facilities that they own and operate. In practice, if the BHCs wish to participate in the export market, they must have formal access undertakings which are made pursuant to Part IIIA of the *Consumer and Competition Act 2010* and which are accepted by the ACCC.

3.23 Revised undertakings from GrainCorp, Viterra, and CBH were accepted by the ACCC during 2011, as well as a first time undertaking from Australian Bulk Alliance. CBH, Viterra and GrainCorp's undertakings are due to expire on 30 September 2014, whereas ABA's undertaking expires on 30 September 2013. The revised undertakings and the ACCC's decisions to accept are available on the ACCC website.²¹

3.24 The 2009 Undertakings included:

- obligations on the BHCs not to discriminate or hinder access in the provision of port terminal services;
- clear and transparent port loading protocols for managing demand for port terminal services;
- obligations on BHCs to negotiate in good faith with eligible wheat exporters for access to port terminal services; and

19 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, Appendix A, Bulk wheat export market analysis, p. 50.

20 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 174.

21 Australian Competition and Consumer Commission, Port Terminal Service Access Undertakings, www.accc.gov.au/content/index.phtml/itemId/846439, accessed 28 March 2012.

- the ability of wheat exporters to seek mediation or binding arbitration on terms of access in the event of a dispute.²²

3.25 Significant differences between 2009 and 2011 Undertakings are outlined in the ACCC's decision to accept documents for each BHC.²³ Of note is the following:

- Viterra's undertaking to introduce an auction system as opposed to a first come, first served approach; and to increase transparency with regard to available capacity, specific services provided for fees charged and stocks at port.²⁴

3.26 The ACCC informed the committee that if it had not required Viterra, the sole port operator in South Australia, to give an undertaking regarding access only two exporters would have been able to access the two key deep water ports, Port Lincoln and Outer Harbour, during the peak shipping period from January to April.²⁵

3.27 WEA has explained that one of the conditions of accreditation is that an accredited exporter must have processes in place for complying with the continuous disclosure rules. If an associated entity of the exporter provides port terminal services the exporter must use its best endeavours to ensure that the associated entity complies with the continuous disclosure rules.²⁶

3.28 Under section 24 of *Wheat Export Marketing Act 2008* an exporter or its associated entity that operates a port terminal service must publish a shipping stem that is updated daily. The shipping stem must include the ship name, nomination time, nomination acceptance time, quantity of grain to be loaded and estimated load date. WEA has provided a list of further information that it submits should be made available in order to augment the process, including:

- Port terminal
- Destination country
- Exporter
- Commodity

22 Australian Competition and Consumer Commission, *Wheat Export: Port Terminal Service Undertakings*, www.accc.gov.au/content/index.phtml/itemId/846439, accessed 28 March 2012.

23 Australian Competition and Consumer Commission, *GrainCorp Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 22 June 2011; Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011; and Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011.

24 *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 2.

25 Australian Competition and Consumer Commission, *Committee Hansard*, 16 November 2011, p. 2.

26 Wheat Exports Australia, *Submission 7*, p. 4.

- Volume (tonnes)
- Vessel Name
- Date and time of nomination received
- Date and time nomination accepted
- Estimated arrival time
- Expected loading commencement time
- Estimated departure time
- Date of berthing
- Date vessel named
- Date of completion/ execution²⁷

3.29 For its part, WEA downloads and analyses the shipping stem for each bulk wheat export terminal on a daily basis in order to monitor compliance with the continuous disclosure rules. In addition to daily monitoring WEA undertakes shipping stem audits to ensure compliance with the requirements of the Act and, in particular, administration of the shipping stem.²⁸

Allocation of shipping slots

3.30 In Western Australia, the sole operator of port facilities, CBH, is required by its undertaking to employ an auction system to allocate capacity in the shipping stem.²⁹ In South Australia, Viterro will be required to employ auctions from May 2012.³⁰

3.31 The ACCC noted that the auction system, which has now been used by CBH for the past three harvests, has 'widespread industry support'. The ACCC went on to note that CBH's system 'promotes economic efficiency at peak times when demand for port terminal capacity exceeds available port terminal capacity'.³¹

3.32 GrainCorp in eastern Australia has also had access undertakings approved by the ACCC. The undertakings with GrainCorp do not include provision for auctions to allocate capacity. The ACCC has stated that while it seeks a consistent approach it

27 Wheat Exports Australia, *Submission 7*, p. 8.

28 Wheat Exports Australia, *Submission 7*, p. 4.

29 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011.

30 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011.

31 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. vii.

considers all undertakings on their own merits and the undertakings therefore will reflect the particular circumstances of each company.³²

3.33 In the case of GrainCorp the ACCC noted that there is less incentive for self preferential treatment due to the following factors:

- there is a significantly higher level of competition in the east coast for up-country supply chain services than in South Australia and Western Australia;
- there is a significantly higher level of competition in the east coast between wheat supplied into the domestic market and export wheat compared to South Australia and Western Australia and from the development of the non-bulk export market;
- there is a higher level of competition between port terminals located in sections of the east coast (New South Wales, Victoria and the easternmost parts of South Australia) compared to port terminals in South Australia (where there is some small degree of competition from Victorian ports) and Western Australia where there are no competing ports; and
- there is evidence of possible competition from access seekers prepared to bypass port terminals on the east coast.³³

3.34 Some witnesses considered that the auction system should apply to all Australian ports. For example, Mr Malcolm Bartholomaeus, a commodity analyst with NZX, submitted that:

We need the same auction system operating in all states for all ports.

It needs to be administered by an independent organisation, rather than by the BHCs themselves, to ensure that the BHCs do not get an opportunity to allocate prime shipping slots to themselves.

All players must have the same, real cost of defaulting, and not just pay a penalty from one division to another within the same organisation.

There needs to be a secondary market where shipping slots can be traded after the initial allocation.³⁴

3.35 The South Australian Farmers Federation (SAFF) recommended 'that the management of the shipping stem be consistent across all terminals nationally to

32 Australian Competition and Consumer Commission, *GrainCorp Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 22 June 2011, Appendix B, Analysis of bulk wheat markets, p. xx.

33 Australian Competition and Consumer Commission, *GrainCorp Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 22 June 2011, Appendix B, Analysis of bulk wheat markets, p. xx.

34 Mr Malcolm Bartholomaeus, *Submission 21*, p. 6.

ensure a transparent and level playing field'.³⁵ Similarly, the WEA argued that the method of booking shipping slots should be standardised.³⁶

3.36 WEA has submitted that there are a number of ways that the efficiency, effectiveness and transparency of shipping arrangements can be improved including greater transparency of nomination fees, tradability of slots by exporters, and partial refund of nomination fees for early cancellation of shipping slots.³⁷

3.37 WEA has also suggested that a mechanism needs to be found to alert exporters of potential congestion or delays or if vessels are running late with the potential of being cancelled. Finally, they submit that a mechanism needs to be found to avoid overbooking or hoarding of slots, in particular by the BHCs' associated exporter.³⁸

3.38 A number of submitters have identified that there is an inherent inequity in the payment of a forfeiture fee in the event of cancelling a shipping slot. They highlight that exporters who cancel a nomination pay a forfeit fee to the BHC. However, when the trading company associated with the BHC cancels a nomination there is no real penalty as the fee is merely paid to their own trading entity.³⁹

3.39 WEA noted that a number of solutions have been proposed to counter this inequity including:

The depositing of forfeited fees (minus any legitimate costs incurred by the BHC) in a separate account that is ultimately distributed amongst all exporters who used their slots.⁴⁰

3.40 GrainCorp submitted that whereas they have provided equitable access to the port elevator network they argued that they have incurred a financial burden during the process of their ACCC undertaking renewal, resulting in increased administrative costs and decreased service delivery efficiency. GrainCorp asserted that:

...a number of port elevator users (accredited bulk wheat exporters) have used GrainCorp's access Undertaking renewal, a 'six-month' process which has been on foot since 22 September 2010, to seek the imposition of regulatory provisions on port infrastructure owners, who compete with them as grain traders, as a means of commercially disadvantaging them.⁴¹

35 South Australian Farmers Federation Grains Industry Committee, *Submission 13*, p. 17.

36 Wheat Exports Australia, *Submission 7*, p. 9.

37 Wheat Exports Australia, *Submission 7*, p. 9.

38 Wheat Exports Australia, *Submission 7*, pp 9–10.

39 Wheat Exports Australia, *Submission 7*, p. 10; and South Australian Farmers Federation, *Submission 13*, p. 15.

40 Wheat Exports Australia, *Submission 7*, p. 10.

41 GrainCorp Operations Limited, *Submission 12*, p. 16.

Committee comment

3.41 The committee considers that, in light of experience in South Australia and Western Australia, auctioning shipping slots is a significant step towards ensuring equitable access to the shipping stem for all exporters. However, the ACCC's acceptance of the undertakings made by GrainCorp does not require that an auction system be implemented, because there is more competition in the eastern states or perhaps there are fewer complaints made to the ACCC. Clearly, the ACCC could extend the auction system to GrainCorp if there were a demonstrated need. The committee considers that the extension of that system to all Australian ports at this time would not necessarily improve the competitive position of exporters in the eastern states.

Natural or regional monopolies

3.42 Many submitters noted that the structure of the export wheat industry in Australia lends itself to the development of regional monopolies or oligopolies.⁴² Economies of scale have led to a small number of large and dominant companies with well integrated supply chains, although a number of smaller competitive firms have been able to establish a more limited place in the market through product differentiation and targeted service provision.⁴³

3.43 The single desk system that operated for 60 years did not support any competition in the supply chain for handling and shipping bulk grains. With the winding up of the single desk in 2008 the industry was essentially left with natural monopolies or near monopolies centred on different geographical areas. These monopoly positions result not only from ownership of the port loading facilities but also from ownership of much of the up-country storage and control of the connecting transportation networks. The BHCs, as a result, were not only able to arrange their own shipping but also were able to arrange much of the transport to the ports that they own.

3.44 Mr Malcolm Bartholomaeus submitted that it should be accepted that there are geographical monopolies and that things should not be done to foster competition that cannot occur. Further, he submitted that the monopoly system of shifting grain to port may be the most efficient and it should not be assumed that a system that forces competition and destroys economies of scale and removes logistical efficiencies is better.⁴⁴

3.45 Mr Bartholomaeus' comments should perhaps be seen in the context that the Australian wheat industry is a price taker in a highly competitive global industry. As

42 Mr Kim Halbert, *Submission 2*, [pp 1–3]; Mr Bernard O'Brien, *Submission 3*; South Australian Farmers Federation Grains Industry Committee, *Submission 13*, covering letter.

43 Grain Growers Ltd, *Submission 24*, p. 2.

44 Mr Malcolm Bartholomaeus, *Submission 21*, p. 1.

suggested by ACIL Tasman, the competitiveness of the global industry imposes a significant overarching competitive constraint on the behaviour of all participants in the Australian grain supply chain.⁴⁵

3.46 In the following sections the committee considers some of the evidence submitted in relation to the 'geographical monopolies' identified by Mr Bartholomaeus.

Southern New South Wales

3.47 One witness, Southern Agventure, identified that in southern New South Wales the ownership of grain storage facilities is as follows:

GrainCorp—72 sites

AWB GrainFlow (Cargill)—4 sites

ABA (Sumitomo)—3 sites⁴⁶

3.48 Southern Agventure also noted that:

In regard to bulk rail capability, only GrainCorp and AWB / Cargill own and operate rolling stock. Both also have port access at Port Melbourne and Port Kembla (ABA has access at Port Melbourne). Pacific National and Queensland Rail operate bulk grain trains which are available to grain marketers on contract. However, generally these have been used by GrainCorp and AWB as they control most of the storage sites.⁴⁷

3.49 The company concluded that:

A deregulated market can only operate effectively if there are sufficient numbers of players in the market (and this means the local market) to ensure true competition. An outcome involving a dominant oligopoly does not result in true competition and is open to market manipulation and exploitation.⁴⁸

3.50 Southern Agventure did not however submit any evidence that the BHCs had denied access to other companies or had charged unreasonable prices for their services. The company's concerns appeared to be based on its view of Cargill's past methods of operation in Australia and the possible reaction of GrainCorp to Cargill's possible future actions relating to access.⁴⁹

3.51 GrainCorp submitted that it has an open access system and that:

45 CBH Group, *Submission 22*, Appendix: ACIL Tasman, *A review of the Wheat Export Marketing Act 2008*, p. v.

46 Southern Agventure Limited, *Submission 4*, p. 5.

47 Southern Agventure Limited, *Submission 4*, p. 6.

48 Southern Agventure Limited, *Submission 4*, p. 8.

49 Southern Agventure Limited, *Submission 4*, pp 5 and 7.

We certainly have a strong commercial incentive to provide access, given the low level of utilisation of our ports and certainly the significant additional storage capacity that we generally have in average years.⁵⁰

3.52 GrainCorp, which owns and operates seven port terminals stretching from Mackay in Queensland to Portland in Victoria, also operates under an access undertaking accepted by the ACCC. In some respects this undertaking is different from those in the south and west. For example, as discussed earlier, an auction of shipping slots is not required. However, as the ACCC has stated, it considers each case on its merits.

Committee comment

3.53 The committee considers that while there may be potential for AWB, GrainFlow (both now owned by Cargill) and GrainCorp, to indulge in duopolistic behaviour to the detriment of grain growers in New South Wales, there was no evidence that this has occurred.

South Australia

3.54 In South Australia Viterra, a subsidiary of a Canadian-based multinational company is the sole owner and operator of the eight bulk grain export facilities and of approximately 90 per cent of all grain storage facilities.⁵¹ As discussed in Chapter 2, in March 2012 a takeover of Viterra by Swiss-based Glencore was announced.⁵²

3.55 The WEA conducted a shipping stem audit of Viterra in July 2010 which resulted in the issue of a joint public statement on 30 November 2011 by WEA and Viterra regarding the audit outcome and, consequently, the improved Export Stem Arrangements Viterra undertook.⁵³

3.56 Viterra asserted that up-country facilities do not display natural monopoly characteristics and barriers to entry are low.⁵⁴ In relation to its shipping facilities, Viterra informed the committee that over the past few years it has received grain from storage facilities owned by other companies and from on-farm stores. For the 2011/12 harvest, for example, Viterra stated that it has received shipping nominations for over 7 million tonnes with more than 77 per cent of the nominations being from eleven

50 Mr Nigel Hart, Group General Manager, Storage and Logistics, GrainCorp Operations Limited, *Committee Hansard*, 31 August 2011, p. 16.

51 South Australian Farmers Federation Grains Industry Committee, *Submission 13*, p. 4.

52 Glencore International and Viterra, 'Glencore to acquire Viterra', Press Release, www.glencore.com/documents/Acquisition_Release.pdf, accessed 25 March 2012.

53 Wheat Exports Australia and Viterra Ltd, *Joint Media Release*, 'Viterra commits to improved Export Stem Arrangements', www.wea.gov.au/PDF/media/media%20releases/ViterraAudit.pdf, accessed 12 April 2012.

54 Viterra Ltd, *Submission 18*, pp 12–13.

exporters other than Viterra.⁵⁵ As discussed elsewhere, the company is subject to an access undertaking with the ACCC as required by the Act.

3.57 Some witnesses expressed concern about the port charges that Viterra makes for handling grain received from third party storages, and its application of shrinkage fees. These issues related to the redelivery of grain are covered in more detail in chapter 6.

Western Australia

3.58 In Western Australia, CBH, a company owned by Western Australian grain growers, is the sole owner and operator of bulk grain export port facilities—at Kwinana, Geraldton, Albany and Esperance. CBH also owns and operates the great majority of up-country storage facilities. According to some witnesses, apart from some on-farm storage it appears that CBH enjoys a monopoly on bulk storage, and could store the entire WA harvest.⁵⁶ Nevertheless, since deregulation many more exporters have entered the market and, according to CBH:

Third party customers provide approximately fifty percent of the throughput of CBH's ports and upcountry storage and transport network. Any action by CBH which discourages these customers from using the CBH network would potentially put the viability of the entire network in jeopardy and would not be in the interests of the CBH Group's grower members.⁵⁷

3.59 CBH informed the committee that it provides direct-to-port access to exporters at no additional cost over those who access CBH's port terminals via the upcountry network.⁵⁸ CBH also submitted that grain being redelivered into CBH's storage network or port terminals from third party storage constitutes a significant risk. This raises the possibility that CBH also could charge a port in-loading fee in future. CBH explained that:

The quality control delivered through CBH's upcountry receipt, storage and logistics network delivers significant efficiencies in port terminal operations by reducing the risks associated with incoming grain. If in the future Direct Port Deliveries threatened these efficiencies CBH would have to pass on the costs associated with managing quality and other issues to safeguard the reputation of Western Australian growers.

The CBH Group's upcountry storage, transport and terminal network are designed to monitor, manage and maintain grain quality at every step of the supply chain. Grain being re-delivered into CBH's storage network or port

55 Viterra Ltd, *Submission 18*, p. 16.

56 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 274.

57 CBH Group, *Submission 22*, p. 6.

58 CBH Group, *Submission 22*, p. 2.

terminals from third party storage constitutes a significant risk particularly in regard to chemical residues and grain insect infestation.⁵⁹

3.60 The Pastoralists and Graziers Association of Western Australia (PGA) acknowledged that Western Australian wheat growers have benefited from movement from a regulated to an open and contested marketing environment, with more than 20 competing buyers entering the market. However, they expressed concern that monopolistic control of the supply chain by CBH continues because of historical protection within the regulated marketplace.⁶⁰

3.61 The PGA was clearly not satisfied with CBH's exclusive dealing notice explaining that:

Since 2008, CBH has supplied grain storage and handling services on the condition that growers and marketers use CBH's supply chain coordination services, and that they acquire transport services from CBH nominated carriers. Because this forced tying of services contravenes the Trade Practices Act, CBH has operated 'Grain Express' under an ACCC Exclusive Dealing Notification.⁶¹

3.62 However, on 29 June 2011, the ACCC revoked CBH's exclusive dealing notice, effective from 1 May 2012. The notification had allowed CBH to require Western Australian grain growers and marketers who use its 'up-country' storage facilities to also use its transport services to deliver grain to port for export. At the time the ACCC chairman Graeme Samuel stated that:

The ACCC recognises that there are efficiencies in CBH offering a whole of supply chain receipt, storage, handling and transport service. The ACCC's decision does not prevent CBH from continuing to offer this service and, importantly, any grower who wishes to continue to use CBH's bundled storage and transport service will remain free to do so.

However, growers and marketers who consider that their transport requirements may be more efficiently met through alternative options to CBH will be free to explore such options.⁶²

3.63 Following the revocation of CBH's exclusive dealing notice the ACCC observed that:

The ACCC considers that it is likely that CBH will continue to be the dominant provider of grain receipt, storage and handling services and port terminal services for grain and at least a major provider of transport services. However, as is already the case with bulk storage and handling

59 CBH Group, *Submission 22*, p. 2.

60 Pastoralists and Graziers Association, *Submission 5*, p. 1.

61 Pastoralists and Graziers Association, *Submission 5*, p. 2.

62 Australian Competition and Consumer Commission, *ACCC to open WA grain supply chain to competition*, www.accc.gov.au/content/index.phtml/itemId/994735, accessed 25 March 2012.

providers in other states, other suppliers will be able to compete with CBH to provide services to transport grain to port for export.

