



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/945
Contact Officer: Jaime Martin
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19 June 2008

Dear Sir/Madam

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification N93439
- interested party consultation**

I am writing to you as a party that may be interested in providing a submission to the Australian Competition and Consumer Commission (ACCC) in relation to the above notification received from Cooperative Bulk Handling Limited (CBH) on 11 June 2008.

In substance, CBH proposes to:

Supply storage and handling services on condition that growers or marketers acquire:

- supply chain coordination services from CBH and
to the extent that grain remains in CBH's custody, that they only acquire transport services from CBH (though its nominated carrier).

CBH's proposal is hereafter referred to as 'Grain Express'

The ACCC is currently conducting a public consultation process regarding this notification. As a potentially interested party, you are invited to comment on the issues outlined in this letter.

The ACCC is aware that CBH has previously consulted the industry about its Grain Express proposal prior to lodging the notification with the ACCC. As a result of this process, the ACCC has received a number of letters directly from industry participants about their preliminary views on Grain Express. If you have written to the ACCC and would like your letter to be treated as a public submission, please confirm this in writing. Further information about requesting the ACCC to exclude information from the public register is provided at page 3 of this letter.

The notification process

The ACCC is the independent Australian government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

Exclusive dealing involves one trader imposing restrictions on another trader's freedom to choose with whom, in what or where they deal. Exclusive dealing is generally prohibited under the Act.

However, the Act allows businesses to obtain immunity from legal action for exclusive dealing conduct in certain circumstances. One way businesses may obtain immunity is by lodging what is known as a 'notification' with the ACCC.

Having lodged a valid notification, CBH receives immediate immunity. The ACCC may act to remove the immunity afforded by exclusive dealing notifications like the one lodged by CBH if it is satisfied that:

- the conduct has the purpose, or has, or is likely to have, the effect of substantially lessening competition and

the conduct has not resulted or is not likely to result in a benefit to the public or the benefit to the public would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.

The CBH notification

CBH's exclusive dealing notification and executive summary in support of the notification is attached.

A full copy of the notification will be available from the ACCC website www.accc.gov.au by following these links: 'Public registers'; 'Authorisations and notifications registers'; and 'Exclusive dealing notifications register'. Please contact the ACCC if you experience any difficulties obtaining a copy of CBH's supporting submission from the website.

CBH believes there are a number of relevant markets for assessing the impact of the proposed conduct. At their broadest, these include the markets in Western Australia for the:

- supply of country grain receipt, storage and handling services
- supply of bulk grain road haulage services
supply of bulk grain rail haulage services and
- acquisition and supply of grain.

In support of its notification, CBH submits that Grain Express will result in efficiency improvements along the grain supply chain, including:

- more efficient grain delivery and handling at receival points
- better coordination of storage and handling
- improved efficiency of the transport task
- enhanced port efficiency
- dynamic efficiency gains, which improve the prospect of efficient infrastructure investment in the future
- better marketing decisions for growers and marketers.

CBH suggests that Grain Express will have minimal impact on competitive activity in any relevant market. In summary, CBH submits that:

- marketers are not prevented from 'outturning' their grain from CBH's custody, albeit from only a number of larger 'Destination Points'
- Grain Express will not deter new entrants from building competitive storage or port loading facilities
- the central control of the freight task will maximise competition between road and rail and may also facilitate competitive entry in rail.

CBH also submits that any concerns regarding the potential for it to discriminate against competitors of Grain Pool Pty Ltd (CBH's grain marketing business) are alleviated by the proposed ring fencing arrangements.

Request for submissions

To assist the ACCC in its consideration of this matter it would be helpful to obtain your comments on CBH's claims. Please note, the ACCC recommends that you refer to CBH's notification and supporting submission before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available on its public register and website.

Persons lodging a submission with the ACCC may request that information included in a submission be excluded from the public register. If a request to exclude information from the public register is made, please provide the ACCC with reasons justifying the claim for the information to be excluded. The ACCC will not grant a request to exclude information from the public register for documents which are clearly not of a confidential nature unless there are compelling reasons to do so. Guidelines for requesting information to be excluded from the public register are attached for your information.

If the ACCC decides to exclude any information from the public register, the ACCC may take it into account even though it is not publicly available.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Submissions can also be lodged by email to adjudication@accc.gov.au or by facsimile on (02) 6243 1211.

If you intend to provide a submission in relation to the Grain Express notification, please do so by **Friday, 11 July 2008**.

