



**Australian  
Competition &  
Consumer  
Commission**

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18 June 2010

Mr Bill Keane  
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Corrs Chambers Westgarth  
Level 15  
240 St Georges Terrace  
PERTH WA 6000

***Via post and 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 further information**

As previously foreshadowed in our meeting on 1 December 2009, and discussed by phone on 31 May 2010, following the second grain harvest season since the Grain Express system was implemented, and given ongoing concerns some parties have expressed about the operation of the Grain Express system, the ACCC is undertaking a review of the notification.

To assist the ACCC in this review please provide a response to the attached list of questions and any other matters you consider relevant by **Thursday, 15 July 2010**.

Please also find attached a copy of the letter the ACCC sent to interested parties seeking their views about the notification. At the end of the consultation period, we will also provide you with a copy of all publicly available submissions received.

Please note the ACCC has not formed a concluded view about the notification at this time. Rather it has commenced a public consultation process to properly assess the concerns raised about Grain Express.

This letter will be placed on the ACCC public register. To assist public consultation on this matter, the ACCC would prefer to place the full list of questions on the public register. However some of the questions refer to material that CBH has provided to the ACCC previously on a confidential basis. As such, I would like to provide you with an opportunity to comment about whether some of the material in the attached list of questions should be excluded from the public register. If you consider that some of this material should be excluded from the public register, please advise us of this by **Thursday, 24 June 2010** and provide reasons for your view.

The ACCC will take account of any concern you have in deciding whether to place the list of attached questions on the public register and, if the ACCC is satisfied that some of the

information in the list of questions is confidential, will place a copy of the list of questions on the public register with this information redacted.

If you wish to discuss any aspect of this matter, please contact: Gina D'Ettorre on 03 9290 1483 ([gina.dettorre@accc.gov.au](mailto:gina.dettorre@accc.gov.au)) or Gavin Jones on 03 9290 1475 ([gavin.jones@accc.gov.au](mailto:gavin.jones@accc.gov.au)).

Yours sincerely



David Hatfield  
A/g General Manager  
Adjudication Branch

## **Questions for CBH about the Grain Express Notification N93439 – 18 June 2010**

### **General**

In CBH's letter to the ACCC dated 14 May 2009, CBH identified a number of factors it considered caused congestion problems and consequential delays loading grain on to vessels at CBH's export terminals during the 2008/09 grain season. CBH also expressed the view that, but for Grain Express, congestion would have been worse.

In a meeting with the ACCC on 1 December 2009, CBH expressed the view that it expected that there would be an improvement in the operation of the Grain Express system during the 2009/10 season both because the factors previously identified by CBH as causing congestion would not be as prevalent during the 2009/10 season, and because of changes to the Grain Express system that CBH was implementing.

1. Please provide an overview of how Grain Express operated during the 2009/10 season, including changes made to the system since the 2008/09 season and the effect of these changes on the operation of the system.
2. Please advise whether CBH experienced any congestion at ports in the 2009/10 season, including details of the number of any such occurrences, parties affected, length of delay, the reason/s for any congestion and the steps taken by CBH to reduce any congestion.
3. Please also provide your views about the contribution of the Grain Express system to mitigating or exacerbating any congestion problems.

### **Direct to Port access**

4. For each CBH port, please provide details of Direct to Port deliveries during the 2009/10 season, including:
  - a) the number of times the Direct to Port option was utilised
  - b) which parties used the Direct to Port option, and
  - c) the volume of grain delivered to port via this method
  - d) for each instance of Direct to Port delivery whether grain was delivered as part of the co-mingled system or delivered into segregated storage at the port.

### **Storage**

5. The report commissioned by CBH and prepared by ACIL Tasman, *A review of the Wheat Export Marketing Act 2008*,<sup>1</sup> states that alternative supply chains to Grain Express are being actively developed by several groups in Western Australia. To the

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<sup>1</sup> ACIL Tasman, *A review of the Wheat Export Marketing Act 2008*, November 2009 at p.10

extent that this information is available to CBH, please provide further details about any alternative supply chain/s being developed, including:

- a) the identity of the group/s proposing to and/or actively developing an alternative supply chain
- b) the likelihood of such a supply chain being developed
- c) how long it has taken/will take to develop an alternative supply chain.

#### **Transport**

- 6. Please provide the ACCC with an update of the road and rail contractual agreements CBH negotiated for the 2009/10 season.
- 7. CBH has commenced a tender process for above rail grain freight services. What changes to the rail freight arrangements are likely to result from the tender process?
- 8. To the extent that it is not addressed in response to questions 1 and 4 above please provide the following:
  - a) Details of any improvements CBH made to its transport arrangements for the 2009/10 season.
  - b) A comparison of rail freight costs to road freight costs for the 2009/10 season, based on CBH's estimate as at February 2010. Please include any data and/or assumptions made or relied on in forming this comparison
  - c) Whether the freight rates appear to have increased or decreased for the 2009/10 season compared to the 2008/09 season.
- 9. Please advise whether a sustained reduction in the volume of grain carried by rail on Grain Express would result in a change to rail freight costs charged by CBH to users of the Grain Express system. Specifically, if the volume of grain carried by Grain Express were reduced by a quarter, how would this affect the cost of rail freight?

