



15 June 2010

Australian Competition & Consumer Commission
Attn: David Hatfield, A/g General Manager, Adjudication Branch
GPO Box 3131
Canberra ACT 2601

Dear Mr. Hatfield:

Thank you for your letter of 18 June 2010 inviting comment on the ACCC's review of the "*Grain Express* notification" of Cooperative Bulk Handling (CBH).

The following is stated in your letter:

The conduct covered by the Grain Express notification is a form of exclusive dealing. This form of exclusive dealing involves the supply of goods or services on condition that the buyer will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier. This type of exclusive dealing will breach the Trade Practices Act 1974 (the Act) if it has the purpose or effect of substantially lessening competition.
(Emphasis added.)

The key question then, seems to be, "Does *Grain Express* have the purpose or effect of substantially lessening competition?" Our unequivocal answer to both is "yes."

CBH has communicated its concerns over ACCC's *Grain Express* review to its grower-shareholdersⁱ. It's easy to see that their tactic is to mount a fear-based campaign to prevent an objective review of the effectiveness of *Grain Express* in regards to the performance of the whole grains industry.

The basis of our submission is that we have more to fear from CBH's obvious determination to create and extend monopoly control of the WA grain industry. There is no better window to examine their performance and behaviour in this matter than in reviewing their access undertakings and the operations of *Grain Express*.

In our view, *Grain Express* is providing cover for CBH to impede new competition in the industry, to restrict effective competition that already exists, and to use their position of privilege that they've been granted under *Grain Express* to expand their share of both the export and domestic grain markets. We argue that they are doing this at the expense of grain growers.

Under the *Grain Express* system, there exists no incentive for supply chain costs to be driven down. We doubt CBH's claims that costs have substantially decreased since *Grain Express* was introduced. From the figures belowⁱⁱ, if anything, CBH

charges and fees appear to have increased since the introduction of *Grain Express*. It's difficult to estimate the exact amount of the cost increases due to the changing structure of the charges, and the fact that cost rises for the trade and in the pools are not transparent.

The costs CBH are imposing on the system are having a significant effect on the trade's bids to farmers. Glencore Grain stated in their August 2009 submission to ACCC:

"The demurrage and surge charges effectively remove Glencore Grain's trading margin. Their effect is to deter us from operating in Western Australia. CBH's delays ruin the reputation of the state among overseas buyers. The practice of CBH exclusively organising transport to port excludes us and all marketers from that transport market."

Because of *Grain Express*, there is no open way of discovering a better way of getting products to market. CBH's network pricing system is disguising huge internal transfers within the system (including cross-subsidisation of freight from specific areas for political purposes) which are embedding inefficiencies and higher costs than what there should be. CBH needs *Grain Express*, but the industry would be better off without it. *Grain Express* conceals a host of failings and limitations that are inherent results of the monopolistic behaviour of CBH.

Rather than moving forward as an industry to find increasingly efficient ways of marketing our product, vested interests are pushing hard for status quo. The general manager of ARG (the railway operator in WA), Ken Potts, stated that without *Grain Express*, "marketers would not be compelled to use the CBH system and as a consequence more grain would go to ports by road and less tonnage would stay on rail.ⁱⁱⁱ" *Grain Express* precludes operators from accessing cheaper freight rates.

Most of the "achievements of *Grain Express*" put forward by CBH in the media release of 28 June 2010^{iv} are, in reality, evidence that the CBH system was grossly mismanaged prior to the demise of the Single Desk. These efficiency gains should have been achieved years ago, and cannot be attributed to the existence of *Grain Express* at all.

CBH conducts business on a cost-plus basis. In the media release, they are congratulating themselves for doing what any other company operating in a competitive environment (that didn't have the option of saddling their customer with charges determined on a cost-plus basis) would have done long ago. Just the threat of competition made CBH analyse and change the ways they formerly did business. We can confidently say that if CBH weren't under pressure from the ACCC (not having to respond to the threat of competition) they would still be double- and triple-handling grain as they have always done as though it were a divine right.