We would appreciate the provision of email contact details to facilitate future correspondence in respect of this notification. You may forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of this matter.

This letter has been placed on the ACCC's public register and website. If you wish to discuss any aspect of this matter, please contact Ms Jaime Martin on (03) 9290 1477 or at jaime.martin@accc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication Branch

**COOPERATIVE BULK HANDLING LIMITED (CBH) – EXCLUSIVE DEALING
NOTIFICATION N93439**

Interested party consultation

Australian Government Department of Agriculture, Fisheries and Forestry

Department of Agriculture and Food WA

The Export Wheat Commission

Grain Pool Pty Ltd

ANZ Grain

Arrow Commodities

Glencore Grain Pty Ltd

Clear Commodities Pty Ltd

Coorow Seeds

Cargill Australia Limited

Elders Toepfer Grain Pty Ltd

Emerald Group Australia

Esperance Grain Handlers

Global Grain Australia Pty Ltd

Grain Link WA Pty Ltd

Grenfell Commodities

Hunter Grain

Kojonup Oils

Louis Dreyfus Australia Pty Ltd

Matthews Transport and Grain Supplies

Maxum Grains and Protein

Milne AgriGroup

Morton Seed and Grain

Pentarch Grains Pty Ltd

Poultry Farmers of WA Co-operative Ltd

Pulse Association of the South East

Quaker Oats Australia Pty Ltd

RA Rogers & Co

Touton Far East Pty Ltd

Weston Milling

DB & N Wallace

RB Harrington Farms

WA Grains Group
Halls Haulage Pty Ltd
OD Transport (WA) Pty Ltd
AWB Limited
GrainCorp Operations Limited
Noble Resources
Tamma Grains
Ecom Commodities Pty Ltd
Grains Council of Australia Limited
The Western Australian Farmers Federation
Department for Planning and Infrastructure (WA)
Australian Government Department of Infrastructure
WA Local Government Association
ABB Grain Ltd
Allied Mill Pty Ltd
Barrett Burston Malting Co
Concordia Agtrading
JK International Pty Ltd
Joe White Maltings
Kettridges
Landpoint Holdings Pty Ltd
Lempriere Grain Pty Ltd
OzEpulse Pty Ltd
Premium Grain Handlers Pty Ltd
Riverina (Australia) Pty Ltd
Riverland Oilseed Processors
UniGrain Pty Ltd
Wesfeeds Pty Ltd
WestNet Rail
Australian Railroad Group (a QR Company)
AD & SE Duncan
PGA Western Graingrowers
Pastoralists & Graziers Association
Milross Grains
National Agricultural Commodities & Marketing Association - WA
Thompson & Redwood Produce Supplies – Stock Feed Manufacturers and Wholesalers

ProFarmer Australia
SCT Logistics
Marleys Transport Pty Ltd
Crane's Haulage
Cataby Cascades Bulk Haulage
Pacific National
Genesee & Wyoming Australia Pty Ltd
Asciano Limited
Appleyard Farms
Auhls Transport
AWR (Formerly Westrail)
Backman Transport
Bairstow Terrence E & Maria C
Beck's Transport
Boral Transport Services
Borden Bulk Transport
C.G. Morris & Co
Central West Contracting
Coast to Coast Grain
Cropline Haulage
Crossley Contracting
D & D Transport
Derek Murray & Co
Dowerin Bulk Transport
Fyfe Transport
Geraldton Cranes & Haulage
Giacci Bros Pty Ltd
Gilmour P R & L V
Goomalling Transport
Green Bros Haulage
Hawkins J J & Co Pty Ltd
Holletts Transport
Irvine Transport
Jandabup Haulage
Karlgarin Contractors
Kwinana Trans Services P/L

Lakewood Logistics Pty Ltd

LC Bonner's Transport

Marsden's Beckenham Transport P/L

Matthews Transport & Traders

McLennon GL & TL

Mortlock Haulage

Noakes B E & W J

O'Rourke Transport

Parmango Farms

Patience Bulk Haulage P/L

Patrick BWL Pty Ltd

Pingelly Transport

Pirone's Sand Supplies

Regional Haulage

RJP Transport

Southern Haulage

Southern Regional Transport Pty Ltd

Sugarwood Holdings Pty Ltd

Thiele D & L

Tianco Transport

TJ Sampson Pty Ltd

Trans-Plus Pty Ltd

Van'tveer C & AJ & Sons

Varley Transport

Wagin Bulk Hauliers

Wandel Transport

Williamson Transport

Worldbase Securties