#### **Volume of grain exported through CBH ports**

- 10. For each CBH port, please provide details of the volume exported during the 2009/10 season (by month) of :
  - a) total grain (including bulk and container grain)
  - b) bulk wheat
  - c) each type of non-wheat grain (in bulk), and
  - d) each type of grain (by container).

11. Please provide details of the revenue achieved by CBH during the 2009/10 season (by month), of:

- a) total grain (including bulk and container grain)
- b) bulk wheat
- c) each type of non-wheat grain (in bulk), and
- d) each type of grain (by container).

12. Please provide details of the cost incurred during the 2009/10 season in exporting:

- a) total grain (including bulk and container grain)
- b) bulk wheat
- c) each type of non-wheat grain (in bulk), and
- d) each type of grain (by container).

#### Calculation of fees and charges

I understand EXCLUDED FROM PUBLIC REGISTER

that CBH has substantially restructured its pricing in response to the regulation of port terminal services and as part of CBH's Port Terminal Services Access Undertaking; that the restructure caused some fees to rise and others to drop or be abolished; and the domestic outturn fee is intended to more correctly reflect the costs of providing the outturn service.

Further, I understand that the primary factor in CBH setting the level of fees is whether the aggregate revenue from all fees will meet all costs and that it is not unusual for a cooperative to set fees in this manner as they are not obliged to derive profits for shareholders.

I understand that while CBH has not quantified the cost for every input involved in domestic outturn, it nevertheless reached the view that the \$3.20 domestic outturn fee was too low because the abolition of certain fees, including time based storage and transport recovery fees would produce a shortfall unless some of the remaining fees, such as the outturn fees were increased.

I also note that CBH has publicly stated on its website that it has recently conducted an extensive review of the cost of providing its port services as well as exploring the cost and value of its services along the entire supply chain.

13. To the extent that CBH is able, please provide the following information:

- a) Details of each of the services (including transport costs/charges) that are included in and calculated as part of:
  - i. the \$10 up-country receival charge

- ii. the \$8.50 outturn fee
  - iii. the \$17.10 fobbing fee (consisting of the \$3.00 upfront marketer fee and the \$14.10 export fee)
  - iv. any other fees that CBH charges grain exporters as part of the CBH grain supply chain.
- b) How CBH calculated or otherwise determined the fees listed at (a), providing a detailed description of that calculation or determination and including the individual cost breakdown of each service included in the fee.
  - c) The marginal cost to CBH of each of the services provided by CBH as part of the charges and fees listed at (a) above.
  - d) If any of the fees listed at (a) above are not reflective of the marginal costs of each service that is part of that fee, please supply a breakdown of the other individual costs (if any) that are included in that fee.

#### **Shipping capacity allocation auction system (Auction system)**

In response to congestion at CBH ports and consequent delays to ship loading, CBH implemented a new Auction system. I note that when marketers bid for shipping capacity through the auction process, they were also required to nominate whether they would use the Grain Express or Direct to Port supply chain within five business days from the completion of each auction.

- 14. In your view, please explain the impact of the Auction system on congestion at port for the 2009/10 season. Please also advise whether CBH received complaints about the Auction system, the nature of any such complaints and how any issues were resolved.
- 15. Please advise the nature of any delays and whether it was necessary for CBH to charge surge fees during the 2009/10 season. If yes, please provide details of the amount of any surge charge imposed, including the reason for imposing the charge, party/s affected and relevant dates.
- 16. If it was necessary to impose a surge charge, please advise why it was necessary given that the auction system was intended to address congestion at port.
- 17. Please advise what the reserve price for capacity for the Phase Two auction process was, and the basis on which it was set. Does the reserve price reflect the marginal cost of CBH providing shipping capacity to grain traders? If not, what other costs are included?
- 18. I note the views of some parties who provided submissions to the Productivity Commission's Inquiry into Wheat Export Marketing Arrangements, that the Auction system acted as an impediment to parties that may wish to by-pass Grain Express and was also detrimental to the secondary market for shipping slots. I note that CBH has issued a discussion paper with proposals to amend the Auction system. CBH sought responses by 14 May 2010. Please advise the nature and extent of any further

amendments CBH proposes to its Auction system based on the outcome of consultation.

#### **Freight fund – results of audit**

As part of CBH's submission in support of the notification CBH said it would provide a report on the operation of the Freight Fund at the conclusion of the first season and every subsequent season of operation. CBH expected to finalise its first report on 31 October 2009. CBH also submitted that the Freight Fund would be independently audited by an external auditor and an annual financial report (the Report) would be provided to the National Agricultural Commodities Marketing Association, the Western Australian Farmers Federation and the Pastoralists and Graziers Association Inc. By letter dated 13 October 2009, CBH advised that it was preparing to produce a report on the operation of the Freight Fund and would provide the ACCC with a copy when it was available.

19. Please advise whether the Report has been completed and if so, whether a copy of the Report has been provided to the above parties. If available, please provide the ACCC with a copy of the Report and a copy of the independent audit. If the Report has not been completed please advise when CBH anticipates it will be completed.

#### **Domestic outturn fee**

20. EXCLUDED FROM PUBLIC REGISTER

the domestic outturn fee is payable by any person (including CBH subsidiaries) that removes bulk grain from Grain Express other than loading it onto an export vessel or into a container. Please advise whether CBH considers the domestic outturn fee forms part of the notified conduct and give reasons for your view.