

**SENATE RURAL & REGIONAL AFFAIRS & TRANSPORT
REFERENCES COMMITTEE**

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Inquiry into the ownership arrangements of grain handling

Sydney, Tuesday, 16 July 2013

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GRAINCORP OPENING STATEMENT

Thank you for the invitation to appear today.

As the committee would be aware, in April GrainCorp's Board recommended shareholders accept a takeover offer from Archer Daniels Midland Company, in the absence of a superior proposal.

This recommendation is not a decision that GrainCorp's Board made quickly or took lightly. It follows the rejection of two earlier offers.

In fact, the committee may recall that ADM's original proposal of \$11.75 per share was received almost nine months ago – in October 2012 – along with the news that ADM had acquired a 15% stake in GrainCorp.

At that time, GrainCorp's Board spent several weeks carefully evaluating the approach. On 15 November the Board informed ADM that the proposal materially undervalued GrainCorp.

A second proposal, improved to \$12.20 per share (and accompanied by an additional share purchase to take ADM's total ownership of GrainCorp to 20%), was received in early December. This proposal was also rejected on the basis it materially undervalued the company.

After some months, ADM returned with a substantially improved third offer, representing \$13.20 per share to GrainCorp's shareholders and, for eligible shareholders, additional value from franking credits of up to 43 cents per share.

After negotiation of terms we reached conditional agreement in late April that ADM would proceed to an off-market takeover offer for all of the GrainCorp shares it did not already own. This offer is now with our shareholders. It remains subject to certain conditions, in particular the satisfaction of regulatory requirements, including FIRB and MOFCOM.

Our Directors have at all times been keenly aware of their fiduciary obligations under the *Corporations Act*. Each of ADM's proposals has been discussed in exhaustive detail. After this discussion, the directors felt this third offer must be put to shareholders and – absent a superior proposal – they have recommended shareholders accept it, because:

- The offer represents a premium of almost 50% to the closing price of GrainCorp shares prior to ADM's first proposal being received;
- An Independent Expert has concluded that the offer is fair and reasonable; and
- As a cash offer it offers greater certainty, particularly as the value of GrainCorp shares could be expected to fall, at least in the near term, were ADM's offer not to succeed.

As you are aware, GrainCorp owns and operates an extensive network of grain storage and handling assets in eastern Australia. These assets are expensive for us to operate and maintain.

In order to be a sustainable business we need to act in a way that maximises the amount of grain that passes through our network, not only year to year, but for the long term.

If we act in a way for short term advantage that causes grain to bypass our network or use other routes to market – this makes us less viable as a business over the long term. It has been broadly acknowledged, (including by regulators) that in eastern Australia there is substantial competitive pressure: both up-country and at point of export.

For this reason, GrainCorp believes that there is close alignment between the interests of our shareholders and the interests of our customers, including growers.

Quite simply, without growers and the grain they produce – and without customers who want to buy and trade the grain stored in our network – we do not have a business and we could not generate a return for our investors.

Whoever owns GrainCorp's assets – these basic fundamentals remain the same.

I welcome the opportunity to help the committee with information about GrainCorp's current operations. Given that we are subject to a takeover offer, you will appreciate that there are some matters that are best referred to ADM and on which I cannot offer any comment beyond what is in ADM's Bidder's Statement.

In particular, questions on:

- ADM's operations;
- how ADM would operate GrainCorp post a change of control; and
- the regulatory process being managed by ADM;

Should be most appropriately put to ADM.

Aside from those matters, I'm happy to take your questions.

Senate Rural and Regional Affairs Committee

Enquiry into the Ownership Arrangements of Grain Handling

Victorian Farmers Federation - Opening Statement

The Victorian Farmers Federation Grains Group represents the interests of grain producers across Victoria who are ultimately impacted by the Committee's findings and the Government of the days subsequent action or inaction as the case may be.