At the time the notification was lodged in June 2008 there was support for the arrangements in the grain industry from growers, freight companies and marketers. Many saw the arrangements as providing desirable certainty and stability, particularly in light of uncertainty about the market environment post the imminent deregulation of the industry.

However, over time a number of industry participants have become frustrated with the level of service offered by CBH and the restriction on their ability to seek alternative transport options.

The ACCC has decided to revoke the notification with effect from 1 May 2012. This will allow sufficient time for CBH and industry participants to adjust and put appropriate systems and processes in place and to take advantage of the opportunity afforded by potential competition in the provision of rail transport services for bulk export grain.⁶³

Committee comment

3.64 The committee is of the view that the decision of the ACCC to revoke CBHs exclusive dealing notice is a positive step in encouraging further competition in the Western Australian wheat export market, although there is no current indication of any other companies likely to enter the market in the near future.

Barriers to entry

3.65 In the short to medium term it is highly unlikely that competitors will emerge in the shipping of bulk grains in South Australia and Western Australia. SAFF has suggested that South Australia's geography and the cost of facilities (estimated at \$50 to \$100 million) would militate against new entries.⁶⁴

3.66 In Western Australia there is some possibility that another bulk handling port which could load grain may be developed in the future. James Point Pty Ltd issued a Press Release on 1 June 2011 stating that it intended to begin work on a bulk and general port facility at Kwinana on 2 January 2013. The facility would be able to handle bulk shipments of grain.⁶⁵ More recent reports suggest that the project may not

63 Australian Competition and Consumer Commission, *ACCC to open WA grain supply chain to competition*, <http://www.accc.gov.au/content/index.phtml/itemId/994735/fromItemId/966100>, accessed 12 April 2012.

64 South Australian Farmers Federation, *Submission 13*, p. 5.

65 James Point, 'Media Release: James Point Port announces schedule for port development', www.kwinanaport.com/arquivo/press_release_june2011.pdf, accessed 26 March 2012.

proceed in that time frame, if at all.⁶⁶ The ACCC has stated that it is 'unaware of any immediate alternative port terminal facility for use by grain exporters'.⁶⁷

3.67 There is however some competition for the dominant BHC, GrainCorp, on the east coast. ABA has an operation at Melbourne; Louis Dreyfus has operations at Newcastle and Gavilon has operations in Brisbane.⁶⁸

3.68 It seems to be generally agreed within the industry that there are fewer barriers to entry for up-country receival and storage facilities and there has been much more on-farm storage installed in recent years. Access to transport to port and access to port may be more problematic and this is discussed in chapter 5.

Costs of regulation

3.69 Governments have regulated BHCs not only to discourage any abuse of market power but to ensure standards for matters such as health and safety. In this report the committee is concerned with the special regulations imposed to ensure greater competition or at least contestability in the market for the export of grains.

3.70 The BHCs submitted that the regulation required under the Act is costly. GrainCorp, for example, informed the committee that:

The 'gaming' of the regulatory process by these parties [port elevator users (accredited bulk wheat exporters)] has placed a significant financial burden, equivalent to thousands of man-hours, and millions of dollars of costs on port infrastructure owners. This has led to increased administrative costs, and decreased service delivery efficiency, which ultimately mean that additional costs are incurred and then passed back to grain growers.⁶⁹

3.71 CBH submitted that it is concerned over the increasing costs of regulation that is not imposed on the overseas competitors of Western Australian and other Australian growers. WA growers in particular take the global price for grain and cannot recoup additional regulatory costs. CBH stated that 'every extra dollar of regulation is a dollar less to WA growers'.⁷⁰

3.72 CBH stated that it supported the recommendation of the Productivity Commission in its 2010 report on wheat export marketing that accreditation (together

66 James Point, 'Frequently asked questions about the James Point Port (updated 2 November 2011)', www.jamespoint.com.au/arquive/faq_for_website.pdf, accessed 26 March 2012.

67 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 44.

68 Mr Anthony Wing, General Manager, Transport and General Prices Oversight, Australian Competition and Consumer Commission, *Committee Hansard*, 16 November 2011, pp 6–7.

69 GrainCorp Operations Limited, Submission 12, p. 16.

70 CBH Group, *Submission 22*, p. 16.

with its supporting regulatory overheads) should be ceased from September 2011. The company submitted that:

CBH is also concerned over the increasing levels of regulation and associated regulatory inertia. Notwithstanding that CBH has provided access and complied with its non-discriminatory and no hindering obligations in its [port access] undertaking, and there have been no major problems or disputes in the first two years, CBH will not be permitted to change even the most minor of its terms and conditions without the approval of the ACCC. There is a growing perception that CBH cannot make changes designed to improve performance of its port terminals without a unanimous popular vote and ACCC approval. Accordingly, marketers now appear to have a veto right to prevent changes that do not benefit them, even though they may benefit the industry. Even without an actual legal right of veto, CBH's costs in making changes have been exponentially increased such that the effort required to make a change may be disproportionate.⁷¹

3.73 The Productivity Commission expressed concern about the cost of regulation, in the following terms:

There have been compliance and administrative costs that need to be taken into account. These include compliance costs for infrastructure owners (possibly about \$3 million so far...lobbying costs and costs to regulatory agencies. To cover administrative costs associated with assessment of the bulk handlers' access undertakings, the ACCC was provided with \$1.5 million over two years... WEA will also have incurred some relatively small costs.⁷²

3.74 The Commission also considered that there would be considerable long-term costs because of the potential impact on investment in essential infrastructure, especially if ad hoc access arrangements came to be seen as the norm. It considered, however, that 'given the industry is still in a transitional phase relating to port access, there are likely to be net benefits of maintaining the test until 30 September 2014'.⁷³

3.75 The introduction of the Wheat Export Marketing Amendment Bill 2012 signals the government's intention to maintain the link between the requirement for port terminal operators to have approved access undertakings in place and their ability to export bulk wheat until 2014. If the bill is passed, a voluntary code of conduct which would include continuous disclosure rules for port terminal operators that export wheat would also be developed and implemented by 30 September 2014.⁷⁴

71 CBH Group, *Submission 22*, pp 16–17.

72 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp. 185–6.

73 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 191.

74 Explanatory Memorandum, *Wheat Export Marketing Amendment Bill 2012*, p. 2.

3.76 Officers of the ACCC told the committee that it is not clear at this time how the code of conduct will be developed, or whether a voluntary code will be adequate. The ACCC has suggested that this may depend on the amount of competition present in the relevant area.⁷⁵ Presumably the code will apply only to access to export facilities, which leaves other transport issues to the market.

Committee comment

3.77 It is intended that the code be developed by industry. The committee is of the view that the government should ensure a broad cross section of industry is involved in the development of the code, including: the WEA, the ACCC and a diverse range of grain handlers not limited to the major BHCs.

3.78 The committee is concerned that without a deterrent such as the possible relinquishment of a BHC's export accreditation, there is no incentive for the BHC to adhere to the voluntary code of conduct. The committee also has grave concerns about the effectiveness of a voluntary code of conduct. The ability for the ACCC to take action against breaches of the code would likely be limited. At this stage the committee is of the view that the code of conduct should be mandatory and prescribed by the ACCC with effect from 30 September 2012, but will consider this further in the course of the inquiry into the Wheat Export Marketing Amendment Bill 2012.

A future role for the WEA?

3.79 A number of submitters told the committee that the WEA has performed well during the deregulation transition and they see value in its continued operation. While some submitters argued that the WEA should continue in its current role for a longer period of time, others envisaged a revised role for the authority after its current mandate finishes on 1 October 2012.

3.80 For example, in its original submission PGA argued that the Federal Government should extend the WEA's commission to 30 September 2014, at which time the regulation of wheat export marketing arrangements should cease.⁷⁶ However, when providing evidence to the committee on 20 February 2012, PGA representatives submitted that they believed that the forthcoming arrangements as recommended by the Productivity Commission are probably adequate. They explained:

We are going along with the recommendations. Yes, I think that is right. Originally when this legislation was drafted I think there was always an intention that it would sunset. The Productivity Commission brought forward the sunset date for the WEA but they made provision for the port

75 Mr Mark Pearson, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission, Committee Hansard, 16 November 2011, p. 6; and Mr Anthony Wing, General Manager, Transport and General Prices Oversight, Australian Competition and Consumer Commission, Committee Hansard, 16 November 2011, p. 6.

76 Pastoralists and Graziers Association, *Submission 5*, p. 3.

access agreements to continue under the oversight of the ACCC. We think it is a satisfactory arrangement, mostly because we believe that the real solutions to our problems are to encourage investment in alternative supply chains, and the fewer regulatory hurdles they have to overcome as new entrants, the more likely they are to make the investment. We have had that advice first-hand from different parties interested in investing in WA.⁷⁷

3.81 Mr Bradley went on to confirm that the PGA's objective is to make sure that the WEA 'sunssets' as they are afraid of 'mission creep'. He explained:

We are afraid of the levy being diverted to purposes other than what it has been raised for. We are also concerned—and I wish to acknowledge the superb job that Wheat Exports Australia has done under Peter Woods' guidance—that when people now on the board eventually leave, all the memory of things that brought about them having their current jobs will slowly fade. We are concerned that Wheat Exports Australia rather than establishing a framework for competition will be captured, turned on its head and we will be back on the path we were before.⁷⁸

3.82 Mr Malcolm Bartholomaeus told the committee that there is a need for an industry body that could be fulfilled by the WEA:

The grain industries in Australia need a legislatively backed organisation to enforce rules and regulations that are sensible for a deregulated export and trading environment, but where natural geographical monopolies have to be accepted.

The Wheat Export Authority is the current form of such a body and the recommendations to disband it are likely to be retrograde if adopted.

There are three things at least for such a body to do:

- Accredit exporters in a similar way to the current system, and to collect fees from those exporters to cover costs like the ABS stocks and use data collection and dissemination.
- Oversee the running of the auction system for shipping allocations (either run it directly or oversee another entity with expertise in running auction systems, online for example).
- Industry Good Functions: They could be charged with enforcing receival and outturn standards, based on industry agreed standards.
 - a) Enforcing BHC receival protocols and systems; and
 - b) Promoting Australian grain in overseas markets and overseeing the provision of customer services for importers of our grain.

77 Mr Leon Bradley, Member, Executive Committee, Pastoralists and Graziers Association of WA, *Committee Hansard*, 20 February 2012, p. 19.

78 Mr Leon Bradley, Member, Executive Committee, Pastoralists and Graziers Association of WA, *Committee Hansard*, 20 February 2012, pp 19–20.

While such an organisation should sit under the umbrella of federal legislation as a statutory authority, it should be funded by the industry by way of fees charged to exporters on the basis of tonnes accredited, with an expectation that the costs would pass back to growers via the prices paid for their grain.⁷⁹

3.83 The ACIL Tasman report, appended to the CBH Group submission, argues conversely that there are risks associated with a continuation of the WEA. It states that it would lead to:

Regulatory failure by exercising more onerous accreditation than is required by growers (that is a divergence between growers' demands for prudential oversight of the bulk export wheat buyers and the oversight provided by the WEA).⁸⁰

3.84 The report goes on to argue that 'there are incentives for WEA to continue to expand its activities, leading to higher costs and increasing barriers to entry' with the danger that it would result in:

Crowding out commercial providers of commercial and market information by providing market commentary and other information that the private sector can and does provide for a fee.⁸¹

Committee comment

3.85 The committee is of the view that accreditation by the WEA has served to provide a useful safeguard during the process of deregulation and should be continued. The committee is also of the view that the government should consider an amended and expanded role for the WEA to perform a range of other industry good functions including quality assurance to protect Australia's reputation as a quality wheat exporter; and performing the role of industry Ombudsman. This is addressed in the committee's recommendations in chapter 8.

3.86 The committee notes that the WEA Special Account will still hold funds when the WEA is abolished, and that it is the intention of the government to reinvest this money in the industry in consultation with stakeholders.⁸² The committee is of the view that such consultations present an opportunity to consider what kind of body is best placed to carry out these functions required by industry. In particular, the

79 Mr Malcolm Bartholomaeus, *Submission 21*, p. 7.

80 CBH Group, *Submission 22*, Appendix: ACIL Tasman, *A review of the Wheat Export Marketing Act 2008*, p. 39.

81 CBH Group, *Submission 22*, Appendix: ACIL Tasman, *A review of the Wheat Export Marketing Act 2008*, p. 39.

82 The Hon Sid Sidebottom MP, Parliamentary Secretary for Agriculture, *Second Reading Speech, Wheat Export Marketing Amendment Bill 2012, House of Representatives Hansard*, 21 March 2012, p. 8.

committee is of the view that these funds should be prioritised to the provision of wheat market information that will benefit grain growers.

Chapter 4

Transparency in storage and handling of grain

Introduction

4.1 This chapter discusses the issue of transparency in the storage and handling of grain and the associated issue of asymmetric marketing advantage. It provides a description of market information that was available for the wheat industry until 30 June 2011, the current availability of information from industry, and the case for greater disclosure of information. It then discusses a range of views about responsibility for funding the provision of this information. The chapter concludes with consideration of current ACCC undertakings as they pertain to information.

Official statistical publications

4.2 Prior to deregulation in 2008, AWB managed and provided the majority of wheat market information. However the Australian Bureau of Statistics (ABS) and the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) also provided wheat market information.¹

4.3 Once the process of deregulation commenced, the function historically filled by AWB ceased, however ABS and ABARES continued to provide information. This was supported by the government's transitional assistance for the wheat industry which included monies provided for market information for the three years to 30 June 2011. An amount of \$3.38 million was allocated to the ABS and an amount of \$0.45 million was provided to ABARES.²

4.4 The ABS used the allocation for two publications – *Stocks of Grain Held by Bulk Handling Companies and Grain Traders Australia*, and *Wheat Use and Stocks, Australia*. ABARES used the allocation to produce the *Australian Wheat Supply and Exports Monthly*.³

4.5 *Stocks of Grain Held by Bulk Handling Companies and Grain Traders, Australia*, was not a new publication, but one that was updated after deregulation to provide monthly data on wheat stocks, and which was released with a three-week rather than a four-week lag. *Wheat Use and Stocks, Australia*, was released monthly

1 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 297.

2 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 297 and 300.

3 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 300–1.

with a five week lag and built on wheat information provided in the *Stocks of Grain Held by Bulk Handling Companies and Grain Traders, Australia*.⁴

4.6 Each quarter the two ABS publications included information on stocks of barley and selected other grains and pulses. The ABS also published several other ongoing publications which contained information on grains. The ABARES publication was based on ABS data and was published with a six-week time lag. The Productivity Commission described the *Australian Wheat Supply and Exports Monthly* as including:

- the ABS stocks data;
- historical Australian wheat production figures (for the previous three years);
- ABARE's estimate of Australian wheat production for the current marketing year; and
- wheat exports, split by 'bag and container' and bulk, for each destination country. This information draws on the ABS trade data.⁵

4.7 Public funding for the ABARES/ABS market information project ended in November 2011 with the release of September 2011 data.

Availability of information from the industry

4.8 As reported by the Productivity Commission, BHCs have access to a variety of wheat stocks information, only some of which is made public. The BHC's have access to:

- the volume of wheat in its bulk handling and storage system, by grade and quality, for each receival site;
- the volume of committed (sold) and warehoused (unsold) wheat; and
- the volume of carry-in stocks (new stock) and carry-out stocks (old stock).⁶

4.9 Each of the BHCs operate a website for this purpose with Viterra operating *ezigrain*, CBH operating *LoadNet*, and GrainCorp operating *Grain Transact*.⁷ The BHCs also provide information on a restricted basis, provided the access seeker owns

4 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 300.

5 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 301.

6 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 304.

7 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 305–6.

wheat in their storage and handling system. It is important to note that the nature and quantity of information provided by the BHCs is still evolving, partly in relation to consumer feedback and partly through the process of the ACCC undertakings.

4.10 Viterra told the committee in its June 2011 submission that it provides a high, and increasing, degree of transparency in relation to the storage and handling of grain. Viterra stated that it:

- publishes the Standard Terms and Reference Prices that apply to both its upcountry storage and handling and port terminal services. Viterra has also published explanatory notes in relation to its fees;
- publishes Port Loading Protocols which set out the processes for managing bookings, receivals and storage and handling at port. Changes can only be made after industry consultation;
- provides growers with a weighbridge ticket upon delivery to Viterra sites for each load of grain. The ticket contains information relating to the results of quality testing and grain classification;
- provides clear information in its ACCC access undertaking in relation to the average in-loading, storage and out-turn capacity at each Port Terminal;
- sets out details of all bookings on the shipping stem each business day;
- publishes information in relation to the stocks of bulk wheat and non-bulk wheat grains held at each Port Terminal;
- provides information on non-bulk wheat commodities on its shipping stem;
- publishes an "Available Capacity" table on its website each day which provides information in relation to whether there is any Export Select and/or Export Standard capacity at a Port Terminal;
- sends simultaneous emails to all current clients advising when additional capacity at a Port Terminal may be available; and
- has direct consultation with growers through its rural based operational and customer sales staff.⁸

4.11 In the same submission Viterra told the committee that it has:

...also taken significant steps in the past year to ensure continuous improvement to its systems (and to address areas of perceived concern relating to open and transparent information disclosure) for the benefit of the industry. Prior to the start of harvest for the 2010/11 season, Viterra

made more information publicly available with respect to commodities that are managed through its grain network.⁹

4.12 Viterra provided examples of recent changes designed to enhance the shipping stem and provision of information to industry, including:

1. Access to grower warehousing information – Growers are able to "opt in" to have information on their warehoused grain disclosed to other grain marketers by completing a Warehouse Disclosure Authority Form. Viterra maintains the privacy of growers who choose not to disclose this information;

2. Quality data information – Grain owners have been able to access quality site data for standard grades via *ezi*grain since 1 January 2011;

3. Additional information on the shipping stem – Viterra has made available more detailed information on the shipping stem by listing the type of commodity booked by a client on the shipping stem and publishing when a vessel is named on the shipping stem, including the date and time; and

4. Increased information regarding exported grain – monthly tonnages shipped from Viterra's ports are available under shipping statistics on the Port Access and Shipping Stem page of the Viterra website. These statistics are broken down into port zone and commodity.

