

## **Chapter 3**

### **Stakeholder views on Archer Daniel Midland's bid for GrainCorp**

3.1 A broad range of views were expressed over the course of the inquiry on Archer Daniel Midland's (ADM) proposed takeover of GrainCorp, both in written submissions and in public hearings held in Canberra on 18 June 2013 and Sydney on 16 July 2013.

3.2 A number of witnesses argued that ADM would provide much-needed capital investment in Australian grain storage and handling networks, while offering Australian growers access to new markets and an expanded knowledge base.

3.3 However, the majority of witnesses appearing before this committee who commented on the proposed takeover expressed either reservations about, or outright opposition to, GrainCorp's sale to ADM.

3.4 Concerns about the proposed takeover included:

- the potential for ADM to use its market power to the detriment of Australian growers, including through restricting or increasing the costs of third party access to its newly-acquired grain handling network. This is of serious concern to many of the contributors to this inquiry;
- that ADM might implement certain efficiencies to improve returns, that may well result in increased costs to growers, and which could include shutting down existing up-country storage sites; and
- that ADM's corporate culture and, in particular, historical record of unethical and illegal behaviour, introduced reputational and other risks for Australian growers.

3.5 For some witnesses, the apparent downsides of ADM's acquisition of GrainCorp meant that they advocated nothing less than the government blocking the takeover. Others, however, proposed making the sale subject to certain conditions, such as the divestment of particular assets currently owned by GrainCorp.

#### **Implications for access to the grain handling network**

3.6 A key point of concern for a number of witnesses was the market power ADM would have in the event of a takeover, and in particular ADM's capacity to exercise this market power in a way that restricted third party access to its newly-acquired grain handling and storage network.

3.7 Although not addressing ADM's bid for GrainCorp specifically, Southern Agventure argued that the capacity of vertically integrated bulk handlers to restrict third party access to the grain handling network ultimately meant that growers received less money for their grain:

It is clear that control of grain storage and related infrastructure including rail transport capability and port facilities places those organisations with

such control with a significant comparative advantage. It has the potential to impact on competing grain traders' access to grain handling facilities, ports, silos and transport infrastructure. Like many experiences with industry regulation, access to infrastructure is a major limitation to effective competition. [In] these circumstances, it is the grain grower who has the least influence and is forced to accept lower prices as a result particularly where regional infrastructure arrangements including stem through ports, mean effective monopoly positions for those with vertically integrated control.<sup>1</sup>

3.8 The committee is concerned by evidence that ADM officials presented at the public hearing on 18 June 2013, in which ADM officials expressed a lack of knowledge of GrainCorp's virtual monopoly ownership of storage and receival site operations on the eastern seaboard:

Senator NASH: I think it is a more important point for ADM than the grower because you will do it in the best interests of ADM. You mentioned that you would like to expand the market for Australian grains. Putting that against the fact that you operate in 140 countries, why should there be any comfort at all for Australian grain growers that they would be a priority? If you are looking to go into a market, be it Asia or wherever, and you are operating in 140 countries, why on earth would grain growers in Australia think that they are going to be a priority for you?

Mr Pinner: Two things: we have sales in 140 countries so we have a global network and access to the consumer and we can bring that back to the Australian grower; the other thing to remember is that Australian wheat is not the same as wheat around the world. It is hard, white wheat, quality wheat. It has certain functionality and uses. We have customers around the world that ask for it. And today we do not have a market share and an asset base in Australia. We think that by bringing the GrainCorp assets, that global market place, working with our end customer, the farmer on one end and at the other end the flour miller and processor, we can bring more value to the grain farmers in Australia.

Mr Bethell: The phrase 'virtual monopoly' was used. We do not see the evidence that up-country there is a virtual monopoly in terms of storage facilities.

Senator NASH: Seriously? You really believe that?

Mr Bethell: There have been no findings as far as we are aware that there is any kind of natural monopoly in the up-country storage system.

Senator NASH: I give up.<sup>2</sup>

3.9 Referring specifically to ADM's takeover bid, the Victorian Farmers Federation (VFF) told the committee that the combined assets of ADM and GrainCorp would create a vertically and horizontally integrated entity that dominated the grain

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1 Southern Agventure, *Submission 12*, pp 1–2.

2 *Proof Committee Hansard*, 18 June 2013, p. 8.

handling, storage and transportation network in eastern Australia. Indeed, according to the VFF, in the event of a takeover, ADM would possess an effective monopoly power which it might use to deny:

...fair and transparent access to ports, upcountry storage and/or market information. This would be at the expense of other third-party providers, such as domestic users, exporters, Australian producers and consumers.<sup>3</sup>

3.10 However, both GrainCorp and ADM rejected suggestions that GrainCorp operated a monopoly, and pointed to competition in Australian grain handling, storage and transportation systems. For instance, while ADM acknowledged that GrainCorp owns significant up-country and port infrastructure, it also stressed that 'all of its supply chain infrastructure faces significant competitive pressure'.<sup>4</sup>

3.11 In its submission, GrainCorp also emphasised that there was significant excess capacity in its storage and handling network. GrainCorp suggested that it was therefore in its commercial interest to maximise throughput, and any attempt to restrict third party access to its network would be contrary to that interest.<sup>5</sup>

3.12 ADM also indicated in its submission that it took as its starting point the view that:

...existing port and receival site access arrangements have served Australian growers well and that GrainCorp will continue to have strong incentives to continue to compete in the supply of grain storage and handling services. ADM is confident that there will be no adverse impact [from its takeover] for grain traders' access to grain handling facilities, ports, silos or transport infrastructure arising from the acquisition.<sup>6</sup>

3.13 A number of witnesses participating in the inquiry indicated that they were not comforted by these assurances, nor did they agree with GrainCorp's and ADM's characterisation of a competitive and transparent grain handling, storage and transportation services in eastern Australia. The different views on these matters, as they relate to port access and up-country storage facilities specifically, are addressed below.

