

Regional Director
Australian Competition and Consumer
Commission
3rd Floor
East Point Plaza
233 Adelaide Terrace
PERTH WA 6000

14 February 2007
Matter 80619842
By hand

Dear Sir

Notification - CSBP Limited

We act for CSBP Limited ("CSBP").

Enclosed with this letter is a notification (in duplicate) in respect of conduct proposed by CSBP which may fall within section 47 of The Trade Practices Act.

Also enclosed is our cheque in the sum of \$2,500 in payment of the relevant application fee.

Restriction from publication on the ACCC's public register and confidentiality generally (the "confidentiality request") is sought in relation to part of the notification, namely, annexures 1 and 2, on the ground of commercial confidentiality.

The notification is lodged in respect of a contract (the "contract") which CSBP proposes to offer to certain of its customers. The nature of the contract is described in detail in the submission forming part of the notification, comprising (broadly speaking) an agreement by which CSBP will supply certain benefits to certain of the ultimate customers of its fertiliser products, and by which those customers commit in turn to purchase a certain quantity of their fertiliser products from CSBP distributors for a three year period.

The relevant terms and conditions of the proposed contract (that is, those which most precisely enunciate the conduct that may fall within section 47 of the TPA) are attached to the notification as Annexure 3 (and for which no confidentiality request is made). However, it is proposed that the terms and conditions will be accompanied, for marketing purposes, by a more general description of the contract, and this is contained in Annexure 2. The confidentiality request is made in relation to the document contained in Annexure 2 because our client has real concerns (based upon past experience) that one or more of its competitors would, if given the opportunity to do so, copy the document and seek to introduce a similar arrangement into the marketplace in advance of, or at the same time as, CSBP. The aim of CSBP in making the confidentiality request in relation to annexure 2 is (insofar as possible) to prevent others from being able to adopt the document to their own use before CSBP has itself had the opportunity to send it to relevant customers (thereby taking the benefit of the extensive time, cost and effort which CSBP has committed to preparation of the document (and the strategy underlying the document)).

Annexure 1 contains commercially sensitive information as to CSBP's assessment of the market, CSBP's market strategies, production and sales levels, production costs, manufacturing capacity, import strategy, and the like.

Doc 6.004034718.2

AUST. COMPETITION &
CONSUMER COMMISSION
PERTH

14 FEB 2007

In support of the confidentiality request, we respectfully point out that the request is confined (in the case of annexure 1) to limited, specific information and (in the case of annexure 2) to a general description of the contract the relevant terms and conditions of which are set out in annexure 3. The nature of the conduct (including the proposed terms and conditions) is set out in sufficient detail in the body of the submission so as to ensure that the material that would remain on the public register (in the event of the confidentiality request being granted) would convey to readers a clear understanding of the conduct the subject of the notification application.

We accordingly look forward to your response to our client's confidentiality request.

Please do not hesitate to contact our Mr Steve Standing if you have any questions or require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Standing', with a large, sweeping loop at the end.

Steven Standing
Special Counsel
Freehills

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steven.standing@freehills.com

FORM G

Regulation 9

[Front of Form]

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

N92829

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

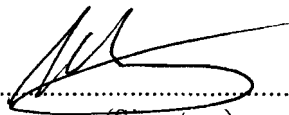
1. (a) Name of person giving notice
CSBP LIMITED ABN 81 008 668 371
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person
Manufacture and supply of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors
- (c) Address in Australia for service of documents on that person
Wesfarmers Limited – Corporate Solicitors Office, 11th Floor, 40 The Esplanade, Perth WA 6000 – Attention Mr Melvin Yeo
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
agricultural fertilisers
- (b) Description of the conduct or proposed conduct
CSBP proposes to offer 3 year contracts by which contracted farmers will receive services and benefits from CSBP upon the condition that those farmers agree to purchase CSBP fertiliser products from distributors of CSBP fertilisers in quantities not less than 90% of the average annual quantity of CSBP fertilisers purchased by them over the previous 3 years. See attached submission for details.
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
Farmers
- (b) Number of those persons-
 - (i) At present time
1,300
 - (ii) Estimated within the next year
Approximately 1,300
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
N/A
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Paul D Evans or Steven Standing
Freehills
(Solicitors for CSBP Limited)
Level 36, QV1 Building
250 St Georges Terrace
PERTH WA 6000

(Telephone 08 9211 7777; Facsimile 08 9211 7878)

Dated **14 February** 2007

Signed on behalf of CSBP Limited by its solicitors and
agents, Freehills of Level 33, QV1 Building, 250 St
George's Terrace, Perth, Western Australia



.....
(Signature)

..... Steven Michael Standing

(Full Name)

..... Special Counsel

(Description)

[Back of Form]

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**Submission by CSBP Limited in support of notification to the Australian
Competition and Consumer Commission under Section 93(1) of the Trade
Practices Act**

**Restriction of Publication of part claimed on the grounds of commercial
confidentiality being annexures 1 and 2 (marked in red)**

1 Introduction and Background

This submission is provided in support of CSBP's notification made under section 93(1) of the Trade Practices Act. The notification deals with proposed conduct by CSBP which may fall within sections 47(2) and/or (6) of the Trade Practices Act.

Reference is made, in this notification, to conduct notified by CSBP in June 2004 (Notification N70383). The conduct in the previous notification was similar (although not identical) to that which is the subject of this notification.

2 Description of notifying party

CSBP is a wholly-owned subsidiary of Wesfarmers Limited. It is one of Australia's major suppliers of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors. For the financial year 2005/6 it had operating revenues from all sectors of its operations of \$594.5 million.

CSBP's head office and its major chemical and fertiliser production complex is located at Kwinana, Western Australia. Major fertiliser despatch facilities are also situated at Geraldton, Bunbury, Albany and Esperance Depots and field based agricultural advisers are located throughout Western Australia's agricultural regions. The company also owns 50 per cent of an integrated ammonium nitrate plant at Moura in central Queensland. CSBP employs more than 500 people in these operations.

2.1 Business units and core manufacturing capacity

CSBP's business comprises two streams; namely –

- (a) CSBP Chemicals, the core products of which include ammonia, ammonium nitrate, sodium cyanide, chlorine and caustic soda, together with a number of traded chemicals;
- (b) CSBP Fertilisers, which through both its manufacturing and importing activities provides a wide range of products and services for use in broad acre cropping, livestock, horticulture and dairy operations. It also operates one of Australia's most modern soil and plant testing laboratories to assist in maximizing the productivity of rural producers.

In 1996, CSBP commissioned an ammonium nitrate facility at Kwinana with a production capacity of approximately 235,000 tonnes per annum, to replace imports and meet growing demand for nitrogenous fertilisers and mining explosives. Ammonium nitrate is manufactured by a process involving the combining of nitric acid and ammonia. Construction of an expanded ammonium nitrate facility (with a further capacity of approximately 235,000 tonnes) commenced in 2006.

In 2000, CSBP commissioned a \$150 million ammonia manufacturing plant at Kwinana with a design capacity of 230,000 tonnes of ammonia per annum (replacing a much smaller plant which has since been decommissioned), for the purpose of reducing CSBP's requirements for imported ammonia. Ammonia is an essential feedstock in the manufacture of a number of downstream products including (as noted above) ammonium nitrate and fertilisers.

Ammonia and ammonium nitrate are globally traded bulk commodities, usually denominated in US dollars, with an efficient and regulatory approved scale of import into Australia being cargo lots of approximately 20,000 tonnes for ammonia and 1000 to 4000 tonnes for ammonium nitrate.

2.2 Liquid Fertilisers

The main liquid fertiliser marketed by CSBP is urea ammonium nitrate (UAN) marketed as Flexi-N. This product is manufactured by mixing ammonium nitrate, urea and water together under certain process conditions to form the liquid fertiliser. CSBP currently sells around 150,000 tonnes per annum of this product, almost all of which is imported, as there it has insufficient ammonium nitrate feedstock available for manufacture. Flexi-N is a nitrogen fertiliser and is a substitute for urea, which is not produced in WA and is also imported.

Growth in demand for CSBP's liquid fertiliser products (in particular Flexi-N) during the period 1998 to 2007 has been substantial and was supported by the investment of approximately \$15m in additional production and distribution facilities together with incentives for customers to provide on farm storage (storage facilities otherwise posing a significant distribution cost and inhibitor to sales).

(a) CSBP liquid fertiliser sales

Sales of liquid fertiliser by CSBP have increased from an almost zero base in 1998/1999 to very substantial levels.