Other information which is available on *ezi*grain includes: grain receipt classification standards, storage allocation/site availability, silo harvest operating hours, quality policies (e.g. in respect of weather damage, dark tipping and foreign material), and daily cash and pool prices.¹⁰

4.13 Viterra also provided the committee with its 2010/11 post harvest review working group report, which included recommendations related to information provision. Among these is the following two recommendations of note:

No. 4. The working group acknowledges the information Viterra has made publicly available and recommends Viterra investigate further ways of raising awareness among growers on the detail of information that is publicly available

No. 5. The working group recommends Viterra investigate the further disclosure of information to the market including the frequency of reporting.¹¹

4.14 Viterra responded to the working group report recommendations on information provision¹² and clarified its responses further to the committee. In answers to questions on notice Viterra stated that:

9 Viterra Limited, *Submission 18*, pp 17–18.

10 Viterra Limited, *Submission 18*, p. 18.

11 Viterra, *2010/11 Post Harvest Review Working Group Report*, p. 15.

12 Viterra, *2010/11 Post Harvest Review: Viterra's responses*, p. 8.

The issue of 'information provision for the benefit of growers, including warehouse and quality data disclosure during 2010/11' was identified in the Terms of Reference of the 2010/11 Viterra Post Harvest Review, and included in the PHR working group report released on June 28, 2011.

Viterra notes the PHR recommendation no. 5 that "...The working group that Viterra investigates the further disclosure of information to the market, including the frequency of reporting."

At the time, Viterra's response was:

Quality site data for standard grades has been publicly available on ezigrain since 1 January 2011. Viterra commits to providing this grower receival data year-round, updated on a daily basis throughout harvest.

Viterra also commits to introducing a weekly harvest report (monthly outside harvest) from November 1, 2011, which provides information on the progress of harvest, including information on grain receivals.

Viterra reaffirms its commitment to publish harvest information from November 1, 2011.

The weekly harvest report will include details on tonnages of grain received grouped by Viterra's business centre areas: Eyre Peninsula (including Port Lincoln and Thevenard), Yorke Peninsula (including Wallaroo, Port Giles and Ardrossan), Northern Area (including Port Adelaide), Murray Mallee and South East.¹³

4.15 In its August 2011 submission the CBH Group told the committee that it currently provides:

- Monthly wheat stocks held in the CBH system broken down into feed and milling grades. This is currently given to the Australian Bureau of Statistics on the first business day after the end of the month and is published by the ABS approximately 3 weeks later;
- Weekly harvest reports showing total grain receivals by port zone;
- A daily list of all bulk cargo departures from CBH ports by either bulk wheat or non-bulk wheat, tonnage and exporter via the Shipping Stem on the CBH Group website;
- Updates throughout the growing season and harvest on CBH Operations forecasts for total grain production in Western Australia.¹⁴

4.16 Under the terms of their access undertakings the BHCs are obliged to publish export information, including stocks at port and quantities exported. This is discussed further below.

13 Viterra, answers to questions on notice, 30 August 2011.

14 CBH Group, *Submission 22*, p. 9.

Case for information disclosure

4.17 Many witnesses stated that there is an imbalance in the information available to different players in the industry. In particular, they submitted that the trading operations of the BHCs had access to stocks, qualities and the position of grains that were not known to grain growers or other non-BHC traders.

Grower views

4.18 A number of growers have expressed various levels of dissatisfaction with the kinds of information that is being provided by the BHCs.¹⁵ Prior to the ACCC revoking CBH's exclusive dealing notification in June 2011, Mr Kim Halbert told the committee that:

One of the main issues is the control of stocks information. While CBH appear (through the Grain Express exemption) to have ring fenced the stock information away from their marketing arm (who knows what will happen when the Grain Express Exemption is removed by the ACCC), Viterra and GrainCorp use the stocks information to the advantage of their marketing arms:

GrainCorp has previously stated that this information belongs to them and they will use it to whatever advantage they can.

Viterra representatives quite openly canvass farmers to sell grain that is warehoused in the system that only Viterra can know about. This puts other grain marketers at a distinct disadvantage to the bulk handlers.

Control of stocks, both the physical positioning and the stack quality are under the control of the bulk handler. They maintain control of this through their control of the up-country supply chain. This also provides them an advantage:

They are able to commit to contracts knowing they can supply grain of that specification. No other marketer has that knowledge.

They strategically move grain to port knowing that other marketers are trying to accumulate grain of a certain quality. When a marketer is unable to accumulate or move the grain to port the BHC offers them grain on Free On Board basis (FOB) at higher than expected prices.¹⁶

4.19 Similar arguments were made by the South Australian Grains Industry Trust (SAGIT), a body which administers the voluntary research levy that has been collected from grain growers for many years. The Trust comprises three elected farmer representatives, and a nominee of the minister.¹⁷ SAGIT told the committee that:

15 Mr Bernard O'Brien, *Submission 3*, p. 10; and Southern Adventure Limited, *Submission 4*, p. 8.

16 Mr Kim Halbert, *Submission 2*, p. 2.

17 South Australian Grains Industry Trust, *Submission 8*, [p. 1].

There is an obvious need for more transparent flow of information on quality and volumes of grain received at various receival sites. This information is required not just by the bulk handling companies but by the growers, buyers and exporters of grain. It forms the basis of informed decisions as to what to grow, the efficient storage and handling of the product, and in identifying and reliably servicing markets, be they domestic or export.¹⁸

4.20 The case for the provision of market information was made in the following terms by Mr Bartholomaeus:

The risk of not having complete information available to the industry is catastrophic market failure when we have our next serious drought, with disruption to the operations of the export grain network, simply because no-one will know for sure what stocks are being held where. The BHC's will have more information than others and be able to use that to manipulate the grain markets and export networks to their own advantage...

There is a cost to

1. Domestic users who end up paying more than they should for grain.
2. Growers who hold grain only to see prices collapse as grain is imported or as the market realises that stocks were never as tight as feared.
3. Bio-security as grain is imported.¹⁹

4.21 Mr Bartholomaeus went on to submit that:

Information on stocks of wheat, barley and sorghum (at the very least) should be freely available to all industry participants. No organisation or group should be able to get a competitive advantage from having information. Any competitive advantage should simply come from the skill with which freely available information is analysed and used, not from one party having the information and another not.²⁰

Views of grain traders other than BHCs

4.22 Grain traders other than the BHCs argued strongly for the provision of much more information about stocks. By way of example the Australian Grain Exporters Association (AGEA) stated that '...anything that a BHC trading team sees/receives should be made available to the market'. AGEA submitted that information that all parties should have access to includes:

- **Receival/Storage**
 - Up to date/regular (daily) receival data by site by commodity by grade by tonnes

18 South Australian Grains Industry Trust, *Submission 8*, [pp 1–2].

19 Mr Malcolm Bartholomaeus, *Submission 21*, p. 6.

20 Mr Malcolm Bartholomaeus, *Submission 21*, p. 6.

- Zone average quality data by port zone by commodity by grade by tonnes
 - Receival profile summary post harvest by commodity by grade by tonnes
 - Full warehouse stock (i.e. that stock which is in the BHC system under the grower warehouse option i.e. uncommitted grain) availability
 - Access to up to date fumigation details and plans to ensure compliance with PRF [Pesticide Residue Free grain] and MRL [Maximum Residue Limits]
- **Ports**
 - Daily reporting of stocks in port by commodity
 - Vessel quality information (e.g. access to sampling, laboratory testing, quality results) prior, during and on completion of loading of vessels.²¹

BHC views

4.23 CBH, GrainCorp and Viterra all expressed the view that a significant amount of public information is already provided to the bulk wheat export industry.²² Of these BHCs, CBH expressed the strongest concerns about the release of any further level of detail, expressing the view that this would require the agreement of those that own the grain such as growers and marketers.

4.24 CBH argued that the release of such information could disadvantage growers, with the possibility that growers may receive lower prices. They also suggested that it would make CBH vulnerable to potential competition from other storage providers. Finally, they claimed that it could disadvantage the Australian wheat market internationally.²³

4.25 CBH was keen to address claims made by other submitters that the BHCs improperly benefit from sharing market information with their marketing arm. They noted that:

CBH Group voluntarily implemented an information segregation policy to ensure that third party information did not transfer from CBH Operations to the CBH Group's marketing arm, CBH Grain, which would provide CBH Grain with an unfair or improper advantage over similar competitors.²⁴

21 Australian Grain Exporters Association, *Submission 20*, p. 5.

22 GrainCorp Operations Limited, *Submission 12*, p. 8; Viterra Limited, *Submission 18*, pp 17–18; and CBH Group, *Submission 22*, p. 9.

23 CBH Group, *Submission 22*, p. 9.

24 CBH Group, *Submission 22*, pp 9–10.

4.26 One BHC (GrainCorp) considered that its access to information is appropriate and that the market is working in a balanced and rational manner. The company commented on the traders' submissions as follows:

Calls for the release of previously unpublished information on grain receivals, and grower warehouse stocks by site and by grade, represent an attempt by grain traders to reverse the shift in market power back to growers.

Should bulk-handling companies be forced to publish stock information on a daily or weekly basis by site and by grade, and disclose grower warehousing positions, the following factors will adversely affect the future of the sector:

Growers may seek to avoid 'compulsory' reporting of their stock position and store more grain on farm, which will reduce net returns to growers;

This will reduce grain quality and increase grain losses and increase the cost of export grain cargo accumulation, as ex-farm deliveries will increase reliance on road transport; and

This in turn will lead to a reduction in the size of the bulk handling systems and associated rail network, and reduce the commercial attractiveness of investing in measures to increase grain handling efficiency.²⁵

4.27 GrainCorp also observed that 'traders, and lobbyists working on their behalf, are not advocating equivalent transparency relating to the stocks of grain held by them, either in the bulk handling networks, or in their own private storages'.²⁶

4.28 AWB's position differed somewhat from the regionally based BHCs, commenting that the restricted availability of information provides the bulk handlers with a distinct marketing advantage and potentially diminishes grain growers' ability to secure a competitive price. The company submitted that:

It would be appropriate for growers to elect, upon registration with a bulk handler, whether they wished to have information regarding their warehoused grain being made available on request to all registered buyers. This information could be made available online through the bulk handlers' websites and accessible by registered buyers. This initiative would ensure that grain farmers are accessing a much broader section of the market and essentially creating a permanent market for their grain irrespective of whether they are a willing seller on any given day. This can be achieved at a very low cost relative to the alternatives that are currently in operation today.

In order to create a level playing field for potential buyers of grain, it is important that information regarding the quality of grain received into storage is available on an equal basis to all buyers.

25 GrainCorp Operations Limited, *Submission 12*, p. 8.

26 GrainCorp Operations Limited, *Submission 12*, p. 9.

Without this equality, grain farmers do not receive the benefit of open competition.

It should be mandatory for all bulk handlers to provide five basic quality parameters (protein, moisture, screenings percentage, test weight, falling number) to grain farmers (by truck delivery) and grain buyers (by truck and by stack average) on a timely basis.²⁷

4.29 The possibility of growers 'opting in' to disclosure of information, raised by AWB, was also raised by SAFF, and reiterated by Grain Producers SA. SAFF submitted 'that growers should have the right to "opt in" to warehouse disclosure of commodity, tonnage, quality and site to be available daily to be viewed by traders'.²⁸

4.30 It is of note that Viterra's post 2010/2011 harvest review found that although Viterra had made an announcement in 2010 about the possibility of growers opting in to having the details of their grain stored in warehouse disclosed; only a small number of growers have elected to provide this information.²⁹ Mr Woods, WEA, noting the low up take of Viterra's 'opt in' option, suggested that it would be better to introduce an 'opt out' system.³⁰

Committee comment

4.31 The committee agrees with Mr Woods, CEO of the WEA, that an 'opt out' system to provide information would be preferable.

WEA view

4.32 Similarly, WEA has stated that the current unequal access to information regarding wheat stocks results in a significant marketing advantage to the associated accredited exporter of the BHCs. WEA explained that:

Exporters without an associated BHC have consistently indicated to WEA that to have information on stocks available on a silo by silo basis would substantially aid pricing and help target purchases and stock swaps. They consider that having this information would have positive implications for both domestic and export industries.

Additionally, these exporters have indicated that this information should be made available on an upcountry silo basis with the data aggregated by grade and warehouse position. Aggregated data would ensure that no individual grower is identified.³¹

27 AWB (Australia) Limited, *Submission 14*, pp 3–4.

28 South Australian Farmers Federation, *Submission 13*, p. 19; and Grain Producers SA, *Submission 26*, Appendix, [p. 4].

29 Viterra, *2010/11 Post Harvest Review Working Group Report*, p. 15.

30 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 20 February 2012, p. 13.

31 Wheat Exports Australia, *Submission 7*, p. 5.

4.33 WEA went on to elaborate the diversity of grower opinions that had been communicated to WEA. They explained that:

...some growers object to the information on their warehoused wheat being passed to on to the related trading arm of the BHC. Other growers would prefer to have the information on their warehoused wheat made available to all traders (not just the BHC trading arm).³²

4.34 WEA commented on the position of the BHCs in relation to access of information:

The bulk handlers have tried to counter this by pushing that there is some kind of disadvantage to growers by having transparency of information. Clearly no market can function properly with incomplete or one sided information and failure to provide that information will lead to market failure. This is why the ASX have their listing rules that ensure complete disclosure to prevent this type of market failure.³³

4.35 WEA continued on to state that:

...there appears to be no valid reason not to require all storage facilities which store wheat for commercial gain to publish site aggregated stocks information.³⁴

4.36 WEA concluded 'WEA considers timely and transparent information critical to the efficient operation of the market'.³⁵

Other views

4.37 A study commissioned by the Department of Agriculture, Fisheries and Forestry (DAFF) to review wheat market information needs, the *Independent Wheat Market Information Study*, and undertaken by GHD Pty Ltd, made the following observation in relation to managing information and disclosure:

Information asymmetry is present when one market participant has access to more information than others; providing a clear advantage. Just as perfect competition is never achieved, information asymmetry is present in all markets and to some degree is necessary to maintain competitive interest. Information is property, and therefore requiring participants to disclose information is equivalent to removing property rights, which can lead to market failure.

32 Wheat Exports Australia, *Submission 7*, p. 5.

33 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 20 February 2012, p. 9.

34 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 20 February 2012, p. 10.

35 Mr Peter Woods, Chief Executive Officer, Wheat Exports Australia, *Committee Hansard*, 20 February 2012, p. 10

Just as complete disclosure can lead to market failure, so too can lack of information. Therefore a minimum level of disclosure is considered necessary to maintain competitive interest in a market. This information allows smaller and outside players to participate in the market without encountering high transaction costs.

Industries and markets regularly self-regulate to ensure sufficient information is disclosed to enable markets to function efficiently and avoid market failure. A common example includes stock exchange trading rules.³⁶

4.38 The Productivity Commission inquiry found that the provision of market information is of broad benefit to the Australian wheat industry, supporting the day-to-day operation of the market.³⁷

Who should pay for information?

4.39 Provision of market information was one of the most contentious issues raised during the inquiry. A variety of opinions were provided to the committee on whether provision of information was a public good that should be funded by government or, in the alternative, whether it was the responsibility of the market to find a funding mechanism.

4.40 The Productivity Commission distinguished between two kinds of wheat market information needed by an efficient bulk wheat export market. These were core long-term wheat information, which is useful for historical analysis, future policy development and industry investment and planning; and short-term information which facilitates the day-to-day operation of the market.³⁸

4.41 The Productivity Commission made a further distinction regarding stocks information, which is primarily of a short-term nature, dividing it into three tiers: which it identified as Tier 1, Tier 2 and Tier 3.³⁹

4.42 The Tier 1 information relates to national stocks information. The Commission found that the provision of this information is critical for the success of the export wheat industry. It argued that national information relates to the performance and competitiveness of the Australian industry in the global market. The

36 GHD, *Independent Wheat Market Information Study*, July 2011, www.daff.gov.au/_data/assets/pdf_file/0003/2035335/independent-wheat-market-information-study-report.pdf, accessed 22 March 2012.

37 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 21.

38 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 293.

39 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 321.

Commission considered that the benefits of providing this information outweighed the costs.⁴⁰

4.43 Tier 2 information relates to state-based information which is of use primarily to domestic users and wheat exporters. The Commission found that there is a net benefit from providing this information.⁴¹

4.44 Tier 3 information relates to disaggregated information at a zone, receival site or even a silo level. The Commission reported that there might be efficiency benefits associated with providing additional tier 3 information to the wider market. It reported on the claims made in submissions to the Productivity Commission that BHCs have unequal access to market information, but it was 'not convinced that unequal access to this information is imposing sufficiently large efficiency costs on the Australian wheat industry to justify imposing a mandatory information disclosure requirement on the bulk handling companies'. The Commission suggested that voluntary provision of this information, such as the weekly harvest reports, could benefit the industry.⁴²

4.45 The Commission found that for all three tiers benefits would accrue mainly or entirely to the industry and that there was no case for public funding. The management of information should be financed by the industry, with possible government intervention in some cases to ensure that all industry players should shoulder the cost burden.⁴³

Future funding mechanisms

4.46 Grain Trade Australia Ltd (GTA) commented on how the costs of providing information might be met, as follows:

Unfortunately the 'user pays' principle breaks down in the grain industry in determining who the user is and how will it be paid for. It is in the commercial interest of the BHC's to let the short term information arrangements lapse and capitalise on their own knowledge of grain stocks which is already in-house but not available to the broader market.

GTA would recommend that the current market data provisions should continue beyond 30 June 2011 and funding be a compulsory payment mechanism such as an industry levy. This could come from GRDC where

40 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 322.

41 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 323–5.

42 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 325–9.

43 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 293–4.

funding can be collected and administered under the existing legislative collection mechanism.⁴⁴

4.47 The Independent Wheat Market Information Study referred to above made the following recommendations for the continued provision of the current level of market information disclosure:

To deliver the survey elements of the project in the short-term, industry should seek to contract ABS to continue the Bulk Handler Stocks and Wheat Export Sales surveys for the 2011/12 marketing year. To facilitate the Wheat Export Sales Survey industry should seek to contract a private service provider, such as the National Grower Register (NGR). Beyond the 2011/12 marketing year industry should seek to transition the Bulk Handler Stocks and Wheat Export Sales Surveys from ABS to a NGR or another private service provider. In doing so, industry should investigate measures to maintain/improve participation rates through the negotiation of individual release agreements.

ABARES should be contracted to continue to publish the Australian Wheat Supply and Exports Monthly Report, incorporating the survey data collected and export figures obtained through Australian Customs.⁴⁵

4.48 The study found the only viable option for short-term funding was:

...to seek co-contributions from industry bodies, including GrainGrowers (on behalf of growers) and GTA (on behalf of the broader industry). Additional contributions should be sought from other industry bodies representing grain users (e.g. Meat & Livestock Australia, Dairy Australia, Australian Pork Limited and the Australian Chicken Meat Federation).⁴⁶

4.49 The study also found that in the longer-term industry should:

...seek to establish funding under a GRDC [Grains Research & Development Corporation] research project, with appropriate contributions from other sections of the industry. As a secondary option, industry could seek to broaden the roles and responsibilities of WEA (assuming this organisation is not abolished) to allow the Wheat Export Charge (WEC) to fund the project.⁴⁷

4.50 In December 2011 GrainGrowers confirmed to the committee that in August 2011 an industry roundtable was convened by GrainGrowers, and funded by DAFF, to examine GHD's *Independent Wheat Market Information Study*. GrainGrowers stated that the roundtable:

44 Grain Trade Australia Proprietary Limited, *Submission 17*, p. 9.

45 GHD, *Independent Wheat Market Information Study*, July 2011, pp 7–8, www.daff.gov.au/_data/assets/pdf_file/0003/2035335/independent-wheat-market-information-study-report.pdf, accessed 22 March 2012.

