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Mr David Hatfield,

A/g General Manager,

Adjudication Branch,

Australian Competition & Consumer Commission,

GPO Box 3131,

Canberra ACT 2601

Dear Sir,

Elders Toepfer Grain Pty Ltd (ETG) welcomes the opportunity to provide a submission to the ACCC in relation to the Grain Express Notification lodged by Cooperative Bulk Handling Ltd (CBH).

ETG believes transparency, efficiency and choice is paramount to a cost effective supply chain enabling maximum supply of grain to overseas buyers.

Given our experience since the inception of Grain Express (GE) in Western Australia (WA) and 2 years using the system, ETG believes this has not been achieved. In fact the intent of Grain express when first suggested to the market, and accepted by many participants on good faith, has not been implemented.

The concept of GE in its most raw form to ETG is one of risk sharing. ETG would give up its right to compete on transportation services and in return would receive virtual stock in port at all times to execute its export contracts. CBH would provide the bundled storage, handling and transport services. It would take on the transport risk but for this they would garner any benefits (or incur any losses) of providing the stock at port. Although this took away competition, in principle it made sense to have a centralised 'planner' of achieving movements to port.

ETG do not believe this is what has evolved. ETG (and other marketers) incur any of the costs above a 'self implemented' core capacity by CBH with no ability to test or challenge on transportation. The choice is simple pay or potentially you do not get your stock at port. This concept conveniently packaged in surge costs is not what industry agreed to in principle. In essence there is no risk sharing.

ETG would also note that in the context of this discussion there is not an undersupply of either port or up country elevation capacity and it is in fact the management of this capacity that is the issue. ETG would contend that GE is a central component of an overall system that does not encourage innovation, efficiency or effectiveness in the essentially export dominated WA grain market.

Referring to the questions provided in the guideline, we would make the following comments.

General

ETG make the following comments in relation to questions 1 – 4.

Grain Express (GE) is the central part of an integrated system that inhibits competition. GE is a closed link on up-country to Port services that does not allow for competition to test either the port capacity or the transportation component of the supply chain cost. At an up-country level the $8.50 / mt outturn fee that is applied to satellite sites under the Direct Port Access (DPA) model is a major cost inhibitor to allowing a benchmarking alternative to the GE for export model. In addition the requirement to nominate the supply chain of either GE or DPA, 5 days after acquirement of capacity, where capacity can be acquired upwards of 6 months in advance is another major deterrent against allowing competitive forces.

GE is the only link between up-country CBH storage and the Port, therefore competition on Grain Transportation is limited to ex. farm movements to the Port only. It should be noted today their is only very limited on-farm storage in WA that would allow direct loading of export ships. This is so for a number of reasons,

1. CBH as a grower co-operative has effectively been the growers storage. In a regulated there was no incentive (or need) for on-farm storage as there was little opportunity for farmers to create value so why invest.
2. Previously there was not a defined 'Direct Port' model.
3. There is a limited domestic market in WA. Again limited reason to invest in on-farm storage in a regulated market.

Under the current access rules the supply chain (either GE or DPA) must be nominated within 5 days of acquirement of port capacity. With limited tonnages on farm, there is simply too much risk to nominate direct port access ex-farm.

The limited volumes, GE and other CBH rules, processes and costs ensure development of an alternative channel via ex-farm to port will not be invested in. If there was transportation competition from up-country, this potentially competitive channel would likely develop as marketers would use a combination of ex-farm and CBH systems for port elevation.

