

7 April 2005

Mr David Hatfield
Director
Adjudication Branch
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Copy: Mr Scott Gregson, ACCC

Dear Mr Hatfield

**AWB/Graincorp joint venture
Authorisation A30233, A30234 and A30235**

This letter responds briefly to the Proponents' Final Submission dated 23 March 2005.

In summary, the Final Submission lodged by the Proponents fails to satisfactorily address the legitimate concerns of Pacific National and others expressed at the pre-decision conference on 14 February 2005 and in subsequent submissions.

The conditions which Pacific National request be imposed on the authorisation, in the event authorisation is granted, are set out for your reference in the attachment to this letter.

Pacific National does not understand why the Proponents and EGL will not agree to implement Pacific National's requested safeguards as they appear entirely consistent with the Proponents' own arguments and the ostensible objective of EGL in enhancing efficiency and competition in export grain rail haulage services.

Pacific National's requested conditions are modest, but have the potential to impose substantial safeguards in relation to anticompetitive detriment which could result to export grain rail haulage services from the proposal.

Commentary on Proponents' Final Submission

In Section 1.3 of their Final Submission, the proponents go to some length to describe the appropriateness of the ring fencing between EGL, AWB and Graincorp in areas where AWB and Graincorp compete. However, the Proponents do not recognise that there is a need for similar ring fencing of confidential information between EGL, Graincorp and rail operators when Graincorp (or AWB) is a competing rail operator. The same theme appears in section 1.5 where the importance of confidentiality for the Proponents' own information when in competition is emphasised, but the restriction does not extend to other parties' confidential information. It is not clear why the Proponents would have any difficulties with the protections being proposed by Pacific National to safeguard the commercially sensitive information of third parties.

In relation to the Victorian Rail Access Regime (referred to on page 8), any information provided by a competitor of the rail operator is automatically treated as confidential. The same is true in Queensland where there is vertical integration of track owner and rail operator. Despite EGL's structural separation, there are no protections in place for Graincorp's rail competitors' information.

To highlight this concern, Pacific National understands that one of the directors of EGL has line responsibility for the operation of GrainCorp's rail services.

With respect to the transparency of tendering and competitive neutrality for operators wishing to provide rail haulage services, Pacific National simply seeks a level playing field for all potential rail operators. There are very real concerns that if a rail operator which is a shareholder of EGL (such as GrainCorp and potentially AWB) has detailed knowledge of competitors' commercial arrangements and bids for EGL haulage services, it is able to favour itself at competitors' expense.

Pacific National submits that there is no reason why the Proponents should reject the safeguards proposed by Pacific National. On the contrary, on the Proponents' own submission, these conditions will not weaken EGL's ability to achieve the ostensible objectives and will give a higher level of confidence to the rail industry in relation to proposed tendering for haulage contracts for export grain.

Public Benefit Claims

The table on page 15 and the analysis in section 2 of the Final Submission summarises the public benefit claimed to arise from the joint venture. Pacific National has some substantial reservations about these claims as follows:

Lack of Rail Capacity in Newcastle Zone

In fact there is no lack of train capacity in the Newcastle Zone. Rather, Pacific National currently has idle capacity on account of lack of grain - two export grain trains in New South Wales and 4-6 export grain trains in Victoria. The fixed costs relating to having those assets available are much higher than the claimed savings.

Trains in the Port Kembla Zone

As a result of GrainCorp running trains in the Port Kembla Zone, Pacific National has 2 idle trains at present. The fixed costs incurred by idle trains contribute to the ongoing cost structure within the grains industry and represents a loss of efficiency in the grain export chain which exceeds the claimed gain.

Pacific National doubts whether the claimed \$175,000 reduction in overall freight costs can be appropriately attributed to the formation of EGL, because the cost of having even one train idle outweighs this benefit. Pacific National holds the view that this short term apparent saving has been the result of tendering of "base load" volume by Graincorp in the Port Kembla Zone for the 2004/2005 summer harvest.