46 GHD, *Independent Wheat Market Information Study*, July 2011, p. 8.

47 GHD, *Independent Wheat Market Information Study*, July 2011, p. 8.

...reviewed what was possible in relation to ensuring the continuation of the provision of wheat market information (stocks, wheat export sales and domestic use data) for Australia due to the ending of government support for such reporting. The outcome was the establishment of an industry Steering Committee that has worked with the Australian Bureau of Statistics to collect data.⁴⁸

4.51 GrainGrowers went on to explain that:

The surveys have been funded by the Grains Research and Development Corporation (GRDC) and GrainGrowers from 1 October 2011 to 30 September 2012 on a short term basis. GrainGrowers and the GRDC will continue to investigate the longer-term funding for the collection and publication of this information. Should funding not become available it is likely that such information will not be available to the industry in the future.⁴⁹

4.52 During the Second Reading Speech of the Wheat Export Marketing Amendment Bill 2012 on 21 March 2012, the Hon Sid Sidebottom, MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry acknowledged that 'the government is aware of some concerns from parts of the wheat industry that a lack of access to market information on stocks and flows of grains is impacting on competitiveness'. Mr Sidebottom went on to explain that:

The government is willing to help industry find a solution, potentially through the voluntary code of conduct. It is already working with Grain Trade Australia and the wider industry to develop the code and strongly encourages all industry sectors to engage in this process.⁵⁰

ACCC undertakings

4.53 One of the questions raised by submitters is how effective the ACCC undertakings are in quarantining information between a BHC and its marketing division so that an unfair advantage does not accrue to the BHC based on its privileged access to information.

4.54 Mr Anthony Wing, from the ACCC, explained that although the information that people were most concerned about relates to stocks held in up-country silos, this was beyond the regulatory role of the ACCC. He explained that the ACCC would only get involved in matters to do with up-country stock information if it fell under

48 GrainGrowers Limited, *Submission 24*, p. 3.

49 GrainGrowers Limited, *Submission 24*, p. 3.

50 The Hon Sid Sidebottom, MP, Parliamentary Secretary for Agriculture, Fisheries and Forestry, Second Reading Speech, Wheat Export Marketing Amendment Bill 2012, *House of Representatives Hansard*, 21 March 2012, p.10.

competition laws. However, he told the committee that the ACCC had introduced extra requirements to publish information about stocks held at the port.⁵¹

4.55 In the ACCC's decision to accept CBH's 2011 Revised Undertaking it noted that CBH will be required to provide greater transparency of information to all exporters in relation to both port terminal capacity and disaggregated stock at port information. The ACCC stated that:

Imposing a formal obligation on CBH to make such information available to all stakeholders is likely to be an effective mechanism to prevent CBH from obtaining any unfair advantage it possesses by virtue of its vertical integration and is therefore appropriate having regard to the interests of access seekers in obtaining fair and transparent access to port terminal services.⁵²

4.56 The ACCC accepted a similar Revised Undertaking from Viterra regarding stocks at port, including information on the three largest grades of bulk wheat by volume at each port terminal.⁵³

Committee comment

4.57 The committee considers that detailed information about stocks should be published in aggregated form for dissemination to the market. Vertical integration of the BHCs and their near-monopoly position in most regions results in the trading arm of some of those companies appearing to have exclusive access to detailed information that is not available to other traders.

4.58 The committee notes that storage providers who store grain for a fee assert to have made significant investments and have some rights to proprietary information relating to the storage and shipping of grain. However, the committee believes that a de-identified, aggregated stack by stack release of information on a regular basis is in the interests of the market.

4.59 The committee notes the storage providers who store grain for a fee now operate what were once state-owned enterprises (as noted by Grain Growers Ltd at paragraph 3.12), state mandated monopolies or are grower-owned enterprises (in the case of CBH) and receive stock information as a consequence of their monopoly position.

51 Mr Anthony Wing, General Manager, Transport and General Prices Oversight, Australian Competition and Consumer Commission, *Committee Hansard*, 16 November 2011, Canberra, p. 4.

52 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited Port Terminal Services Access Undertaking, Decision to accept*, 29 September 2011, p. 16.

53 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Services Access Undertaking, Decision to accept*, 29 September 2011, p. 44.

4.60 The committee notes that the ACCC has recently accepted greater requirements for the provision of information in the 2011 BHC Undertakings. As the deregulated industry matures, all players may recognise that the timely and wide dissemination of information even at a disaggregated level will be in the interests of all players. The committee therefore will not recommend at this time that the government should intervene further in this area. It notes that in relation to access to port facilities that the government intends that a voluntary code of conduct will be developed by the industry and implemented by 30 September 2014. That code of conduct will include continuous disclosure rules. In preparing the code of conduct, industry should carefully consider whether BHCs should publish aggregated grain data where grain growers and sellers have agreed, on an opt out basis, to have this de-identified information made public.

Chapter 5

Equitable market access and transport options

Introduction

5.1 Efficient and economic transport to storage facilities and from storage facilities to the ports is vital for the continued viability of the grains export industry. Grain growers depending on export markets are 'price takers' so that their costs, including transport costs, will determine their incomes and, the viability of the Australian grain growing industry. Transport costs and access to transport were therefore issues that attracted much comment in submissions and oral evidence.

5.2 As discussed previously, at harvest most grain growers have several options for handling grain. They might choose on-farm storage, transport to a storage facility owned by a bulk handler (or perhaps owned co-operatively) or direct transport to a domestic user or to a port loading facility. The choice made is essentially financial. On-farm storage may be chosen, for example, because the grower expects thereby to obtain more marketing options. The most popular option involves storage and subsequent handling by one of the BHCs.

5.3 The Productivity Commission considered transport, storage and handling in detail in its 2010 report and concluded, *inter alia*, that:

Greater competition can improve the efficiency of the grain supply chain. These efficiency improvements lower the costs of the supply chain, providing benefits to the industry, and particularly to growers.

Up-country storage facilities do not exhibit natural monopoly characteristics. There is no case for specific third party access regulation. Specific access regulation is likely to hinder the development of efficient supply chains.

Competition in the grain supply chain requires that participants have the ability to by-pass the bulk handling system.¹

5.4 In reaching the third of these conclusions the Commission made the following proviso:

...provided that wheat delivered to port terminals outside of the bulk handling system is not discriminated against (this requires appropriate port access charges), there will be no impediments to growers and traders using their own supply chains to export wheat.²

1 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 31.

2 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, p. 273.

5.5 Some witnesses submitted that charges levied on grain that do not utilise the supply chains operated by some BHCs are exorbitant and inhibit the development of competing supply chains. Mr Halbert, a grain grower from Western Australia, submitted that:

As growers we are only able to cost effectively build a certain amount of on farm storage. This allows us better segregation and greater control of when we market the grain but the benefit is offset when we need to deliver grain to port for export.

Grain introduced into the bulk handling system at the point of export incurs the same charges as for grain that has been stored in the system for up to nine months and which may have been handled a number of times in order to get it to port. Extra shrinkage charges are used as a disincentive to deliveries from third party storage providers.

People wishing to use their own supply chain or on farm storage are penalised with substantial charges at the point of delivery. This makes gaining a suitable return on investment in alternate storage and supply chain systems difficult. This has the effect of hand-cuffing growers and traders to the current bulk handling system.³

5.6 SAFF submitted data that indicated that port charges levied by Viterra in 2010/11 on grain received at port from third parties were significantly greater than those levied on grain received from Viterra up-country stores.⁴ As discussed earlier Viterra explained this difference as being necessary to ensure that the grain received from third parties was of the necessary quality, free of insect infestation and dust and allowing for shrinkage.⁵ The need for these charges was disputed by some growers and other exporters. These issues are discussed further in chapter 6.

Transport options

Road transport

5.7 Growers are obliged to use road transport at least in the initial stages of transporting their grain to export markets, that is, from the farm to a receival facility. For some growers who operate close to ports, road freight may be the most efficient and cheapest option for the entire journey. In South Australia, for example, Viterra submitted that:

A unique feature of South Australia is the proximity of ports to the grain growing regions. Direct grower receivals by road at harvest form an important and efficient method of export accumulation for a portion of the crop.⁶

3 Mr Kim Halbert, *Submission 2*, p. 3.

4 South Australian Farmers Federation, *Submission 13*, p. 7.

5 Viterra Limited, *Submission 18*, p. 27.

6 Viterra Limited, *Submission 18*, p. 23.

5.8 There has been a trend in the industry to larger trucks (B-Doubles and road trains) and for longer journeys. Longer journeys are needed in some cases because small storage sites have been shut down and in others because rail is no longer available or perhaps because access to rail may be restricted by arrangements between the BHCs and the rail operators. The use of larger trucks however comes at a cost. Having suggested reasons for the greater reliance on road transport, namely, concentrated ownership or control of infrastructure and insufficient investment in rail, Southern Agventure summarised some concerns with the increased use of road transport as follows:

This has led to a much greater reliance on road transport which is much less efficient and more costly. The direct costs of these inefficiencies are generally passed back to the farmer. Indirect costs associated with road and related infrastructure, excessive consumption of fuel, impact on the environment via additional gas emissions and increased public risk associated with more trucks on the road are absorbed elsewhere in the Australian economy. There is also the added impact of Australia's export grains being less competitive in the world market because of this inefficiency.⁷

5.9 The trend to larger trucks is not seen as entirely negative. Mr Treasure, a South Australian grain grower, submitted that:

Larger trucks mean less road miles and greater efficiency to both the farmer and the industry. Hence their use should be encouraged. Contrary to this, the Government's massive increase in A trailer registration has been harmful to our industry and has stopped farmers and carriers from pursuing efficiency in this area.⁸

5.10 WEA commented on the increased use of road transport and attributed it to the 'limited availability of rail transport and the inability of the rail system to cope with the volume of grain movements to port, particularly in peak times'.⁹

5.11 Although road transport generally is more expensive than rail for the transportation of bulk commodities and is always sensitive to increases in fuel prices and regulatory costs there is a significant level of competition in the industry which may tend to limit cost increases.

5.12 However, AWB claimed that the fees charged by CBH in Western Australia for outturn to road from its up-country storage facilities have impeded the development of road transport competition outside the transport companies that have received rights under tender from CBH to move grain to port. AWB submitted that while CBH charges \$8.50 per tonne, Viterra in South Australia charges \$5.70 per

7 Southern Agventure, *Submission 4*, p. 8–9.

8 Mr David Treasure, *Submission 10*, [p. 1].

9 Wheat Exports Australia, *Submission 7*, p. 6.

tonne and ABA \$2.00 per tonne. AWB stated that, unlike Viterra and ABA, CBH does not charge monthly storage fees.¹⁰

Rail

5.13 Rail transport was an issue of concern to many witnesses who were concerned in particular about the poor state of railways in the grain growing areas and exporters' and growers' access to rail transport.

State of the railways

5.14 Mr Brian Nye, Chief Executive Officer, Australasian Railway Association (ARA) told the committee that there is, in fact, considerable investment in urban public transport rail networks and in the lines that service the export iron ore and coal networks. However, this is not reflected in regional lines servicing the grain industry.¹¹

5.15 Mr Nye informed the committee that the situation in Canada is far more efficient, and farmers are becoming involved in owning and managing infrastructure. He also told the committee that it is not only the ageing rail lines that are a limiting factor, but also other ageing attendant infrastructure, which reduces incentive to become involved in the market. He explained that:

You have got to put in an old locomotive and a train set to load at some of the old silos. It takes 24 hours to load the train. You have to have three crews with two people per crew. That drives up the cost overall. With modern silos I will give you an example. There is a grain-handling operation in Saskatchewan in Canada where they do not have silos. All the farmers bring their own augers down, they have a big concrete hard and they come down and load the train themselves, rapidly, within three or four hours and it is out of the way. It then goes along slowly, picks up one of the super freighters going to the west coast and is exported that way. There is no incentive at the moment for farmers to take control of their own market.¹²

5.16 AWB submitted that local, state and federal governments and commercial participants should focus on reducing inefficiencies in the road and rail transport sectors that service the Australian grain industry 'to improve the resilience and competitiveness of the production sector.' In particular, in AWB's view, the initiative

10 AWB Australia Limited, *Submission 14*, [p. 4].

11 Mr Bryan Nye, Chief Executive Officer, Australasian Railway Association, *Committee Hansard*, 20 February 2012, p. 2.

12 Mr Bryan Nye, Chief Executive Officer, Australasian Railway Association, *Committee Hansard*, 20 February 2012, p. 3.

that needs prioritisation is upgrading and maintaining strategically significant rail lines to the Australian grain industry.¹³

5.17 AGEA also commented on the poor state of the grain railways, as follows:

There are ongoing concerns about both the quality and ongoing viability of grain rail lines. Many lines are in need of significant capital investment if they are to continue to operate.¹⁴

5.18 AWB listed a number of lines that it considers are most in need of investment across the eastern Australian grain belt. In addition, the company suggested that a rigorous cost/benefit analysis would demonstrate sufficient economic and social benefits to warrant public funding of the Western Australian wheat belt narrow gauge lines.¹⁵

5.19 The ARA suggested that rail is the only transport mode that has enough capacity to handle a large grain harvest.¹⁶ This suggestion was supported by data supplied by Viterra. According to the company a single train carries around 1800 tonnes on the Eyre Peninsula narrow gauge lines and 2600 metric tonnes on standard gauge lines in the east [of South Australia].¹⁷ Nevertheless, as the ARA observed:

Because of years of below average crop production, rail has been underutilised and there has been significant underinvestment in rail infrastructure. Combined with the significant diversion of resources towards mining freight, there has been a significant deterioration in rail grain freight capacity.¹⁸

5.20 The ARA provided an example of the implications of the state of the regional rail lines in NSW:

The New South Wales rail network services grain movements and consists of 1,217 km of track on 20 lines... The condition of grain lines has been gradually deteriorating, and investment is required for these lines to remain operational. 9 grain lines with low axle load ratings have been identified that could potentially be upgraded in New South Wales. In their current state, the closure of these lines would be the most viable business option.

The closure of these lines would force 750,000 tonnes of grain onto road which is equivalent to 30,000 truck movements per annum. The current fix-when-fail maintenance strategy cannot sustain these lines in a fit-for-purpose condition. To remain in service they must be restored by more

13 AWB Australia Limited, *Submission 14*, [p. 2].

14 Australian Grain Exporters Association, *Submission 20*, p. 5.

15 AWB Australia Limited, *Submission 14*, [p. 2].

16 Australasian Railway Association, *Submission 23*, p. 1.

17 Viterra Limited, *Submission 18*, p. 23.

18 Australasian Railway Association, *Submission 23*, p. 1.

intensive works, and adoption of a periodic preventive maintenance regime going forward.¹⁹

5.21 ARA went on to outline the dilemma that upgrading the rail infrastructure would result in significant economic dividends to growers, but little to infrastructure owners, with the consequence that such upgrades are unlikely without government intervention. It explained that:

Upgrading class D (18 tonne axle loads) lines to class A or B (20-30 tonne axle loads) would allow faster operating speeds on these lines, and make it possible to operate to and from some additional silos on a 36- or 48-hour cycle time. It would also allow greater flexibility in the deployment of locomotives. The economic evaluation by NSW Grain Freight Review 2009 reveals a number of instances where it appears desirable to improve the quality of the branch line network to a 20-30 tonne axle load standard.

The benefits of moving to a higher service standard will flow almost entirely to grain producers—higher track service standards will increase the reliability and productivity of grain freight services.²⁰

5.22 Viterra submitted that:

Transport services are a key constraint to export shipping volumes at peak periods through the grain supply chain. Peak shipping periods will generally coincide with optimal prices and the maximising of value for Australian grain. The importance of transport is being seen particularly on the east coast of Australia this year [2010-11]. The inability for rail infrastructure to meet the shipping task has meant an escalation in road freight prices as marketers endeavour to get grain from up-country to port, longer cargo accumulation times, subsequent vessel wait times and the likelihood of increased carryover of stocks into the new season.²¹

5.23 AGEA stated that the lack of investment in rail is a critical issue that industry and government in partnership need to address.²² JK International suggested that:

Governments can and need to do more in the area of sponsoring the development of regional shipping container parks and supporting them with rail commitments which would see an improved secondary export path. Such an approach would improve supply chain competition with BHCs, allow for innovation and the development of niche markets and keep more heavy trucks out of major city/export path routes.²³

19 Australasian Railways Association, *Supplementary Submission 23*, [pp 4–5].

20 Australasian Railways Association, *Supplementary Submission 23*, [pp 4–5].

21 Viterra Limited, *Submission 18*, p. 23.

22 Australian Grain Exporters Association, *Submission 20*, p. 8.

23 JK International Proprietary Limited, *Submission 16*, p. 12.

5.24 The move to containerisation was also cited by Mr Nye, from the ARA, as a way to improve rail efficiency, and enable the use of existing modern rolling stock. He told the committee that:

...one of the recommendations in our submission is actually to move more grain into containers because containerisation of grain helps in the export. Particularly we know the problems in Newcastle and Port Kembla. They are both coal exporting terminals. Sydney actually sends out empty containers. A load comes in quite full; empty containers get sent out. So the containerisation of grain also means the wagons that are required are just general-purpose rolling stock that is available overall. So I think a change of the handling would be good. You see elsewhere in the world they are rapidly moving into containerisation.²⁴

5.25 Recent developments in the Western Australian rail freight network were outlined by the CBH group to the committee at a public hearing in February 2012. Mr David Capper, Strategy Manager, CBH Operations, CBH Group. Mr Capper told the committee that:

CBH is in the middle of a transition from our existing rail service provider, QR National, to our new service provider, Watco. QR National was unfortunately unable to provide us with any additional services or rail assets at the start of the harvest to take into account the larger than average harvest, and it was unfortunately further impacted by industrial action through the harvest. That resulted in only approximately 70 per cent of our contracted rail resource being provided through the harvest. Ultimately, in such a large harvest as this, having these shortfalls has really reduced our ability to move grain away from sites, and that has also impacted on the service we are able to provide to growers at some sites. We have, of course, done our best to mitigate that impact, and we have used additional road resources where necessary and also conducted a lot of road-to-rail movements in areas where we have been able to do that to further increase the capacity of the rail that we have had on offer.²⁵

5.26 Mr Capper went on to outline CBH's recent investment in the rail network. He told the committee that:

...in the near future CBH is going to bring into use our 574 new purpose-built aluminium rail wagons and our 22 new locomotives, which is from that investment of approximately \$175 million in new efficient above-rail infrastructure—obviously, of course, in conjunction with our new operator, Watco. This investment that we have made is going to provide WA growers with the most modern and efficient above-rail infrastructure—dedicated

24 Mr Bryan Nye, Chief Executive Officer, Australasian Railway Association, *Committee Hansard*, 20 February 2012, p. 3.

25 Mr David Capper, Strategy Manager, CBH Operations, CBH Group, *Committee Hansard*, 20 February 2012, pp 38–39.

grain infrastructure in Australia, which we hope from the next harvest time is going to deliver better performance and lower freight rates to growers. We have a genuine opportunity to really reduce freight rates in Western Australia, and of course there will be higher capacity and more tonnes to port for our exporters from WA.²⁶

Committee comment

5.27 The committee notes that despite the problems associated with rail, most grain for export continues to be transported from up-country storages to port by rail. A large proportion of the sale price of grain goes towards transportation. There is therefore a pressing need for transport costs to be kept as low as possible. If this is to occur, continued and increased use of rail will be required. However, there are many impediments to investment in rail, including the reluctance of state governments to invest in grain lines; continued competing government investment in roads; the reluctance of private rail companies to allocate resources to a marginally profitable activity; and competition for rail from the more lucrative business of carrying coal and iron ore. Additionally, as noted by the ARA, the viability of grain production makes it extremely difficult to provide cost effective rail infrastructure for the provision of reliable freight services for grain commodities and provision of rail facilities is a capital intensive activity.²⁷

5.28 As mentioned elsewhere, the industry is a price taker in a global market and its competitiveness in that market is affected significantly by its transportation costs. The committee considers therefore that, unless investment in rail is increased so as to provide the industry with relatively low transport costs from grain collection points to port, this may impact on the long term sustainability of the industry.