In the same CBH media release, CEO Dr Andrew Crane made the claim that

"[Grain Express] also lowers the barriers to entry for marketers in WA by allowing them to buy the grain they require from growers in any location, knowing CBH will outturn grain meeting the same receival standards at

their chosen port, giving growers the benefit of more marketing options for their grain as well."

According to Dr Crane, CBH's exclusive management of logistics results in benefits to traders and producers alike. CBH comes to this view from the comfortable position of being the direct beneficiary of the restriction on competition imposed by *Grain Express*. In reality, any benefits are more than offset by the costs. Costs that include inability by the trade to manage transport costs, the disincentive to invest in upcountry storage, the inability of grain owners to manage the profile of their stocks (including in the worst case the complete loss of parcels of grain), and rigidities imposed by CBH on domestic users.

In PGA's April 2010 submission to the Productivity Commission regarding Wheat Export Marketing Arrangements, we stated:

"CBH is impeding competition through post-upstream services, such as fumigation, shifting grain, Grain Express, artificial port zones, information control, charging receival and outturn fees to offset freight differences and eliminating competition between port zones through network pricing.

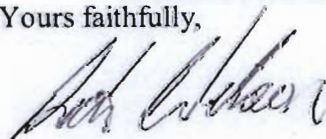
CBH controls the entire wheat logistics structure (both port terminal services and upstream services in Western Australia). CBH controls 197 receival sites and the export supply chain through Grain Express. They are able to extend their port monopoly up-country, and discourage investment in alternative pathways to the ports through Grain Express and business rules. It is quite possible that all the benefits of deregulation will not come to fruition if the monopoly is allowed to function in its current state."

CBH has had adequate time to prove up the *Grain Express* concept, and by any measure other than its own, *Grain Express* is impeding the development of the industry in WA. This we attribute to CBH's culture of entitlement and privilege which can only be addressed by the bracing air of competition.

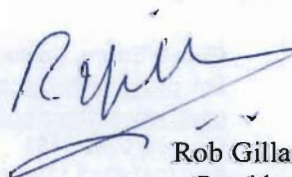
We therefore encourage the ACCC to reject the exclusive dealing notification that allows *Grain Express* to operate in breach of the Trade Practices Act (1974).

Thank you for your time and consideration. We are available for further contact should you deem it necessary.

Yours faithfully,



Rick Wilson
Chairman
PGA Western Graingrowers



Rob Gillam
President
Pastoralists & Graziers Association

Endnotes

ⁱ In a special edition "Down the Line" email to grower/shareholders dated Wednesday, 7 June 2010, CBH posed the question: "What happens if *Grain Express* goes?"

As you may be aware, the Australian Competition and Consumer Commission (ACCC) recently notified the CBH Group of its intention to review Grain Express.

Grain Express is the logistics co-ordination system introduced by CBH in 2008 to ensure that, in the deregulated grain marketing environment, the right grain got to port at the right time and in the most efficient way possible.

If the ACCC revokes its decision to allow Grain Express, you will notice:

- Total freight COSTS WILL INCREASE
- Storage and Handling Costs WILL INCREASE
- Grower Weighted Averaging - will be HIGHLY UNLIKELY to go ahead
- LESS EFFICIENCY at CBH sites
- LESS CAPACITY available at ports
- LIMITED ACCESS to marketers

Grain Express has delivered a huge range of benefits to growers and marketers in the past two years of operation. There has been **NO increase in storage and handling costs**, growers received a total of **\$8 million in freight rebates** and it's provided **easy access to all marketers**. Click [here](#) for a full list of the benefits Grain Express has delivered to growers and marketers.

With more than 25 buyers requesting to access and transport individual parcels of grain stock from 190-plus country receival sites the Western Australian grain storage, handling and transport system is under threat of severe disruption without Grain Express.

What can you do to help?