### ***Port access***

3.14 Both GrainCorp and ADM suggested that GrainCorp's port infrastructure faced, as GrainCorp put it, 'Substantial (and growing) competition from alternate export pathways from eastern Australia'. This competition, GrainCorp suggested, was itself a natural disincentive to uncommercial behaviour, including any attempt to restrict third party or other exporter access.<sup>7</sup>

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3 Mr Brett Hosking, President, VFF Grains Group, Victorian Farmers Federation, *Proof Committee Hansard*, 16 July 2013, p. 38.

4 Archer Daniels Midland, *Submission 1*, p. 7.

5 GrainCorp, *Submission 7*, p. 3.

6 Archer Daniels Midland, *Submission 1*, p. 8.

7 GrainCorp, *Submission 9*, p. 12.

3.15 Similarly, ADM argued that GrainCorp's port terminals were:

...subject to a number of competitive pressures - from other competing bulk terminals (eg. Melbourne, Newcastle and Brisbane), containerised exports and the threat of customers bypassing GrainCorp facilities.<sup>8</sup>

3.16 Like GrainCorp, ADM suggested it would make no commercial sense for it to restrict third party access to the port infrastructure it would acquire should the takeover proceed. This was particularly the case because GrainCorp's ports were currently operating well below capacity – indeed, GrainCorp's ports had operated at approximately 35 per cent capacity over the past decade. Just as it was in GrainCorp's commercial interest to maximise throughput, so too would be in ADM's interest:

For this reason alone, ADM has a strong commercial motivation not to exclude any participant access—rather ADM intends to encourage more use so as to increase utilisation of the ports.<sup>9</sup>

3.17 GrainCorp and ADM also pointed out that, in addition to the commercial imperatives to maximise throughput, GrainCorp's ports were subject to access undertakings required by the government. If an exporter of grain or an associated entity is the provider of one or more port terminal services, that exporter must have port access undertakings in place with the Australian Competition and Consumer Commission (ACCC).<sup>10</sup>

3.18 In its submission, ADM stated that it was committed to operating GrainCorp's port services in accordance with existing 'open access' arrangements.<sup>11</sup> This commitment was also expressed in an 'open letter to Australian growers' published on ADM's website:

ADM will continue to provide access to GrainCorp's bulk grain export terminals in accordance with GrainCorp's access undertakings with the Australian Competition & Consumer Commission, and ADM will honour all long-term and short-term port access agreements with GrainCorp customers.<sup>12</sup>

3.19 During the inquiry, it was noted that the requirement to have access undertakings in place with the ACCC will be removed on 1 October 2014, provided that a mandatory industry code of conduct is prescribed under the *Competition and*

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8 Archer Daniels Midland, *Submission 1*, p. 7.

9 Archer Daniels Midland, *Submission 1*, pp 8–9; GrainCorp, *Submission 9*, p. 11.

10 Information on access undertakings is available at Grain Trade Australia, 'Prescribed Mandatory Code of Conduct for Port Access', <http://www.graintrade.org.au/node/499> (accessed 27 August 2013).

11 Archer Daniels Midland, *Submission 1*, p. 8.

12 Archer Daniels Midland, 'An Open Letter to Australian Growers', <http://www.adm.com/en-US/company/ADMandGrainCorp/OpenLetter/Pages/default.aspx> (accessed 27 August 2013).

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*Consumer Act 2010*. From that point forward, access to port services will be governed by the code and general competition law.<sup>13</sup>

3.20 Some witnesses expressed confidence that the shift from access undertakings with the ACCC to a mandatory code of conduct would provide clear and enforceable rules regarding port access. For instance, Australian Grain Exporters Association (AGEA) told the committee:

The mandatory code of conduct will have a lot more teeth than previously what we had with the access undertakings. So whenever that gets put in place we will have a new set of rules and, hopefully, we can move forward with better access.<sup>14</sup>

3.21 Under questioning AGEA was unable to tell the committee what the exact sanctions would be for breaches of the mandatory code of conduct. However, AGEA emphasised that the penalties were referred to in the Competition and Consumer Act, and could be quite substantial, depending on the level of the breach.<sup>15</sup>

3.22 Despite the existing arrangements relating to access undertakings, and the plan to move to a mandatory code of conduct, a number of witnesses questioned whether ADM would provide fair access to the port infrastructure it would acquire from GrainCorp.

3.23 Grain Growers told the committee that it had conducted a survey of its membership on the ADM takeover, and 89 per cent of respondents had indicated that they believed a foreign takeover of GrainCorp's ports would have an impact on port access.<sup>16</sup> As Grain Growers explained to the committee, this result was a:

...very strong indication ... that [growers] were concerned about the impact that a foreign company would have in potentially having control of the ports. It was very clear from our membership that there were concerns out there about the potential change.<sup>17</sup>

3.24 NSW Farmers, meanwhile, suggested that:

...it is appropriate to consider the current development of the mandatory code of conduct by the Australian Government, as required by the Wheat Export Marketing Amendment Act 2012, in any approval process for the sale. NSW Farmers has made submissions to the ACCC that if the

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13 Information on access undertakings is available at Grain Trade Australia, 'Prescribed Mandatory Code of Conduct for Port Access', <http://www.graintrade.org.au/node/499> (accessed 27 August 2013).

14 Ms Rosemary Richards, Executive Officer, Australian Grain Exporters Association, *Proof Committee Hansard*, 16 July 2013, p. 65.

15 Ms Rosemary Richards, Executive Officer, Australian Grain Exporters Association, *Proof Committee Hansard*, 16 July 2013, p. 68.

16 Dr Michael Southan, General Manager, Grower Engagement, Grain Growers Limited, *Proof Committee Hansard*, 16 July 2013, p. 69.