The VFF Grains Group supports the need for an open, efficient, and transparent market to promote competition.

The VFF Consider there are four key failings within the grain industry which are impacted by the Ownership arrangements of Grain Handling Corporations, especially the ownership of GrainCorp Limited within Victoria. These problems or Market Failures include:

1. Monopoly/Market Power
2. Stocks Information
3. Grain Quality; and
4. Industry Good Services

VFF consider that the proposed takeover of GrainCorp's ownership arrangements by Archer Daniel's Midland will exacerbate existing market failures and will not be within the National Interest, unless appropriately regulated.

The VFF consider that the combined vertically and horizontally integrated assets of ADM and GrainCorp will dominate the grain sector in relation to transport, infrastructure and ports along the entire Eastern Seaboard of Australia, in what the Foreign Investment Review Board would classify as a 'prescribed sensitive sector'. ADM will have the monopoly power to impact the efficient operations of a competitive Australian market for the supply of domestic and export food commodity.

VFF are concerned that a combined ADM/GrainCorp will have the scale and capacity that it may not provide fair and transparent access to ports, up-country infrastructure, and/or market (stocks) information. This will be at the expense of other third-party providers such as domestic users, exporters, and Australian producers and consumers.

VFF consider that guaranteeing access to up-country infrastructure and up-country market (stocks) information through the ACCC and/or a Mandatory Code of Conduct should be relatively achievable conditions of sale that could be recommended by the Treasurer.

VFF also consider that an independent Industry Good entity should be established to provide grain Industry Good functions such as: Varietal Classification; minimum Export Standards; and Trade Access. Such an entity could be enabled by Government legislation and funded by industry using surplus Wheat Export Charge (WEC) funds combined with industry levy funding.

VFF believe the Federal Government's obligation to act is three-fold: to ensure foreign ownership regimes are in the National Interest especially in prescribed sensitive sectors; secondly to ensure competition is not impeded; and finally to ensure existing market failures are not only addressed, but to ensure the action, or inaction, of Government does not further exacerbate this market failure.

VFF thank the Senate Rural and Regional Affairs and Transport References Committee for reviewing these significant National and regional issues.

Table A 16/17.
NSW Farmers
Opening Statement

RRAT Inquiry into the ownership arrangements for grain handling

Opening Statement 16 July 2013

Firstly I would like to thank the Senators upon the Committee for allowing NSW Farmers with the opportunity to provide a submission and evidence today in response to the terms of reference.

As you would be aware from our submission, the NSW grain farming community, by and large, is opposed to the proposed acquisition of GrainCorp by American agribusiness Archer Daniels Midlands. As this proposed purchase provides a live case study by which the terms of reference for the inquiry may be considered, we have used the takeover bid as a focal point in our submissions.

Competition Impact

In examining this proposed takeover, our membership has determined that it is neither in their interest nor in the national interest of Australia for GrainCorp to be purchased by ADM. Specifically within our written submission, NSW Farmers concentrated on our concerns that the incentive for ADM to use the GrainCorp network in

a way that will be to the detriment competition for farmers' grain. The assertion from ADM before this committee that growers have the opportunity to 'tip down the road' shows little understanding of the dominance that GrainCorp holds in the market place. Farmers are rationale business men and women and to deliver to site further away or to invest in long term storage requires grain prices for these marketing options to include enough margin to cover these additional costs.

While it may be accurate to point to the recent ACCC decision in which it chose not to oppose the sale; NSW Farmers agrees with the comments that have been made by several of the Senators within this committee regarding the appropriateness of the law that the ACCC administers to farmers as price takers in the market place.

In addition to these points I seek to provide further arguments with regard to the conflict between the responsibility to shareholders and the best interests of Australian producers and consumers that NSW Farmers believes to arise in the case of ADM's proposal to purchase GrainCorp.