Year	CSBP Flexi-N Sales
1998/1999	500 tonnes
1999/2000	7,000 tonnes
2000/2001	15,000 tonnes
2001/2002	43,000 tonnes
2002/2003	80,000 tonnes
2003/2004	122,000 tonnes
2004/2005	149,000 tonnes
2005/2006	149,000 tonnes (drought affected)

Although one of the original reasons for CSBP entering the liquid fertiliser market was to consume greater quantities of CSBP's locally manufactured ammonium nitrate from its first ammonium nitrate plant (thereby capturing the production efficiencies of optimum plant utilisation, and displacing imported urea), that ammonium nitrate plant is currently operating at capacity, with nearly all production committed to supply mining industry explosives needs.

CSBP predicts continued growth in demand for liquid fertilisers, due to superior handling and application qualities and better nutrient availability. CSBP's predictions for market growth are **Commercial-in-Confidence** and are set out in Annexure 1.

(b) Effects of market growth

Commitments from customers at volumes similar to or slightly greater than those under the previously notified arrangements would partially underpin the ongoing investment in,

and operation of, the new CSBP ammonium nitrate production facility currently under construction. The production from this new plant will, mean that CSBP will no longer import UAN, and will instead manufacture its Flexi-N by combining locally produced ammonium nitrate (from CSBP's new ammonium nitrate plant) with water and urea. The net result will be the production, in Australia, of a locally produced value added products (ammonium nitrate and Flexi-N) in place of imported UAN.

(c) **Market certainty**

Supplies of nitrogenous fertilisers continue to be subject to considerable vagaries of pricing, due to the substantial volumes of US dollar denominated imports. As a key production input for farmers, fertiliser prices can (subject to some contractual risk mitigation measures) rise and fall from month to month.

CSBP Flexi-N, when domestically produced, would (unlike UAN and urea products imported by others) be less affected by the vagaries of the global economy, commodity markets and fluctuations in foreign exchange rates. When the exchange rate is low, domestic production has an advantage over imports. When the dollar is high (as it presently is) imports are relatively cheaper and may in absolute terms become cheaper than domestic production.

Although future production of Flexi-N by CSBP will use imported ammonia and urea, any percentage increase in the import price of these raw materials will result in a percentage increase in CSBP's total Flexi-N production costs that is less than the percentage increase in the import price of these raw materials, as there are other local components of CSBP's total Flexi-N production costs which are not affected by foreign exchange rates. In addition, the raw material prices do not move in unison and this will have a further buffering effect on manufactured Flexi-N costs. Approximately 84% of CSBP's total Flexi-N production costs will be made up of the import price of ammonia and urea. Accordingly, the impact of import price variations on Flexi-N production costs is expected to be less than the impact of import price variations on the purchase price of imported UAN and urea that are then sold in their imported form.

2.3 Solid fertilisers

CSBP currently manufactures a range of solid cropping fertilisers under the Agras and MacroPro/K-Till brands and Granular Sulfate of Ammonia from its granulation plant at Kwinana. The other manufacturing plant, which is also located at Kwinana, manufactures superphosphate, which is predominantly a pasture fertiliser. The superphosphate manufacturing plant has not been considered here because it is of little application in the context of crop nutrients, being primarily used for pasture (and therefore animal husbandry).

Kwinana's solid fertiliser operations are currently operating at approximately 68% of maximum capacity. Production is constrained by limited demand, reflecting the fact that CSBP's solid fertiliser products compete with generally cheaper imported substitutes, which (like ammonia and ammonium nitrate) are freely traded on the world market.

CSBP's gross solid fertiliser sales in WA for 2006/2007 and domestic manufacture levels are set out in Annexure I.

With continuing high levels of imports, CSBP faces difficulties in justifying significant expenditures on improvements in solid fertiliser assets. If a degree of security of demand was

achieved by CSBP over the forthcoming three-year period in relation to solid fertilisers, CSBP would be able to justify maintaining or increasing investment in the granulation plant for the purpose and to the degree set out in Annexure 1.

2.4 Impacts of capital expenditure

Greater volumes through CSBP's granulation plant would increase efficiency and the competitiveness of the product with imports. CSBP anticipates that, if its granulation plant operated at 100% capacity, efficiency improvements would translate to a decrease in the operating cost of CSBP's solid fertilisers to a material degree set out in Annexure 1, with a corresponding increase in competitiveness against imported substitutes.

Any decrease in price of CSBP's solid fertilisers will also improve the competitiveness of those products on the international market. At present, CSBP has not exported any solid fertilisers to international markets, but anticipates that a price decrease in the order of that contemplated for "increased" levels of production as set out in Annexure 1 may make this financially viable at prevailing exchange rates.

3 The market for sale of fertiliser

Fertiliser is a high volume, relatively low value product, economic to import by ship from major off-shore production facilities to developed ports, but marginal or uneconomic to transport domestically. For that reason, WA has traditionally been regarded as a separate fertiliser market to the rest of Australia. To the best of its knowledge, CSBP considers the current market for fertilisers in Western Australia to comprise as follows -

3.1 Main sellers

(a) CSBP

Has an approximate market share of around 64% and annual sales in the order of about 1 million tonnes. CSBP's market share has fallen from an estimated 89% in 1995-6 as new fertiliser suppliers have entered the WA market. CSBP has manufacturing facilities at Kwinana, and further distribution facilities at Geraldton, Bunbury, Albany, Esperance and six inland depots;

(b) Summit Fertilisers

100% owned by Sumitomo Corporation (a Japanese company) since September 2005, primarily selling imported fertiliser, with approximate annual sales of 350,000 tonnes and an estimated market share in the order of 23%. Summit has distribution facilities at Kwinana, Geraldton, Bunbury, Albany and Esperance;

(c) United Farmers Co-operative

A WA based farming co-operative which is a provider of low cost imported fertiliser products, with annual sales in the order of 165,000 tonnes and an estimated market share of 11%. UFC has distribution facilities at Kwinana, Geraldton, Bunbury, Albany and Esperance and a country depot at Watheroo. UFC also has a compaction plant for sulfate of ammonia at its Kwinana facility;

(d) Others

There are also a number of smaller operators and opportunistic importers of fertiliser products, including Superfert, Whitford Fertilisers and ABB.

3.2 Products sold

Total demand for fertilisers in WA increased significantly during the 1990s, but has now stabilised with the introduction of revised farming practices focussing on more targeted delivery of nutrition and reduced wastage. CSBP estimates that market growth is unlikely to be greater than in the order of 2% to 3% per annum over the next few years, with most growth coming from increased use of nitrogen and potassium (potash).

The WA rural market for fertiliser comprises the following products –

(a) Imported commodity fertiliser

CSBP estimates the following commodity fertilisers are imported by all WA fertiliser suppliers and are either sold in commodity form, or blended with other fertilisers prior to sale to produce tailored analysis products or products for specialist applications (all quantities are in metric tonnes).

	2003-04	2004-05	2005-06
Monoammonium phosphate (MAP)	209,586	175,249	180,728
High density ammonium nitrate		15,911	10,034
Ammonium sulphate	1,034	969	1,357
Diammonium phosphate (DAP)	73,966	92,057	96,926
Fertilisers(not elsewhere stated in this table)	174	206	512
Mineral or chemical fertilisers	51,865	63,802	31,548
Potassium chloride	170,449	210,496	88,689
Superphosphates	75,227	118,978	71,346
Urea	353,366	372,743	304,821
UAN	123,148	160,231	165,207
Total	1,058,815	1,210,642	951,168

(b) Inputs from domestic suppliers

The following products are sourced from local suppliers (as by-products of the minerals processing industry) and used in the manufacture of final products and in blends by WA fertiliser suppliers (all quantities are in metric tonnes).

	2003-04	2004-05	2005-06
Anaconda – SoA	50,000	50,000	50,000
WMC – MAXam*	30,000	30,000	30,000
WMC – SoA	51,000	72,000	72,000
Other - SoA	30,000	30,000	30,000
Total	161,000	182,000	182,000

*MAXam is a product offered by Summit Fertilizers and is usually sourced from WMC. It consists of Sulfate of Ammonia in large crystals in the 2-4mm range. This product competes directly with CSBP's locally manufactured Granular Sulfate of Ammonia.

(c) Locally manufactured fertilisers

The fertiliser products manufactured locally by CSBP are specified in Annexure 1.

3.3 Distribution methods

CSBP sells its products through a variety of distributors, including Elders, Landmark, and several other independent operators. CSBP does not sell directly to end-user customers (ie. farmers).

Summit distributes its product through distributors and also sells product directly to farmers. CSBP estimates that approximately 40% of Summit's sales are made through Landmark, approximately 15% of Summit's sales are made through Elders and approximately 40% of Summit's sales are direct to farmers, with the balance of sales being through other distributors.

UFC sells its product through one major distributor (CRT) and other independent distributors, but the majority of its product is sold direct to farmers.

Overall, CSBP estimates that approximately 11% of fertilisers in WA are sold direct to farmers.

