

EXECUTIVE OFFICE



**Australian
Competition &
Consumer
Commission**

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our Ref: C2008/945
Contact Officer: David Hatfield
Contact Phone: (02) 6243 1266

The Hon Alannah MacTiernan MLA
Minister for Planning and Infrastructure
Level 13, Dumas House
2 Havelock Street
West Perth WA 6005

Dear Minister

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

Thank you for your letter dated 18 June 2008 to the Chairman of the Australian Competition and Consumer Commission (the ACCC), Mr Graeme Samuel.

As you may be aware, Cooperative Bulk Handling Limited (CBH) lodged an exclusive dealing notification with the ACCC on 11 June 2008 in relation to its 'Grain Express' proposal.

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).

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 notification from the website.

Interested party consultation

The ACCC is currently conducting a public consultation process regarding this notification. Interested parties are invited to make submissions in relation to the proposed Grain Express arrangements, to indicate whether they support the proposal, and to provide reasons for their views.

Unless otherwise advised, the ACCC intends to treat your letter of 18 June 2008 as a submission regarding CBH's Grain Express notification. Accordingly, your letter will be placed on the ACCC's public register for this matter.

If you would like to make a further submission in relation to the exclusive dealing notification lodged by CBH, please do so by **Friday, 11 July 2008**.

The ACCC asks for submissions to be in writing so they can be made 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. Guidelines for requesting information to be excluded from the public register are attached for your information.

Submissions may be addressed 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.

The notification process

As you would be aware, 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.

Please inform the ACCC 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 Mr David Hatfield on (02) 6243 1266 or at david.hatfield@accc.gov.au.

Yours sincerely



Brian Cassidy
Chief Executive Officer

23/6/2008