



13 September 2011

Mr Anthony Wing  
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Transport and General Prices Oversight  
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**RE: CBH Port Access Undertaking 2011 – ACCC Draft Decision**

Dear Mr. Wing-

We support the draft decision made by ACCC on CBH's 2011 Port Access Undertaking proposal and appreciate the opportunity to comment on revision proposals made by CBH in response to preliminary feedback from ACCC.

In our 20 May 2011 submission we concluded:

*The 2008 deregulation of wheat marketing further exposed the significant problems that are inherent within a monopoly that has developed due to state protection and forced single desk marketing.*

*CBH is the incumbent monopoly operator of the entire grain storage and handling system in Western Australia. They have total control of all grain exporting ports along with 70 years of built-up infrastructure and operations assets at their disposal.*

*They have restructured fees to preference their own -- and to discourage competitive investment in -- up-country storage and handling facilities.*

*CBH appears to have the power to make the rules to their own benefit and to oversee any negotiations or arbitrations that might arise. The state of Western Australia has the capacity to solve the problems arising from CBH's monopoly control of grain storage and handling in this state under the Bulk Handling Act. An independent arbiter of port access arrangements and pricing would allow for competition to develop at port, which would then allow for more competition in up-country service provision.*

*In the absence of such a solution, we support ACCC's continuing oversight of port access arrangements. Specifically, we submit that*

- 1. the ACCC's review of port pricing is necessary;*
- 2. CBH's proposal for baseload capacity allocation of port shipping slots outside of the auction system inordinately favours CBH; and*
- 3. effective ringfencing rules are required.*

These general points continue to be relevant.

Although the two-tiered baseload capacity allocation proposal has been abandoned, we continue to hold reservations over the lack of independent and objective assessment of core, additional and surge capacity. The criteria outlined in Section 3.2 of the revised Draft Terminal Rules appear to be determined at CBH's leisure and discretion. (We note, for example, in section 3.2 (A) (ii) that only daylight working hours are to be factored in, when in fact ports can and do operate 24 hours a day.)

In addition, most of these criteria can be empirically assessed and all can be independently evaluated. Capacity should not be left to CBH, as monopoly port operator and with the largest grain trading company in the state, to decide.

Competition in the provision of port services would alleviate these concerns. But the fact that CBH engages in monopolistic behaviour within their privileged position causes certain uneasiness, especially considering the fact that CBH is not solely operating a grain logistics business, but also a significant grain trading business. Absent competition, the potential within the access rules for CBH to favour its own trading division is significant.

Regarding section 12.1 of the Revised Draft Undertaking, we submit that the average quality specifications of the grain at port should be made available as well. A storage and handling provider should wish to display the goods that are for sale to all buyers so as to obtain the highest price for its patron's products. If that is not the case, one must question as to why.

In addition, given that CBH employs technology which yields continuous feedback of grain attributes while ships are being loaded, it would seem that this information should be shared with the users of the Cooperative's facilities.

Section 12.1(b) appears to give considerable lee-way to CBH in the determination of what is reasonable. It seems to defeat the purpose of section 12.1.

Section 12.4 (b) states that variations to capacity will be published within 2 business days. In today's world of just-in-time inventory management and the provision of real-time information; arrivals, delays, diversions and any other variations in relation to a shipping window can and should be notified continuously.

Finally, while it is certain to be a mere oversight, verbiage regarding the Allocation of baseload capacity is still on page 49 of the Port Terminal Rules.

Once again, we appreciate the opportunity to comment. Please do not hesitate to contact us should you require clarification or additional information.

Sincerely,

John Snooke  
Chairman, Western Graingrowers

Rob Gillam  
President, PGA