It is estimated by CSBP that there are in the order of 10,000 agricultural operations in WA, of which approximately 8,500 comprise broad acre operations (with an average area of 12,000 hectares and an average annual fertiliser spend in the order of \$70,000).

For both CSBP and Summit, as the principal suppliers of fertiliser in WA, a key annual method of sales management, developed and operating in the market for many years, is the annual "benefits program" (CSBP's annual "benefits program" is known as the "Fertiliser Supply Agreement") which benefits both parties and operates as follows:

- (a) At the beginning of each cropping season CSBP and Summit (suppliers) through their various representatives/distributors take preliminary indicators of tonnage from individual farmers.
- (b) Those suppliers then enter into a "benefits program" with those farmers. The CSBP "benefits program" (FSA) is a contract which has the following *economic* characteristics:
 - (1) the FSA establishes the approximate (subject to some contracted elections) quantities and collection dates for fertilisers;
 - (2) it sets out certain discounts and rebates to be received by farmers off the prices of their purchases of fertiliser products and also provides for certain other benefits;
 - (3) the nominated distributor or distributors – that is, the party (or parties) from whom the farmer actually purchases the fertiliser, and with whom the supplier will contract to supply, is fixed (often by the farmer, based on the farmer's preferred rural dealer, with whom the farmer will often have a long standing relationship, including credit arrangements); and
 - (4) the distributor takes the contract risk, and credit risk, in relation to supply to the farmer.
- (c) While the nominated distributor is free to charge such price as it may wish, the supplier will provide additional discounts to the distributor or rebates to the farmer to ensure that the farmer gets the benefit of the discounts and rebates set out in the FSA.

For the supplier, these annual “benefits programs” perform an important role, given the seasonal nature of fertiliser requirements, in assisting with forecasting demand to better manage production, importation and distribution volumes. These “benefits programs” generally provide rebates or discounts for collection at particular times and at particular locations (facilitating distribution, and rewarding on farm storage investments) as well as volume related rebates.

Strictly, there are three separate legal arrangements entered into, or given effect to, as a result of the CSBP FSA: First, a contract between the farmer and supplier (CSBP) under which the volumes and distributors are nominated and discounts, rebates and other benefits to be provided to the farmer set out; secondly, a contract subsequently entered into between farmer and the nominated distributor, under which the farmer will buy, and the distributor will sell, fertiliser (at a price determined by the distributor) and (in some cases) the provision by the distributor of finance; and finally supply under a master supply agreement between CSBP and the nominated distributor which is effected at a price which reflects the selling price of the distributor to the farmer, less a commission to the nominated distributor

Separately, CSBP, Summit, Superfert, UFC and many of the rural services providers sell agronomic and farm management related services, on a fee for service basis. Some of those services, such as nutrient planning and management, benefit the farmer directly in relation to the selection of the type and quantity of fertiliser to be purchased and applied, and are logically linked to the purchasing decision. Some of the incentives offered by CSBP under the proposed FSA Plus programme will be ‘redeemable’ for such services.

3.4 Barriers to Entry

CSBP’s view is that there are low barriers to entry into the fertiliser market in WA, for the following reasons –

- (a) on farm storage for solid fertilisers is estimated to be in the order of 750,000 tonnes, with increasing capacity for storage of liquid fertilisers, meaning that new importers can import and distribute bulk solid fertiliser on an opportunistic basis without needing their own long term bulk storage;
- (b) port access at key centres around the Western Australian coastline is readily available on commercial terms and transportation and storage are both relatively cheap and available;
- (c) Western Australian farm sizes are typically sufficiently large to mean that only a relatively small number of farmers in a district need to band together to bring in an import shipment of a fertiliser product without an intermediary;
- (d) most relevant fertiliser products are widely produced and traded internationally, with price information easily available over the internet and from other sources to enable estimates of import parity prices to be made readily;
- (e) distribution of imports can accordingly take place through a mix of larger and independent distributors and direct to farmers; and
- (f) the fertiliser industry generally operates in a highly competitive, unregulated environment, in which regular and opportunistic imports of globally-traded commodity fertilisers occurs on a routine basis.

4 The proposed conduct

CSBP proposes to offer FSA contracts for an extended term of three years (known as ‘FSA plus’ contracts) to approximately 1,300 customers. These 1,300 customers (farmers) are anticipated to represent approximately 450,000 to 550,000 tonnes of fertiliser sales per annum (see Annexure 1), and the majority are expected to be customers who accepted the 3 year FSA Plus contract in

2004 that was the subject of CSBP's notification that year. Tonnes secured will be dependent on the following factors:

- a) the number of farmers who accept the offer; and
- b) the purchase history of those customers.

An advanced draft of the terms and conditions for the proposed three-year FSA Plus contract to be offered are set out in Annexure 3. A general description of the contract is to be sent out to customers (for marketing purposes) with the terms and conditions; this part of the document is confidential and is set out in Annexure 2.

The substance of the proposed contract is that:

- (a) the CSBP fertiliser customers to whom the offer is made would be required to agree to purchase a quantity of CSBP fertiliser (through their nominated distributors of CSBP fertiliser) in an amount not less than 90% of their rolling three-year average purchases of CSBP fertilisers over the previous three-year period;
- (b) in consideration of those customers entering into the three-year contract, they would be entitled to the benefits set out in clause 6 of the contract, comprising an account trading terms package, access to managed farm productivity services at discounted prices, priority access to new fertiliser products, and a rebate in respect of CSBP fertiliser purchases.

5 Purpose of proposed conduct

The purpose of the proposed conduct is to provide to CSBP a degree of certainty of demand for its products over a three-year period for the purpose of supporting the ongoing investment by CSBP in import substituting plant development and the competitiveness of domestic production as follows -

- (a) in the case of liquid fertilisers (primarily, Flexi-N) to assist in underpinning the investment currently being made in expanded capacity of its ammonium nitrate plant in Kwinana to meet a greater proportion of total demand for Flexi-N from local production rather than imports. The details of this expanded capacity are set out in paragraph 1 above.
- (b) in relation to solid fertilisers, maintaining a level of sales sufficient to justify CSBP maintaining and increasing investment in its currently underutilised granulation plant at Kwinana (as to which see paragraph 1 above), and (via improved plant efficiencies gained from using spare plant capacity) more competitive pricing of solid fertilisers locally so as to compete with cheaper imported substitutes, and to enhance the competitiveness of CSBP's solid fertilisers on the international market.

6 Public benefits of proposed conduct

In relation to liquid fertilisers, the primary public benefit of the proposed conduct will be that the degree of certainty of demand gained over a three year period will contribute to underwriting the current expansion and operation of CSBP's ammonium nitrate plant at Kwinana, leading to substantial import substitution and direct and indirect local economic benefits.

6.1 Liquid fertiliser production

As specified in paragraph 2.2 above, the plant expansion currently under way is expected to -

- (a) involve significant capital investment in plant and storage facilities (at Kwinana and in regional centres) and additional employment within CSBP and the distribution network;
- (b) permit local manufacture of Flexi-N, and cessation, to a corresponding degree, of imports by CSBP of Flexi-N and its inputs (the quantities of which are specified in Annexure 1). The current value of those imports, and estimated value in 2001/2011, is specified in Annexure 1;
- (c) enhance the ability to sell Flexi-N manufactured at Kwinana at a price which may enable CSBP to compete more effectively with imported products.

6.2 Solid fertiliser production

In relation to solid fertilisers, the following public benefits would (again, assuming sufficient acceptance by farmers so as to guarantee likely sales of solid fertiliser of at least 175,000 tonnes per annum for three years) accrue from achieving the expected certainty of demand over a three-year period:

- (a) maintenance and upgrade (between 2007/08 and 2010/11) in CSBP's granulation plant would be justified, with the expenditure shown in Annexure 1;
- (b) the efficiencies gained from using spare plant capacity would enable more competitive pricing (as specified in paragraph 1 above), resulting in improved international competitiveness of CSBP's solid fertilisers; and
- (c) greater plant efficiencies should also enable more competitive pricing of CSBP's solid fertilisers in Western Australia (both through the discounts offered through the three-year contracts, and generally in the market), enabling it to compete more effectively with cheaper imported substitutes, in the manner indicated in Annexure 1.

6.3 Additional benefits

The proposed three-year contract is also expected to have the following, further, benefits:

- (a) cheaper soil and plant analysis, nutrition management services and information/education services are able to be offered, leading to greater efficiency and better targeting of fertiliser use, more efficient and sustainable land use, and greater efficiency of crop uptake; and
- (b) the tying of parts of the discount to the purchase of agronomic services encourages farmers to adopt "best practice" management of fertiliser usage, minimising nutrient waste and the adverse effects of fertiliser run-off.