17 Dr Michael Southan, General Manager, Grower Engagement, Grain Growers Limited, *Proof Committee Hansard*, 16 July 2013, p. 69.

provisions within the proposed code are not considered adequate, or alternatively not in a form at which the ACCC is able to make such a determination, that the ACCC should reserve any findings it makes within this review. In such a case it would also be appropriate for the ACCC to publicly state what the appropriate conditions within the code would be.<sup>18</sup>

### ***Access to up-country storage sites***

3.25 Both ADM and GrainCorp argued that there is significant competition in terms of up-country storage facilities and services in eastern Australia, and that it would remain in the commercial interest of whoever owned GrainCorp's storage infrastructure to maximise throughput.

3.26 In its submission, ADM argued that while GrainCorp accounted for about half of the up-country storage capacity in eastern Australia, significant capacity was also owned by growers (on farm), merchants and other bulk handlers. ADM further noted that:

...some 80% of the grain that passes through the GrainCorp up-country storage network is owned by entities other than GrainCorp. In relation to grain trading, it is widely accepted that the Australian market is now highly competitive, with a range of international and Australian players active in the market.<sup>19</sup>

3.27 Similarly, GrainCorp characterised the market for up-country storage providers as a competitive one, and noted that its country storage and receival network 'competes in an environment where there is substantial excess capacity – enough to hold the average winter harvest (17 million tonnes) approximately 2.3 times over'.<sup>20</sup>

3.28 GrainCorp argued that if they failed to provide competitive terms and conditions to growers for the use of GrainCorp's storage facilities, then growers would respond by storing their grain elsewhere or bypassing the GrainCorp network and taking their grain direct to a customer.<sup>21</sup>

3.29 ADM, meanwhile, told the committee that, like GrainCorp, it would be in its commercial interest to maximise the amount of grain in its storage and handling network, including at up-country storage and receival sites.<sup>22</sup> In its abovementioned 'open letter to Australian growers', ADM also made the following commitment:

In terms of country receival sites, ADM's intention is to ensure its network remains relevant and responsive to grower needs. It is in ADM's interest to

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18 New South Wales Famers, *Submission 11*, p. 10.

19 Archer Daniels Midland, *Submission 1*, p. 7.

20 GrainCorp, *Submission 7*, p. 3.

21 Ms Alison Watkins, Managing Director and Chief Executive Officer, GrainCorp, *Proof Committee Hansard*, 16 July 2013, pp 23, 29–31.

22 Archer Daniels Midland, *Submission 1*, p. 8.

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ensure that its origination networks and up-country storage facilities are efficiently utilised by providing open access to all owners of grain.<sup>23</sup>

3.30 NSW Farmers challenged suggestions from GrainCorp and ADM that if growers were not provided with access to GrainCorp storage facilities on terms they felt fair, then they could deliver to an alternative site or install their own on-farm storage. According to NSW Farmers, ADM's assertion that, if growers were dissatisfied with the fees and charges imposed by GrainCorp for use of its up-country storage facilities, they could simply:

...tip down the road shows little understanding of the dominance that GrainCorp holds in the marketplace. Farmers are rational business men and women, and to deliver to the site further away [or] to invest in long-term storages requires grain prices for these market options to include enough margin to cover these additional costs.<sup>24</sup>

3.31 NSW Farmers also emphasised that operational costs and pressures during harvest meant that, contrary to what ADM and GrainCorp appeared to be suggesting, growers were not in a position to 'vote with their trucks' when deciding where to deliver their grain:

We have seen increases where we are now paying exorbitant fees and charges for delivering our grain, and the last thing we want to be doing is putting our grain on our trucks and heading off another 40 or 50 km down the road at an additional cost to us. The time and the expense it costs us to turn our trucks around at a site—we are competing with other people as well—means the more we are forced to centralise our receivals. The more competition we are receiving there for our truck receivals during harvest, when we have big headers roaming around there stripping 60 or 70 tonnes of wheat an hour, then the last thing we want to do is send off a B-double [a type of road train] an extra hour down the track to sit in a queue where we can only get two loads of wheat off in a day and competing with all the other cockies that are there.<sup>25</sup>

3.32 AgForce Queensland (AgForce), meanwhile, suggested the lack of competition in terms of up-country storage facilities had resulted in inefficient practices on GrainCorp's part, and producers and other agribusinesses were bearing the costs of this inefficiency. Specifically, AgForce argued that traders and marketers in Queensland sometimes faced difficulties in accessing grain in a timely and efficient fashion once it was in GrainCorp's handling system:

The biggest problem currently facing traders and marketers in Queensland is their ability to access and accumulate grain when required. Due to

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23 Archer Daniels Midland, 'An Open Letter to Australian Growers', <http://www.adm.com/en-US/company/ADMandGrainCorp/OpenLetter/Pages/default.aspx> (accessed 27 August 2013).

24 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 37.

25 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 39.

GrainCorp currently having a basic monopoly on up-country storage, traders, marketers and producers are only able to access their grain when it is suitable for GrainCorp. This has proven to be a significant issue and is costing competitors time and money.<sup>26</sup>

3.33 In its appearance before the committee, AgForce did not suggest the situation would necessarily be worse as a result of ADM's takeover, but it did question the strength of the current competition regulatory system:

Even though they have told us they are going to allow other people access to up-country storage, access to ports, there is still really no teeth anywhere in the system whereby we can guarantee that. Certainly, we do not have any confidence in the ACCC being of any value at all.<sup>27</sup>

3.34 As such, AgForce argued that should the takeover proceed, ADM should be required to provide assurances that it will be efficient and accountable in providing access to grain held in its storage network.<sup>28</sup>

3.35 Other witnesses also argued that, in light of GrainCorp's ownership of such a significant part of eastern Australia's up-country storage capacity, it would be appropriate to place conditions on ADM's takeover to ensure growers' interests were protected. These potential conditions are discussed further below.

