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FILE No:
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MARS/PRISM:

10th July 2008

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

Dear Sir

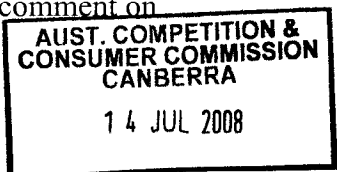
Re: Submission to the ACCC in relation to the Cooperative Bulk Handling Limited (CBH) exclusive dealing notification N93439

Milne AgriGroup Pty Ltd (MAG) is one of the largest domestic users of grain in Western Australia. Each year we purchase a wide range of grain types and grades from both grain growers and the trade, primarily for use in our stockfeed operation located in the metropolitan area. With changes in world grain markets in recent times and foreshadowed and the changes made to the single desk we are examining a range of options for the production of value added grain products and their export.

Each harvest, the bulk of the WA harvest is delivered into the CBH logistics and grain storage network and this is bought by the trade, including ourselves, and then in our case out turned from CBH to our Perth based stockfeed operation prior to the next harvest.

In this submission to the ACCC we raise concerns about the operation of Grain Express and its impact on domestic users of grain in Western Australia. In its current form, Grain Express seeks to streamline the logistics of handling, transporting and exporting grain from the state and the CBH Group as one of the largest exporters is likely to be the main beneficiary. Grain Express focuses on export, and grain movements are structured so that they always move from the point of harvest towards the nearest port and in some instances this can severely disadvantage domestic acquirers and users of grain.

For MAG the disadvantage stems from our requirement in some years to buy grain out of a port zone (e.g. downgraded wheat or barley because of a harvest weather event in a particular region) and little option but to store this grain in a local CBH bin for outturn to our Perth operation at a later date. To help illustrate this we provide an example which we have formally provided to CBH Group when asked to comment on



their proposal. The principle of this example is applicable to the out of zone purchase of any grain or grade.

The example:

- *In a particular year (for any reason) there is an opportunity to buy feed barley at an acceptable price in Hyden (Albany port zone and therefore 'out of zone')*
- *MAG buys it delivered into CBH Hyden intending to out-turn it later in the year to Perth.*

The situation now:

- *MAG buys the barley at the Albany port price (say \$200/mt) minus Hyden freight of say \$20/mt = \$180/mt*
- *MAG then freights the grain to Perth at say \$20/mt to arrive at a delivered price of \$200/mt*
- *This equates to the price MAG would have paid for feed barley bought in the Fremantle shipping zone (this is why it works)*

The situation under Grain Express:

- *MAG will be forced to buy the feed barley delivered into CBH Hyden at CBH Wagin (Hyden destination site is Wagin), which will price the grain at \$200/mt Albany less Wagin freight of say \$15/mt (closer to port, and the grower has been charged freight to get the grain from Hyden to Wagin and will want to get reimbursed for this) = \$185/mt*
- *The grain is now further away from Perth and will now cost MAG around \$25/mt to freight to Perth.*
- *The grain will now cost \$210/mt delivered Perth, an additional cost of \$10/mt which is a substantial on-cost in high volume grain sales.*
- *The additional cost of the out-of-zone grain is because under Grain Express the grain is treated as having automatically moved away from Perth to a destination site closer to the port in that zone even though it may not physically have moved. We are essentially charged this freight (reflected in what we pay the grower - as outlined above) and then on top of this because the grain is now further away it costs us more to transport back to Perth.*

This type of exercise of monopoly power by the CBH Group is highly prejudicial to domestic grain buyers as it increases their costs and carbon footprint. Whilst we appreciate that the CBH Group wishes to improve the efficiency of exporting for their export grain trading operation, domestic grain buyers such as us also utilise such grains for value added production in Australia. Grain Express penalises domestic buyers and effectively requires them to subsidise some of the logistics costs of the export of grain for the benefit of those engaged in grain trading (including CBH Group). Grain Express will also prejudice the development and investment in the export of value added products from Western Australia.

In a formal response to our concerns, CBH Group sent us a letter dated 4th July 2008 (copy attached) acknowledging that in some instances Grain Express would disadvantage domestic acquirers and users of grain. They provided a 'draft' proposal to deal with our out of zone grain purchases, but to date have given no commitment to the proposal nor have they provided any guarantee that MAG would not be disadvantaged under any circumstances under Grain Express.

Accordingly, we have no alternative but to register our objection to the Grain Express proposal which we regard as an abuse of market power and to request that the ACCC does not grant the approval sought by CBH Group unless an enforceable undertaking is included to protect domestic grain purchasers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'B Thomson', followed by a long horizontal flourish.