5.29 Given that the business of freighting grain is only marginally profitable, that the returns to the national economy are significant and that there is clear evidence of continued underinvestment in rail, the committee considers that there is a case for governments to consider seriously their commitment to investment in grain railways. The 'third tier' rail lines in Western Australia and grain lines in the eastern states require investment if they are to continue to provide viable transport options for the industry. If the state governments and private operators are unwilling or unable to make the necessary investment to maintain the lines, the Commonwealth Government should consider alternative options for providing the necessary funding.

Access to transport

5.30 Concentration of ownership of collection sites and long-term contracts entered into by integrated BHCs with rail companies have the potential to restrict other exporters' access to the lowest cost routes to market.

26 Mr David Capper, Strategy Manager, CBH Operations, CBH Group, *Committee Hansard*, 20 February 2012, p. 39.

27 Australasian Railway Association, *Submission 23*, [p. 3].

5.31 The ARA stated in relation to the east coast grains industry that because GrainCorp has a virtual monopoly of storage infrastructure in eastern Australia it has control over the grain freight supply chain.²⁸ Mr Halbert made a similar observation in relation to all geographic areas:

Control of up-country storage and grain loading infrastructure gives the bulk handlers an advantage. As they control all the best sites with access to rail it is very difficult for any company to set up an alternate storage business. Rail is a very effective method of restricting competition and is used to the advantage of the incumbent bulk handlers.²⁹

5.32 AWB commented in relation to one costing it received from the South Australian rail operator:

AWB also believes that the track access fees charged by Genesee & Wyoming, owner and operator of most of the South Australian rail track, are prohibitive and serve as an anti-competitive barrier to entry for competing rail service providers. This has the effect of artificially inflating rail costs to South Australian farmers and reducing their farm gate returns. The most recent costing provided to AWB from Genesee & Wyoming to run a rake of grain wagons along the Pinnaroo or Loxton lines to deliver grain into the port of Adelaide amounted to \$66,000 per train. In comparison in NSW or Victoria, an equivalent grain train movement costs AWB less than \$6,000 per train.³⁰

5.33 Genesee & Wyoming declined the committee's invitation to appear at the Public Hearing on 20 February 2012, so it has not been possible to verify or refute the information provided by AWB.

5.34 GrainCorp submitted that it does not restrict third parties' access to transport. The company addressed the issue as follows:

Rail and road transportation of grain from storage (ex a bulk-handling network or ex-farm) is available to all grain traders and buyers on a commercial basis, from a number of transport providers.

Thus, 'access' to transport capacity is primarily determined by the willingness of a participant to commit to contracts with transport providers on a commercial basis, or to manage the risk associated with purchasing transport (rail or road) on an ad hoc, 'spot' basis.³¹

5.35 GrainCorp also submitted that:

28 Australasian Railway Association, *Submission 23*, [p. 3].

29 Mr Kim Halbert, *Submission 2*, p. 3.

30 AWB (Australia) Limited, *Submission 14*, pp 2–3.

31 GrainCorp Operations Limited, *Submission 12*, p. 4.

Grain traders and buyers are able to enter into commercial contracts with rail service providers for provision of rail capacity on a take-or-pay / forward contract, or through the purchase of 'spot' capacity.

GrainCorp manages its rail transport risk through significant take-or-pay commitments, and the ownership of rail assets. GrainCorp's current annual rail commitment is ~\$40 million [per annum] in the form of:

- a) ownership of branch line locomotives and wagons in NSW, and the provision of 'open access' rail services on that network under an agreement with the NSW Government.
- b) a contract with Pacific National (PNL) for the provision of ~2.5 million tonnes of annual main line rail capacity in NSW and Victoria.
- c) a contract with the Australia Railroad Group (ARG) for the provision of ~1 million tonnes of annual main line rail capacity in Queensland.

GrainCorp's rail capacity is contracted for use by;

1. GrainCorp's own grain trading and exporting operations, and
2. Customers that have entered into forward rail contracts with GrainCorp.

Where spare rail capacity exists, GrainCorp will sell this on a 'spot' basis.³²

5.36 Viterra commented on its rail operations as follows:

A number of rail operators have operated trains on the standard gauge lines in recent years. Rail, however, requires a large and long term fixed cost commitment to both above and below track infrastructure and economically suits high and certain volume tasks. This is at odds with the nature of the grain industry and the volume fluctuations in production...

Viterra has an agreement with rail provider Genesee and Wyoming Australia ("GWA") to utilise rail assets throughout South Australia and Victoria to transport grain to port in a cost-effective manner.

Viterra's commitment to above rail infrastructure ensures that a rail service is provided in South Australia. Rail freight provides significant logistics capacity for the grains industry to manage peak loads both efficiently and economically. Without this commitment the majority of tasks would be handled on road.

Because this is a 'take or pay' arrangement, Viterra is exposed to volume risk in poor production years. No other entity in the South Australian grain market has been prepared to take on this risk. Viterra makes these train assets available to other grain marketers on reasonable commercial terms.

It is important to note that other train operators have been discharged at Viterra's ports in accordance with Export Standard bookings made by third-party exporters.³³

32 GrainCorp Operations Limited, *Submission 12*, pp 10–11.

33 Viterra Limited, *Submission 18*, pp 23–24.

5.37 In Western Australia, since the deregulation of the wheat industry, CBH has developed an integrated grain handling system, 'GrainExpress', that has allowed the company to have what appears to be significant market power in the transport of grain. CBH submitted that GrainExpress had enabled it to coordinate and achieve freight efficiencies with a number of benefits for the Western Australian industry. The company submitted data to demonstrate that its road and rail freight rates are lower than those in the other states. As discussed previously, until recently, CBH has had the agreement of the ACCC for this arrangement, but in June 2011 the ACCC revoked the 'exclusive dealing notification' to enable other suppliers to compete with CBH to provide services to transport grain for export from 1 May 2012.

5.38 As discussed above, CBH informed the committee that it had decided in 2010 to invest \$175 million in new locomotives and wagons and that:

When combined with the Federal and State Governments rail funding packages this investment will significantly enhance the safety, efficiency and productivity of grain transport in Western Australia. The partnership between Western Australian growers and the Federal and State Governments, enabled by Grain Express, will result in almost half a billion dollars being invested into ensuring the longevity and viability of the safest and most efficient mode of transport from up country to port.³⁴

5.39 WEA observed that in the United States of America rail services are contested through an auction system. WEA stated that:

Experience from the USA has identified substantial benefits in having cost-effective rail freight available for transporting grain to port. US bulk handlers have found that it enables longer-term forward planning which has assisted grain shipments, creating a situation where there is less rail capacity available for unplanned transactions. As a result, more forward planning on the part of US bulk handlers has led to:

- an auction mechanism for rail services
- cost premiums for shipping during seasonal peaks
- penalties (rail demurrage) for late, reduced or cancelled shipments
- ability to trade rail slots (guarantees/obligations).

The development of more coordinated access to both rail and port terminal services has the potential to provide Australian exporters with similar efficiencies and cost advantages.

WEA considers that a competitive rail network is critical to a cost effective and efficient grain logistics system within Australia.³⁵

34 CBH Group, *Submission 22*, p. 4.

35 Wheat Exports Australia, *Submission 7*, p. 6.

Committee comment

5.40 Some witnesses stated that access to rail transport may be limited by commercial arrangements made by the integrated BHCs with the rail transport providers. The BHCs asserted that they made access available on commercial terms to other exporters.

5.41 The committee did not receive sufficient information on the matter to reach a firm conclusion, but notes that at least in NSW the State Government and GrainCorp are parties to an agreement which allows other companies to access rail facilities. The committee also noted WEA's evidence that access to rail is allocated at auction in the USA.

5.42 The committee did not receive evidence to suggest that special steps are now needed in Australia to specifically allocate rail transport. However, as the deregulated Australian export grain industry matures, state government authorities responsible for the regulation of intrastate rail may wish to consider whether special access arrangements are required.

Chapter 6

Competition issues arising from the redelivery of grain

Introduction

6.1 According to GrainCorp, the 'redelivery' of grain means the delivery of grain into the company's storage and handling network, or into GrainCorp port elevators, from 'third party' grain storages, including from on-farm storage.¹

Competition issues

6.2 Some exporters have objected to integrated BHCs charging excessive fees for redelivery and applying unnecessary 'shrinkage' factors for grain delivered to a BHC port terminal from other storage providers. The committee heard that, as a result, third party storage providers need to discount their own fees on export grain to ensure exporters are not disadvantaged.

6.3 Grain Growers Limited emphasised the importance of effective competition in 'redelivery fees':

For various reasons the handling companies charge an additional fee for such deliveries. These fees appear to vary across the country and are likely to be a reflection of both some additional costs involved in out of season receival, the efficiency of the company handling the receival and the perceived market power on the part of the receiver and an assessment of any increased risk of insect or other contamination. Such fees are typically small and may be subject to negotiation but will act as a discouragement for delivery from other storage sites.

Grain Growers has a general concern in relation to these particular fees in that they form an overall part of the costs of delivering grain through the supply chain. These fees need to be as low as possible so Australian grain exports remain competitive on world markets and producers' returns are as high as they can be given that producers are generally in a weak bargaining position. To ensure this, it is vital that there be effective competition throughout the chain.²

Bundled fees

6.4 Some storage providers have objected to the practice of BHCs combining receival and storage charges, claiming that this practice impinges unfairly on the competitiveness of third party storage providers—there is a direct time-based cost in storing grain—the longer grain is stored the greater the cost. By not reflecting this time-

1 GrainCorp Operations Limited, *Submission 12*, p. 11.

2 Grain Growers Limited, *Submission 24*, p. 4.

based cost component in its charges, a BHC is said to be discouraging storage in third party facilities when that grain will ultimately be transferred back to the BHC (typically for export) and hence attract the same BHC storage fee irrespective of the length of time the grain is in the BHC's system.

6.5 Growers and exporters have informed WEA that they are seeking greater cost-reflectivity and transparency of all fees, including those charged for redelivery of grain.³

Third party deliveries

6.6 Submitters provided a range of evidence regarding the way that third party deliveries are treated by BHCs. GrainCorp submitted that it actively seeks the delivery of grain from third party storages or ex-farm storages into the company's bulk-handling network, where:

- No additional receival or handling fees are applied at country storages, and
- An additional receival fee of \$1.54/T is applied at the port terminal.⁴

6.7 GrainCorp stated that the additional port fee is applied:

...to manage the additional risks posed to the efficient operation of the port elevators from receipt of grain that has not been previously assessed by GrainCorp as meeting relevant quality standards.⁵

6.8 The company argued that:

...where grain is received at port that is contaminated or otherwise unsuitable for export, considerable inefficiencies in grain storage and handling within the port can be experienced, and this is a cost liability to which GrainCorp is exposed, a liability mitigated by the fee applied.⁶

6.9 SAFF stated that deliveries from Approved Third Party Bulk Handlers are charged additional fees to deliver through the Viterra port system, thereby disadvantaging competing exporters. As the witness observed, there is no other way of loading bulk vessels in South Australia.⁷ Details of these charges may be found in chapter 3.

3 Wheat Exports Australia, *Submission 7*, pp 6–7.

4 GrainCorp Operations Limited, *Submission 12*, p. 11.

5 GrainCorp Operations Limited, *Submission 12*, p. 11.

6 GrainCorp Operations Limited, *Submission 12*, p. 11.

7 South Australian Farmers Federation, *Submission 13*, p. 7. Viterra's definition of an 'Approved Third Party Store' is: A non-Company grain storage and handling facility which meets published standards as determined by the company. The standards were recently published and are available on the Viterra website.

6.10 Data on handling charges that were submitted by SAFF indicated that handling costs for third parties in South Australia were significantly higher than for parties utilising Viterra's systems. The figures provided for the 2010/11 harvest year indicate that carry charges were between 40 and 50 per cent higher for third parties, dependent on the time of year.⁸

6.11 According to SAFF, Third Party Bulk Handlers are also disadvantaged as :

...they are not eligible for the 'Export Select Rebate' which is paid on outturn from Viterra upcountry sites. Export Select Rebates are a 'reward' for efficient grain movements. Sites excluded from the Export Select Rebate were said to include GrainFlow sites at Crystal Brook and Mallala, both of which are equipped with rail balloon loops for rail out-turn and have a capacity to load approximately 2,500 tonnes per hour, which is considerably faster than many Viterra sites which qualify for the Export Select Rebate.⁹

6.12 SAFF also submitted that rail access to Viterra export sites is limited for Approved Third Party Bulk Handlers due to:

...the long term arrangements between the major rail operator Genessee and Wyoming Australia (GWA) and Viterra. Road transport therefore is the predominate mode of delivery from Approved Third Parties.¹⁰

6.13 The witness also stated that Viterra manages the scheduling of rail delivery to their port terminals and that Third Party deliveries by rail may be delayed if Viterra are requiring the facilities at the same time.¹¹

6.14 SAFF Grains recommended to the committee that anti-competitive third party access charges should be abolished.¹²

Are third party storage through-put fees at port terminals excessive?

6.15 As indicated above, both GrainCorp and Viterra impose additional charges for grain delivered to their terminals that does not originate from one of their own up-country storage facilities. Both companies submitted that there are 'risks' associated with receiving grain that is 'out of specification' and may contaminate their facilities.¹³

8 South Australian Farmers Federation, *Submission 13*, p. 7.

9 South Australian Farmers Federation, *Submission 13*, p. 8.

10 South Australian Farmers Federation, *Submission 13*, p. 8.

11 South Australian Farmers Federation, *Submission 13*, p. 8.

12 South Australian Farmers Federation, *Supplementary Submission*, [p. 1].

13 GrainCorp Operations Limited, *Submission 12*, p. 11; and Viterra Limited, *Submission 18*, p. 25.

Some witnesses claimed that, in reality, grain from third parties has met the same standards as those that are required at the BHCs' storage facilities.¹⁴

6.16 AWB submitted that the costs imposed by GrainCorp for grain provided by competitor storage providers is \$1.54 per tonne, whereas Viterra charges \$2.50 per tonne. By way of comparison MPT charges \$0.50 per tonne. The witness stated that MPT is the only facility that operates in competition to another terminal (GrainCorp's Geelong port terminal) and that it lacks the ownership advantage of sourcing grain from over fifty up-country sites as does GrainCorp in Victoria and southern NSW.¹⁵

6.17 AWB went on to argue that it:

...strongly believes these charges constitute an abuse of market power, and, given the third party throughput charges of GrainCorp and Viterra are three and five times higher than MPT's respectively, in no way reflect the risk to either port terminal service provider for receiving this grain at their port terminals.¹⁶

6.18 AWB submitted that there are more equitable ways of dealing with the risks cited by the BHCs:

...in the event that contaminated grain were to be received the actual costs of quarantining and addressing the rectification of the contamination should be charged directly to the owner of the grain that created the issue rather than penalising every tonne of grain from competing facilities from which the vast majority is exactly the same quality as the grain out-turned from a GrainCorp or Viterra storage facility.¹⁷

6.19 From this, AWB concluded that:

As a result of these unwarranted and anticompetitive charges, returns to grain farmers are being diminished, as higher costs are passed back to country storage competitors to those companies who operate both the port terminals and their own country storage sites, resulting in higher costs being reflected to farmers seeking to encourage competition.¹⁸

6.20 JK International observed that the integrated BHCs in the end 'get the lion's share of any grain because it must come through their export terminals regardless of the grain origin':

14 South Australian Farmers Federation, *Submission 13*, p. 9; and AWB (Australia) Limited, *Submission 14*, p. 5.

15 AWB (Australia) Limited, *Submission 14*, [p. 5].

16 AWB (Australia) Limited, *Submission 14*, [p. 5].

17 AWB (Australia) Limited, *Submission 14*, [p. 5].

18 AWB (Australia) Limited, *Submission 14*, [p. 5].

Therefore they are also free to differentiate their port receival charges depending on grain origin (ex farm, competitor facility or their own facilities).

6.21 The company stated that this approach is designed to ensure more grain comes through their 'system'.¹⁹

6.22 Viterra provided the following explanation for charging higher prices for handling grain from non-Viterra sources:

Viterra receives grain at its port terminals from a number of sources, including:

- grain held in Viterra's up-country storage and handling facilities on behalf of its marketing division and a range of third party exporters;
- grain delivered direct to port by growers or otherwise from outside Viterra's storage and handling system; and
- grain held in up-country storage facilities by professional storage and handling providers that have been accredited by Viterra as "Approved Third Party Storage" providers (as outlined below).

Viterra has much lower levels of visibility in relation to the services that have been provided by third parties in relation to grain received at port. It is therefore necessary for Viterra to provide a number of additional services at port in relation to grain received directly from growers or from third party storage systems, to ensure that the quality of grain is to requisite standards. The cost of providing these services as part of the port terminal services is reflected in Viterra's Reference Prices – these prices are published on Viterra's website.

The provision of these services at port does not involve discrimination in respect of receivals from growers and third party storage facilities. Viterra provides comparable services in respect of all grain it receives into its up-country storage facilities. As those services have already been provided (with strict quality controls while grain remains in Viterra's storage system), there is no need for them to be re-provided (and those costs to be incurred again) at the time the grain is received at port.²⁰

6.23 Viterra stated that its charges for grain received from 'Approved Third Party' storage facilities are lower than those charged on grain received from other (non-Viterra) sources. It told the committee that:

Approved Third Party Storage providers are generally professional grain handlers that have in place facilities, systems and training which are specifically designed, and are actively managed, to reduce these risks. The risks associated with grain received from Approved Third Party Storages are, therefore, ameliorated to a degree which, in turn, reduces the extent of

19 JK International Proprietary Limited, *Submission 16*, p. 11.

20 Viterra Limited, *Submission 18*, p. 26.

the risk management services that need to be provided at port. Viterra's standard receival fees from Approved Third Party Storages are therefore lower than the standard prices for receival of grain from other third party sources.