3.36 The committee notes that since making submissions to this inquiry, NSW Farmers, VFF and Agforce have publicly expressed concerns about the potential impact of ADM's bid on competition.<sup>29</sup> NSW Farmers and VFF have both passed resolutions opposing the sale of Graincorp,<sup>30</sup> while Agforce has sought assurances from the Government and ADM that they would allow access to ports and would not hinder trading or handling competition in the market.<sup>31</sup>

### **Recommendations that ADM's takeover be subject to access conditions**

3.37 To protect the interests of growers and promote a competitive market for storage and handling services, several witnesses participating in this inquiry argued that ADM's takeover should be subject to certain conditions.

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26 AgForce Queensland, *Submission 4*, attachment, p. 3.

27 Mr Wayne Newton, AgForce Grains President, AgForce Grains Limited, *Proof Committee Hansard*, 16 July 2013, p. 62.

28 AgForce Queensland, *Submission 4*, attachment, pp. 4–5.

29 Grace Ryan, 'East coast farmers join forces against ADM takeover', *Western Advocate*, 21 August 2013, <http://www.westernadvocate.com.au/story/1720904/east-coast-farmers-join-forces-against-adm-takeover/?cs=114> (accessed 28 August 2013).

30 Grace Ryan, 'East coast farmers join forces against ADM takeover', *Western Advocate*, 21 August 2013, <http://www.westernadvocate.com.au/story/1720904/east-coast-farmers-join-forces-against-adm-takeover/?cs=114> (accessed 28 August 2013).

31 Agforce, 'Agriculture - 30 Issues, 30 Days Issue 28: Graincorp and ADM', 19 August 2013, <http://www.agforceqld.org.au/index.php?tgtPage=news&id=view,366> (accessed 28 August 2013).

3.38 With respect to ADM's assurances to growers that it would maintain existing access arrangements for up-country storage facilities and abide by any regulations at port, NSW Farmers suggested these assurances would carry more weight if ADM agreed to make them mandatory conditions of its proposed takeover:

In our initial meeting we proposed to ADM that if they are genuine in delivering those outcomes for growers they should offer them up as a mandatory condition as part of the foreign investment review process. It is disappointing that, as yet, ADM do not appear to have done so. Until this [happens], growers will not have any real choice but [to] be sceptical about their intentions.<sup>32</sup>

3.39 Appearing before the committee the VFF also suggested that:

...guaranteeing access to upcountry infrastructure and upcountry market stocks information through the ACCC and/or a mandatory code of conduct should be relatively achievable conditions of a sale that could be recommended by the Treasurer.<sup>33</sup>

3.40 The VFF subsequently added that:

...if we can have some sort of undertaking—I should be careful of what words I use—to ports, to up-country silos and to marketing information, so that there is a transparent and competitive market, that will go a long way to addressing a lot of the concerns we have around the way the market is operating at the moment and potentially if ADM do take over GrainCorp.<sup>34</sup>

3.41 Several witnesses, including NSW Farmers and Link Agriculture, also argued that should the takeover proceed, ADM should be required to divest certain assets in order to encourage a more competitive marketplace.

3.42 For its part, Link Agriculture noted that GrainCorp currently owns up-country storage sites that are unused and unmaintained. Link Agriculture therefore recommended that ADM 'ought to be forced to divest themselves of the hundreds of currently unused vertical storage facilities'.<sup>35</sup>

3.43 Asked about its suggestion that divestments should be part of any takeover, NSW Farmers provided a chart to the committee showing GrainCorp sites in NSW, and stated that it:

...shows that there is a certain amount of grain in the north of the state that goes out through Newcastle. In the southern part of the state it is bottlenecked through Port Kembla. There is leakage through some ports

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32 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 38.

33 Mr Brett Hosking, President, VFF Grains Group, Victorian Farmers Federation, *Proof Committee Hansard*, 16 July 2013, p. 38.

34 Mr Stephen Sheridan, Manager, VFF Grains Group, Victorian Farmers Federation, *Proof Committee Hansard*, 16 July 2013, p. 45.

35 Link Agriculture, *Submission 13*, p. 1.

down in Victoria. We are saying that, to break that monopoly up, the Port Kembla port should be divested in the equation.<sup>36</sup>

3.44 Asked how NSW Farmers envisaged such a divestment might take place, the committee was told:

Our position on it is that we ask the ACCC to consider that, noting our concerns about different incentives for behaviour, but it could fit quite clearly within either FIRB's remit or the Treasury's remit through the Acquisitions Act. The ACCC could also use its powers of divestment under the competition and consumer law. So the reality is that, as growers, our members need to see improvements in competition. We cannot be locked into the suboptimal bottleneck infrastructure that we have. Even the ANZ's 'Greener Pastures: The Global Soft Commodity Opportunity for Australia and New Zealand' report talked a lot about how we have not gone far enough with regard to ensuring contestability on port infrastructure and other bottleneck infrastructure.<sup>37</sup>

### **Risk of sites being closed in search for new efficiencies**

3.45 In addition to hearing evidence from various witnesses on the potential impact of the proposed takeover on third party access to up-country storage facilities, several witnesses also raised concerns that such facilities might be closed by ADM in a search for new efficiencies.

3.46 ADM wrote that it recognised the importance of up-country silos 'to growers as a key part of the value chain, and to local communities as a seasonal source of employment'. ADM added that it will continue GrainCorp's current practice of assessing which facilities will be opened on a year-by-year basis, with that assessment based on the level of the harvest.<sup>38</sup>

3.47 Despite these assurances, several witnesses remained concerned that ADM would close storage sites and supporting infrastructure as it sought to improve profitability, and this would be to the detriment of both growers and local communities.