Dr Brett Thomson
General Manager Supply Chain & Technology
Milne AgriGroup Pty Ltd

7 JUL 2008



4th July 2008

Dr Brett Thomson
General Manager
Supply Chain & Technology
Milne AgriGroup
103-105 Welshpool Road,
Welshpool, WA, 6986.

Re; Grain Movements between CBH Zones under Grain Express.

Dear Brett;

Thank you for your email correspondence to Mr. Michael Musgrave dated the 13th June 2008.

In this email you highlighted the issue of out of zone grain movements under Grain Express as an area of concern to the Milne Agrigroup.

In summary your concerns are detailed below. The summary uses CBH Hyden and CBH Wagin as examples. CBH acknowledges that your concerns could relate to other CBH receival sites.

- Milne AgriGroup operates a facility located at Welshpool WA.
- CBH have four zones of grain production those being the Albany, Esperance, Geraldton and Kwinana zones.
- In particular years, the Milne AgriGroup may have an opportunity to buy feed barley at a competitive market price from grain producers who deliver their grain to CBH's receival site located at Hyden. CBH Hyden is located in the Albany zone.
- Milne AgriGroup buy grain delivered into CBH Hyden with a view to out-turning it later in the season to Milnes' facility located at Welshpool. Milnes' facility is located within the CBH Kwinana Zone.
- A domestic grain outturn of this type is termed an out of zone movement.
- Under Grain Express, Milne AgriGroup considers they will be forced to buy feed barley delivered into CBH Hyden at CBH Wagin. CBH Wagin has been determined to be the CBH destination site for CBH Hyden.

- The purchased grain will now be further away from Welshpool as Milne AgriGroup will have stock entitlement at CBH Wagin.
- The additional cost of the out-of-zone grain is because under Grain Express stock entitlement is automatically moved away from Milne's facility located at Welshpool to a CBH destination site (CBH Wagin) which is closer to the port within the Albany zone.
- Milne AgriGroup consider they will be charged the freight to move the grain further away from their facility since it is reflected in what Milne AgriGroup pay the grain producer. Additionally, as the grain is now further away from their facility it may cost Milne AgriGroup more to transport the grain back to Welshpool.

CBH have considered this matter.

It is the belief of CBH that participants within the Western Australian grain industry will continue to acquire grain within the CBH zones of grain production as per the export route.

If a CBH customer wants to move a significant parcel of grain between CBH zones, CBH would reconcile the freight back to the CBH receival site(s) at which we intend to accumulate grain from. CBH will then charge the customer the cost of freight from the CBH receival site at which the grain was delivered to the location of the intended end user if CBH arrange transport resources.

Consider for example, Milne AgriGroup has stock entitlement at CBH Wagin following the purchase of feed barley that was delivered to the CBH Hyden receival site. CBH propose to rebate Milne AgriGroup the freight charge incurred to move grain from CBH Hyden to CBH Wagin. CBH would then charge Milne AgriGroup the freight charge from CBH Hyden to Milne AgriGroup's facility located at Welshpool if CBH arrange transport resources.

Such arrangements will be considered on a case by case basis so that the freight rate of the day can be taken into account.

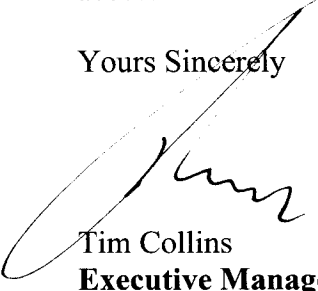
To date CBH has not established firm business rules relating to domestic outturns of grain from CBH destination sites. CBH is holding a transporters forum within the month of July 2008. At this forum the invited twenty five (25) transport companies will assist CBH to finalise the business rules for domestic outturns from CBH destination sites.

CBH considers that in regards to your concerns CBH will have two options available to it. CBH could set a minimum tonnage that is required to be outturned from a site in order to operate as per the manner described above. Alternatively as happens now, the customer could work with CBH to outturn grain from a CBH receival site when the receival site is operational as per the program determined by CBH Operations.

To enable a customer to take up such options it will be essential that the customer engages with CBH Operations in the pre- and post- harvest Grain Express planning process as detailed by the Quality Management Plan. Under this process the customer will need to review their grain purchases and match them to their outturn needs. After harvest this may allow the out of zone stock to be identified, freight costs prepared and outturn plans arranged accordingly by CBH operations.

Under Grain Express CBH is committed to working with its customers to provide a simpler logistics system. We encourage you to continue to provide us with your feedback so valued customers like Milne AgriGroup have open, fair and equitable access to the CBH system.

Yours Sincerely



Tim Collins
Executive Manager - Logistics