

6<sup>th</sup> July 2011

**Private & Confidential**

Ms Lyn Camilleri  
Director  
Transport & General Prices Oversight Branch  
Australian Competition & Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
Melbourne VIC 3000

Dear Lyn

**Re: Access to Port Terminals operated in Western Australia by Co-operative Bulk Handling Limited (CBH)**

With reference to the proposed Access Undertaking for Port Terminal Services submitted by CBH, [Entity A] considers the proposal to implement a Base Load Capacity allocation system as anti-competitive and strongly believe it will limit our ability to compete and grow in the WA grain market.

[Entity A] submits that the base load system is anti-competitive because:

- should CBH's assumption of the total capacity available be overstated and the full 60% of Base Load capacity be allocated, the capacity available through the Auction process would be reduced. For example, it is possible that if 100% capacity is estimated at 14 million tonnes, 60%, being 8.4 million tonnes, may be allocated to the larger exporters prior to the harvest. However, if the Western Australian crop yields only 10 million tonnes, this equates to 84% of Western Australian grain exports being available to large exporters only. The smaller exporters would only have access to 16% of capacity, and this would be further reduced if the larger exporters also obtained capacity through the auction system.
- The Base Load Capacity allocation system provides an undue advantage to the exporters accessing capacity through this system. One of the main advantages these exporters gain is a greater certainty of and access to shipping slots in high demand periods compared to smaller exporters who would need to await allocation through the auction system of the less desirable slots not taken by the larger exporters. This would provide Base Load exporters with an unfair advantage compared to smaller exporters in competing for the supply of services to growers in the high demand period, as they will have greater export certainty and lower costs associated with exporting a higher proportion of grain earlier in the marketing year.

With these points in mind, [Entity A] submits that smaller grain marketers may have a reduced ability to provide competitive prices to Western Australian growers due to the uncertainty in acquiring suitable capacity at the ports, and the inability to freely access higher value slots. [Entity A] considers the offering of competitive prices to growers as fundamental to the growth and viability of [Entity A]'s business.

In addition, CBH statements relating to the efficiencies generated at the port through the use of a Base Load allocation system are misleading in [Entity A]'s view for the following reasons:

- For efficiencies to be generated at the port due to a more even distribution of exports year round would require exporters to agree to such a shipping program, however the incentive for Base Load exporters to evenly spread their shipping program is lacking. Exporter shipping programs will be determined by market forces, so Base Load exporters will therefore simply use the Base Load allocation system to gain greater access to slots they perceive as having a higher market value.
- Western Australian ports are currently operating at less than full capacity due to the limitations of the supply chain into the ports, not due to the operation of the ports themselves. Actual shipping capacity in each of the Western Australian ports is significantly higher than current capacity, so it is [Entity A]'s view that any efficiency that may be gained from greater certainty from the allocation system will be minimal. [Entity A] believes this is why CBH's submissions are noticeably vague regarding efficiencies they believe will be achieved from the Base Load Capacity system.
- The current auction system would provide **more** certainty for CBH than the Base Load Capacity system as it promotes competition between exporters, provides for the efficient allocation of slots and provides CBH with equal insight into the forward export program from its ports. Whereas the Base Load Capacity system will discourage small and new exporters from participating in the Western Australian market if their right to access port capacity is limited under the auction system.

[Entity A] believes that the design of the Base Load system to accommodate a few larger players is in itself anti-competitive for all other players. We are strongly in favour of using the auction system as a method for allocating capacity as it provides equal access to all players in the market whether they are old or new, small or large. Under the existing auction system all exporters have equal privileges and compete on a level playing field.

Yours sincerely

Entity A