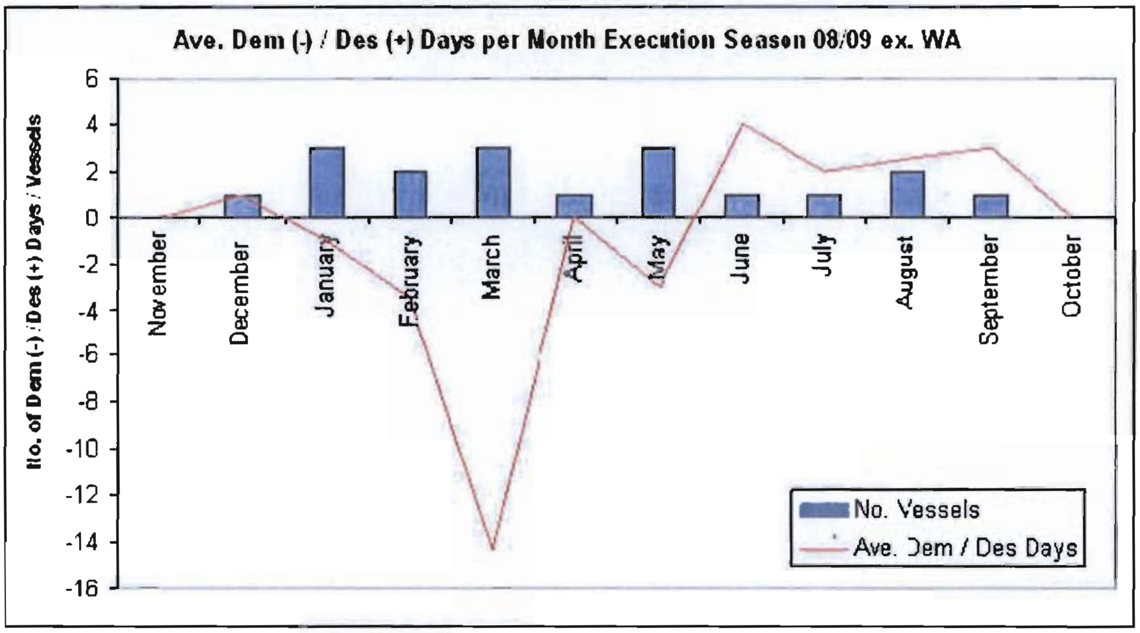
ETG are a firm believer that Bulk Handler Corporations (BHC) should be incentivised to increase available capacity to execute through there Port infrastructure at a given point in time. Under the GE model the capacity is capped at a level, determined solely by CBH in isolation to competitive forces and this can only be increased under GE from employing surge capacity. This effectively is utilising GE resources at a higher freight rate. The capacity is capped at a certain level without a benchmark that is measurable to perform against. However without competitive forces to supplement the supply chain the benchmark can-not be tested. Not providing incentives to challenge the benchmark leads to industry status quo, which inturn inhibits innovation and potentially drives inefficiencies within the market. Clear evidence of this has occurred in the current season with the implemented auction / allocation system, which has caused its own set of issues that will considered later within this submission.

Potential improvements in the GE model from season 08/09 to 09/10 are complex to consider. Season 09/10 has seen a downward move in the demand for elevation services ex. WA. The capacity for the majority of season 09/10 to date has been under utilised and not fully booked up. From having less grain move to the Port, the systems weaknesses have not been highlighted unlike the previous season.

The efficiency of GE from delivering grain to Port is extremely difficult to comment on as we have no way to test what is or is not the capability. All we have are the claims of a single service provider without competition. Clearly the need for GE or an alternative model hinges on the demand for port elevation as per the above comments.

In season 08/09 where capacity was continuously booked up to the available level ETG executed 18 vessels ex. WA origin for an average per vessel of 2.6 days demurrage. Whilst averaging demurrage on every vessel is an indictment on the system it does not reflect the vessels switched to other states, lost to Australia totally by switching or simply be cancelled at what can be significant costs. Essentially the GE system did not stack up, it cost extra in transport, it caused reputational issues for marketers and Australian grain and the GE system was isolated from 'surge' costs. The foresight of delays within the 08/09 season saw ETG move 3 shipments to other competing origins to avoid the Port congestion. This ultimately reduces the viability of the WA supply chain and induces a net reduction in cash flow back to the grower from moving grain contracts to competing origins.

The below graph demonstrates the extent of delays experienced throughout the peak execution period in season 08/09. This ultimately led to ETG moving shipments and risk exposure in the second half of the season, a trend that was seen throughout the industry.



In the current season YTD (end May) where capacity has continually been oversupplied and demand down, ETG have shipped 17 vessels for an average pick up of 1.7 days despatch per vessel. In summary in a season of slack demand the GE model has effectively met the shipping program in delivering grain to Port, however this does not address the experiences of the past where bottlenecks occurred at the Port, because the market simply did not demand the same utilisation of WA. It should be added that whilst this season has not had the same issues, there is no measurement to say that GE has done a good job. Have we achieved efficient freight, have we maximised port utilisation? These questions can-not be answered as we have no opportunity to test or benchmark the GE performance.

ETG would make the general comment that we are happy to be offered a bundled service from CBH for storage and transport. We are not against the concept of centralised planned movements to port. If this is efficient, effective and makes sense we will use it. The current situation though is we have no choice and therefore the above logic does not apply to GE today. A model more akin to South Australia where if the bundled service makes sense you use it, but if not you can have an alternative is more what we would suggest. If a competitive version of GE was offered where we do not have to use but can choose to use without other in-built penalties was available then commercial logic will prevail.

Up-country storage and handling

ETG make the following comments in relation to questions 5 – 12.

The volume of on-farm storage & non-CBH on farm storage in WA is insignificant relative to CBH. 98% - 100% of WA grain production is moved through the CBH storage network. With the current integrated export model under GE there is no incentive to build or outlay substantial amounts of capital. Without the opportunity to manage risk by out-turning grain from CBH sites with our freight and without substantive in built penalties the likelihood of alternative investment in regional communities is slim. In other Australian states the grower has the opportunity of off-setting the risk against the domestic market, however in WA the GE inhibits going DPA ex. farm and this makes such investment highly unsustainable under the current model, operating procedures and cost structures of CBH.