7 Public detriment

CSBP submits that there will be little, if any, public detriment flowing from the proposed conduct. In particular:

- (a) The proposed conduct is targeted at a limited number of existing consumers of CSBP products, with a view only to maintaining certainty of existing demand from those customers for a three-year period. Even in respect of those customers, the contract is based on 90% of historical demand and therefore affords the opportunity for purchase of competitive products.
- (b) Sales volumes are already committed by farmers on a periodic basis. Sales to those customers will remain contestable on a periodic basis.
- (c) Whilst it is arguable that the proposed conduct involves a form of third line forcing (in that the contract requires farmers to purchase a large proportion of their fertiliser

requirements from CSBP's distributors), this simply reflects (rather than distorts) existing market behaviour (CSBP's products have always been available only through distributors). Unlike a typical third line forcing situation, the primary focus of the proposed conduct is upon the third party product (in this case, fertiliser, which is produced, but not sold, by CSBP), with the services and products directly offered by CSBP being a subsidiary, and closely related, benefit to the supply of fertiliser.

- (d) It is otherwise difficult to articulate any likely public detriment from the proposed conduct, particularly given that the proposed conduct involves contracts for only a three-year term. The investment strategies and infrastructure of CSBP's competitors over the medium term are unlikely to be significantly affected.

8 Balance of benefit and detriment

It is submitted that the benefits of the proposed conduct are obvious and strong, and far outweigh any detriment from the conduct. The conduct is, in respect of liquid fertilisers, intended to provide ongoing support for a significant capital investment, expansion of employment and substitution of domestic products in place of imported product. In the case of solid fertilisers, the conduct is intended to support more efficient use of plant (and the upgrade of that plant), which will in turn lead to lower prices and import replacement. All of these are factors which have been identified either by the legislature (*Trade Practices Act* section 90(9A)) or by the ACCC (*Re ACI Operations Pty Ltd (1991) ATPR (Com) 50-108*) as constituting real public benefit.

The conduct will occur in a highly competitive and well informed market characterised by a high degree of import competition. It will likely involve only 26% to 32% of the market, will be directed at existing FSA Plus customers, and (because it is based on 90% of historical purchases of CSBP product) would allow even those customers to purchase some of their requirements from competitors. There will be further contestability within a relatively short period. Existing market share is unlikely to be distorted by these arrangements. In the circumstances, it is submitted that any competitive detriment would be incapable of outweighing the clear benefits to the public.



FREEHILLS AS SOLICITORS AND
AGENTS FOR CSBP LIMITED

Annexure 1

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure 2

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure 3 – Draft Three Year Contract Terms and Conditions

OFFER

1. CSBP Limited ABN 81 008 668 371 ("CSBP") offers to you, as a valued CSBP fertiliser customer, the opportunity to:

- receive additional rebates on your CSBP fertiliser purchases; and
- receive additional purchase rewards, under CSBP's Fertiliser Supply Agreement^{PLUS} Program (the "Agreement") as set out below.

2. The offer to enter into the Fertiliser Supply Agreement^{PLUS} Program is open for acceptance until 30 September 2007, or such later date as determined by CSBP.

3. Unless clearly indicated to the contrary, "GST" and other terms used in clause 10 (and in other provisions of these Terms and Conditions where the GST meanings are expressly intended) have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any replacement or other relevant legislation and regulations.

4. In these Terms and Conditions: "Rolling Three Year Average CSBP Purchase Quantity" means, in respect of any three year period, an amount equal to the sum of the total number of tonnes of CSBP fertiliser that you purchased during that three year period, divided by three.

"Term" means the period from 1 October 2007 to 30 September 2010.

"Year" means any 12 month period during the Term running from 1 October in one calendar year to 30 September in the following calendar year.

5. If you accept this offer of the Fertiliser Supply Agreement^{PLUS} Program you must purchase, in each Year during the Term from Distributors of CSBP fertiliser, a quantity of CSBP fertiliser products that is not less than 90% of your Rolling Three Year Average CSBP Purchase Quantity over the previous three year period.

Example:

If your purchases of CSBP fertiliser from CSBP's Distributors in:

1. the period from 1 October 2004 to 30 September 2005 was 260 tonnes;
2. the period from 1 October 2005 to 30 September 2006 was 250 tonnes; and
3. the period from 1 October 2006 to 30 September 2007 was 270 tonnes,

then the average annual quantity of CSBP fertiliser you purchased over these three Years is 260 tonnes.

Under the Fertiliser Supply Agreement^{PLUS} Program, you must purchase not less than 90% of 260 tonnes of CSBP fertiliser in the period from 1 October 2006 to 30 September 2007 (ie. not less than 234 tonnes of CSBP fertiliser).

6. If you have not purchased fertiliser from CSBP for each or any of the past three years, your required purchase volume for each year of the Fertiliser Supply Agreement^{PLUS} Program will be determined on a case-by-case basis as agreed by CSBP.

7. If you fail to purchase, in any Year during the Term from Distributors of CSBP fertiliser, a quantity of CSBP fertiliser products that is not less than 90% of your Rolling Three Year Average CSBP Purchase Quantity over the previous three year period, then CSBP may take such action as it considers appropriate in respect of that breach, including requiring you to pay damages for losses suffered by CSBP as a result of that breach. Consideration will be given on a case by case basis to the impact of seasonal conditions (eg drought, frost, flood) or changes in your property on fertiliser purchases.

8. The Fertiliser Supply Agreement^{PLUS} Program will operate in conjunction with the CSBP benefit program for 2007/2008 and any other CSBP benefit program as notified by CSBP to you from time to time as operating in conjunction with the Fertiliser Supply Agreement^{PLUS} Program.

9. If GST becomes payable by a party ("Supplier") in relation to any supply that it makes under, in connection with or resulting from these Terms and Conditions or the Fertiliser Supply Agreement^{PLUS} Program to the other party ("Recipient"), then the parties agree that:

(a) any consideration provided for that supply in these Terms and Conditions or under the Fertiliser Supply Agreement^{PLUS} Program other than under this clause 9 or any value deemed for GST purposes in relation to that supply ("Agreed Amount") is exclusive of GST;

(b) an additional amount (or if no consideration is payable for the supply, an amount) will be payable by the Recipient to the Supplier equal to the Agreed Amount for that supply multiplied by the applicable rate of GST; and

(c) the additional amount or amount referred to in clause 9(b) is payable upon issue by the Supplier to the Recipient of a valid tax invoice for that supply. To the extent that any consideration for a supply is specified in these Terms and Conditions or in the Fertiliser Supply Agreement^{PLUS} Program

to be inclusive of GST, that consideration shall be excluded from the Agreed Amount for the

purposes of this clause 9.

10. You acknowledge that CSBP has not made any representations or warranties:

(a) in relation to any CSBP fertiliser product; or

(b) in relation to the goods and services to be

provided by CSBP under the Fertiliser Supply Agreement_{PLUS} Program, other than the representations and warranties expressly set out in these Terms and Conditions and

the representations and warranties expressly set out in any other applicable CSBP benefit program, including the CSBP benefit program for 2007/2008 headed "CSBP Fertiliser Supply Agreement 2007/2008".

Save for those rights and remedies (including those under the Trade Practices Act 1974 (Cth) and similar State legislation) which cannot be lawfully excluded or modified, all representations and warranties not expressly set out in these Terms and Conditions are excluded.

11. Save for those rights and remedies (including those under the Trade Practices Act 1974 (Cth) and similar State legislation) which cannot lawfully be excluded or modified, CSBP's liability to you, including in respect of any negligence by CSBP or any of its employees, agents or contractors, is:

(a) limited, where CSBP supplies any goods or services under the Fertiliser Supply Agreement_{PLUS} Program (except where such goods or services are of a kind ordinarily acquired for personal

domestic or household use, or where you establish that reliance upon this clause would not be fair and reasonable)

(i) in the case of goods, to the replacement of the goods or, at the election of CSBP, to the supply of equivalent goods or the repair of the goods or the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(ii) in the case of services, to the supplying of the services again or, at the election of CSBP, to the cost of having the services supplied again; and

(b) in all other cases and except where inconsistent with the above, excluded entirely.

12. (a) CSBP has lodged a notification under section 93 of the Trade Practices Act 1974 (Cth) with the Australian Competition and Consumer Commission in relation to the provisions of the Fertiliser Supply Agreement_{PLUS} Program. If the ACCC serves a notice on either of the parties under section 93A(2) or 93(3) or 93(3A) of the Trade Practices Act 1974 (Cth) ("Act") in respect of that notification (each an (ACCC Notice), then the receiving party will promptly inform the other party of the existence and contents of the ACCC Notice.

