

# Chapter 1

## Ownership arrangements of grain handling

### Terms of reference

1.1 On 16 May 2013 the Senate referred the matter of ownership arrangements of grain handling to the Rural and Regional Affairs and Transport References Committee (committee) for inquiry and report.

1.2 On 14 November 2013, the Senate agreed to the recommendation of the committee that this matter be re-adopted in the 44<sup>th</sup> Parliament for inquiry and report by 11 December 2013.

1.3 The committee was required to inquire and report on the following:

The ownership arrangements of grain handling, with particular reference to whether:

(a) such arrangements are in the interests of:

(i) Australia's farmers; and

(ii) Australia's long term food security interests;

(b) there are potential impacts on competing grain traders' access to grain handling facilities, ports, silos and transport infrastructure;

(c) there are potential impacts for grain traders, and a competitive marketplace, of access to warehoused grain stock information;

(d) there is potential for conflict between the responsibility to shareholders and the best interest of Australian producers and consumers; and

(e) any other related matters.

### Interim reports

1.4 In the 43<sup>rd</sup> Parliament, the committee tabled a first interim report on 31 July and a second interim report on 30 August 2013.<sup>1</sup>

1.5 The second interim report provided an overview of the takeover bid by Archer Daniels Midland (ADM) for GrainCorp Limited (GrainCorp) and the regulatory

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1 Senate Rural and Regional Affairs and Transport References Committee, *Ownership arrangements of grain handling*, First Interim Report, 31 July 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Grain\\_Handling/First\\_Interim\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Grain_Handling/First_Interim_Report) (accessed 29 November 2013).

reviews conducted by the Australian Competition and Consumer Commission (ACCC) and the Foreign Investment Review Board (FIRB).<sup>2</sup>

1.6 The interim report considered perspectives on the merits of ADM's bid with focus on concerns raised to the committee about the potential impact of the bid on the interests of Australia's grain farmers as well as the Australian grain industry and Australia's long-term food security interests more broadly.

1.7 The report highlighted the extent of cross-ownership in the Australian grain handling market and the anti-competitive harm that the ADM's proposed takeover of GrainCorp could have had on the market. In the interim report, the committee questioned whether this ownership structure and the potential anti-competitive impacts had been adequately considered by Australia's regulators while drawing attention to ADM's record as a corporate citizen which contributed to the low level of trust that Australian grain growers have in the company.

### **Order under the *Foreign Acquisitions and Takeovers Act 1975***

1.8 On 4 October 2013, the Treasurer, the Hon Joe Hockey MP signed an interim order under the *Foreign Acquisitions and Takeovers Act 1975* (FATA) to extend the statutory time period for a decision on the proposed acquisition to be made by 17 December 2013.<sup>3</sup>

1.9 On 29 November, the Treasurer made an order to prohibit the proposed acquisition by ADM of 100 per cent of the shareholding in GrainCorp under the FATA.<sup>4</sup>

### **Committee view**

1.10 The Treasurer's 29 November announcement went to the heart of the committee's inquiry. The committee determined that many of its concerns had therefore been substantively addressed.

1.11 Nevertheless, the committee will monitor the outstanding concerns of Australian grain growers, including port access and anti-competitive behaviour within the industry. These and other unresolved matters raised in the committee's second interim report may be the subject of future committee inquiry.

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- 2 Senate Rural and Regional Affairs and Transport References Committee, *Ownership arrangements of grain handling*, Second Interim Report, 30 August 2013, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Grain\\_Handling/Second\\_Interim\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Grain_Handling/Second_Interim_Report) (accessed 29 November 2013).
  - 3 The Hon Joe Hockey MP, Treasurer, 'Foreign investment application: Archer Daniels Midland Company's proposed acquisition of GrainCorp Limited', *Media Release*, 4 October 2013, <http://jbh.ministers.treasury.gov.au/media-release/005-2013/> (accessed 29 November 2013).
  - 4 The Hon Joe Hockey MP, Treasurer, 'Foreign investment application: Archer Daniels Midland Company's proposed acquisition of GrainCorp Limited', *Media Release*, 29 November 2013, <http://jbh.ministers.treasury.gov.au/media-release/026-2013/> (accessed 29 November 2013).

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