However, for the reasons set out above, it is still necessary for Viterra to provide services when grain from Approved Third Party Storages is received into its system at port. Viterra takes the responsibility of protecting the integrity of the South Australian grain food chain seriously.²¹

6.24 In Western Australia neither growers nor exporters complained of third party fees at port terminals. CBH submitted the following:

Direct Port Access allows exporters to access CBH's Grain terminals from alternative supply chains such as third party or on-farm storage. The Direct Port Access option was formalised in 2009 due to the Wheat Export Marketing Act requiring port operators with marketing operations to provide access to all accredited wheat exporters.

The CBH Group provides direct to port access to exporters at no additional cost over those exporters who access CBH's port terminals via the CBH upcountry network. All exporters whether accessing the port terminal via the CBH upcountry network or third party storage are charged a basic fee of \$17.10. This includes the Upfront Marketer Fee to secure the port capacity and the Export Fee to receive, store for up to 21 days and load the grain onto their nominated vessel.²²

6.25 CBH told the committee that it:

...endeavours to protect the reputation of Western Australian growers as producers and suppliers of high quality, safe grain. CBH maintains a system across its supply chain which continuously assesses and maintains the integrity and quality of grain in its care.²³

6.26 The company submitted that:

The quality control delivered through CBH's upcountry receival, storage and logistics network delivers significant efficiencies in port terminal operations by reducing the risks associated with incoming grain.²⁴

6.27 Nevertheless, CBH stated that:

If in the future Direct Port Deliveries threatened these efficiencies CBH would have to pass on the costs associated with managing quality and other issues to safeguard the reputation of Western Australian growers.²⁵

21 Viterra Limited, *Submission 18*, p. 27.

22 CBH Group, *Submission 22*, p. 13.

23 CBH Group, *Submission 22*, p. 13.

24 CBH Group, *Submission 22*, p. 13.

25 CBH Group, *Submission 22*, p. 13.

6.28 CBH stated in relation to redelivery to its upcountry network that:

The CBH Group allows growers and non-growers to deliver grain from on-farm storage or third party storage facilities into CBH's upcountry storage network outside of the harvest period. These deliveries attract a fee of \$1.10/tonne in addition to the standard storage and handling fees to compensate the operational and administrative cost of conducting this uncommon activity.

Grain delivered to a CBH site needs to be handled regardless of whether it is a harvest delivery or a redelivery and this incurs costs. Deliveries post harvest have a higher risk of insect infestation and contamination from other loads (back loading of products like fertiliser is generally not feasible during the high intensity usage at harvest time).²⁶

Addressing competition issues through the 2011 ACCC access undertakings

6.29 A number of the issues raised by submitters in the earlier stages of the inquiry have been addressed in part through the process of BHCs negotiating their 2011 access undertakings. By way of example, during the process of negotiating Viterra's 2011 access undertakings the ACCC noted that:

In June 2011 Viterra provided to the ACCC information on the various services that were provided for each of the fees used to differentiate between grain received from different storage locations. The ACCC notes that Viterra charges receivals from non-approved third party sources the same rate as it does to growers delivering directly off farm.²⁷

6.30 In its Draft Decision the ACCC considered that:

...it was not appropriate that:

- it is not clear whether the differentials applied by Viterra to receivals from alternative supply chains are cost reflective and what services are being supplied in exchange for the various charges
- the application by Viterra of criteria for eligibility for particular Reference Prices and differentials was not subject to negotiation under the Proposed 2011 Undertaking.²⁸

6.31 Viterra responded to the Draft Decision by undertaking to provide a transparent baseline for negotiation in accordance with the publish-negotiate-arbitrate framework of the undertaking. It agreed to do this by providing 'additional detail around the services which are covered by the Reference Prices, and the criteria used to

26 CBH Group, *Submission 22*, p. 13.

27 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 35.

28 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 35.

determine eligibility for particular prices'. Clause 5.2 (f) of the Revised Undertaking now states that:

The Port Operator must, throughout the term of this Undertaking, publish in a prominent place on its website (in the same location as the Shipping Stem) details in relation to:

- i. the specific services covered by the charges set out in the Reference Prices including, where appropriate, the quantum of those services; and
- ii. the criteria (if any) which must be satisfied in order to qualify for any charges set out in the Reference Prices.²⁹

6.32 Similarly, the ACCC noted that concerns raised by third parties in relation to CBH included:

- the level of transparency provided by CBH's pricing (e.g. the extent to which prices are provided on an itemised basis)
- the ability for exporters to determine the reasonableness of CBH's pricing on a cost basis.³⁰

6.33 Responding to these concerns CBH committed to:

...provide in its Revised Undertaking additional information on the range of services covered by the reference prices and the criteria required to qualify for those prices by including a new clause 12.5 requiring that CBH will publish the required details on its website.³¹

6.34 The ACCC was of the view that these provisions of CBH's Revised Undertaking would provide 'an enhanced level of transparency around the baseline prices and therefore provide a greater level of certainty and clarity for access seekers in negotiations'. The ACCC went on to explain that:

Access seekers wanting to use non-CBH supply chain arrangements to bring grain to port will also be in a better position to assess the reasonableness of any price differentials they are charged by CBH for access to port terminal services compared to those that utilise CBH's up-country supply chain services. Access seekers who are unable to negotiate prices will be able to use the arbitration provisions in the undertaking.³²

29 Australian Competition and Consumer Commission, *Viterra Operations Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 35.

30 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 37.

31 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 37.

32 Australian Competition and Consumer Commission, *Co-operative Bulk Handling Limited, Port Terminal Access Undertaking, Decision to Accept*, 29 September 2011, p. 37.

Shrinkage

6.35 Viterra defined shrinkage as 'the loss of grain mass which occurs in the normal storage and handling process, including loss of mass through changes in moisture content, handling processes, insect infestation and through wastage'.³³ The company stated that shrinkage levels may vary having regard to the following factors:

- the type and location of storage (for example, bunker storages are more prone to weather impacts than sheds or vertical storage);
- the methods used for transporting and moving grain (for example, moving grain via conveyors on site versus road transport);
- the number of times the grain is transported or moved while in storage;
- the moisture content of the grain – the higher the moisture content, the greater the shrinkage;
- the presence of lightweight material and other contaminants – the greater the presence of contaminants, the greater the shrinkage; and
- the presence of insects.³⁴

6.36 SAFF commented on Viterra's shrinkage fee of 0.35 per cent (estimated at approximately \$1.05 per tonne on cereals with a value of \$300 per tonne; 35 tonnes 'lost' on a 10,000 tonne rail shipment; or one in every 280 rail cars).³⁵

6.37 Viterra submitted that it applies shrinkage to grain received into its system to account for these losses. The company stated that grain that enters its port facilities from third party approved storages does not have the same exposure to the above factors as grain from other sources and subsequently has a lower shrinkage rate applied.³⁶

6.38 On this issue SAFF stated that:

The port in-loading fee is considered to be charged as Viterra stands risk from deliveries from third parties, including pesticide residue and live insects. All GrainFlow sites in South Australia (and Australia) comply with ISO9001 standards. A quality Management System is used and independently audited to ensure compliance. Viterra port terminals also comply with this standard, however many of their up-country sites do not. It could be argued that GrainFlow sites have less inherent risk due to independently audited processes and procedures compared to some

33 Viterra Limited, *Submission 18*, p. 27.

34 Viterra Limited, *Submission 18*, pp 27–28.

35 South Australian Farmers Federation, *Submission 13*, p. 9.

36 Viterra Limited, *Submission 18*, p. 28.

up-country Viterra sites and therefore GrainFlow should be charged a lower fee.³⁷

Industry practice

6.39 The committee has noted that port access agreements between clients and the BHCs may include provision for the application of shrinkage. Provision for shrinkage is included in the ACCC port terminal access undertakings for CBH, GrainCorp and Viterra but not ABA.³⁸

6.40 The 2011 Port Terminal Services Access Undertaking by Viterra Operations Limited, for example, includes the following provision:

- a) The Client acknowledges and agrees that Bulk Wheat will always suffer Shrinkage and loss from Dust.
- b) The Company is entitled to deduct from the Client's Bulk Wheat a percentage of wheat on account of Shrinkage and Dust. The net quantity of the Client's Bulk wheat remaining after such deductions is called the Client's Outturn Entitlement ("Outturn Entitlement").
- c) The quantum and method of calculation of the deductions for Shrinkage and Dust is specified in the Reference Prices.
- d) The Company will own and be at liberty to sell or otherwise deal in the quantity of wheat deducted from the Client's Bulk Wheat for Shrinkage and Dust at any time following receipt of the wheat at a Port Terminal.³⁹

Committee comment

6.41 The committee has noted the concerns of exporters that charges for redelivery of grain may be excessive, or in some cases unjustified. It is concerned that some BHCs may be exploiting their integrated operations to disadvantage third parties. The committee is of the view that the government needs to consider whether the access undertakings can include further provisions relating to fees and charges to third parties. Further, the government needs to explore whether there is scope for the ACCC to take regulatory action to ensure that the charges are reasonable under the provisions of the *Competition and Consumer Act 2010*.

37 For example South Australian Farmers Federation, *Submission 13*, p. 9.

38 These undertakings are available on the ACCC website, www.accc.gov.au/content/index.phtml/itemId/846439, accessed 27 March 2012.

39 Viterra Limited, Port Terminal Services Access Undertaking, www.accc.gov.au/content/item.phtml?itemId=1009820&nodeId=da24f286b6f26f25f5dedee36df80031&fn=20110922%20Viterra%20Operations%20Undertaking%20.pdf, accessed 27 March 2012.

Chapter 7

Quality issues

Introduction

7.1 This chapter considers the absence of uniform receipt, testing and classification standards and practices and any implications for growers and/or Australia's reputation as a quality wheat supplier. It discusses classification, standards, objective standards and the issue of mandatory testing.

Classification

7.2 Wheat Quality Australia (WQA) was formed in 2011 and is responsible for the classification of wheat varieties. Through the Wheat Classification Council (WCC) and the Variety Classification Panel, WQA:

...assesses new varieties to determine their processing and end product quality (such as dough strength, baking performance and extensibility) to meet key market requirements.¹

7.3 The WCC establishes and maintains Australia's wheat variety classification system, including the strategic and operational framework, and defines common wheat classes and their quality attributes. The Variety Classification Panel which, like the WCC, comes under Wheat Quality Australia also plays a role in classification through the assessment and classification of new wheat varieties.²

Standards

7.4 Grain Trade Australia (GTA) is primarily responsible for setting and publishing the majority of industry grain standards.³ GTA informed the committee that its standards are applied at all points in the supply chain.⁴ GTA submitted that:

All standards are based on a range of quality parameters, be they physical properties, defective characteristics or on contaminants present in the grain. A key to some commodities, such as wheat, is the inherent varietal characteristics and the varietal classification associated with that quality.

Another key task of the [GTA Standards] Committee is to ensure commonality of standards, tolerances, definitions, procedures and processes

1 Wheat Exports Australia, *Report for Growers 2010/11*, p. 11.

2 Wheat Quality Australia, *Wheat Classification Council*, www.wheatclassificationcouncil.com.au/info/wheatqualityaustralia/classificationcouncil, accessed 23 March 2012.

3 Grain Trade Australia Limited, *Submission 17*, p. 9.

4 Grain Trade Australia Limited, *Submission 17*, p. 10.

across commodities where practical. This reduces the complexity of the application of standards and ensures consistent methods and procedures are applied, no matter what the commodity. The Committee provides reference methods for the majority of tests for the cereal grains. While industry is free to apply field methods for assessment, these must be calibrated against the reference methods.⁵

7.5 GTA stated that it is involved in a range of other standards-related activities through various means such as:

- offering grain standards training courses in the correct interpretation and application of standards and use of testing equipment
- providing industry with Commodity Vendor Declarations detailing chemical application
- developing a Code of Conduct for industry that includes a range of core requirements when assessing grain.⁶

7.6 Mr Geoff Honey, Chief Executive Officer, GTA confirmed that GTA have also become the industry custodians of the Australian grains industry code of conduct, as part of the export deregulation process, following a request from the Australian government.⁷ He went on to clarify that GTA is an industry body with no legislative powers.⁸

7.7 GTA submitted that, through the standards committee, it has developed various Competency Standards that industry use when developing courses for employees in regards to sample stand operations. GTA stated that this work was done in conjunction with NSW TAFE and the units have been adopted by Agrifoods Skills Australia as part of a training package for the preparation, use and management of grain storage facilities.⁹

Objective standards

7.8 Objective classification of grain at receiving facilities was among the most vexed issues at the inquiry. This had in part come about as a record harvest in eastern Australia and rain during the harvesting season resulted not only in stress on the delivery, receipt and transport of grain but also in classification of rain-affected grain.

5 Grain Trade Australia Limited, *Submission 17*, p. 10.

6 Grain Trade Australia Limited, *Submission 17*, p. 10.

7 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 24.

8 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 25.

9 Grain Trade Australia Limited, *Submission 17*, p. 10.

7.9 In South Australia in particular, Viterra resorted to the use of visual classification of grain, due to a shortage of Falling Number machines. Falling Number machines are used to test rain-damaged wheat delivered to storage. Although this may have expedited the handling processes, it led to much disputation about grading of grain delivered to Viterra. Many growers complained bitterly about their harvest being unfairly downgraded by Viterra.¹⁰

7.10 In other states, bulk handlers used falling number machines.¹¹ For example in Western Australia, CBH said that:

...under grains industry of WA wheat receival standards, any load in which sprouted grain was detected automatically fell into the feed category unless a falling number test proved it was of a higher grade.¹²

7.11 Other concerns raised with the committee included allegations that Viterra had subsequently blended downgraded grain with high quality grain to meet a higher standard (and hence a higher price) for the benefit of the BHC and to the detriment of the farmer.¹³

7.12 Mr Honey, from GTA, told the committee that when determining the grades for wheat or barley the major determinants of protein, moisture and screenings should be done objectively rather than visually.¹⁴

7.13 A number of witnesses submitted that more objective means for classification are needed. Among them were SAGIT, Mr Treasure and WEA.¹⁵ WEA submitted that:

It is in the best interests of the wheat export industry to ensure accurate objective measurement of grain receivals, to enable the correct segregation and provide the ability to export grain to the quality requirements of each customer. This will protect Australia's reputation as a producer of high quality, clean grain.¹⁶

10 Mr Kenneth Scroop, *Submission 1*, [p. 1]; Mr Bevan Siviour, *Submission 6*, [p. 1]; Mr Robert Walsh, *Submission 9*, [pp 1–2]; and Mr David Treasure, *Submission 10*, [p. 1].

11 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 25.

12 Mr Peter Hemphill, 'Falling number machines add value', *The Weekly Times*, 15 November 2011, www.weeklytimesnow.com.au/article/2011/11/15/407831_grain-and-hay.html, accessed 23 March 2012.

13 Mr Bernard O'Brien, *Submission 3*, p. 4; and Mr Malcolm Bartholomaeus, *Submission 21*, pp 3-4.

14 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 25.

15 Wheat Exports Australia, *Submission 7*, p. 7; South Australian Grains Industry Trust, *Submission 8*, [p. 2]; and Mr David Treasure, *Submission 10*, [p. 1].

16 Wheat Exports Australia, *Submission 7*, p. 7.

7.14 WEA stated that:

The use of a uniform, standard objective testing regime on receipt of all grain can form the basis of wheat stocks information and assist to:

- develop the long-term competitiveness of the Australian wheat industry by effectively meeting the particular needs of key customers in target markets
- enable product differentiation strategies to be implemented
- encourage greater segregation for developing niche markets
- tailor Australian production systems and varieties in our unique environment to satisfy our discerning customers
- ensure that all grower deliveries are assessed objectively, and reduce cause for concern about bias or unequal assessment.¹⁷

7.15 Similarly, SAGIT commented that:

Currently much of the grain quality assessment at the silo is subjective or visual. It not only provides inconsistent and sometimes unreliable data to all sectors in the chain but is the cause of much distrust and aggravation.¹⁸

7.16 If grain is downgraded the grower may receive a much lower price for his or her product. Mr Bartholomaeus informed the committee that on 5 January 2011 APW was valued at \$312 per tonne at Port Adelaide while Feed Grade was valued at \$210 per tonne. He stated that a \$100 plus per tonne penalty was common during and after the harvest.¹⁹

7.17 Mr Bartholomaeus commented on problems with classification in South Australia, as follows:

...Most growers only have one practical choice for delivering grain into the bulk export supply chain, but we need to make sure that the monopoly BHC, bulk handling company, does not force growers to accept less than best practice service levels. That was the result, unfortunately, of the decision by Viterra not to use falling number machines. It forced a low level of service onto growers. That low level of service could only be avoided by incurring significant additional costs to go to an alternative receival point. That is just one example, but it is one that was pretty graphic from last year.

There were three issues that came out of that. It was Viterra that made the decision on behalf of growers, not growers themselves making the decision. They [Viterra] then delivered inconsistent visual assessments and then the goalposts moved from morning to afternoon. There was a high cost, up to \$100 per tonne, of getting it wrong. Secondly, GTA recommendations that

17 Wheat Exports Australia, *Submission 7*, p. 7.

18 South Australian Grains Industry Trust, *Submission 8*, [p. 2].

19 Mr Malcolm Bartholomaeus, *Submission 21*, p. 2.

growers be able to ask for falling number tests were not followed. And, thirdly, the integrity of the segregations that came out of that process simply has to be under question, given the large number of examples of misclassification that seem to have arisen. My recommendation is that BHCs need to be forced—in other words, regulated—to follow an industry agreed set of protocols for receipt and classification of grain.²⁰

7.18 Following the 2010/11 harvest Viterra conducted a post harvest review which found that:

...the majority of respondents to the Viterra 2010/11 Post Harvest Review Grower Questionnaire were dissatisfied with the grain classification procedure introduced following the record widespread rain event in December.²¹

7.19 The review made nine recommendations related to classification of wheat, including the need to use Falling Number machines in future, and the need to improve management and training of classification staff.²² In response to the review Viterra purchased a further 78 Falling Number machines, established a new Grain Classification Training Unit, employed more staff and provided pre-harvest classification training.²³

7.20 GrainCorp, which operates mainly in the eastern states, informed the committee that it 'uses the industry standards for receiving and grading grain as they are a "common" language describing grain and grain quality, and form a common language that can be used to facilitate the trade of grain between parties'. The company submitted that:

It should be noted that GrainCorp, as a storage provider, is contractually responsible to outturn grain at its received standard (that is the grade a grower is able to sell to another party).²⁴

7.21 The company stated that this involves a substantial risk, of up to \$100 per tonne, if the grain is out-loaded at a lower grade and that this risk exceeds the fees GrainCorp receives for undertaking this task. In addition, GrainCorp informed the committee that the company has no recourse to the grower (or buyer) for compensation if it incorrectly grades grain.²⁵

7.22 GrainCorp also stated that:

20 Mr Malcolm Bartholomaeus, *Committee Hansard*, 30 August 2011, p. 36.

21 Viterra, *2010/11 Post Harvest Review Working Group Report*, p. 18.

22 Viterra, *2010/11 Post Harvest Review Working Group Report*, p. 21.

23 Viterra, *Supplementary Submission 18*, pp 9–10.

24 GrainCorp Operations Limited, *Submission 12*, p. 12.

25 GrainCorp Operations Limited, *Submission 12*, p. 12.

A grower is not obliged to accept the grade assigned by GrainCorp at the sampling stand, and is free to take his or her grain to another receiver or back to on-farm storage for cleaning or blending and sale at a later date.²⁶

7.23 GrainCorp submitted that grain assessment needs to be flexible. The company gave examples from the wet 2011 harvest. GrainCorp stated that it had established wheat grades for white grain wheat that enabled growers to sell wheat that would otherwise not have been sold and it tested many loads of rain-affected wheat with falling numbers machines, 26 of which it purchased especially.²⁷

7.24 Commenting on growers' concerns relating to classification GrainCorp submitted that:

The fact that grain quality variations occur, combined with the lack of familiarity among growers with the manner in which grain is assessed, can account for many of the claims that sample stand staff are 'not experienced', are 'poorly trained' or are 'disadvantaging growers'.

