

Our reference
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Your reference
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6 July 2010

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Richard Chadwick
Australian Competition & Consumer
Commission
GPO Box 3131
CANBERRA ACT 2601

Contact
Bill Keane (08) 9460 1600

Dear Sir,

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

Thank you to you and your team for your time on 29 June 2010.

1 Request for extension of time

1.1 CBH requests an extension of time to respond to the ACCC's letter dated 18 June 2010. CBH requests an extension of time to 29 July 2010 for the following reasons:

- (i) CBH is in the midst of a procurement process for the provision of rail services. Under that process, above rail providers will be making presentations in this period [redacted]
[redacted] This will absorb a substantial proportion of the available time of management responsible for Grain Express logistics;
- (ii) CBH is also in the midst of a substantial organisational redesign, which includes significant redundancies [redacted] This will cause additional demands to be placed on CBH management, particularly in the early part of the redesign; and
- (iii) the ACCC's request includes complex questions regarding cost and revenue that require substantial contribution from CBH's finance team. Some questions request information in a form that will require CBH to perform additional work in order to provide a clear and comprehensive answer to the question.

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2 Timetable for decision-making

- 2.1 It is important to note that CBH considers the notified conduct does not have the purpose or effect of substantially lessening competition. CBH also considers that the Undertaking addresses many of the concerns voiced by market participants and that a significant net public benefit results from the notified conduct. The extension of time requested above is required to allow CBH the time to provide the ACCC with sufficient information to inform a decision to allow the Notification to stand. However, the ACCC's decision-making in relation to the Notification has the potential for significant impact upon:
- (i) CBH's access undertaking for port terminal services (**Undertaking**); and
 - (ii) CBH's other supply chain preparations and arrangements, both internally and with third parties.
- 2.2 As the ACCC is aware, CBH engages in substantial pre-harvest preparations. Those arrangements include:
- (i) pre-harvest planning of operations;
 - (ii) pre-harvest site operations and maintenance;
 - (iii) negotiating and drafting transport contracts (for agreements terminating this year);
 - (iv) planning and implementing labour arrangements (both permanent and casual);
 - (v) drafting the Port Terminal Services Agreement (**PTSA**) for publication on the CBH website before 31 August 2010;
 - (vi) making any amendments to Port Terminal Rules and processes in accordance with the Undertaking;
 - (vii) negotiating agreements with marketers (which may involve requests to amend the PTSA);
 - (viii) planning and conducting the auction of capacity for the harvest period; and
 - (ix) determining the capacity that CBH can make available and planning the auction for the annual period.
- 2.3 At the same time, other market participants (including growers) are making their own plans, based in part on a clear understanding of the supply chain structure.
- 2.4 These preparations and arrangements are generally put into place in the period between May and October each year. For the 2010/2011 harvest, preparations are well advanced, with remaining transport contracts in the process of negotiation.
- 2.5 Because a decision by the ACCC to revoke the Notification (which CBH does not believe will be justified following the review) has the potential to require substantial

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changes to the supply chain, the timing for ACCC decision-making should be planned to take the harvest season into account and disclosed well prior to the commencement of harvest preparations. Taking such an approach will result in minimum disruption to the efficient operation of the supply chain.

- 2.6 The current review appears to be timed so as to provide an outcome prior to the 2010/2011 harvest if possible. CBH infers that the ACCC may have assumed that a decision made and implemented by that time would have minimal disruptive impact if the ACCC decided to revoke the Notification. Unfortunately, the nature and timing of pre-harvest preparations means that severe disruption will result if the ACCC were to revoke the Notification with effect prior to the 2010/2011 harvest. In short, such a decision would leave the supply chain without any central coordination and would require CBH and third parties to incur substantial costs in abandoning plans and revisiting existing contractual arrangements.
- 2.7 CBH submits that any decision to revoke the Grain Express Notification should be made prior to 1 December 2010, with any decision to revoke not coming into effect until prior to the 2011/2012 harvest season. This approach would enable the disruptive effects of such a decision would be most effectively managed in the interests of all supply chain participants. Specifically:
- (i) CBH and other supply chain participants could conduct harvest planning on an informed basis;
 - (ii) CBH would be in a position to submit a new Undertaking, amended PTSA and Port Terminal Rules, taking into account the substantial changes in supply chain structure that a revocation would cause; and
 - (iii) contracts with third parties could be negotiated in an environment of certainty for both parties.
- 2.8 If the ACCC adopted such an approach, the review could proceed without the pressure of reaching a conclusion prior to the harvest and preparations for the 2011/2012 harvest season (including the drafting and submission of CBH's further access undertaking) could proceed on a clearly understood and orderly basis.

Please let us know if the ACCC is prepared to proceed in this manner.

Yours faithfully

Corrs Chambers Westgarth


Bill Keane
Partner