3.48 NSW Farmers told the committee that it had been unable to secure any details from ADM regarding how it would identify and develop new operational efficiencies. As such, NSW Farmers expressed concerns that ADM's search for 'operational efficiencies' would mean closing down storage facilities.<sup>39</sup>

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36 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 43.

37 Mr Justin Crosby, Policy Director, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 43. The ANZ report, released on 19 October 2012, is available at <http://www.media.anz.com/phoenix.zhtml?c=248677&p=irol-insight> (accessed 27 August 2013).

38 Archer Daniels Midland, *Submission 1*, p. 8.

39 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 37.

3.49 Expanding on this point, NSW Farmers told the committee that such closures would not only affect growers, but would also damage local communities:

If they are talking about efficiencies and if we see supply chain closures, we are also talking about rural and regional Australia and the effect that is going to have on jobs. We have got a lot of people out there in full-time jobs working in communities. We have people—farmers' wives and daughters and sons—who get part-time work at silos. That is going to have a detrimental effect on those people especially if we see rationalisation of the upcountry storages on the branch lines, and we as New South Wales farmers—and I am sure that VFF are doing the same thing—are fighting tooth and nail to keep these branch lines open. Any rationalisation of sites along those lines will jeopardise those lines and we will be forced by lack of investment to put our grain on the road competing with the school buses and everything else—<sup>40</sup>

3.50 AgForce suggested that if ADM intends to close any GrainCorp storage sites without selling them to another user, it should provide assurances that the sites will not become eyesores, and that any such closures are undertaken in consultation with local communities.<sup>41</sup>

### **ADM's record as a corporate citizen**

3.51 In its submission, ADM emphasised its 'strong grower-focused culture'.<sup>42</sup> It also suggested that, like GrainCorp, ADM was 'built on a foundation of strong values that include integrity, respect, responsibility and a firm commitment to good stewardship of the land'.<sup>43</sup>

3.52 While ADM emphasised its positive corporate culture and strong guiding values to the committee, this inquiry has also focused on past instances of ADM's involvement in illegal or unethical behaviour.

3.53 NSW Farmers suggested that ADM's record of illegal activities could potentially damage the reputation of Australian growers:

Recent scrutiny by this committee and the Australian Broadcasting Corporation's *Background Briefing* program has brought the incidences of the illegality in ADM's operations to light. It is the New South Wales Farmers' concern that this history may bring the reputation of Australian growers into disrepute, a matter for consideration in determining whether the sale is in the national interest. This was one of the reasons former wheat

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40 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 40.

41 AgForce Queensland, *Submission 4*, attachment, pp. 10–11.

42 Archer Daniels Midland, *Submission 1*, p. 7.

43 Archer Daniels Midland, *Submission 1*, p. 12.

export licence arrangements required Wheat Exports Australia to consider the previous history of an exporter.<sup>44</sup>

3.54 Given the publicity surrounding ADM's corporate record, NSW Farmers told the committee that any government decision on ADM's proposed takeover should have regard to ADM's corporate record:

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 markets.<sup>45</sup>

### **Concerns regarding wheat blending**

3.55 Although not a major focus of the inquiry, NSW Farmers raised concerns that ADM's takeover might lead to a reduction in the standard of Australian wheat being exported, and in turn damage the reputation of the product that east coast Australian growers had built over a long period of time.

3.56 Specifically, NSW Farmers told the committee that:

...since deregulation, we have been battling with the ideas of producing clean green wheat of high quality and continuing that quality, and we now face sending our grain into these markets where American wheat could be sold alongside our grain, bringing our wheat quality into question. It really concerns me that we will be forced to grow wheat of fair-average quality, down from where we used to grow some of the best in the world, and supplying the markets. The east coast of Australia—and I am not putting any rubbish on Western Australia—is the only place in Australia where we produce the highest quality grain, the prime hard varieties of the milling quality, and we supply genuine customers who are already showing concerns that the quality seems to be dropping off since deregulation. So we are trying to hold onto those markets and the last thing we want to do is lose them through quality issues, and quality cannot be guaranteed because we now have an American company which can totally control our supply chain.<sup>46</sup>

### **The balance between the interests of shareholders and growers**

3.57 Witnesses participating in this inquiry expressed a range of views on the whether ADM's takeover would be in the interests of GrainCorp's shareholders, and if these interests were potentially in conflict with the interests of growers.

3.58 In its submission, GrainCorp rejected the notion that:

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44 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 38.

45 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 38.

46 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 39.

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...the interests of its shareholders and those of Australian growers or consumers are somehow mutually exclusive. Regardless of ownership structure, without Australian growers and the grain they produce, and without consumer demand for the products the company handles and processes, GrainCorp's business would not be able to generate a return for its owners.<sup>47</sup>

3.59 Similarly, ADM maintained that 'everything we do begins with the grower'. To this end, it committed to establishing a GrainCorp Grower and Community Advisory Group, which would:

...provide a conduit between GrainCorp management and the views of growers and their communities. To be chaired by a distinguished person with a strong affiliation with regional and rural Australia and the grower community, it will also include four growers – one from each of New South Wales, Victoria and Queensland and an additional grower representative. Other Advisory Group members will include senior GrainCorp management representatives, as well as a person with a strong connection to regional and rural community organisations.<sup>48</sup>

3.60 In its appearance before the committee, Pastoralists and Graziers Association (PGA) Western Graingrowers underlined the value of ADM's takeover offer for GrainCorp shareholders, stating that:

...there is a very good offer before the GrainCorp shareholders that will greatly advantage the GrainCorp company and enable Australia to serve its overseas customers, and the GrainCorp shareholders will benefit substantially from it.<sup>49</sup>

3.61 NSW Farmers, however, questioned whether the takeover would, in fact, be in the best interests of GrainCorp shareholders. As Mr Hoskinson told the committee:

A number of [GrainCorp's] shareholders have brought to my attention section 2.7 of the bidder's statement [provided to them by ADM]. This section outlines that, in the instance that ADM achieves acceptance of the bid—that is, over 50 per cent of the voters' shares—it will, as far as possible, exert its control over GrainCorp including the timing ... and the quantum of any future dividends. These shareholders have outlined their concerns that they have felt intimidated by the way ADM has approached this obligation and that, to them, that indicates a low level of willingness from ADM to act in the best interests of GrainCorp, the company as a whole, let alone in the interests of the farmers or in the national interest.<sup>50</sup>

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47 GrainCorp, *Submission 7*, p. 3.