If you want to ensure Grain Express remains in place and protects the benefits of YOUR CBH system, then please share your support of Grain Express with the ACCC by contacting:

Gina D'Ettore, Contact Officer for the Grain Express Review
 Em: gina.dettore@acc.gov.au
gavin.jones@acc.gov.au
 Ph: (03) 9290 1483
 Fax: (02) 6243 1199 - - - Click [here](#) for an easy-to-use fax template.

All feedback must be provided to the ACCC by Thursday, 15 July 2010.

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2007-08

CBH

WA
Wheat
Kwinana
\$
220.00

Current Market Price Track

<i>Type of Service (07/08 categories)</i>	07/08 Rate
Receival Charges - Tier 1 sites	8.30
Grain Assessment Fee	1.15
Transport Recovery Fee	1.00
Vessel Notification Fee: >30 days = \$0, >15 days<30 days \$1.00, <15 days \$2.00	1.00
Terminal Outload Export Assist	7.20
Vessel cancellation Fee	0.21
Shipping Relocation Fee	0.21
Blending Fees \$1.05/mt blend into ship, \$1.05/mt blend into cells.	0.53
Shrinkage @ 0.5%	1.10
Dust @ 0.25%	0.55

Total Charges CBH, excluding storage

\$
21.25

Export Accumulation Fee from Site Types 3 & 4 - must have minimum 3,000mt at each site if requesting a stock movement.

Type 3 - \$2.50/mt for each tonne short of 3,000mt

Type 4 - \$3.00/mt for each tonne short of 3,000mt

Time Based Storage Charges

Jan	Feb	Mar	Apr	May	Jun
-	0.80	0.80	0.80	0.90	1.00
Jul	Aug	Sep	Oct	Nov	Dec
1.10	1.10	1.70	3.00	1.90	1.80

2008-09

CBH

WA
Wheat
Kwinana
\$
220.00

Current Market Price Track

<i>Type of Service (07/08 categories)</i>	08/09 Rate
Receival Charges - Tier 1 sites	10.50
Grain Assessment Fee	1.15
Transport Recovery Fee	1.10
Vessel Notification Fee: >22 days = \$0, >15 days<22 days \$1.10, <15 days \$2.20	0.50
Export Outloading Charge	8.00
Vessel cancellation Fee	0.20
Shipping Relocation Fee	0.25
Blending Fees \$1.15/mt blend into ship, \$1.15/mt blend into cells.	0.50
Shrinkage @ 0.5%	1.10
Dust @ 0.25%	0.55

Total Charges CBH, excluding storage

\$
23.85

Time Based Storage Charges

Jan	Feb	Mar	Apr	May	Jun
-	1.30	1.30	1.30	1.30	1.30
Jul	Aug	Sep	Oct	Nov	Dec
1.30	1.30	1.70	3.00	1.90	1.80