Improved Rail Logistics

Pacific National's experience over the summer harvest is that there has not been an improvement in efficiency during EGL's initial period of operations. In fact, Pacific National is of the view that there have been considerable problems during that period, particularly in Victoria and in the Newcastle zone, and Pacific National looks forward to an improvement in future as result of working with AWB and Graincorp to overcome these impediments.

Pacific National does not perceive that working with EGL alone would resolve these issues.

Improved Supply Chain: Lower Vessel Costs

Whilst Pacific National cannot comment on savings in shipping demurrage charges paid by AWB, what is not recognised in the table outlined by the Proponents is the "land demurrage" incurred by Pacific National through having idle available underutilised capacity and resources to enable AWB to reduce shipping demurrage.

As an example, Pacific National is required by EGL to provide 4.5 trains per day capacity into Newcastle, equivalent to 1.3m tonnes, harvest year to date. So far in 2005 the volume of grain hauled to this port has been 760,000 tonnes. This difference has largely been the result of orders for grain (from EGL) not nearly matching the stated required capacity. The estimated cost attributable to the under utilisation of trains by Pacific National is \$2.1m into Newcastle.

In addition, an estimated \$1.1m in cost has been incurred owing to EGL cancelling a number of trains after ordering them owing to insufficient space at port which is an EGL logistics management responsibility.

As a result of these issues, Pacific National's experience is that the improvement in rail logistics generally cannot be claimed as described in the Final Submission.

Use of sub-terminals (eg. Werris Creek)

In Pacific National's experience, any reasonably sized harvest in northern New South Wales in the past has resulted in the use of Werris Creek sub-terminal as an intermediate grain storage location. However, it is only appropriately used to overcome a failure or restriction elsewhere in the system (usually lack of storage up country and in particular, lack of storage at the port) when it then becomes preferable to moving no grain at all. Use of this facility is not a new idea and cannot properly be attributed to EGL.

Over the summer harvest season immediately past, Werris Creek was used primarily in November 2004 (the peak harvest month) because GrainCorp closed the port of Newcastle for upgrade and maintenance. Far from improving utilisation of assets for Pacific National, this decision to close the port resulted in Pacific National being required to double tip and load all grain trains to carry the same amount of grain to the port.

Pacific National recently raised the possibility of using GrainCorp's Murtoa sub-terminal in Victoria as an intermediate storage point, an equivalent facility to Werris Creek. Since EGL would not allow us to deliver grain to Portland or Geelong ports without committed shipping, it was considered preferable to move grain to Murtoa rather than keep trains idle. However, this was rejected by EGL for reasons which are not apparent to Pacific National.


Improved Loading Capacity

Pacific National maintains the strong view that any improvements in the loading of wagons are due to Pacific National's consistently raising and pursuing this issue with the marketers and grain loaders and is not attributable to the actions of EGL.

Conclusion

Pacific National believes that the additional safeguards by way of conditions on the authorisation set out in the attachment are essential to ensure that the supply of rail haulage services is efficient and competitive on merit, for the reasons previously given as well as those set out in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Stephen O'Donnell", with a horizontal line underneath the name.

Stephen G O'Donnell
Chief Executive Officer

Pacific National's Requested Conditions

1. non-discrimination and objectivity in selection of rail operator to preserve competition in handling and haulage - this requires:
 - (a) fair and clear tendering processes which:
 - (i) define the task (eg. tonnages, market share, priority in task allocation process, geography) and how task will be managed/allocated over the period;
 - (ii) do not unfairly discriminate in favour of the AWB/GrainCorp;
 - (iii) ensure all tenderers have equal access to relevant information;
 - (iv) are at arm's length from JV shareholders; and
 - (v) comprise terms which are competitively neutral as between third parties and GrainCorp/AWB;
 - (b) audit of tendering, task allocation process and freight allocation process by a third party probity auditor on an annual basis; and
 - (c) transparency of allocation of rail freight charges across the silo network to ensure no geographic bias at the expense of other storage facilities;
2. prevention of third party confidential information sharing by the joint venture with its shareholders through ring-fencing arrangements;
3. a time limit of November 2007 on the authorisation because at that time there will be a material change in the circumstances of grain haulage in NSW and no safe conclusions can be drawn now about comparative detriment and benefit beyond that date.