Restricting growth of on farm storage has a negative effect on rural innovation and erodes potential returns to the grower at the farm gate. If this alternative channel in the supply chain can create value and increase efficiency it should be encouraged.

All types of grain can be stored in on farm storage, bearing all control and grain hygiene measures are followed to the approved standards. ETG has recently released a Private Warehouse Program (PWP) that provides industry benchmarking for storing grain on farm. This program involves an accreditation at a farm level by SGS agricultural services and provides the grower with access to information databases for testing and quality assurance. In the first season of the program running, ETG has signed in excess of 200,000 mt of grower storage within the east coast. The current DPA model is the west limits the viability of such a program becoming attractive to the WA grower with the inherent cost and execution risks to the Port.

There is abundant available Port capacity at all WA Ports. We believe it is the construct of the cost/rules of CBH that are the impediment, not the lack of port capacity. The capped available pipeline to Port, based purely on CBH's own views, and disincentives to test port capacity and throughput are the root cause of bottlenecks during peak demand, as seen throughout season 08/09. As discussed vigorously within this submission there is limited on farm storage that exists in WA due to the current inhibitory structure, however any DPA model must be considered as a supplement only to GE on accumulating for an export position. Ultimately this potentially increases capacity from utilising transportation above and beyond the 'core' GE resources (and possibly without additional surge costs), which in effect increases efficiency and net revenue back to the grower from more tonnage throughput moving through the Port at a given point in time.

ETG does not believe it is prudent for the industry to replicate the CBH storage model. This would only lead to wastage of capital and a further over supply of storage capacity, the key is ensuring there are competitive forces in moving grain to Port that effectively drive efficiencies for the net benefit of the industry. It is also an opportunity for industry people to invest capital to 'supplement' CBH's current infrastructure. By doing this we could test the true capacity of ports by introducing the potential of new transport systems to the port.

This point is extremely salient at the moment where CBH have made it clear there supply chain costs are too high and they are actively reducing costs (recent press comments and staff reductions). There is surely no better time for this supplement to the system to be encouraged. Again we reiterate our position that GE is the centrepiece of an integrated system that seems to discourage rather than encourage this outcome.

By-passing Grain Express

ETG make the following comments in relation to questions 13 – 16.

In ETG's opinion we believe there are adequate alternative transport providers available to service the WA grain network. However under the current model where GE is the central integrated link from up-country to the Port there is no ability to competitively utilise these providers.

ETG are a minimal player in the WA container market, however when delivering grain to a container facility there is increased ability to shape your own destiny from competitive forces on freight and service providers alike. Throughout this document we have highlighted that limited tonnages exist outside the CBH network and therefore the container market supply chain is insignificant compared to the bulk export market which is centralised around the GE model, where competition is inhibited.

Transport

ETG make the following comments in relation to questions 17 – 21

The current season has seen limited pressure being placed on transport resources moving grain to Port. Basis the downturn in demand, it can not be judged if improvements on efficiency in moving grain to Port were achieved when comparing to season 08/09.

Limited demand above the benchmarked available capacity in season 09/10 has resulted in minimal acquirement of surge capacity. ETG have not entered this market in the current season, however in season 08/09 this was a significant execution cost and risk. In 08/09, ETG shipped 760,000 mt ex. WA origin of all commodities. In total ETG was charged $1,014,537 in surge fees or $1.33 per MT across all tonnes shipped. At the end of the season on reconciliation ETG did receive a rebate of $281,263 or $0.37 per MT. This resulted in a net cost over and above GE core capacity of $733,274 ETG have incurred. This cost is in addition to demurrage costs, relocating vessels and cancelling vessels. ETG are only one shipper and our story is not an isolated one, so the original promises and support of GE are hard to reconcile to these types of outcomes. In addition the exposure encountered throughout the season had a direct effect on the daily pricing shown to the grower, where the market looked to factor in risk costs against the BHC performance.

The BHC inability to share the execution risk during the peak demand in 08/09 forced the market to outlay additional costs under the banner of 'surge' to effectively assist in underwriting the GE in expanding its resource base. Under the GE arrangement the shipper had no alternative other than absorbing these costs or being placed at the back of the shipping queue. In an environment of competitive intention the market should have been given the opportunity to employ and allocate resources outside the current GE base to supplement the movements to Port, inturn increasing efficiency, Port throughput and net returns back to the grower, however under the centralised integrated GE system this was prohibited.