48 Archer Daniels Midland, *Submission 1*, p. 12.

49 Mr Leon Bradley, Committee Member, PGA Western Graingrowers, The Pastoralists and Graziers Association of Western Australia, *Proof Committee Hansard*, 16 July 2013, p. 59.

50 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 38.

3.62 Similarly, Mrs Gillian and Mr Don Haling contended that ADM's proposed takeover was neither in the interest of growers or GrainCorp shareholders. They suggested that given GrainCorp was already growing and providing strong returns to shareholders and a 'very efficient service to grain growers', it made little sense to sell the company to ADM.<sup>51</sup>

3.63 The VFF, meanwhile, drew a clear distinction between the interests of shareholders and the interests of growers and the nation more broadly, particularly given what it regarded as ADM's uneven record as a good corporate citizen:

[F]rom the shareholders' point of view, that probably is a good deal. From our nation's point of view and from our community's point of view and from the growers' point of view, there is a lot of threat potentially coming our way with the deal. It is that unknown. And, as has been pointed out, we do not know how ADM are going to behave if they come to Australia. I am not Tom Waterhouse, but I would give pretty good odds as to how they are going to behave.<sup>52</sup>

3.64 AgForce wrote in its submission that because GrainCorp is already a publicly listed company, a change in ownership would produce little change in the balance between shareholder and grower interests. Nonetheless, AgForce also suggested that in:

...recent years in Queensland producers believe that the service and benefits to producers did come second to shareholders. The majority of sites in Queensland have not had adequate maintenance carried out for some time, equipment does not work properly and traders and producers alike have difficulty accessing their grain in storage. However, the profits announced by GrainCorp in the last two years have been amongst the largest, if not the largest ever posted by GrainCorp.

AgForce believe GrainCorp's quest for profit has been at the expense of producers. While this is a difficult problem to address with a non-government entity, AgForce believe that some of the problems currently being experience can be resolved by ensuring open and free access to up-country storage sites and that any anti-competitive behaviour is met with swift and appropriate action.<sup>53</sup>

3.65 AgForce noted that, historically speaking, GrainCorp's infrastructure had been built to serve growers interests. It would therefore be inappropriate for this infrastructure to now be used simply to maximise profit for its owner.<sup>54</sup>

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51 Mrs and Mr Gillian and Don Haling, *Submission 2*, pp. 1–2.

52 Mr Brett Hosking, President, VFF Grains Group, Victorian Farmers Federation, *Proof Committee Hansard*, 16 July 2013, p. 39.

53 AgForce Queensland, *Submission 4*, p. 2,

54 Mr Wayne Newton, AgForce Grains President, AgForce Grains Limited, *Proof Committee Hansard*, 16 July 2013, p. 57.

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## ADM's takeover bid and foreign investment in Australian agribusiness

3.66 In its submission to this inquiry, ADM highlighted its international record of investing to grow its agricultural value chain:

In building those networks, ADM has created growth and opportunity up and down the agricultural value chain, from the grower to the truck driver to the plant operator to the food manufacturer. As ADM grows its value chain, it benefits people, communities and businesses at every link.

That is the future we see in Australia as well. As Australian agriculture looks to grow its ability to serve expanding global markets, a strong global partner, helping to create a more robust industry up and down the value chain, can only strengthen those efforts.<sup>55</sup>

3.67 ADM also pointed to its history of investment in infrastructure and research and development, and its commitment to working with GrainCorp's management to identify areas where further investment can deliver improved operational efficiencies. ADM suggested such investments might be made, for example, in 'new stackers and intake capacity increases to allow faster truck discharge, improved communications technology, and increased storage capacity'.<sup>56</sup>

3.68 More specifically, ADM has committed to supporting or investing \$300 million in capital expenditure in the GrainCorp business from the execution of the implementation deed on 25 April 2013. This figure would include the \$250 million in expenditure announced by GrainCorp in 2012, plus an additional \$50 million 'on strategic expenditure for the GrainCorp business'. This amount would be in addition to the annual expenditure required to maintain and improve GrainCorp's existing assets, which will average between \$40 million and \$60 million in coming years.<sup>57</sup>

3.69 Several written submissions and witnesses appearing before the committee argued that ADM's takeover bid represented an opportunity to provide much-needed capital investment in Australian agribusiness.

3.70 In both its submission and appearance before the committee, PGA Western Graingrowers argued that greater foreign investment in Australian agriculture was a welcome development. In particular, PGA highlighted the access international corporations have to global financial markets, and the liquidity they can bring to the Australian grains marketplace. Addressing concerns expressed by AgForce about a lack of competition and the unfair advantage the marketing arms of bulk handling companies had over other non-bulk handling companies in terms of access to grain and stocks information, PGA Western Graingrowers told the committee:

We believe that foreign investment in infrastructure will encourage competition, and a lot of the problems that were raised by the previous

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55 Archer Daniels Midland, *Submission 1*, p. 4.