(b) If either CSBP or you receive an ACCC Notice under section 93A(2) or 93(3) or 93(3A) of the Act then:

(i) whoever receives the notice must notify the other immediately and must notify the ACCC within 14 days of receipt of that notice, that they require the ACCC to hold a conference pursuant to clause 93A(5) of the Act; and

(ii) CSBP must participate at the conference in a manner which seeks to ensure that the ACCC does not give a notice under section 93(3) or (3A) of the Act.

(c) If either CSBP or you receives an ACCC Notice under section 93(3) or 93(3A) of the Act, we will meet to negotiate in good faith and seek to agree appropriate amendments to the terms and conditions of the Fertiliser Supply Agreement_{PLUS} Program to ensure that the ongoing performance of the Fertiliser Supply Agreement_{PLUS} Program will not contravene section 47 of the Act.

(d) If we do not agree amendments prior to protection conferred by the notification ceasing, pursuant to section 93(7) or (7C) of the Act, then CSBP may terminate the Fertiliser Supply Agreement_{PLUS} Program at its absolute discretion.

(e) Upon termination of the Fertiliser Supply Agreement_{PLUS} Program the rights and obligations of each party under the Fertiliser Supply Agreement_{PLUS} Program (other than your right to receive accrued rebates on fertiliser already contracted for or delivered in the then current Year) will be discharged.

Disclaimer: While the advice provided by CSBP in the term of this Fertiliser Supply Agreement_{PLUS} Program is intended to assist you to increase your productivity and profitability, CSBP will not (except in the case of statutory rights or other remedies whether under the Trade Practices Act or otherwise and which cannot be excluded) be liable for the application of this advice.

FORM G

Regulation 9

[Front of Form]

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

N92830

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

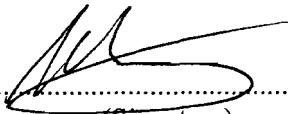
1. (a) Name of person giving notice
CSBP LIMITED ABN 81 008 668 371
(See Direction 2 on the back of this Form)
- (b) Short description of business carried on by that person
Manufacture and supply of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors
- (c) Address in Australia for service of documents on that person
Wesfarmers Limited – Corporate Solicitors Office, 11th Floor, 40 The Esplanade, Perth WA 6000 – Attention Mr Melvin Yeo
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
agricultural fertilisers
- (b) Description of the conduct or proposed conduct
CSBP proposes to offer 3 year contracts by which contracted farmers will receive services and benefits from CSBP upon the condition that those farmers agree to purchase CSBP fertiliser products from distributors of CSBP fertilisers in quantities not less than 90% of the average annual quantity of CSBP fertilisers purchased by them over the previous 3 years. See attached submission for details.
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates
Farmers
- (b) Number of those persons-
 - (i) At present time
1,300
 - (ii) Estimated within the next year
Approximately 1,300
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
N/A
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Paul D Evans or Steven Standing
Freehills
(Solicitors for CSBP Limited)
Level 36, QV1 Building
250 St Georges Terrace
PERTH WA 6000

(Telephone 08 9211 7777; Facsimile 08 9211 7878)

Dated *14 February* 2007

Signed on behalf of CSBP Limited by its solicitors and
agents, Freehills of Level 33, QV1 Building, 250 St
George's Terrace, Perth, Western Australia



.....
(Signature)

Steven Michael Standing

.....
(Full Name)

Special Counsel

.....
(Description)

[Back of Form]

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act* 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**Submission by CSBP Limited in support of notification to the Australian
Competition and Consumer Commission under Section 93(1) of the Trade
Practices Act**

**Restriction of Publication of part claimed on the grounds of commercial
confidentiality being annexures 1 and 2 (marked in red)**

1 Introduction and Background

This submission is provided in support of CSBP's notification made under section 93(1) of the Trade Practices Act. The notification deals with proposed conduct by CSBP which may fall within sections 47(2) and/or (6) of the Trade Practices Act.

Reference is made, in this notification, to conduct notified by CSBP in June 2004 (Notification N70383). The conduct in the previous notification was similar (although not identical) to that which is the subject of this notification.

2 Description of notifying party

CSBP is a wholly-owned subsidiary of Wesfarmers Limited. It is one of Australia's major suppliers of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors. For the financial year 2005/6 it had operating revenues from all sectors of its operations of \$594.5 million.

CSBP's head office and its major chemical and fertiliser production complex is located at Kwinana, Western Australia. Major fertiliser despatch facilities are also situated at Geraldton, Bunbury, Albany and Esperance Depots and field based agricultural advisers are located throughout Western Australia's agricultural regions. The company also owns 50 per cent of an integrated ammonium nitrate plant at Moura in central Queensland. CSBP employs more than 500 people in these operations.

2.1 Business units and core manufacturing capacity

CSBP's business comprises two streams; namely –

- (a) CSBP Chemicals, the core products of which include ammonia, ammonium nitrate, sodium cyanide, chlorine and caustic soda, together with a number of traded chemicals;
- (b) CSBP Fertilisers, which through both its manufacturing and importing activities provides a wide range of products and services for use in broad acre cropping, livestock, horticulture and dairy operations. It also operates one of Australia's most modern soil and plant testing laboratories to assist in maximizing the productivity of rural producers.

In 1996, CSBP commissioned an ammonium nitrate facility at Kwinana with a production capacity of approximately 235,000 tonnes per annum, to replace imports and meet growing demand for nitrogenous fertilisers and mining explosives. Ammonium nitrate is manufactured by a process involving the combining of nitric acid and ammonia. Construction of an expanded ammonium nitrate facility (with a further capacity of approximately 235,000 tonnes) commenced in 2006.

In 2000, CSBP commissioned a \$150 million ammonia manufacturing plant at Kwinana with a design capacity of 230,000 tonnes of ammonia per annum (replacing a much smaller plant which has since been decommissioned), for the purpose of reducing CSBP's requirements for imported ammonia. Ammonia is an essential feedstock in the manufacture of a number of downstream products including (as noted above) ammonium nitrate and fertilisers.

Ammonia and ammonium nitrate are globally traded bulk commodities, usually denominated in US dollars, with an efficient and regulatory approved scale of import into Australia being cargo lots of approximately 20,000 tonnes for ammonia and 1000 to 4000 tonnes for ammonium nitrate.

2.2 Liquid Fertilisers

The main liquid fertiliser marketed by CSBP is urea ammonium nitrate (UAN) marketed as Flexi-N. This product is manufactured by mixing ammonium nitrate, urea and water together under certain process conditions to form the liquid fertiliser. CSBP currently sells around 150,000 tonnes per annum of this product, almost all of which is imported, as there it has insufficient ammonium nitrate feedstock available for manufacture. Flexi-N is a nitrogen fertiliser and is a substitute for urea, which is not produced in WA and is also imported.

Growth in demand for CSBP's liquid fertiliser products (in particular Flexi-N) during the period 1998 to 2007 has been substantial and was supported by the investment of approximately \$15m in additional production and distribution facilities together with incentives for customers to provide on farm storage (storage facilities otherwise posing a significant distribution cost and inhibitor to sales).

(a) CSBP liquid fertiliser sales

Sales of liquid fertiliser by CSBP have increased from an almost zero base in 1998/1999 to very substantial levels.

Year	CSBP Flexi-N Sales
1998/1999	500 tonnes
1999/2000	7,000 tonnes
2000/2001	15,000 tonnes
2001/2002	43,000 tonnes
2002/2003	80,000 tonnes
2003/2004	122,000 tonnes
2004/2005	149,000 tonnes
2005/2006	149,000 tonnes (drought affected)

Although one of the original reasons for CSBP entering the liquid fertiliser market was to consume greater quantities of CSBP's locally manufactured ammonium nitrate from its first ammonium nitrate plant (thereby capturing the production efficiencies of optimum plant utilisation, and displacing imported urea), that ammonium nitrate plant is currently operating at capacity, with nearly all production committed to supply mining industry explosives needs.

CSBP predicts continued growth in demand for liquid fertilisers, due to superior handling and application qualities and better nutrient availability. CSBP's predictions for market growth are **Commercial-in-Confidence** and are set out in Annexure 1.

(b) Effects of market growth

Commitments from customers at volumes similar to or slightly greater than those under the previously notified arrangements would partially underpin the ongoing investment in,

and operation of, the new CSBP ammonium nitrate production facility currently under construction. The production from this new plant will, mean that CSBP will no longer import UAN, and will instead manufacture its Flexi-N by combining locally produced ammonium nitrate (from CSBP's new ammonium nitrate plant) with water and urea. The net result will be the production, in Australia, of a locally produced value added products (ammonium nitrate and Flexi-N) in place of imported UAN.

(c) **Market certainty**

Supplies of nitrogenous fertilisers continue to be subject to considerable vagaries of pricing, due to the substantial volumes of US dollar denominated imports. As a key production input for farmers, fertiliser prices can (subject to some contractual risk mitigation measures) rise and fall from month to month.