Demurrage

As discussed within the general comments on this submission, GE has clearly contributed to demurrage costs faced by exporters. The extent of these costs can only be looked upon in the relevance of the season in question. In a high demand season such as 08/09, demurrage costs were prevalent as the weaknesses of GE were exposed. In the current season where the GE has not been placed under the same pressure the extent of costs has been minimal, however still apparent. We again re-iterate our comments that there is no ability to see if the system should be performing better than it has this season. Even with the reduced demand there have been instances where ships have had to wait for cargo to arrive at port after meeting all the other conditions imposed on us by CBH. This must again come back to this centre piece GE strategy which still does not take any of this delay risk.

The GE is the central part of a fully intergraded system linking up-country to Port, in an environment where competition is inhibited. This should result in only minimal risk if any of demurrage being forced on the shipper and only in circumstances that out of the BHC control. As a user of the system, ETG have experienced first hand delays at the berth while awaiting cargo to be moved to Port, something we as the shipper had no ability to control or supplement.

Shipping capacity allocation system

ETG make the following comments in relation to questions 23, 24 & 25.

The auction rules have a significant impact on a marketer's decision to use GE. When acquiring the slots under the auction system in October 09, as discussed throughout the submission the requirement was to nominate the supply chain 5 days post the acquirement. In October many variables still exist for the crop production and price that will influence the growers delivering / storage trend at harvest. These factors in addition to the non-performance risk on shipping slots results in the marketer being left with no option but to nomination GE. Once the slot has been acquired under GE the market is left bearing the full execution risk under the current structure where non performance results in a default at full execution cost, even if no workings has been performed by the BHC.

ETG do acknowledge that under the current system the market does have certainty on vessels being loaded within a timely fashion. There is a need for a fair and transparent allocation system to be in place. However, there should also be incentives / alternative accumulation models in place to allow for additional capacity being handled through the Ports over what is in place for the auctioned capacity.

Under the current structure the capacity is 'capped' at what CBH determine the pipeline capabilities to the Ports. A marketer must have secured a shipping slot prior to evaluating any execution model and has no ability of being able to shape or assist there execution.

Under an alternative model, the marketer would be able to determine if there is a cost benefit in placing on additional nearby business with associated premiums for organising own transport / deliveries etc. The current domestic outturn fee ex. CBH site is a price inhibiter to the above and therefore CBH must consider a differing outturn structure for domestic stock and cargo destined for export if they are committed to maximising efficiency.

The secondary market only existed and facilitated in the current season through the market looking to off-set part risk in the full execution exposure on non performance. If the auction is operating effectively then the secondary market becomes extinct from the market ever only acquiring required capacity. It should be noted that secondary markets (not to mention primary markets) perform where there is liquidity. The breakdown of the CBH auction system secondary market (and arguably the primary market) is due to the fact that overall supply is greater than demand and in that environment we simply do not have a liquid market for a specialised technical service.

ETG note with interest comments made on the CBH website encouraging growers to make submission to the ACCC supporting the maintenance of GE. We can only assume the headline bullet points provided are the basis for the grower to make submission.

ETG note the claims made to growers would possibly lead growers to believing without GE they will incur much more in the way of cost and subsequent reductions in service.

ETG would like to be able to have quantified the assertions / comments suggested. A number of these assertions are central to comments and questions marketers have asked or been keen to understand in regard to the GE process to date. If these assertions can be demonstrated we would be the first to acknowledge. Up to this point this has not occurred to ETG and our only experience and data are the unfortunate inefficiencies, costs and lost opportunities mentioned in this submission.

Conclusions

In conclusion we believe GE is flawed due to the inflexibility to allow competition and subsequently be able to be measured against alternatives.

GE has failed to deliver options for the export trade that accounts for the vast majority of activity for the WA grower community. GE was presented to industry as an efficient, effective way to move product to port and execute shipping via a centralised planning methodology. There was to be risk sharing which would ensure both parties were incentivised to participate and allow GE to be the promise proposed.

This has simply not eventuated. GE appears to have become little more than a monopoly transportation service. The user (marketer) is forced to use the service, has to pay any additional costs (surge) against an internal non-competitive benchmark and is scarcely if at all indemnified against a lack of performance.

ETG believe the concept behind GE ie. common stock, has merit, if the marketer has choice to use GE or use alternatives, the system rules are such that the most efficient transport and supply model will be demanded and the system is developed to encourage maximum elevation throughput via incentives and penalties, not just penalties. This is not GE though and the current exclusive dealing notification does not deliver anything close to the benefits that industry was promised.

ETG believe that GE after 2 seasons of operation is showing that any benefits derived from GE are clearly outweighed by the significant lessening of competition and consequential costs, system performance and restriction to innovation and pursuit of efficiency within the WA grain market.

ETG does not support the maintenance of the GE system's privileged role under the current format.

Yours Sincerely

Mark Thiele

Managing Director
Elders Toepfer Grain