56 Archer Daniels Midland, *Submission 1*, p. 10.

57 Archer Daniels Midland, *Submission 1*, p. 10.

speaker are better resolved by competition and investment rather than a return to a heavy-handed regulation that completely ignores the requirements of customers overseas.<sup>58</sup>

3.71 Farmer and former chairman of GrainCorp, Mr Ron Greentree, argued that GrainCorp, under its current ownership arrangements, was not in a position to provide the capital investment in the grain storage and handling network that Australian growers needed:

The capital requirements are ginormous to be able to keep our business farm going and even more so outside the farm gate. The farmers have spent their capital on trying to get their crop off and get it under store very quickly—the size of our headers, our augers. We have all spent it, but unfortunately outside the farm gate the amount of capital has not kept pace. Elevator capacities at GrainCorp silos on average have not changed over the last 20 or 30 years. If they have not kept up with us, we can see that our cost of storing and transport has doubled in the last seven years on the east coast of Australia. My worry is that I do not believe that GrainCorp under its present structure and ownership will have the means to be able to keep up with that investment in storage and handling going into the future.<sup>59</sup>

3.72 Mr Greentree added:

[E]very farmer has had frustration with GrainCorp about not spending and how slow they are and how long the silo lines are. That has not gone away. That is going to stay until they start putting more capital into the storage system.<sup>60</sup>

3.73 Mr Greentree told the committee that without greater capital investment in the storage and handling network, Australian growers would continue to face rising costs, undermining their competitiveness.<sup>61</sup>

3.74 Mr Greentree suggested that ADM was more likely than GrainCorp 'to spend the money on the infrastructure that affects farmers'.<sup>62</sup>

3.75 Mr Greentree contended that GrainCorp had been running at a loss in drought years, so in those years at least it lacked the capital required to invest in the grain storage and handling network. He also took the view that what money GrainCorp had been able to raise was largely being spent overseas on GrainCorp's malt business, which it had diversified into:

So there is no capital that can be spent. They have had to go and do rights issues. They have had to go and raise more capital to keep the show going.

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58 Mr Leon Bradley, Committee Member, PGA Western Graingrowers, The Pastoralists and Graziers Association of Western Australia, *Proof Committee Hansard*, 16 July 2013, p. 58; PGA, *Submission 6*, p. 3.

59 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 51.

60 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 55.

61 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 52.

62 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 51.

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And what have they done with that? They have gone and spent that money overseas. I cannot see how that is going to stop happening, because they freely admit they want to takeover-proof themselves. If they stay like they are now, they may continue to do that. That money might never come home. They seem to think that storage and handling is not trendy, but that is what is affecting us as growers and I am very concerned.<sup>63</sup>

3.76 Mr Greentree argued that ADM's larger capital base and more diverse sources of income compared to GrainCorp provided it with greater ongoing capacity to finance investments in the Australian grain storage and handling network:

What I am saying is that GrainCorp in their present structure will not be able to do that because the majority of the income will come from the east coast of Australia and there could be a drought here. I am saying that there is potential for a company like ADM, if they wanted to, to still have other places of income where they could put into Australia where GrainCorp could not. What I am on about is more about what GrainCorp are not doing for Australian east coast farmers at the moment and trying to get that better.<sup>64</sup>

3.77 While not questioning GrainCorp's capacity to invest in the grain storage and handling network, ADM made a similar point in its submission about its own capacity to maintain stable investment levels, including through periods of drought:

With one of the strongest balance sheets in the agricultural sector, ADM can support the accumulation of quality Australian grain to underpin long-term global demand, while at the same time supporting ongoing investment in grain handling infrastructure. Because of this financial strength and geographical diversity, ADM can also manage through drought conditions and supply shocks to ensure they are there for the grower year after year.<sup>65</sup>

3.78 Although not referring to ADM's proposed takeover of GrainCorp specifically, AGEA made the general point that the grains industry is a global business, and 'foreign investment is one mechanism for ensuring the industry can build economies of scale and can access and leverage global knowledge, technologies and innovations'. AGEA further suggested that Australian supply chains were high cost compared to Australia's competitors, 'and further investment is required to ensure supply chains are competitive and efficient'.<sup>66</sup>

3.79 In addition to underlining the need for foreign investment in Australian agribusiness, Mr Greentree told the committee that he believed that if the takeover was blocked, this could have a devastating impact on GrainCorp's value, and weaken what he believed to be its already limited capacity to fund capital investment:

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63 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 51.

64 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 55.

65 Archer Daniels Midland, *Submission 1*, p. 11.

66 AGEA, *Submission 5*, pp 12.

I suppose my other concern is that, hypothetically, if the deal did not go ahead, we would know what the share price was before the offer. I do not know the figure, but maybe 40 or 50 per cent of the shareholders' money could be held in overseas funds. I believe that those people could then, hypothetically, pull out—this is just my personal opinion—and the share price could crash. Then we would have less confidence in overseas capital investing in agribusiness in Australia. That really scares me. If they lose that confidence in GrainCorp then they will not have the backing. If they have to go out and raise more money then they are going to spend less money on capital, because they can only do it from profits and they might have to use that capital just to keep the show going.<sup>67</sup>

3.80 Several witnesses also focused on the impact a regulatory rejection of ADM's takeover bid, or a broader shift to a more restrictive policy setting with regard to foreign investment, might have on Australian agribusiness.

3.81 Mr Greentree argued that if, in response to regulatory delays, ADM withdrew its application for takeover approval:

...the message that would send to the world about investing in agribusiness in Australia would be a bad outcome and could potentially stop or very much slow down that stream of money.<sup>68</sup>

3.82 Similarly, PGA told the committee that it was:

...very concerned that the message being conveyed to the international markets, the signals that they are receiving, is that Australia is no longer a friendly place for investment, and the signals it sends to local investors—in what will be, I believe, a very considerable loss to GrainCorp shareholders if this proposal is not allowed to go ahead—are very discouraging for the prospects of the wheat industry in Australia.<sup>69</sup>

3.83 Although not addressing ADM's proposed takeover, AGEA made a broader point about the risks involved in a move to a more restrictive policy setting with regards to foreign investment, cautioning that:

...any policy shift to a more restrictive environment in relation to foreign investment and/or ownership of supply chain assets may give rise to concerns about sovereign risk amongst investors. This will influence future investment decisions that could impact on growth in the industry and may see capital allocated to other origins/enterprises.<sup>70</sup>

3.84 In contrast, Mr Jock Munro told the committee that it was inaccurate to characterise ADM's takeover as 'foreign investment'. According to Mr Munro:

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67 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 52.

