

# Australian Treasurer rejects proposed takeover of Australian agricultural business by US company

Australian Treasurer Joe Hockey has today made an order under the Foreign Acquisitions and Takeovers Act 1975 prohibiting the proposed AUD\$3.4 billion acquisition by US crop transportation and logistics entity Archer Daniels Midland Company (ADM) of 100% of the shareholding in GrainCorp Limited (GrainCorp) on the basis that the acquisition was contrary to the national interest.

GrainCorp owns agricultural export infrastructure and has a significant share in the eastern Australian grain exports industry.

Various stakeholders are said to have expressed strong concern to the Federal Government that 100% foreign ownership of GrainCorp by ADM (which already holds a 19.85% stake in GrainCorp) could reduce competition and impede growers' ability to access the grain storage, logistics and distribution network.

In his determination, the Treasurer indicated that the proposed acquisition was one of the most complex cases to come before the Foreign Investment Review Board (FIRB) and one of the most significant proposed acquisitions of an agricultural business in Australia's history.

The Treasurer stated that FIRB had been unable to reach consensus on whether to recommend approval of ADM's proposed acquisition to him.

Despite blocking the proposed acquisition, the Treasurer indicated that he would be inclined to approve proposals for ADM to increase its stake in GrainCorp to 24.9%, as a platform to build stakeholder support and demonstrate its commitment to the Australian grains industry.

Some of the Treasurer's language gave the impression that were more robust competition in the grains export industry to emerge, he may potentially be willing to reconsider the proposal.

Although the Australian competition regulator, the Australian Competition and Consumer Commission, did not have concerns around the anti-competitive nature of any takeover, the Treasurer did.

The Treasurer also did not accept the undertakings offered by ADM, as he did not want to create a "separate regulatory regime" which applied only to one corporate entity as it may create distortions in competition and referred to the Treasurer's recent comments in relation to statutory restrictions on Qantas.

The Treasurer stated that Australia "remains open for business". The decision has, however, been criticised by the Federal Opposition as sending a message to investors that Australia is not in fact open for business. Many see the decision as political.

## Impact

This determination represents the first high-profile rejection of a significant foreign investment proposal since the Liberal/National Coalition came to power in September 2013 and resonates with popular concerns around national food security and protectionism.

The decision now focuses attention on two other high profile investment proposals by Chinese investors currently before FIRB, namely the bid for minority interests in Yancoal and for a large stake in Singapore Power's Australian electricity and gas business.

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