It is unfortunate that there is an extremely low level of industry familiarity with both the grain standards and the manner in which harvest conditions and market feedback drive the assessment of grain during harvest. This leads to growers not understanding why grain is sometimes graded differently at different sites.

It should be noted that GrainCorp allows growers to request retesting of their load, should they disagree with the sample stand assessment. If a grower is not happy with a resample, they can request that a representative sample be assessed at one of GrainCorp's NATA [National Association of Testing Authorities] 13 accredited laboratories.²⁸

7.25 Export grain classification may be different from domestic. GrainCorp submitted that:

It should be noted that grain is not usually exported against the assessed received grade(s), but is exported against the grain specification in the sale contract, principally determined by the buyer of the grain.

Export contract specification will almost always require quality parameters that differ in some degree from the grades used to classify grain on receipt into the storage and handling network. Thus each export parcel usually requires a blend of different grades to meet the minimum contracted standard.²⁹

7.26 Nationally, the National Measurement Institute (NMI), a division of the Department of Innovation, Industry, Science, Research and Tertiary Education, has

26 GrainCorp Operations Limited, *Submission 12*, p. 12.

27 GrainCorp Operations Limited, *Submission 12*, pp 13–14.

28 GrainCorp Operations Limited, *Submission 12*, p. 15.

29 GrainCorp Operations Limited, *Submission 12*, p. 16.

been working for some years with the grain industry through its Grain Quality Measurements Committee 'to address concerns about grain protein and moisture measurements'. NMI informed the committee that, among other things, it has introduced a metrological control system for grain protein measuring instruments used at grain receival sites.³⁰

The question of mandatory testing

7.27 It would appear to be in the interests of the grain industry to develop and apply more objective quality control measures. WEA submitted that:

Mandatory objective testing has been introduced for a range of commodities including wool and meat, with substantial benefits for both customers and producers. Although objective measurement of wheat quality has improved over the last decade, wheat is lagging other commodities in this regard. Advances in objective grain quality measurement include:

- i. the development of a prototype instrument to measure weather damage of wheat at delivery, by compression; and
- ii. photographic measurement of grain to identify grain defects such as staining.

It is known that Near Infrared technology (NIR) can be used as a “drafting gate” for falling numbers (NIR technology has the ability to identify low falling numbers as opposed to high falling numbers) to assist in increasing grain throughput at delivery sites during wet harvests.³¹

7.28 Government involvement in mandatory testing does not appear to enjoy wide support in the industry. SAGIT, reporting on a meeting of representatives of all sectors of the supply chain in South Australia, which considered issues relating to the 2010 harvest, made the following submission:

It was generally agreed that whilst no sector wanted government regulation, the industry itself needed to lift its game in maintaining its own standards across the supply chain. The possibility of independent industry audit and certification is an option if voluntary measures do not work. Such an approach to industry self-regulation needs to be further developed in the interests of all sectors, and the industry as a whole.³²

7.29 It was not clear who might conduct any 'independent industry audit and certification', but GTA would appear to be a non-government organisation in a position to do so. However, SAGIT recommended that a combined BHC–GRDC working group be set up to assess the R&D required to progress and enhance objective quality testing, to contract that research and ensure adoption of the outcomes.³³

30 National Measurement Institute, *Submission 19*, [p. 1].

31 Wheat Exports Australia, *Submission 7*, p. 7.

32 South Australian Grains Industry Trust, *Submission 8*, Appendix, [p. 2].

33 South Australian Grains Industry Trust, *Submission 8*, Appendix, [p. 2].

Accreditation

7.30 Mr Honey from the GTA explained that one of the ways that GTA is looking at improving uniformity of wheat grading is by introducing national accreditation programs for sampling and testing. He went on to explain that they are also exploring an accreditation process to become a GTA bulk handler which will require the handler, for example, to use objective measurement criteria, to participate in the national residue survey for chemical residues and to take corrective action.³⁴ Support for these kinds of accreditation was also given by WEA.³⁵

7.31 Mr Honey told the committee that the next step would be to align accreditation programs to the code, and make it mandatory for GTA membership. He explained that to complement this process GTA is examining the possibility of a code ombudsman who would play a similar role to the banking industry ombudsman:

It would be a person separate to GTA, but where somebody could go to get relief if they felt somebody had stepped outside the bounds of the code.

7.32 Mr Honey went on to explain that people were increasingly seeing the value of being a member of GTA as it has particular values associated with it:

If you are dealing with a member of Grain Trade Australia then the organisation will abide by the code and will sample its grain according to these reference methods... [U]nder the export arrangements with AWB there were four reference methods. We now have 20 reference methods for sampling and testing of wheat, so, if you are a GTA member and you are dealing with somebody who is a GTA member, these are the expectations that you can have.³⁶

Committee comment

7.33 The committee would encourage the industry in its endeavours to continue to develop and apply objective standards for grain. Effective and reliable quality assurance standards are imperative to maintaining Australia's formidable international reputation as a superior wheat supplier. The committee is of the view that a body such as the WEA, with an amended mandate, could also make a contribution in this regard.

7.34 Grain Trade Australia is to be commended for its work in developing accreditation processes in collaboration with industry. The committee is encouraged by reported developments in near infrared technology and the involvement of NMI with the industry.

34 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 25.

35 Wheat Export Australia, *Submission 7*, p. 7.

36 Mr Geoff Honey, Chief Executive Officer, Grain Trade Australia Limited, *Committee Hansard*, 31 August 2011, p. 26.

7.35 The committee notes that Viterra attempted to address some of the serious problems that were identified with their classification practices during the 2010/11 harvest through the purchase of further falling number machines, establishing a new Grain Classification Training Unit, employing more staff and providing pre-harvest classification training.

Chapter 8

Conclusions

Introduction

8.1 This inquiry focussed on operational issues in export grain networks, following commencement of the deregulation of the export wheat market in 2008. The inquiry examined whether deregulation had resulted in the replacement of the monopoly that existed in the form of the 'single desk', with any other kind of monopolies or oligopolies in the industry.

8.2 The committee considered a number of other aspects of the operation of the bulk wheat export industry, including the degree of transparency in storage and handling of grain; equitable access to the lowest cost route to market; competition issues arising from the redelivery of grain; the absence of uniform receipt, testing and classification standards and practices; and equitable and efficient access to the shipping stem.

8.3 This inquiry ran for over a year. During that time there were a number of significant developments. This included the decision by the ACCC to accept new undertakings from Viterro, GrainCorp, CBH Group and Australian Bulk Alliance. It also included the tabling of the Productivity Commission's report on Wheat Export Marketing Arrangements, with the government accepting the recommendations in principle, but opting for these to be implemented over a longer period of time.

Vertical integration and market advantage

8.4 The committee examined many stages of the bulk wheat export supply chain and noted the emerging trend towards more vertically integrated supply chains that extend from bulk receival sites to ownership of export cargo ships. This tendency, while sometimes providing efficiencies that are of benefit to growers, also increased the likelihood of marketing advantages accruing to these larger companies. The committee also notes that a number of other changes in the supply chain are occurring due to deregulation, privatisation and competition in both the transport and storage of grain.

8.5 Although the committee received information regarding the entry of new players to the market, resulting from deregulation, relative market shares do not tell the whole story. Ownership and control of grain handling facilities, particularly port facilities where there are high barriers to entry, have resulted in significant concentrations of market power. The committee notes the ACCC's observations on the incentives for vertically integrated operators to hinder access by competitors in upstream or downstream markets in order to gain market share at the expense of access seekers, with this behaviour only moderated if there is a threat of losing throughput to an alternative supply chain.

8.6 The committee notes that on 20 March 2012, the Swiss-based company Glencore announced its intention to acquire Viterro for a sum of \$6.2 billion. In the event that this occurs, the company will become the largest wheat exporter in Australia. At the time of concluding this report it was not yet clear to the committee how this may further change the face of the bulk export wheat industry in Australia.

The role of the WEA and the ACCC

8.7 The committee heard that the role played by Wheat Exports Australia in administering the accreditation scheme has been an important one, and the views of submitters have been positive about the way that the WEA has conducted itself. The committee also examined the role that the ACCC have played in assessing the access undertakings of the Bulk Handling Companies. While these access undertakings have addressed a number of important issues regarding potentially anti-competitive behaviour, they are of limited utility due to being confined to matters related to port access and not the broader grain supply chain.

8.8 The committee is of the view that accreditation by the WEA has provided a useful safeguard during deregulation and that this should continue. The committee also heard a variety of views regarding the utility of a future, albeit amended role for the WEA, or a similar body, to perform a range of industry good functions. The committee notes that the WEA Special Account will still hold funds when the WEA is abolished, and that it is the intention of the government to reinvest this money in the industry in consultation with stakeholders. The committee is of the view that such consultations present an opportunity to consider what kind of body is best placed to carry out these functions required by industry.

8.9 The lack of mandate of the ACCC to address up country issues through the access undertakings means that a significant swathe of anti-competitive behaviour remains essentially untouched or unsupervised. The committee is of the view that there needs to be more exploration of how the provisions of the *Competition and Consumer Act 2010* could address these issues.

Shipping slots

8.10 The committee heard that the experience of auctioning shipping slots in Western Australia has been positive and notes the new access undertaking requirements for Viterro to commence an auction system in May 2012. The introduction of this system in South Australia should improve equitable access to the shipping system for all exporters. The ACCC has not placed the same requirement on GrainCorp in the eastern states where there is a degree of competition from ABA and AWB Grainflow, although clearly it could do so if there was a demonstrated need. At this time the committee is of the view that extending the auction system to all Australian ports would not necessarily improve the competitive position in the eastern states, however there needs to be some oversight of the existing auction system by either the WEA (if extended) or the ACCC. The committee is also of the view that the

necessity of extending the auction system to other ports should be assessed by the WEA or the ACCC on an ongoing basis.

Access to information

8.11 The committee received a lot of evidence about the importance of being able to access timely information about wheat stocks in order to make informed decisions. It heard a range of evidence from submitters relating to market asymmetries in accessing information. Vertical integration of the BHCs and their near-monopoly position in most regions results in the trading arm of some of those companies appearing to have exclusive access to detailed information that is not available to other traders.

8.12 The committee considers that detailed information about stocks should be published in aggregated form for dissemination to the market. The committee accepts that storage providers who store grain for a fee have made significant investments and have some rights to proprietary information relating to the storage and shipping of grain. The committee notes, however that the ACCC has recently accepted greater requirements for the provision of information in the 2011 BHCs Undertakings, and this may in part address grower concerns.

8.13 In preparing the code of conduct, the committee is of the view that industry should carefully consider whether storage providers who store grain for a fee should publish aggregated grain data where grain growers and sellers have agreed, on an opt out basis, to have their de-identified information made public.

Transport access

8.14 The committee considered the issue of equitable transport to market, noting that transport costs are higher than in other countries, with a large proportion of the sale price of grain going to transport in Australia. It notes that despite the problems associated with rail, most grain for export continues to be transported from up-country storages to port by rail. The committee observes that insufficient investment in grain freight networks is a long standing problem, with reluctance of state governments prepared to make adequate and appropriate commitment. The committee is of the view that, unless investment in rail is increased so as to provide the industry with relatively low transport costs from grain collection points to port, this may impact on the long term sustainability of the industry. If the state governments and private operators are unwilling or unable to make the necessary investment to maintain the lines, the Commonwealth Government should consider alternative options of providing the necessary funding.

8.15 The committee heard evidence that access to rail transport may be limited by commercial arrangements made by the integrated BHCs with the rail transport providers. However, the committee did not receive sufficient information on the matter to reach a conclusion, but noted that at least in NSW the State Government and

GrainCorp are parties to an agreement which allows other companies to access rail facilities.

8.16 The committee did not receive evidence to suggest that special steps are now needed in Australia to allocate rail transport. However, as the deregulated Australian export grain industry matures, the state government authorities responsible for the regulation of intrastate rail may wish to consider whether special access arrangements, such as auctioning access, are required.

Redelivery fees

8.17 The committee has noted the concerns of exporters that charges for redelivery of grain may be excessive, or in some cases unjustified. It is concerned that some BHCs may be exploiting their integrated operations to disadvantage third parties. The committee is of the view that the government needs to consider whether the access undertakings can include further provisions relating to fees and charges to third parties. Further, the government needs to explore whether there is scope for the ACCC to take regulatory action to ensure that the charges are reasonable under the provisions of the *Competition and Consumer Act 2010*.

Standards and classification

8.18 The committee is of the view that effective and reliable quality assurance standards are imperative to maintaining Australia's formidable international reputation as a superior wheat supplier.

8.19 The committee encourages the industry in its endeavours to continue to develop and apply objective standards for grain classification. Grain Trade Australia is to be commended for its work in developing accreditation processes in collaboration with industry. The committee is encouraged by reported developments in near infrared technology and the involvement of NMI with the industry. The committee is of the view that a body such as the WEA, with an amended mandate, could also make a contribution in this regard.

8.20 The committee received a lot of evidence of poor practice on the part of Viterra in relation to the visual classification of rain-damaged wheat, with the outcome being over-classification of wheat as feed grade. The committee notes the concerns provided to the committee that this may have produced an unfair commercial advantage to Viterra, when that wheat was later re-classified at a higher grade. The committee, however, notes that Viterra has attempted to address some of the serious problems that were identified with their classification practices during the 2010/11 harvest through the purchase of additional falling number machines, establishing a new Grain Classification Training Unit, the employment of more staff and the provision of pre-harvest classification training.

Code of conduct

8.21 The committee notes that in relation to access to port facilities that the government intends that a voluntary code of conduct will be developed by the industry and implemented by 30 September 2014.

8.22 It is intended that the code be developed by industry. The committee is of the view that the government should ensure a broad cross section of industry is involved in the development of the code, including: the WEA, the ACCC and a diverse range of grain handlers not limited to the major BHCs.

8.23 The committee is concerned that without a deterrent such as the possible relinquishment of a BHC's export accreditation, there is no incentive for the BHC to adhere to the voluntary code of conduct. The committee also has grave concerns about the effectiveness of a voluntary code of conduct. The ability for the ACCC to take action against breaches of the code would likely be limited.

8.24 At this stage the committee is of the view that the code of conduct should be mandatory, and intends to review this matter carefully in the current inquiry into the Wheat Export Marketing Amendment Bill 2012.

A new inquiry

8.25 On 21 March 2012, the Wheat Export Marketing Amendment Bill 2012 was introduced into the House of Representatives in order to implement the government's response to the Productivity Commission's recommendations. The bill has been referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 18 June 2012. The bill if passed will abolish the Wheat Export Accreditation Scheme and the Wheat Export Charge on 30 September 2012, and will wind up Wheat Exports Australia on 31 December 2012. It is anticipated that some of the issues raised by this inquiry may be considered in further detail during the course of that bill inquiry.

8.26 The Labor Senators on the committee note that they do not agree with some areas of the majority view of the report. They do, however, agree with both recommendations 1 and 2 of the report and look forward to the pursuing further investigations in the new inquiry.

Committee Recommendations

Recommendation 1

8.27 The committee recommends that, in recognition of the critical role that Wheat Exports Australia is playing in the deregulation of the Australian bulk wheat export market, a continuing and enhanced role for Wheat Exports Australia be further investigated in the inquiry into the Wheat Export Marketing Amendment Bill 2012. This role may include, but not be limited to:

- **accreditation of exporters;**

- **quality assurance to protect Australia's reputation as a quality wheat exporter; and**
- **performing the role of industry Ombudsman.**

Recommendation 2

8.28 The committee recommends that a mechanism for making wheat stockpile information available in an equitable manner to all participants in the bulk wheat export industry be further considered in the inquiry into the Wheat Export Marketing Amendment Bill 2012.

Senator the Hon Bill Heffernan

Chair

AGAINST THE GRAIN

Additional Comments by Senator Nick Xenophon

1.1 While I agree with many of the Committee's comments in the majority report, it is very concerning that evidence was provided to the Committee illustrating problems that could become serious competition issues for the industry if further action is not taken. The majority report does not go far enough in addressing these issues. This is particularly true for South Australia, where the recent acquisition of Viterra by Glencore has led to the largest grain market share in Australia. I acknowledge that many of these issues have occurred as a result of the 'single desk' system that operated for many years, but it is vital that these issues are dealt with as a matter of urgency and that the current monopolies or near-monopolies are not allowed to continue.

1.2 It is particularly concerning that BHCs seem to have control over the majority of facilities in the relevant states, including rail and port facilities. I acknowledge the Committee's comments on this.

1.3 I endorse the Committee's comments in relation to the activities of the WEA in managing the industry's transition, and agree that their actions have been commendable. However, I am concerned that the planned wind-up of WEA would leave some sectors of the industry under-regulated. I agree with the Committee's comments that there could be a regulatory role for WEA or a similar agency with an extended mandate, and I support the Committee's recommendation that this should be further considered in the inquiry into the Wheat Export Marketing Amendment Bill 2012.

1.4 It would be appropriate to combine the duties and expertise of existing agencies, such as the WEA and GTA, into a single regulatory body to oversee the entire industry, from production to final export. Such a body could also oversee a mandatory code of conduct, rather than the voluntary code currently planned. This mandatory code should be formed with particular consideration to issues raised during this inquiry, including the publication of aggregated grain data, the classification and grading of grain, and access to port and rail transport facilities. It would be useful for the inquiry into the Wheat Export Marketing Amendment Bill 2012 to consider the implications of a voluntary versus mandatory code of conduct, given the adequacy of voluntary codes in other industries. I am concerned that the ACCC is not the correct body to enforce this code, as suggested by the Committee, given the ACCC's history of managing monopolistic activities in other sectors.

1.5 Additional Recommendation 3: That an independent peak body or regulator, utilising the current expertise of WEA, should be established to oversee the industry in the role of Ombudsman. This regulator should continue activities such as accreditation and monitoring currently undertaken by WEA.