CSBP Flexi-N, when domestically produced, would (unlike UAN and urea products imported by others) be less affected by the vagaries of the global economy, commodity markets and fluctuations in foreign exchange rates. When the exchange rate is low, domestic production has an advantage over imports. When the dollar is high (as it presently is) imports are relatively cheaper and may in absolute terms become cheaper than domestic production.

Although future production of Flexi-N by CSBP will use imported ammonia and urea, any percentage increase in the import price of these raw materials will result in a percentage increase in CSBP's total Flexi-N production costs that is less than the percentage increase in the import price of these raw materials, as there are other local components of CSBP's total Flexi-N production costs which are not affected by foreign exchange rates. In addition, the raw material prices do not move in unison and this will have a further buffering effect on manufactured Flexi-N costs. Approximately 84% of CSBP's total Flexi-N production costs will be made up of the import price of ammonia and urea. Accordingly, the impact of import price variations on Flexi-N production costs is expected to be less than the impact of import price variations on the purchase price of imported UAN and urea that are then sold in their imported form.

2.3 Solid fertilisers

CSBP currently manufactures a range of solid cropping fertilisers under the Agras and MacroPro/K-Till brands and Granular Sulfate of Ammonia from its granulation plant at Kwinana. The other manufacturing plant, which is also located at Kwinana, manufactures superphosphate, which is predominantly a pasture fertiliser. The superphosphate manufacturing plant has not been considered here because it is of little application in the context of crop nutrients, being primarily used for pasture (and therefore animal husbandry).

Kwinana's solid fertiliser operations are currently operating at approximately 68% of maximum capacity. Production is constrained by limited demand, reflecting the fact that CSBP's solid fertiliser products compete with generally cheaper imported substitutes, which (like ammonia and ammonium nitrate) are freely traded on the world market.

CSBP's gross solid fertiliser sales in WA for 2006/2007 and domestic manufacture levels are set out in Annexure 1.

With continuing high levels of imports, CSBP faces difficulties in justifying significant expenditures on improvements in solid fertiliser assets. If a degree of security of demand was

achieved by CSBP over the forthcoming three-year period in relation to solid fertilisers, CSBP would be able to justify maintaining or increasing investment in the granulation plant for the purpose and to the degree set out in Annexure 1.

2.4 Impacts of capital expenditure

Greater volumes through CSBP's granulation plant would increase efficiency and the competitiveness of the product with imports. CSBP anticipates that, if its granulation plant operated at 100% capacity, efficiency improvements would translate to a decrease in the operating cost of CSBP's solid fertilisers to a material degree set out in Annexure 1, with a corresponding increase in competitiveness against imported substitutes.

Any decrease in price of CSBP's solid fertilisers will also improve the competitiveness of those products on the international market. At present, CSBP has not exported any solid fertilisers to international markets, but anticipates that a price decrease in the order of that contemplated for "increased" levels of production as set out in Annexure 1 may make this financially viable at prevailing exchange rates.

3 The market for sale of fertiliser

Fertiliser is a high volume, relatively low value product, economic to import by ship from major off-shore production facilities to developed ports, but marginal or uneconomic to transport domestically. For that reason, WA has traditionally been regarded as a separate fertiliser market to the rest of Australia. To the best of its knowledge, CSBP considers the current market for fertilisers in Western Australia to comprise as follows -

3.1 Main sellers

(a) CSBP

Has an approximate market share of around 64% and annual sales in the order of about 1 million tonnes. CSBP's market share has fallen from an estimated 89% in 1995-6 as new fertiliser suppliers have entered the WA market. CSBP has manufacturing facilities at Kwinana, and further distribution facilities at Geraldton, Bunbury, Albany, Esperance and six inland depots;

(b) Summit Fertilisers

100% owned by Sumitomo Corporation (a Japanese company) since September 2005, primarily selling imported fertiliser, with approximate annual sales of 350,000 tonnes and an estimated market share in the order of 23%. Summit has distribution facilities at Kwinana, Geraldton, Bunbury, Albany and Esperance;

(c) United Farmers Co-operative

A WA based farming co-operative which is a provider of low cost imported fertiliser products, with annual sales in the order of 165,000 tonnes and an estimated market share of 11%. UFC has distribution facilities at Kwinana, Geraldton, Bunbury, Albany and Esperance and a country depot at Watheroo. UFC also has a compaction plant for sulfate of ammonia at its Kwinana facility;

(d) Others

There are also a number of smaller operators and opportunistic importers of fertiliser products, including Superfert, Whitford Fertilisers and ABB.

3.2 Products sold

Total demand for fertilisers in WA increased significantly during the 1990s, but has now stabilised with the introduction of revised farming practices focussing on more targeted delivery of nutrition and reduced wastage. CSBP estimates that market growth is unlikely to be greater than in the order of 2% to 3% per annum over the next few years, with most growth coming from increased use of nitrogen and potassium (potash).

The WA rural market for fertiliser comprises the following products –

(a) Imported commodity fertiliser

CSBP estimates the following commodity fertilisers are imported by all WA fertiliser suppliers and are either sold in commodity form, or blended with other fertilisers prior to sale to produce tailored analysis products or products for specialist applications (all quantities are in metric tonnes).

	2003-04	2004-05	2005-06
Monoammonium phosphate (MAP)	209,586	175,249	180,728
High density ammonium nitrate		15,911	10,034
Ammonium sulphate	1,034	969	1,357
Diammonium phosphate (DAP)	73,966	92,057	96,926
Fertilisers(not elsewhere stated in this table)	174	206	512
Mineral or chemical fertilisers	51,865	63,802	31,548
Potassium chloride	170,449	210,496	88,689
Superphosphates	75,227	118,978	71,346
Urea	353,366	372,743	304,821
UAN	123,148	160,231	165,207
Total	1,058,815	1,210,642	951,168

(b) Inputs from domestic suppliers

The following products are sourced from local suppliers (as by-products of the minerals processing industry) and used in the manufacture of final products and in blends by WA fertiliser suppliers (all quantities are in metric tonnes).

	2003-04	2004-05	2005-06
Anaconda – SoA	50,000	50,000	50,000
WMC – MAXam*	30,000	30,000	30,000
WMC – SoA	51,000	72,000	72,000
Other - SoA	30,000	30,000	30,000
Total	161,000	182,000	182,000

*MAXam is a product offered by Summit Fertilizers and is usually sourced from WMC. It consists of Sulfate of Ammonia in large crystals in the 2-4mm range. This product competes directly with CSBP's locally manufactured Granular Sulfate of Ammonia.
(c) Locally manufactured fertilisers

The fertiliser products manufactured locally by CSBP are specified in Annexure 1.

3.3 Distribution methods

CSBP sells its products through a variety of distributors, including Elders, Landmark, and several other independent operators. CSBP does not sell directly to end-user customers (ie. farmers).

Summit distributes its product through distributors and also sells product directly to farmers. CSBP estimates that approximately 40% of Summit's sales are made through Landmark, approximately 15% of Summit's sales are made through Elders and approximately 40% of Summit's sales are direct to farmers, with the balance of sales being through other distributors.

UFC sells its product through one major distributor (CRT) and other independent distributors, but the majority of its product is sold direct to farmers.

Overall, CSBP estimates that approximately 11% of fertilisers in WA are sold direct to farmers.

It is estimated by CSBP that there are in the order of 10,000 agricultural operations in WA, of which approximately 8,500 comprise broad acre operations (with an average area of 12,000 hectares and an average annual fertiliser spend in the order of \$70,000).

For both CSBP and Summit, as the principal suppliers of fertiliser in WA, a key annual method of sales management, developed and operating in the market for many years, is the annual "benefits program" (CSBP's annual "benefits program" is known as the "Fertiliser Supply Agreement") which benefits both parties and operates as follows:

- (a) At the beginning of each cropping season CSBP and Summit (suppliers) through their various representatives/distributors take preliminary indicators of tonnage from individual farmers.
- (b) Those suppliers then enter into a "benefits program" with those farmers. The CSBP "benefits program" (FSA) is a contract which has the following *economic* characteristics:
 - (1) the FSA establishes the approximate (subject to some contracted elections) quantities and collection dates for fertilisers;
 - (2) it sets out certain discounts and rebates to be received by farmers off the prices of their purchases of fertiliser products and also provides for certain other benefits;
 - (3) the nominated distributor or distributors – that is, the party (or parties) from whom the farmer actually purchases the fertiliser, and with whom the supplier will contract to supply, is fixed (often by the farmer, based on the farmer's preferred rural dealer, with whom the farmer will often have a long standing relationship, including credit arrangements); and
 - (4) the distributor takes the contract risk, and credit risk, in relation to supply to the farmer.
- (c) While the nominated distributor is free to charge such price as it may wish, the supplier will provide additional discounts to the distributor or rebates to the farmer to ensure that the farmer gets the benefit of the discounts and rebates set out in the FSA.