68 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 53.

69 Mr Leon Bradley, Committee Member, PGA Western Graingrowers, The Pastoralists and Graziers Association of Western Australia, *Proof Committee Hansard*, 16 July 2013, p. 58.

70 AGEA, *Submission 5*, p. 3.

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...this is not an investment this is a clear sell out, and to say that Australia has not got the money, cannot create enough cash to invest in its own industries, is a complete fallacy. The money that built these assets came from the land. We created that money ourselves and built these assets. To say that we cannot go on updating those assets and continue to improve them is just a nonsense.<sup>71</sup>

3.85 While expressing in-principle support for foreign investment, NSW Farmers argued that ADM's proposed takeover would not bring with it new capital investments in the grain handling network:

New South Wales Farmers agree that direct foreign investment has played an important part in the development of the Australian agricultural industry. However, this has traditionally been where the investment has assisted in the development of new infrastructure or in the establishment of a production system necessary for producing new commodities. The proposed acquisition of GrainCorp by ADM fails to fit these established patterns. Growers more accurately view it as a purchase of existing assets that will place in it a dominant position in the east coast grains market.

In considering the proposed capital investments that ADM has indicated that it will support if it were to acquire GrainCorp, it must first be recognised that the lion's share had already been committed to GrainCorp by GrainCorp's Australian board. Secondly, public statements by ADM with regard to additional expenditure above that already allocated would appear to tie up the initial money that was to follow the operational efficiencies.<sup>72</sup>

3.86 NSW Farmers also argued that ADM appeared to lack a full understanding of GrainCorp's assets and operations, and as a result was not in a position to identify where or when its promised additional capital expenditure would be invested.<sup>73</sup>

3.87 According to NSW Farmers, it was not clear how the amount to be dedicated by ADM to annual repair maintenance could be differentiated from the amount already spent annually by GrainCorp.<sup>74</sup>

3.88 Grain Growers included questions in its membership survey about the potential benefits of an ADM takeover of GrainCorp for Australian agriculture. An overwhelming number of respondents indicated that they did not think the takeover would be to the industry's benefit. Asked if ADM's takeover of GrainCorp

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71 Mr Jock Munro, private capacity, *Proof Committee Hansard*, 16 July 2013, p. 80.

72 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 37.

73 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 37.

74 Mr Mark Hoskinson, Chairman, Grains Committee, New South Wales Farmers Association, *Proof Committee Hansard*, 16 July 2013, p. 37.

would 'benefit the Australian industry in any way', 85 per cent of respondents answered 'no'.<sup>75</sup>

### **Opportunities to access new markets and knowledge**

3.89 ADM argued that its economies of scale and global market reach would help Australian growers remain competitive and take advantage of growing world food demand:

ADM's network of global customers for food and agricultural commodities spans more than 140 countries. This reach – and the market insight it brings – will benefit Australian growers, driving greater and more consistent demand for Australian grains.

The combination of GrainCorp and ADM will provide Australian growers a unique opportunity to be part of a truly global network of markets and buyers including ADM's own global processing operation, itself a significant creator of demand for agricultural production.

Joining these two great businesses will generate opportunities for Australian growers in new markets, including those not economically viable for GrainCorp to access on its own, as well as expanding Asian and Middle Eastern markets. Through ADM, the combined group will provide customers around the world with access to a more diversified grain origination portfolio while providing Australian growers with greater access to world markets, enhanced logistics and leading market insights.<sup>76</sup>

3.90 ADM also suggested that Australian growers would benefit from its knowledge of market dynamics and best practice:

ADM's global footprint enables growers to trade profitably amid market volatility and offers growers greater insight into the detail of specific crops and qualities including global and regional wheat supply and demand, which helps with forward crop planning and marketing for wheat and other crops. ADM also offers valuable insights into best practice, research and risk management tools to help growers strengthen their businesses.<sup>77</sup>

3.91 Mr Greentree argued that large multinational agricultural commodity companies, such as Cargill and ADM, had strong and established relationships with the large global food manufacturers, such as MacDonald's and Nestle. According to Mr Greentree, ADM's relationships with major food companies would provide new opportunities for Australian growers:

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75 Dr Michael Southan, General Manager, Grower Engagement, Grain Growers Limited, *Proof Committee Hansard*, 16 July 2013, p. 69. Dr Southan explained that Grain Growers had sent out the survey to about 6000 of its members, and had received 473 responses. The survey was open from 6 May to 10 May. Mr Eastburn added that this was 'by far the highest response of all the [surveys] we have sent out', with the next-highest receiving about 300 responses.

76 Archer Daniels Midland, *Submission 1*, p. 6.

77 Archer Daniels Midland, *Submission 1*, p. 11.

[If] we are going to be set ourselves up around the world, we have to have all these multinational companies in Australia that are going to have the relationships with these mega food companies. And at the moment we do not have them here.<sup>78</sup>

3.92 In contrast, Grain Growers was sceptical about ADM's claims that its takeover would provide Australian growers with new market opportunities. Grain Growers told the committee that, rather than providing Australian growers with access to new markets, the takeover was more about improving ADM's trade opportunities and access to Southeast Asian markets.<sup>79</sup>

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78 Mr Ron Greentree, farmer, *Proof Committee Hansard*, 16 July 2013, p. 54.

79 Mr John Eastburn, Chairman, Grain Growers Limited, *Proof Committee Hansard*, 16 July 2013, p. 72.

