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**Australian
Competition &
Consumer
Commission**

30 June 2011

Mr Richard Codling
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By email: Richard.Codling@cbh.com.au
CC: Matthew.Knox@corrs.com.au

Dear Mr Codling

Request for information – Co-operative Bulk Handling Limited: Port Terminal Services Proposed Access Undertaking

I refer to the proposed undertaking lodged under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA) by Co-operative Bulk Handling Limited (CBH) to the Australian Competition and Consumer Commission (ACCC) on 31 March 2011 (the **Proposed Undertaking**).

The ACCC requires further information in order to decide whether to accept the Proposed Undertaking. Accordingly, please find attached at schedule 1 a notice pursuant to section 44ZZBCA(1) of the CCA requesting information. As required by section 44ZZBCA(2)(b), a copy of this notice will be published on the ACCC's website. Some of the information requested relates to the operation of the 2009 undertaking. This information is considered relevant to the current assessment process as significant elements of the 2009 undertaking, including some parts of the capacity allocation system, have been continued in the Proposed Undertaking.

Section 44ZZBCA is attached for information at schedule 2.

To assist the ACCC in its assessment of the Proposed Undertaking, please provide a response to the notice, in writing, to transport@accc.gov.au by 5:00pm on Wednesday, 6 July 2011.

Unless information provided in response to this notice is marked confidential, it will be made available to any organisation or person on request. Any information that is confidential should be clearly identified.

Under section 44ZZBC of the Act, the ACCC must make a decision on an access undertaking application within 180 days of receipt of the Proposed Undertaking, plus any 'clock-stopper' periods such as consultation periods and requests for information.

The ACCC is treating the request for information contained in this letter as a 'clock-stopper' for the purposes of subsection 44ZZBC(2) of the Act. Accordingly, the 7 days from 30 June 2011 to 6 July 2011 will not count toward the 180 days within which the ACCC is required to make its decision on CBH's Proposed Undertaking.

If you have any questions in relation to the contents of either this letter, or the attached notice, please contact Darren Toh on 03 9290 1956 or at darren.toh@accc.gov.au or alternatively Lyn Camilleri on 03 9290 1973 or at lyn.camilleri@accc.gov.au.

Thank you for your co-operation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anthony Wing'.

Anthony Wing
General Manager
Transport & General Prices Oversight Branch

Schedule 1

INFORMATION REQUESTED PURSUANT TO S.44ZZBCA

To the extent that information has already been provided in relation to the following questions in a previous submission from CBH, please simply refer to that previous submission.

Please provide the following information:

Capacity management – historical data and existing practices

1. Please provide data on the volume of port terminal capacity offered by CBH and the volume of port terminal capacity actually shipped, at each of CBH's port terminals during each of the previous five years, on a quarterly basis.
2. Please indicate whether CBH amended the available port capacity that it published and offered to customers during the 2009/10 and 2010/11 seasons. If available port terminal capacity was amended, please provide the reasons for and timing of the amendment.
3. Please provide detail of the volume of port terminal capacity that was booked by CBH and not subsequently shipped (i.e. forfeited) in the 2009/10 and 2010/11 seasons.
4. Please provide a detailed explanation of how total available port terminal capacity is published and made available to exporters throughout the year.
5. Please provide details of the auction premia for each month and port over the period during which the auction system has been in operation and the capacity tonnage offered for auction for each period/port.

Capacity management – proposed capacity allocation arrangements

6. Please provide detail of how CBH calculates the available port terminal capacity to be offered to customers at each of its port terminals, on a monthly basis. In responding to this question, please provide:
 - a) a detailed description of the factors taken into account by CBH in calculating the port terminal capacity it elects to make available; with reference to that description explain why the period capacity at Kwinana port varies over the 2010/11 year
 - b) CBH's Port Terminal Rules (PTR) employ a number of capacity concepts including core capacity, surge capacity, annual capacity and harvest capacity;
 - i. core capacity is defined in the PTR by reference to clause 4.2(a). Should this reference be to clause 3.2(a)? How does core capacity relate to the answer to 6(a) above and to annual shipping period capacity published on the CBH website?