For the supplier, these annual “benefits programs” perform an important role, given the seasonal nature of fertiliser requirements, in assisting with forecasting demand to better manage production, importation and distribution volumes. These “benefits programs” generally provide rebates or discounts for collection at particular times and at particular locations (facilitating distribution, and rewarding on farm storage investments) as well as volume related rebates.

Strictly, there are three separate legal arrangements entered into, or given effect to, as a result of the CSBP FSA: First, a contract between the farmer and supplier (CSBP) under which the volumes and distributors are nominated and discounts, rebates and other benefits to be provided to the farmer set out; secondly, a contract subsequently entered into between farmer and the nominated distributor, under which the farmer will buy, and the distributor will sell, fertiliser (at a price determined by the distributor) and (in some cases) the provision by the distributor of finance; and finally supply under a master supply agreement between CSBP and the nominated distributor which is effected at a price which reflects the selling price of the distributor to the farmer, less a commission to the nominated distributor

Separately, CSBP, Summit, Superfert, UFC and many of the rural services providers sell agronomic and farm management related services, on a fee for service basis. Some of those services, such as nutrient planning and management, benefit the farmer directly in relation to the selection of the type and quantity of fertiliser to be purchased and applied, and are logically linked to the purchasing decision. Some of the incentives offered by CSBP under the proposed FSA Plus programme will be ‘redeemable’ for such services.

3.4 Barriers to Entry

CSBP’s view is that there are low barriers to entry into the fertiliser market in WA, for the following reasons –

- (a) on farm storage for solid fertilisers is estimated to be in the order of 750,000 tonnes, with increasing capacity for storage of liquid fertilisers, meaning that new importers can import and distribute bulk solid fertiliser on an opportunistic basis without needing their own long term bulk storage;
- (b) port access at key centres around the Western Australian coastline is readily available on commercial terms and transportation and storage are both relatively cheap and available;
- (c) Western Australian farm sizes are typically sufficiently large to mean that only a relatively small number of farmers in a district need to band together to bring in an import shipment of a fertiliser product without an intermediary;
- (d) most relevant fertiliser products are widely produced and traded internationally, with price information easily available over the internet and from other sources to enable estimates of import parity prices to be made readily;
- (e) distribution of imports can accordingly take place through a mix of larger and independent distributors and direct to farmers; and
- (f) the fertiliser industry generally operates in a highly competitive, unregulated environment, in which regular and opportunistic imports of globally-traded commodity fertilisers occurs on a routine basis.

4 The proposed conduct

CSBP proposes to offer FSA contracts for an extended term of three years (known as ‘FSA plus’ contracts) to approximately 1,300 customers. These 1,300 customers (farmers) are anticipated to represent approximately 450,000 to 550,000 tonnes of fertiliser sales per annum (see Annexure 1), and the majority are expected to be customers who accepted the 3 year FSA Plus contract in

2004 that was the subject of CSBP's notification that year. Tonnes secured will be dependent on the following factors:

- a) the number of farmers who accept the offer; and
- b) the purchase history of those customers.

An advanced draft of the terms and conditions for the proposed three-year FSA Plus contract to be offered are set out in Annexure 3. A general description of the contract is to be sent out to customers (for marketing purposes) with the terms and conditions; this part of the document is confidential and is set out in Annexure 2.

The substance of the proposed contract is that:

- (a) the CSBP fertiliser customers to whom the offer is made would be required to agree to purchase a quantity of CSBP fertiliser (through their nominated distributors of CSBP fertiliser) in an amount not less than 90% of their rolling three-year average purchases of CSBP fertilisers over the previous three-year period;
- (b) in consideration of those customers entering into the three-year contract, they would be entitled to the benefits set out in clause 6 of the contract, comprising an account trading terms package, access to managed farm productivity services at discounted prices, priority access to new fertiliser products, and a rebate in respect of CSBP fertiliser purchases.

5 Purpose of proposed conduct

The purpose of the proposed conduct is to provide to CSBP a degree of certainty of demand for its products over a three-year period for the purpose of supporting the ongoing investment by CSBP in import substituting plant development and the competitiveness of domestic production as follows -

- (a) in the case of liquid fertilisers (primarily, Flexi-N) to assist in underpinning the investment currently being made in expanded capacity of its ammonium nitrate plant in Kwinana to meet a greater proportion of total demand for Flexi-N from local production rather than imports. The details of this expanded capacity are set out in paragraph 1 above.
- (b) in relation to solid fertilisers, maintaining a level of sales sufficient to justify CSBP maintaining and increasing investment in its currently underutilised granulation plant at Kwinana (as to which see paragraph 1 above), and (via improved plant efficiencies gained from using spare plant capacity) more competitive pricing of solid fertilisers locally so as to compete with cheaper imported substitutes, and to enhance the competitiveness of CSBP's solid fertilisers on the international market.

6 Public benefits of proposed conduct

In relation to liquid fertilisers, the primary public benefit of the proposed conduct will be that the degree of certainty of demand gained over a three year period will contribute to underwriting the current expansion and operation of CSBP's ammonium nitrate plant at Kwinana, leading to substantial import substitution and direct and indirect local economic benefits.

6.1 Liquid fertiliser production

As specified in paragraph 2.2 above, the plant expansion currently under way is expected to -

- (a) involve significant capital investment in plant and storage facilities (at Kwinana and in regional centres) and additional employment within CSBP and the distribution network;
- (b) permit local manufacture of Flexi-N, and cessation, to a corresponding degree, of imports by CSBP of Flexi-N and its inputs (the quantities of which are specified in Annexure 1). The current value of those imports, and estimated value in 2001/2011, is specified in Annexure 1;
- (c) enhance the ability to sell Flexi-N manufactured at Kwinana at a price which may enable CSBP to compete more effectively with imported products.

6.2 Solid fertiliser production

In relation to solid fertilisers, the following public benefits would (again, assuming sufficient acceptance by farmers so as to guarantee likely sales of solid fertiliser of at least 175,000 tonnes per annum for three years) accrue from achieving the expected certainty of demand over a three-year period:

- (a) maintenance and upgrade (between 2007/08 and 2010/11) in CSBP's granulation plant would be justified, with the expenditure shown in Annexure 1;
- (b) the efficiencies gained from using spare plant capacity would enable more competitive pricing (as specified in paragraph 1 above), resulting in improved international competitiveness of CSBP's solid fertilisers; and
- (c) greater plant efficiencies should also enable more competitive pricing of CSBP's solid fertilisers in Western Australia (both through the discounts offered through the three-year contracts, and generally in the market), enabling it to compete more effectively with cheaper imported substitutes, in the manner indicated in Annexure 1.

6.3 Additional benefits

The proposed three-year contract is also expected to have the following, further, benefits:

- (a) cheaper soil and plant analysis, nutrition management services and information/education services are able to be offered, leading to greater efficiency and better targeting of fertiliser use, more efficient and sustainable land use, and greater efficiency of crop uptake; and
- (b) the tying of parts of the discount to the purchase of agronomic services encourages farmers to adopt "best practice" management of fertiliser usage, minimising nutrient waste and the adverse effects of fertiliser run-off.

7 Public detriment

CSBP submits that there will be little, if any, public detriment flowing from the proposed conduct. In particular:

- (a) The proposed conduct is targeted at a limited number of existing consumers of CSBP products, with a view only to maintaining certainty of existing demand from those customers for a three-year period. Even in respect of those customers, the contract is based on 90% of historical demand and therefore affords the opportunity for purchase of competitive products.
- (b) Sales volumes are already committed by farmers on a periodic basis. Sales to those customers will remain contestable on a periodic basis.
- (c) Whilst it is arguable that the proposed conduct involves a form of third line forcing (in that the contract requires farmers to purchase a large proportion of their fertiliser

requirements from CSBP's distributors), this simply reflects (rather than distorts) existing market behaviour (CSBP's products have always been available only through distributors). Unlike a typical third line forcing situation, the primary focus of the proposed conduct is upon the third party product (in this case, fertiliser, which is produced, but not sold, by CSBP), with the services and products directly offered by CSBP being a subsidiary, and closely related, benefit to the supply of fertiliser.

- (d) It is otherwise difficult to articulate any likely public detriment from the proposed conduct, particularly given that the proposed conduct involves contracts for only a three-year term. The investment strategies and infrastructure of CSBP's competitors over the medium term are unlikely to be significantly affected.

