



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2008/945  
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23 April 2009

Bill Keane  
Partner  
Corrs Chambers Westgarth  
Level 15  
240 St Georges Terrace  
Perth WA 6000

*Via email: [Bill.Keane@corrs.com.au](mailto:Bill.Keane@corrs.com.au)*

Dear Mr Keane

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification N93439  
- request for information**

I refer to the above mentioned exclusive dealing notification concerning Cooperative Bulk Handling Limited's (CBH) 'Grain Express' storage, handling and transportation arrangements.

As you are aware, on 8 September 2008 the ACCC decided not to revoke the immunity afforded by the Grain Express notification at that time. The purpose of this letter is to request information about the operation of Grain Express since the ACCC's decision.

In particular, the ACCC is aware that there have been recent congestion problems and consequent delays loading grain vessels at CBH's export terminals. In light of CBH's public benefit claims in relation to Grain Express – particularly in relation to improved efficiency of the transport task and enhanced port efficiency – I would appreciate receiving further information on this issue, including:

1. Please explain what factors have caused the current congestion problems, including the contribution of Grain Express to the current situation.
2. Please explain what CBH considers is likely to have occurred in the current environment if Grain Express had not been operating.
3. Please outline the current proportion of wheat being delivered by road and rail at each of CBH's export terminals under Grain Express.
4. More generally, please provide CBH's view about the operation of Grain Express to date, including whether CBH has any plans to review its operation prior to the next

Further, as outlined in the ACCC's decision of September 2008, the ACCC was of the understanding that under Grain Express marketers remained free to arrange the transport of grain direct from the farm to the end point, including the port, for example.

However, concerns have been raised with the ACCC that marketers are effectively being excluded from accessing CBH's port facilities unless they put their grain into CBH's system up-country and have it transported to port via Grain Express.

5. Please provide a response to the above mentioned concerns regarding marketers being effectively declined access to CBH's port facilities unless they use Grain Express. In particular:
  - i. Please confirm whether marketers can access CBH's port facilities without using Grain Express.
  - ii. If yes, please provide details of instances of delivery of grain direct to port. Please also provide a copy of the standard terms and conditions that govern the arrangement of delivery of grain direct to port.

I would be grateful if you could arrange for a response to be provided to the ACCC by **1 May 2009**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact David Hatfield (02) 6243 1266 ([david.hatfield@accc.gov.au](mailto:david.hatfield@accc.gov.au)) or Jaime Martin on (03) 9290 1477 ([jaime.martin@accc.gov.au](mailto:jaime.martin@accc.gov.au)).

Yours sincerely



Darrell Channing  
A/g General Manager  
Adjudication Branch