1.6 Additional Recommendation 4: That the industry should move towards implementing a mandatory code of conduct, to be enforced by the new regulatory body, with particular consideration to the publication of aggregated grain data, the classification and grading of grain, and access to port and rail transport facilities.

1.7 Additional Recommendation 5: That the new regulator and relevant agencies should closely monitor the industry in South Australia, given the recent takeover of Viterra by Glencore and the impact of its market share on competition and related issues.

1.8 I support the comments of Mr Malcolm Bartholomaeus, of NZX, relating to the systems currently in place in Australian ports. In his submission, Mr Bartholomaeus recommended:

1. We need the same auction system operating at in all states for all ports.
2. It needs to be administered by an independent organisation, rather than by the BHC's themselves, to ensure that the BHC's do not get an opportunity to allocate prime shipping slots to themselves.
3. All players must have the same, real cost of defaulting, and not just pay a penalty from one division to another within the same organisation.
4. There needs to be a secondary market where shipping slots can be traded after the initial allocation.¹

1.9 I note that these comments are referenced in the Committee's majority report, but I am concerned that the Committee has not given them appropriate weight.

1.10 I disagree with the Committee's comment that an auction system would not necessarily improve the competitive position of exporters in the eastern states. While it may not improve the position of the BCHs, it would very likely improve the position of smaller exporters who do not have control over port facilities and are required to pay high rates for their use.

1.11 Additional Recommendation 6: That the new regulator undertake an assessment to consider the benefit of a consistent auction system across all relevant Australian ports.

1.12 I support the concerns raised by growers in relation to the market information released by BHCs and, while I acknowledge that these companies have a right to use specific information for their own benefit, I agree with the Committee's comment that detailed information about stocks should be published in aggregated form for release to the market. I also support the Committee's comment that the industry (or regulator) should consider whether the release of de-identified aggregated grain information should be required, where grain growers and sellers have agreed to the release of this information on an opt-out basis.

¹ Mr Malcolm Bartholomaeus, *Submission 21*, p. 6.

1.13 I note the comments made to the Committee regarding the provision of rail transport for grain in Australia. I am particularly concerned about the circumstances in South Australia, as outlined in the majority report. Information provided to the Committee by AWB indicates that costs put in place by Genesee & Wyoming, owner and operator of most of the South Australian tracks, could be artificially inflated. The example provided by AWB demonstrated that South Australian producers are paying approximately \$66,000 per train, as opposed to the \$6,000 per train in NSW or Victoria.² Given that Genesee & Wyoming declined to appear before the Committee, it is impossible to justify this difference in cost. In fact, in the absence of an appropriate explanation, the differences in costs appear outrageous.

1.14 As explained to the Committee by WEA, in the United States rail services operate on an auction system similar to those in place in most Australian ports. There is significant merit in introducing a similar system in Australia.

1.15 It would also be beneficial for the relevant authority or government agency to undertake a review of Australia's rail networks, including a cost/benefit analysis of rail versus road transport in Australia, so that targeted reforms can take place.

1.16 Additional Recommendation 7: That a review should be undertaken by the appropriate body into the condition of lines for rail freight transport in Australia, with particular attention to a cost/benefit analysis of rail versus road transport and the benefits of implementing an auction-based system similar to the one currently operating in the US.

1.17 Additional Recommendation 8: That the ACCC undertake an investigation into certain commercial arrangements by the BHCs that may restrict access to rail transport, and recommend any necessary legislative changes to ensure these issues are addressed.

1.18 Additional Recommendation 9: That this Committee undertake an inquiry into the outcomes of Recommendation 7 within the next two years.

1.19 I also note the evidence provided by SAFF in relation to the additional charges faced by South Australian Approved Third Party Bulk Handlers when delivering through the Viterra port system, and that there are no other ways of loading bulk vessels in South Australia³. These fees, coupled with the shutdown of country storage facilities and other examples provided by SAFF, raises concerns in relation to manipulation of market power on the part of Viterra/Glencore.

1.20 I note that the ACCC has previously commented on the redelivery fees through the access undertaking arrangements of some BHCs. It would be appropriate for the ACCC to investigate how the *Competition and Consumer Act* operates in relation to these issues, and to make any recommendations for legislative change to

2 AWB (Australia) Ltd, *Submission 14*, pp 2–3.

3 South Australian Farmers Federation, *Submission 13*, p. 7.

the Government so that the ACCC has the regulatory power to appropriately address these problems.

1.21 Additional Recommendation 10: That the ACCC examine how the *Competition and Consumer Act 2010* operates in relation to up country issues through access undertakings and redelivery fees, and make any recommendations for legislative change that would ensure these issues can be appropriately addressed.

1.22 I support the Committee's comments in relation to the activities of GTA in developing uniform classification standards for grain. It would be useful for this organisation to have a role in developing the proposed code of conduct for the industry, and for them to play a part in the new regulatory body. I encourage the Committee to consider this as part of the inquiry into the Wheat Export Marketing Amendment Bill 2012.

1.23 Without a mandatory code of conduct and a new regulatory body to enforce it, growers will continue to be at risk of BHCs undervaluing their grain by using visual identification and other inappropriate measures. I support the Committee's comments in relation to Viterra's activities in South Australia during the last harvest, where an apparent shortage of Falling Number machines led to Viterra using visual identification of grain. While the GTA has done excellent work in forming appropriate standards for identification and classification, these measures are essentially useless if they cannot be enforced. It is important to note that growers and buyers have no ability to claim compensation from BHCs for incorrectly graded grain.⁴

1.24 I also take issue with GrainCorp's comments that growers are unfamiliar with 'the manner in which grain is assessed'.⁵ It is hard to believe that growers, whose livelihoods rely on producing quality grain, would not be familiar with how their product is assessed, and to dismiss grower concerns on this basis is unfair.

1.25 It is also important to address issues relating to pool products raised in the 2008 Committee inquiry into exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008. During this inquiry, growers expressed their concerns in relation to their position as unsecured creditors. In the Additional Comments provided to that report by Liberal Senators, Senators Heffernan, McGauran, Adams, Fisher and Cormann expressed their view that pool products should be classified as financial products under the relevant Acts, and that the required legislative changes should be made to provide necessary financial security to growers.⁶ This has not yet taken place, leaving growers in a precarious financial position.

4 GrainCorp Operations Limited, *Submission 12*, p. 12.

5 *Ibid*, p. 15.

6 Senate Rural and Regional Affairs and Transport Legislation Committee, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, Additional Comments provided by Liberal Senators, April 2008, p. 62.

1.26 Additional Recommendation 11: That the Committee’s inquiry into the Wheat Export Marketing Amendment Bill 2012 should consider pool products and whether they should be classified as financial products, and make recommendations accordingly.

1.27 While I acknowledge that many of the competition issues in the grain sector have naturally occurred as a result of high regulation over the last 60 years, it is vital that these issues are addressed as the industry continues the process of deregulation. We only have to look to the supermarket sector to see the negative effects of high market concentration for both consumers and producers, with Australia experiencing some of the fastest-rising grocery prices among the OECD nations. 2009 data showed that Australian prices had risen over 40 percent in a decade, compared to 32.9 percent in Britain and 28.4 percent in the US.⁷ In comparison, Australian producers are struggling to survive as the price wars between Coles and Woolworths push down farm gate prices.

1.28 The Committee’s majority report has raised and discussed some important and worrying issues, which should continue to be examined. I encourage the Committee to address these issues further in the inquiry into the Wheat Export Marketing Amendment Bill 2012, and to make some specific recommendations for how these could be addressed.

NICK XENOPHON

Independent Senator for South Australia

7 Crystal Ja & Miles Godfrey, ‘Aussies angry as grocery prices soar’, *The Australian*, 9 November 2009.

APPENDIX 1

Submissions Received

**Submission
Number**

Submitter

1. Kenneth Scroop
2. Kim Halbert
3. Bernard O'Brien
4. Southern Agventure Limited
5. PGA Western Graingrowers
6. Bevan Siviour
7. Wheat Exports Australia
8. SA Grains Industry Trust
9. Robert Walsh
10. David Treasure
11. Bill Greenslade and Peter Botta
12. GrainCorp Operations Limited
13. South Australian Farmers Federation (SAFF) Grains Industry Committee
14. AWB (Australia) Ltd
15. Kangaroo Island Pure Grain Pty Ltd
16. JK International Pty Ltd
17. Grain Trade Australia Ltd
18. Viterro Ltd
19. National Measurement Institute
20. Australian Grain Exporters Association
21. Malcolm Bartholomaeus
22. CBH Group
23. Australasian Railway Association
24. Grain Growers Ltd
25. John Crosby
26. Grain Producers SA

Additional Information Received

- Received on 19 September 2011, from Cargill/AWB (Australia) Ltd. Answers to Questions taken on Notice on 31 August 2011;
- Received on 23 September 2011, from the South Australia Farmers Federation (SAFF) Grains Industry Committee. Answers to Questions taken on Notice on 30 August 2011;
- Received on 26 September 2011, from Wheat Exports Australia (WEA). Answers to Questions taken on Notice on 30 August 2011;
- Received on 28 September 2011, from GrainCorp Operations Ltd. Answers to Questions taken on Notice on 31 August 2011;
- Received on 4 October 2011, from Viterra Ltd. Answers to Questions taken on Notice on 30 August 2011;
- Received on 5 October 2011, from Australia Grain Exporters Association (AGEA). Answers to Questions taken on Notice on 30 August 2011;
- Received on 15 November 2011, from the CBH Group. Answers to Questions taken on Notice on 31 August 2011;
- Received on 22 November 2011, from Southern Agventure Ltd. Answers to Questions taken on Notice on 30 August 2011;
- Received on 1 December 2011, from the Australian Competition and Consumer Commission (ACCC). Answers to Questions taken on Notice on 16 November 2011;
- Received on 20 February 2012, from Ms Caroline Rhodes, Viterra. Copy of the opening statement provided to the committee subsequent to the public hearing;
- Received on 22 February 2012, from Mr Gerard McMullen. Response to evidence provided by Grain Producers Australia at the public hearing on 20 February 2012 in Canberra;
- Received on 6 March 2012, from Grain Producers Australia (GPA). Answers to Questions taken on Notice on 20 February 2012;
- Received on 6 March 2012, from GrainCorp Operations Ltd. Answers to Questions taken on Notice on 20 February 2012;
- Received on 6 March 2012, from NSW Farmers Association. Answers to Questions taken on Notice on 20 February 2012.

TABLED DOCUMENTS

- Tabled by Mr Peter Woods, Wheat Exports Australia on 30 August 2011 in Adelaide. Copy of opening statement.
- Tabled by Viterra on 30 August 2011 in Adelaide. Package of information containing:
 - Post Harvest Review – Working group report;
 - Post Harvest Review – Viterra's response;
 - Viterra Media Release dated 24 June 2011 – *Grain shipments from SA ports continue at record pace.*
- Tabled by Mr Bryan Nye, CEO, Australian Railway Association on 20 February 2012 in Canberra. Two photos:
 - Picture 1: *Victorian Grain Freight Consist*. An average freight consist only requires three locomotives. This grain line consist requires six locomotives due to the unreliability of the old engines. The cumulative age of the six locomotive consist is 301 years old.
 - Picture 2: *Grain line in regional NSW*. This line is technically still in operational. However, given the variability of the grain task, it has been left unused for years and very little maintenance work has been undertaken.
- Tabled by Mr Peter Woods, Wheat Exports Australia on 20 February 2012 in Canberra. Copy of:
 - Opening statement;
 - Wheat Exports Australia's *Report for Growers 2010/11*.

APPENDIX 2

Public Hearings and Witnesses

30 August 2011 – Adelaide, SA

- ARNEY, Mr Darren, Consultant,
South Australian Farmers Federation Grains Industry Committee
- BARTHOLOMAEUS, Mr Malcolm Kingsley, Senior Commodity Analyst,
NZX Ltd; and Editor, Profarmer
- BREUST, Mr Geoff, Managing Director,
Southern Agventure Limited
- FITZGERALD, Mr Damian, Director – Legal,
Viterra Ltd
- GORDON, Mr Rob, President, South East Asia,
Viterra Ltd
- GREEN, Mr Robert, President,
Australian Grain Exporters Association
- KRAUSE, Mr Tim, General Manager Grain, Strategy and Compliance,
Viterra Ltd
- McQUEEN, Mr Dean, Executive Manager Grain,
Viterra Ltd
- MOHAN, Mr Sandeep, Chief Executive Officer,
JK International Pty Ltd
- RICHARDS, Ms Rosemary, Executive Officer,
Australian Grain Exporters Association
- SCHAEFER, Mr Michael, Chairman,
South Australian Farmers Federation Grains Industry Committee
- SMITH, Ms Judy, Chief Financial Officer,
JK International Pty Ltd
- WILSDON, Mr Philip Andrew, Deputy Chairman,
South Australian Farmers Federation Grains Industry Committee
- WILSON, Mr Peter Bernard, Manager, Global Supply Chain,
JK International Pty Ltd
- WOODS, Mr Peter, Chief Executive Officer,
Wheat Exports Australia

31 August 2011 – Perth, WA

- BARKER, Mr Geoffrey Stewart, Merchandising Officer, Cargill/AWB (Australia) Limited
- BRADLEY, Mr Leon, Committee Member, Western Graingrowers; Executive Member, Pastoralists and Graziers Association of Western Australia
- CODLING, Mr Richard George, Group General Counsel, CBH Group
- CRANE, Dr Andrew, CEO, CBH Group
- HART, Mr Nigel, Group General Manager, Storage and Logistics, GrainCorp Operations Ltd
- HONEY, Mr Geoff, Chief Executive Officer, Grain Trade Australia
- JOHNS, Mr Allan Neil, Chief Develop and Officer, GrainCorp Operations Ltd
- McBRIDE, Mr Peter, Director, Corporate Affairs, Cargill/AWB (Australia) Limited
- SCOTT, Mr Paul, Government Relations Manager, CBH Group
- SIMPSON, Mr Kimberley James (Kim), President, Grains Section, WA Farmers
- SNOOKE, Mr John, Chairman, Western Graingrowers, Pastoralists and Graziers Association of Western Australia
- WHITFIELD, Ms Danielle Jane, Executive Officer, Grains Section, WA Farmers

16 November 2011 – Canberra, ACT

- PEARSON, Mr Mark, Deputy Chief Executive Officer, Regulation, Australian Competition and Consumer Commission
- WING, Mr Anthony, General Manager, Transport and General Prices Oversight, Australian Competition and Consumer Commission

20 February 2012 – Canberra, ACT

- BRADLEY, Mr Leon, member, Executive Committee, Pastoralists and Graziers Association of WA
- CAPPER, Mr David John, Strategy Manager, CBH Operations, CBH Group
- CODLING, Mr Richard George, Group General Counsel, CBH Group
- CROSBY, Mr Justin Spence, Policy Director, NSW Farmers Association
- HANNON, Mr Andrew, Manager, County Operations, Grain, Viterra Limited
- HART, Mr Nigel, Group General Manager, Storage and Handling, GrainCorp
- HOSKINSON, Mr Mark, Chairman, Grains Committee, NSW Farmers Association
- JOHNS, Mr Neil, Chief Development Officer, GrainCorp
- KRAUSE, Mr Tim, General Manager, Strategy and Compliance, Grain, Viterra Limited
- MAILLER, Mr Pete, Chairman, Grain Producers Australia
- McQUEEN, Mr Dean, Executive Manager, Grain, Viterra Limited
- NYE, Mr Brian, Chief Executive Officer, Australasian Railway Association
- RHODES, Ms Caroline, Manager, Government and Commercial Relations, Australia and New Zealand, Viterra Limited
- SCOTT, Mr Paul Gregory, Government Relations Manager, CBH Group
- SIMPSON, Mr Kim, Grains Section President, Western Australian Farmers Federation
- WOODS, Mr Peter, Chief Executive Officer, Wheat Exports Australia

APPENDIX 3

Recommendations of the Productivity Commission Report on Wheat Export Marketing Arrangements¹

RECOMMENDATION 4.1

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 legislative changes in place.

RECOMMENDATION 4.2

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 effective 30 September 2011.

RECOMMENDATION 4.3

Wheat Exports Australia should be abolished on 30 September 2011.

RECOMMENDATION 4.4

The Wheat Export Charge should be abolished on 30 September 2011.

RECOMMENDATION 4.5

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 and more clearly defining its role to ensure that its powers do not extend into matters of competition policy.*

If the Australian Government decided not to abolish accreditation, 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

1 Productivity Commission, *Wheat Export Marketing Arrangements*, Productivity Commission Inquiry Report No. 51, July 2010, pp 27–33.

exports of wheat in bags and containers, as they are not covered by the accreditation scheme.

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

RECOMMENDATION 5.1

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.

RECOMMENDATION 5.2

The requirement for grain port terminal operators to pass the access test contained in the Wheat Export Marketing Act 2008 (continuous disclosure requirements and an ACCC accepted port access undertaking) as a condition for exporting bulk wheat should remain in place until 30 September 2014. Responsibility for determining if the access test is met (including the continuous disclosure requirements component) should rest solely with the ACCC beyond 30 September 2011, whether or not accreditation continues past that date.

Ideally, grain port terminal operators not subject to the access test between 30 September 2011 and 30 September 2014 would voluntarily publish their shipping stem and port access protocols.

The requirement for port terminal operators to pass the access test as a condition for exporting bulk wheat should be abolished on 30 September 2014.

The requirement for continuous disclosure should continue after 30 September 2014, although this should no longer be a condition for exporting bulk wheat. From this date, the continuous disclosure rules should be applied to all grain port terminals, regardless of ownership. Responsibility for monitoring compliance with continuous disclosure rules should remain with the ACCC after 30 September 2014.

From 1 October 2014, access disputes (other than those relating to the continuous disclosure requirements) should be dealt with by the National Access Regime under Part IIIA of the Trade Practices Act.

Ideally, port terminal operators would supplement these arrangements with a voluntary code of conduct from 1 October 2014.

Should the access test continue beyond 30 September 2014, it should be reviewed after no more than five years.

RECOMMENDATION 6.1

The ACCC has announced that it will review the exclusive dealing notification granted to CBH, regarding the use of Grain Express. In light of market developments and concerns over the contestability of CBH's supply chain, the Commission endorses the decision by the ACCC to review Grain Express. The Commission recommends that the ACCC makes its determination as soon as practicable.

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, including both economic and social costs and benefits. Where possible, the analysis should consider the benefits that can be obtained throughout other parts of the grain supply chain.

RECOMMENDATION 7.1

The Commission sees value in the provision of stocks information by state to support the effective operation of the domestic and export wheat markets. However, if the industry wants this information, it should pay for it. The most efficient approach to funding this information would be via an existing compulsory industry levy. Specifically, the GRDC levy collection framework appears to be the most practical and cost-effective option for funding stocks information by state.

RECOMMENDATION 8.1

Reforms and initiatives to improve the collection and enforcement of End Point Royalties, such as those recommended by the Advisory Council on Intellectual Property's Review of Enforcement of Plant Breeders Rights, should be implemented expeditiously.