8 Balance of benefit and detriment

It is submitted that the benefits of the proposed conduct are obvious and strong, and far outweigh any detriment from the conduct. The conduct is, in respect of liquid fertilisers, intended to provide ongoing support for a significant capital investment, expansion of employment and substitution of domestic products in place of imported product. In the case of solid fertilisers, the conduct is intended to support more efficient use of plant (and the upgrade of that plant), which will in turn lead to lower prices and import replacement. All of these are factors which have been identified either by the legislature (*Trade Practices Act* section 90(9A)) or by the ACCC (*Re ACI Operations Pty Ltd (1991) ATPR (Com) 50-108*) as constituting real public benefit.

The conduct will occur in a highly competitive and well informed market characterised by a high degree of import competition. It will likely involve only 26% to 32% of the market, will be directed at existing FSA Plus customers, and (because it is based on 90% of historical purchases of CSBP product) would allow even those customers to purchase some of their requirements from competitors. There will be further contestability within a relatively short period. Existing market share is unlikely to be distorted by these arrangements. In the circumstances, it is submitted that any competitive detriment would be incapable of outweighing the clear benefits to the public.

FREEHILLS AS SOLICITORS AND
AGENTS FOR CSBP LIMITED

Annexure 1

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure 2

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure 3 – Draft Three Year Contract Terms and Conditions

OFFER

1. CSBP Limited ABN 81 008 668 371 ("CSBP") offers to you, as a valued CSBP fertiliser customer, the opportunity to:

- receive additional rebates on your CSBP fertiliser purchases; and
- receive additional purchase rewards, under CSBP's Fertiliser Supply Agreement^{PLUS} Program (the "Agreement") as set out below.

2. The offer to enter into the Fertiliser Supply Agreement^{PLUS} Program is open for acceptance until 30 September 2007, or such later date as determined by CSBP.

3. Unless clearly indicated to the contrary, "GST" and other terms used in clause 10 (and in other provisions of these Terms and Conditions where the GST meanings are expressly intended) have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any replacement or other relevant legislation and regulations.

4. In these Terms and Conditions: "Rolling Three Year Average CSBP Purchase Quantity" means, in respect of any three year period, an amount equal to the sum of the total number of tonnes of CSBP fertiliser that you purchased during that three year period, divided by three.

"Term" means the period from 1 October 2007 to 30 September 2010.

"Year" means any 12 month period during the Term running from 1 October in one calendar year to 30 September in the following calendar year.

5. If you accept this offer of the Fertiliser Supply Agreement^{PLUS} Program you must purchase, in each Year during the Term from Distributors of CSBP fertiliser, a quantity of CSBP fertiliser products that is not less than 90% of your Rolling Three Year Average CSBP Purchase Quantity over the previous three year period.

Example:

If your purchases of CSBP fertiliser from CSBP's Distributors in:

1. the period from 1 October 2004 to 30 September 2005 was 260 tonnes;
2. the period from 1 October 2005 to 30 September 2006 was 250 tonnes; and
3. the period from 1 October 2006 to 30 September 2007 was 270 tonnes,

then the average annual quantity of CSBP fertiliser you purchased over these three Years is 260 tonnes.

Under the Fertiliser Supply Agreement^{PLUS} Program, you must purchase not less than 90% of 260 tonnes of CSBP fertiliser in the period from 1 October 2006 to 30 September 2007 (ie. not less than 234 tonnes of CSBP fertiliser).

6. If you have not purchased fertiliser from CSBP for each or any of the past three years, your required purchase volume for each year of the Fertiliser Supply Agreement^{PLUS} Program will be determined on a case-by-case basis as agreed by CSBP.

7. If you fail to purchase, in any Year during the Term from Distributors of CSBP fertiliser, a quantity of CSBP fertiliser products that is not less than 90% of your Rolling Three Year Average CSBP Purchase Quantity over the previous three year period, then CSBP may take such action as it considers appropriate in respect of that breach, including requiring you to pay damages for losses suffered by CSBP as a result of that breach. Consideration will be given on a case by

case basis to the impact of seasonal conditions (eg drought, frost, flood) or changes in your property on fertiliser purchases.

8. The Fertiliser Supply Agreement^{PLUS} Program will operate in conjunction with the CSBP benefit program for 2007/2008 and any other CSBP benefit program as notified by CSBP to you from time to time as operating in conjunction with the Fertiliser Supply Agreement^{PLUS} Program.

9. If GST becomes payable by a party ("Supplier") in relation to any supply that it makes under, in connection with or resulting from these Terms and Conditions or the Fertiliser Supply Agreement^{PLUS} Program to the other party ("Recipient"), then the parties agree that:

(a) any consideration provided for that supply in these Terms and Conditions or under the Fertiliser Supply Agreement^{PLUS} Program other than under this clause 9 or any value deemed for GST purposes in relation to that supply ("Agreed Amount") is exclusive of GST;

(b) an additional amount (or if no consideration is payable for the supply, an amount) will be payable by the Recipient to the Supplier equal to the Agreed Amount for that supply multiplied by the applicable rate of GST; and

(c) the additional amount or amount referred to in clause 9(b) is payable upon issue by the Supplier to the Recipient of a valid tax invoice for that supply. To the extent that any consideration for a supply is specified in these Terms and Conditions or in the Fertiliser Supply Agreement^{PLUS} Program to be inclusive of GST, that consideration shall be excluded from the Agreed Amount for the

purposes of this clause 9.

10. You acknowledge that CSBP has not made any representations or warranties:

(a) in relation to any CSBP fertiliser product; or

(b) in relation to the goods and services to be

provided by CSBP under the Fertiliser Supply Agreement^{PLUS} Program, other than the representations and warranties expressly set out in these Terms and Conditions and

the representations and warranties expressly set out in any other applicable CSBP benefit program, including the CSBP benefit program for 2007/2008 headed "CSBP Fertiliser Supply Agreement 2007/2008".

Save for those rights and remedies (including those under the Trade Practices Act 1974 (Cth) and similar State legislation) which cannot be lawfully excluded or modified, all representations and warranties not expressly set out in these Terms and Conditions are excluded.

11. Save for those rights and remedies (including those under the Trade Practices Act 1974 (Cth) and similar State legislation) which cannot lawfully be excluded or modified, CSBP's liability to you, including in respect of any negligence by CSBP or any of its employees, agents or contractors, is:

(a) limited, where CSBP supplies any goods or services under the Fertiliser Supply Agreement^{PLUS}

Program (except where such goods or services are of a kind ordinarily acquired for personal domestic or household use, or where you establish that reliance upon this clause would not be fair and reasonable)

(i) in the case of goods, to the replacement of the goods or, at the election of CSBP, to the supply of equivalent goods or the repair of the goods or the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(ii) in the case of services, to the supplying of the services again or, at the election of CSBP, to the cost of having the services supplied again; and

(b) in all other cases and except where inconsistent with the above, excluded entirely.

12. (a) CSBP has lodged a notification under section 93 of the Trade Practices Act 1974 (Cth) with the Australian Competition and Consumer Commission in relation to the provisions of the Fertiliser Supply Agreement^{PLUS} Program. If the ACCC serves a notice on either of the parties under section 93A(2) or 93(3) or 93(3A) of the Trade Practices Act 1974 (Cth) ("Act") in respect of that notification (each an (ACCC Notice), then the receiving party will promptly inform the other party of the existence and contents of the ACCC Notice.

(b) If either CSBP or you receive an ACCC Notice under section 93A(2) or 93(3) or 93(3A) of the Act then:

(i) whoever receives the notice must notify the other immediately and must notify the ACCC within 14 days of receipt of that notice, that they require the ACCC to hold a conference pursuant to clause 93A(5) of the Act; and

(ii) CSBP must participate at the conference in a manner which seeks to ensure that the ACCC does not give a notice under section 93(3) or (3A) of the Act.

(c) If either CSBP or you receives an ACCC Notice under section 93(3) or 93(3A) of the Act, we will meet to negotiate in good faith and seek to agree appropriate amendments to the terms and conditions of the Fertiliser Supply Agreement^{PLUS} Program to ensure that the ongoing performance of the Fertiliser Supply Agreement^{PLUS} Program will not contravene section 47 of the Act.

(d) If we do not agree amendments prior to protection conferred by the notification ceasing, pursuant to section 93(7) or (7C) of the Act, then CSBP may terminate the Fertiliser Supply Agreement^{PLUS} Program at its absolute discretion.

(e) Upon termination of the Fertiliser Supply Agreement^{PLUS} Program the rights and obligations of each party under the Fertiliser Supply Agreement^{PLUS} Program (other than your right to receive accrued rebates on fertiliser already contracted for or delivered in the then current Year) will be discharged.

Disclaimer: While the advice provided by CSBP in the term of this Fertiliser Supply Agreement^{PLUS} Program is intended to assist you to increase your productivity and profitability, CSBP will not (except in the case of statutory rights or other remedies whether under the Trade Practices Act or otherwise and which cannot be excluded) be liable for the application of this advice.