

**Blanch, Belinda**

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**From:** D'Ettorre, Gina  
**Sent:** Thursday, 15 October 2009 3:21 PM  
**To:** Blanch, Belinda  
**Subject:** FW: Revocation of Grain Express #2 [SEC=UNCLASSIFIED]  
**Categories:** SEC=UNCLASSIFIED  
**Attachments:**  
**ACCC Classification:** SEC=UNCLASSIFIED

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**From:** Adam Bisits [mailto:adam.bisits@netlink.com.au]  
**Sent:** Thursday, 10 September 2009 5:45 PM  
**To:** richard.chadwick@Qaccc.gov.au; Hatfield, David; Jones, Gavin  
**Cc:** Sheppard, Sarah; eugene.henry@acc.gov.au; Hilton, Tony  
**Subject:** Revocation of Grain Express #2

Dear Mr Jones,

I am sending this to you as I understand from Mr Hatfield that you now also are dealing with this matter.

Since Glencore Grain's letter to Mr Chadwick of 13 August requesting revocation of Grain Express, CBH has announced two changes relating to Grain Express, which we submit you should consider as further grounds for revocation. We also wish to illustrate the price and shipping uncertainty that Grain Express imposes.

### **1. "Unused" surge charges to be "rebated"**

In the notice below, sent on Wednesday 2 September, by CBH to Glencore Grain, CBH proposes to "rebate" to exporters "the un-used portion of the cost of Surge (including interest)".

In Glencore Grain's letter to you of 13 August, requesting revocation of the exclusive dealing notification for Grain Express, CBH's surge charges (extra charges by CBH for transporting grain to port) were described as an opaque levy at the sole discretion of CBH, CBH having the leverage to impose the charges because of its Grain Express monopoly in transport to port.

The notice from CBH confirms the discretionary nature of the surge charges. Marketers should not be subject to discretionary charges turned on and off like a tap at the whim of CBH, a situation which would not arise if there was no Grain Express monopoly in transport to port. We thus affirm Glencore Grain's request that the notification of Grain Express be revoked.

### **2. Alleged new voluntary nature of Grain Express**

At para 2.3 of a letter on behalf of CBH of 24 August 2009, from Corrs, which is on the ACCC's website at the wheat export part, CBH announced that Grain Express was "voluntary".

If Grain Express is no longer forced on growers and marketers, but is truly voluntary they would be able to freely choose whether or not to take Grain Express.

However Glencore Grain understands that what CBH actually is offering is that the grower or marketer may organise its own transport to port **only** from the farm or from a private up country storage. On the other hand transport of grain taken from CBH storage upcountry, a large percentage of the state's grain, is still required to be by CBH under Grain Express.

For Grain Express to be truly voluntary it should be voluntary for transport to port whatever the provenance of the grain, whether the farm, private storage or CBH storage. Revocation of the notification of Grain Express will show that Grain Express is truly voluntary and an alternative to other arrangements, such as organising

one's own transport to port. Again this affirms Glencore Grain's request that the notification of Grain Express be revoked.

### **3. Price and shipping uncertainty**

Growers sometimes wish to sell ahead to get a better price. Eg in the attached contract note dated 26 May 2009, the grower has agreed to sell 250 tonnes of APW1 0910 season wheat at \$315 per tonne delivered at the port of Kwinana between 15 November to 31 December 2009.

If Glencore Grain were allowed to transport the wheat to port and the grower agreed, the price for transport would be incorporated and the grower would know the actual net price he or she was to get. Glencore also would like to lock in the transport price and have the security of controlling transport to port.

But in fact the grower would deliver the grain to CBH for up country storage and be obliged by its agreement with CBH for CBH to organise transport to port. As of 26 May 2009 the cost of such transport had not been published by CBH. As of today's date that cost has not been published, and the rates may not be published til much later this year. This imposes considerable uncertainty as to net price. Eg if the up country receival point were Merredin, the transport cost last year including surge was 27.46% higher than the previous year or \$28.50 (as opposed to \$20.12 in 2007/08) – the source is attachment 3 to Glencore Grain's letter of 13 August. \$28.50 and more is a substantial part of a grower's margin and it is unfair to the grower that he or she not be allowed to fix this cost at the time of selling his or her wheat.

For Glencore Grain the risks are that (i) it will be charged a surge fee by CBH on top of what CBH is getting from the grower and (ii) that transport to port will be delayed as it was last season in the hands of CBH.

The importance of being able to sell ahead may be seen from the fact that in recent days APW1 0910 season wheat attracted a price of just \$230 a tonne, \$85 less than the 26 May price.

These risks and uncertainties for both grower and marketer are eliminated if they are allowed to operate outside Grain Express.

Please let me know if you have any queries.

Yours sincerely

**Adam Bisits**  
**Solicitor**

**level 10**  
**607 Bourke St**  
**Melbourne 3000**  
**Australia**

**+613 9675 0305**  
**+61 (0)438 405 527**  
**fax + 613 96143970**  
**adam.bisits@netlink.com.au**

#### **The Notice from CBH to Glencore Grain**

From: "McMiles, Jody" <Jody.McMiles@cbh.com.au>  
To:  
Date: 02/09/2009 10:36 AM  
Subject: **Surge Rebate**

15/10/2009

Dear Customer

CBH Operations would like to advise that we expect to be in a position to provide a rebate to exporters who paid Surge fees in the February to August period.

As you are aware, CBH offered exporters Surge freight during this period to accelerate the movement of the crop from up-country to port to alleviate shipping congestion. This initiative achieved a good result with a record 1.5 million tonnes shipped in March and more than 300 vessels and nearly 10 million tonnes exported from WA to date.

At the time, the cost of Surge freight was estimated on the basis of expected pathways to port. It was not a profit-generating initiative. With the acceleration complete, and with the process of reconciling shipments being finalised, we will soon be in a position to rebate to exporters the un-used portion of the cost of Surge (including interest).

The factors which have contributed to this surplus included our ability to negotiate some additional rail wagons and train resources at no extra cost, the management of our road fleet to haul additional tonnage at competitive rates, and a drop in fuel prices below the level predicted.

It is anticipated the rebate will be paid on a zone basis, as the prevailing shipping and freight circumstances in each zone determined the amount of Surge expended. This means that each zone may return a greater or lesser rebate.

At this stage we will be working towards the following dates to finalise the rebate

21 September - CBH will calculate the rebate and notify each exporter

28 September - the rebate will be paid, details to be confirmed.

We take this opportunity to thank everyone involved in the acceleration of accumulations since March. This result could not have been achieved without the co-operation of exporters and significant effort by all concerned.

If you have any queries, please contact [customersupport@cbh.com.au](mailto:customersupport@cbh.com.au)

Kind regards

**Jody McMiles**

Manager - Customer Accounts

CBH Operations

30 Delhi Street, West Perth WA 6005

M: 0427 385 004

P: (08) 9237 9776

F: (08) 9237 9827

E: [Jody.McMiles@cbh.com.au](mailto:Jody.McMiles@cbh.com.au)