Whether the proposed capital inflow is in the national interest

NSW Farmers agrees that direct foreign investment has played an important part in the development of the Australian agriculture industry; however this has traditionally been where the investment has assisted in the development of new infrastructure or the establishment of the production systems necessary for producing new commodities. The proposed acquisition of GrainCorp by ADM fails to fit these established patterns. Rather it is more accurately viewed as a purchase of existing assets that will place it in a dominant position in the east coast grains market.

In considering the proposed capital investments that ADM have indicated that it will support if it is to acquire GrainCorp, it must first be recognised that the lion's share had already been committed to by GrainCorp's Australian board.

Secondly, public statements from ADM with regard to additional expenditure, that is expenditure above that already allocated, would appear to tie the additional money to the finding of operational efficiencies. As was evident from the evidence provided by ADM Executives to this committee,

ADM at this point in time do not appear to have a full understanding of the nature of GrainCorp's assets and operations.

Therefore it is unsurprising that there is little detail on how it intends to develop these operational efficiencies, nor where or how this additional capital expenditure would be used. NSW Farmers sought clarity from ADM's Australian representatives at the time of the announcement as to this detail, to which we were informed that the only detail that would be made available was that in the flyer 'ADM's offer for GrainCorp; its benefits and how they will be delivered'.

Likewise there is no definitive timeframe proposed other than 'over the next few years', nor a guarantee that the amounts will be spent on infrastructure that impacts on farmers as opposed to GrainCorp's downstream processing assets. We have publicly outlined our concerns that "operational efficiencies" is likely to mean closing down facilities.

Thirdly the amount to be dedicated to annual repair and maintenance by ADM is not readily differentiated from the amount already spent annually by GrainCorp.

Over the long run we are not sure that this deal is a win for both ADM and for Australia.

How will an ADM controlled GrainCorp operate in the best interests of Australians

Over the past few weeks many grower shareholders have been receiving the bidder's statement that ADM has been required to distribute under corporations law. These shareholders have bought into GrainCorp as part of a strategy to invest in the downstream supply chain and have informed me that they have considered the shares a good investment.

A number of these shareholders have brought to my attention section 2.7 of the bidder's statement. This section outlines that in the instance that ADM achieves acceptance of the bid (that is over 50% of the voting shares) it will as far as possible exert its control over GrainCorp, including the timing and quantum of any future dividends.

These shareholders have outlined their concerns that they have felt intimidated by the way that ADM has approached its obligation and that to them and that it indicates a low level of willingness from ADM to act in the best interest of the GrainCorp company as a whole, let alone in the interests of

farmers or the national interest. It has generally been their observation that it may only be where the interests of ADM's shareholders are tempered by legal requirements.

ADM have sought to make public assurances that they will be a positive and not a negative impact on farm gate prices in response to questioning over how they will manage conflict between shareholders and producers. These assurances have included maintaining access up country and abiding by any regulation of ports. In our initial meeting, we proposed to ADM that if they are genuine in delivering these outcomes for growers, they should offer them up as mandatory conditions as part of the foreign investment review process. It is disappointing that as yet ADM does not appear to have done so. Until this occurs, growers will have no other real choice but to be sceptical about their intentions.

Fit and Proper Person

Recent scrutiny from this Committee and the Australian Broadcasting Corporation's Background Briefing program has brought historical incidences of illegality in ADM's operation to light. It is NSW Farmers' concern that that this history may bring

the reputation of Australian grain into disrepute is a matter for consideration in determining if the sale is in the national interest. This was one of the reasons that the former wheat export licensing arrangements required Wheat Exports Australia to consider the previous history of an exporter.

Given the widespread publicity surrounding these matters, NSW Farmers believes that any communication by the Government with regard to Australia's Foreign Investment Policy must specifically advert to the history of ADM. In particular any decision should specify how ADM has addressed concerns that arise from previous illegalities that it was associated with and if necessary the assurance measures that the Australian Government will require to ensure that it will not impact on the reputation of Australian grain and its marketers.

