



Australian Government

Wheat Exports Australia

20 May 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Wing

**PUBLIC SUBMISSION ON ACCC ISSUES PAPER CONCERNING
CO-OPERATIVE BULK HANDLING LIMITED
PROPOSED PORT TERMINAL SERVICES ACCESS UNDERTAKING**

1 About Wheat Exports Australia

Wheat Exports Australia (WEA) was established on 1 July 2008 following legislative changes to Australia's wheat export arrangements. WEA is an Australian Government agency within the Department of Agriculture, Fisheries and Forestry (DAFF) portfolio.

Established under the *Wheat Export Marketing Act 2008* (the Act), WEA's primary role is to administer the *Wheat Export Accreditation Scheme 2008* (the Scheme). The Scheme allows the accreditation of bulk wheat exporters who meet specified 'fit and proper' criteria and for WEA to exercise monitoring and enforcement powers to ensure that a competitive bulk wheat export market exists. This provides growers with more choice in the marketing of their wheat.

The primary objective of the Act is "to promote the development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers".

2 Comments on certain areas of the issues paper

(a) Item 2.2 - Proposed Base Load Capacity Allocation

In Co-operative Bulk Handling Limited's (CBH) submission dated 1 April 2011 to the Australian Competition and Consumer Commission (ACCC), CBH indicated it would implement changes to its capacity allocation system, specifically, the introduction of a Base Load Capacity Allocation (BLCA).



WEA is concerned that a BLCA could be anti-competitive and unreasonably discriminate in favour of the largest bulk wheat exporters, including CBH Grain Pty Ltd (CBH Grain), to the detriment of all other bulk wheat exporters.

WEA appreciates the requirement for a Port Terminal Operator to ensure efficiency in the port system, however this should be through an unbiased approach and not to the exclusion of smaller exporters.

WEA provides the following comments:

- Minister Burke (then Minister for Agriculture, Fisheries and Forestry) stated in his second reading of the Wheat Export Marketing Bill 2008 that:
One of the concerns identified during consultation was the risk of a single wheat export monopoly being replaced by three regional monopolies....So we have decided to impose specific requirements on accredited exporters that operate bulk grain terminals at ports, as these are the facilities with natural monopoly characteristics and are the infrastructure bottleneck in the export supply chain. Unless all exporters can obtain access to these critical facilities on fair and reasonable terms then one of the major objectives of the policy could be frustrated.

WEA is of the view that a BLCA could effectively block exporters' access to these critical facilities on fair and reasonable terms.

- The Productivity Commission Inquiry Report No 51, 1 July 2010, Wheat Export Marketing Arrangements (PC Report) stated in regard to the CBH auction system that: *"although the Commission considers aspects of the system can be improved upon, it supports its continuation (subject to modifications) and thinks that other port operators might also consider adopting a similar system where there is likelihood of excess demand for port capacity at certain points in time (pp205).*
- One of the criteria which CBH has nominated for BLCA eligibility is that an exporter must have a forecast shipping schedule in excess of 800,000 tonnes in the next year.
 - For the 2009/10 marketing year, 18 accredited exporters exported bulk wheat from Australia, 13 of which exported from Western Australia.
 - Only two exporters exported in excess of 800,000 metric tonnes from Western Australia – one of which was CBH Grain.
- Hence, if a BLCA had been applied in 2009/10, 11 of the 13 Western Australia bulk wheat exporters would have been disadvantaged, through having to bid for the remaining shipping slots via the auction process after the BLCA. A BLCA would have resulted in more than 3,500,000 tonnes of wheat export capacity being allocated before the other 11 exporters had an opportunity to obtain any port capacity through the auction system.

- A number of exporters purchase grain Free on Board (FOB) as an alternative to going through the auction process. This avoids the need to work with the CBH logistical system. Also, in many instances, FOB purchases are undertaken if an exporter is unable to obtain a desired shipping slot through the auction process. Should a BLCA be adopted, the two largest exporters would be able to tie up the most sought after shipping slots, forcing other exporters to buy FOB from them during those peak periods.
- In practical terms, a BLCA will allow the two largest exporters to book a significant portion of WA shipping slots without the exposure and risk of entering the auction process. A BLCA will effectively provide CBH Grain (and any other eligible exporters) first access to shipping slots to the disadvantage of smaller exporters. This scenario contradicts the sentiments expressed by Minister Burke in his Second Reading of the Wheat Export Marketing Bill 2008 where he states that; *“Unless all exporters can obtain access to these critical facilities on fair and reasonable terms then one of the major objectives of the policy could be frustrated”*.
- Even if the proposed 800,000 tonne eligibility threshold were lowered, to enable more exporters to participate in a BLCA, the inherent inequity of such an allocation would persist, as other exporters would be precluded from participating, being left with competing for the remaining slots in a subsequent auction.
- A BLCA appears to contradict clause 6.2(a) of the CBH Port Terminal Services Access Undertaking (proposed), which states:
 - (6.2(a)) *“the Port Operator must not discriminate between different Applicants or Users (including its own Trading Business) in favour of its own Trading Business including discrimination based on the location or identity of the storage custodian, handler or transporter of the Applicants or Users’ Bulk Wheat”*.

WEA is supportive of the current CBH auction system as a fair and transparent allocation method (though there will no doubt continue to be further possible improvements). A BLCA is not in the best interests of competition nor would it provide equitable access for all exporters to WA’s bulk wheat export terminals.

(b) Item 2.4 - Ring-fencing arrangements (item 2.4)

WEA considers that ring fencing arrangements should apply to all Bulk Handling Companies (BHCs) that have an associated trading entity.

- Bulk handling companies, by virtue of their operations, are privy to information that is not publicly available. Sharing of this information (either inadvertently or intentionally) between the BHC and its associated trading entity gives rise to an information asymmetry.

Such information could include but is not limited to:

- Access to information on location, volume and quality of wheat stocks at port and in upcountry storage facilities.

- Activities on the shipping stem prior to general publication required under the continuous disclosure rules. This may be more advantageous where allocation is via a first-in first-served system.
- In the case of CBH, current ring fencing arrangements between the bulk handling and marketing divisions should be maintained as part of the proposed Access Undertaking. Ring fencing should continue regardless of the ACCC's proposed revocation of CBH's notification in relation to the exclusive Grain Express dealing.

WEA is of the view that all bulk handling companies should have an effective ring-fencing framework that prohibits the transfer of all non-public marketing-related information between the BHC and its associated trading entity.

If you have any questions regarding this submission, please contact Peter Woods on (02) 6202 3430.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Woods', followed by a long, sweeping horizontal stroke.

Peter Woods
Chief Executive Officer