- ii. what is the core capacity at each of the CBH port terminal facilities?
 - iii. What is the distinction between annual shipping capacity and harvest shipping capacity and why is the distinction made?
 - iv. PTR clause 3.2(b) indicates that surge capacity is created at times when demand exceeds core capacity. Please provide an explanation of the operational response at port need to make that surge capacity available.
 - c) Does CBH rely on forecasts or estimates in determining port terminal capacity and, if so the details of how those forecasts &/or estimates are made.
7. In the event that CBH adjusts the amount of port terminal capacity offered to customers during the year, please provide detail on:
- a) the factors on which such adjustment will be based
 - b) how this adjustment will be shared between tonnages allocated as base load capacity and tonnages allocated for auction.
8. When will allocation of Base Load Capacity (BLC) to eligible customers be made each year?

Impact of introducing BLC

9. CBH has stated that auctions incur substantial costs. What is the quantum of those costs and what savings of those costs will occur if the two tiered approach to capacity allocation is introduced?
10. CBH has stated that demand can fluctuate markedly from year to year as a result of crop size and global market conditions. Please explain how that is a relevant factor in the choice between the auction system and the proposed BLC approach.
11. CBH has stated that the auction system has resulted in maximum accumulation periods that are shorter than would be possible in a more flexible system. Please provide details on the length of a desirable accumulation period and why it is not possible to time auctions to ensure that sufficient accumulation time occurs.
12. CBH has stated that the 'hard' shipping windows used for the auction system has reduced flexibility in port capacity management and ability to manage risk. Please provide more detail on this concern and the impact on port operations and the availability of capacity.
13. CBH has stated that it is concerned that difficulties associated with the pure auction system may be causing marketers to prefer to do business in other states over Western Australia. Please outline the evidence on which this concern is based.

14. Please provide detail of the nature and magnitude of efficiency gains that CBH anticipates will result from the two-tiered capacity allocation system in relation to the management of port operations, including an estimate any additional port terminal capacity that will be made available as a result of that system.

Base load capacity – contractual arrangements

15. We note that CBH has included a Port Terminal Services Agreement for Standard Port Terminal Services under schedule 2 of the Proposed 2011 Undertaking (**Standard Access Agreement**). In relation to this, please provide detail of:
- a) whether both customers that are eligible and non-eligible for the allocation of base load capacity will be covered by the same Standard Port Terminal Terms under the standard Port Terminal Services Agreement; and
 - b) if eligible customers for base load capacity are to be covered under a different set of Standard Port Terminal Terms, please provide a copy of those terms for inclusion with the Proposed 2011 Undertaking.

Pricing

16. Please provide detail of the method by which CBH calculates its prices for port terminal services, including any internal analysis undertaken in this regard.
17. Please provide a detailed explanation of how CBH's pricing model prevents cross-subsidisation of its port terminal and up-country infrastructure, as stated at page 11 of your submission dated 14 June 2011.

Ring-fencing

18. Please provide detail of the ring-fencing arrangements that CBH may retain in the event the Grain Express notification is revoked, as stated at page 13 of your submission dated 13 May 2011.
19. Please provide detail of the stock entitlement system maintained by CBH at its port terminals, including an explanation of the extent to which exporters are able to trade grain stocks at port.
20. Please provide your view of what, if any, marketing advantage is provided to CBH compared to other exporters given its ability to access detailed disaggregated information on grain stocks at port, including reasons for your answer.

Limitation of liability

21. Please provide detail of how CBH arrived at the liability cap amounts provided under clause 13 of the Standard Access Agreement.

Other matters

22. Please provide detail of the number of CBH port terminal service customers that have access agreements with CBH on the Standard Port Terminal Terms and the number that have access agreements with CBH on non-standard terms.

Schedule 2

44ZZBCA Commission may request information

- (1) The Commission may give a person a written notice requesting the person give to the Commission, within a specified period, information of a kind specified in the notice that the Commission considers may be relevant to making a decision on an access undertaking application or an access code application.
- (2) The Commission must:
 - (a) give a copy of the notice to:
 - (i) in the case of an access undertaking application--the provider of the service (unless the provider is the person); and
 - (ii) in the case of an access code application--the industry body that gave the application to the Commission (unless the body is the person); and
 - (b) publish, by electronic or other means, the notice.
- (3) In making a determination, the Commission:
 - (a) must have regard to any information given in compliance with a notice under subsection (1) within the specified period; and
 - (b) may disregard any information of the kind specified in the notice that is given after the specified period has ended.