2009-10

CBH**WA****Wheat****Kwinana****\$****220.00****Current Market Price Track**

09/10

Rate

Receival Charges - Tier 1 sites

10.00

Upfront Marketer Fee

3.00

Export Fee

14.10

Shipping Relocation Fee 2.3\$/mt Kwinana others 4.0\$/mt

-

additional port storage after 7 days 3\$/mt 14 days 3\$/mt

-

Surge

-

Auction Premium

-

Residual Grain 1-3days free, 4-7 days 0.50\$/t, 8days plus 0.95\$ p/t

-

Shrinkage @ 0.5%

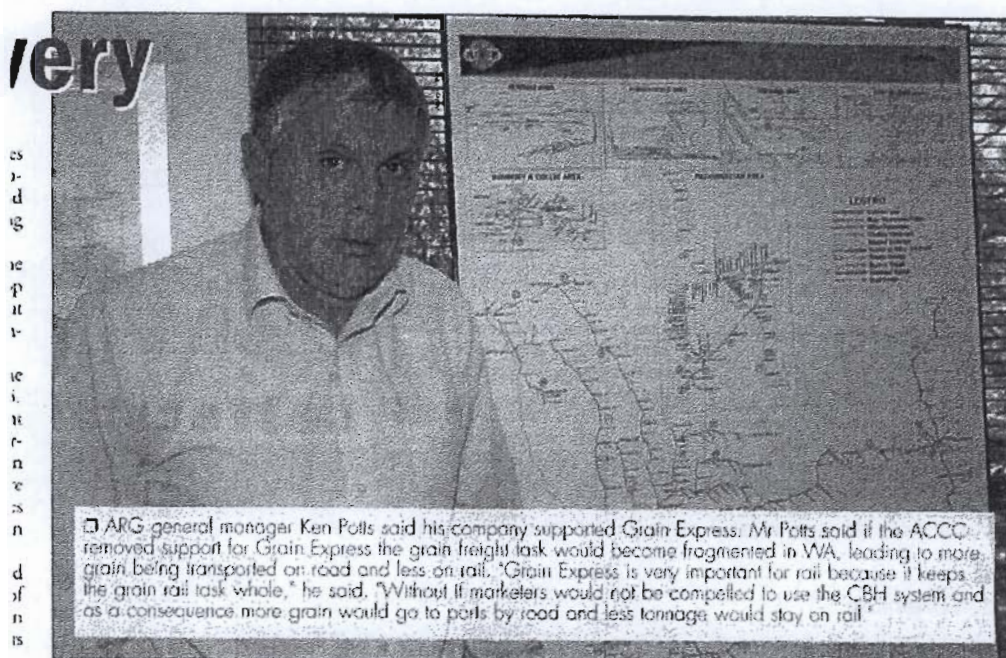
1.10

Dust @ 0.25%

0.55

\$**Total Charges CBH, excluding storage****28.75**

CBH eliminated time based storage charges from Jan to Sept(?) in the 09/10 season.



PGA responds: The objective of the exemption order from ACCC for Grain Express has nothing to do with CBH getting grain on rail. The goal and stated purpose of *Grain Express* is to get grain to port for the least cost.

iv CBH Media Release, 28 June 2010

Achievements of Grain Express:

- CBH held its average charge per tonne steady in 2009-10 notwithstanding labour, energy and materials cost increases
- 91% of grain was sold online by growers using LoadNet in 2008-09
- Streamlining of grower receival process, including the significant drop in the number of load changes required post delivery. From the 2007-08 harvest, before Grain Express, the number of load changes has dropped from 17% to 10% with a major factor in that being reduced load errors
- For the first time, a freight rebate was paid this year to growers for surplus freight collected from them - \$8 million for the 2008-09 season
- More than 6mt of grain were shipped from October to the end of April in each of 2008-09 and 2009-10; we estimate around half of that would have been shipped in 2008-09 without Grain Express
- Grain Express provides the volumes to make rail transport possible where it is competitive - in 2009-10 there has been an increase from 50% to 64% in the proportion of grain moved by rail.
- Open bulkheads, a riskier and costlier form of storage, have been cleared of grain 10% faster
- Intra-silo movements costs dropped 44% in the year to 31 March 2009 and a further 20% in the year to 31 March 2010
- Stacks have been cleared and closed more quickly – 32% of stacks were open on 31 March 2010 compared with 67% at 31 March 2008
- Fewer sites needed to be open to achieve the same shipping tonnage e.g Albany shipping increased 24% with 8% less sites open.

PGA Responds: Most of these “achievements” have nothing to do with *Grain Express*. CBH are being disingenuous if not outright deceptive.

CBH's claims conveniently ignore the fact that the WA State Government has already wasted significant money subsidising CBH to put grain on rail lines that have been declared unprofitable and destined for closure. In the 2010/11 State Budget, \$10.369 million was allocated as a Grain Freight Network Rescue Transitional Assistance Package, of which \$2.081 million was spent in the 2009/10 harvest; \$4.088 million is to be spent in the 2010/11 harvest and \$1.40 million is to be spent each year in the 2011/12 – 2013/14 harvests.

In addition, CBH are working off a false base in using the 50% of grain on rail figure for the 2008-09 season. In the first year after deregulation, CBH did not anticipate and respond to the increased demand for grain early in the season by arranging adequate rail capacity. They made up for the shortfall in rail capacity by moving grain on trucks.