

**COOPERATIVE BULK HANDLING LIMITED (CBH) EXCLUSIVE
DEALING NOTIFICATION N93439
– INTERESTED PARTY CONSULTATION**

PREPARED FOR

THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

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The Western Australian Farmers Federation (Inc.) (WAFarmers) appreciates the opportunity to comment on the review of the Cooperative Bulk Handling Limited (CBH) exclusive dealing notification: N93439, referred to as the "Grain Express notification".

As having the largest, by far, membership base of any rural lobby group in Western Australia, WAFarmers is confident that they are truly representative of this State's wheat producers, and as such welcomes the opportunity to address the Australian Competition and Consumer Commission (ACCC) regarding this notification.

WAFarmers acknowledges that, as detailed in the ACCC's correspondence dated June 18, 2010, that the ACCC has reviewed all public submissions to the Productivity Commission's Inquiry into Wheat Export Marketing Arrangements.

To this end, this correspondence is intended as additional information to be read in conjunction with the organisation's previous submissions.

The subsequent information provided within this document is focused on the key factors of ACCC's assessment, that being that the ACCC may move to revoke CBH's notification if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition and in all the circumstances:

- The conduct has not resulted or is not likely to result in a benefit to the public; or
- Any benefit to the public that has resulted or is likely to result from the conduct would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.

The Western Australian grains industry is the State's largest and most valuable agricultural sector contributing exports worth more than \$4.5 billion to the WA economy each year.

If the WA grains industry wishes to maintain or improve upon its contribution to the economy it is vital that the needs of international customers, who purchase 90% of this States grain, are met in the most efficient manner possible.

With the international grains market becoming increasingly competitive as "the Black Sea states alone ... look set to raise wheat exports by one half to more than 50 million tonnes by the end of the decade," (source Agrimoney.com, 24th May, 2010), ensuring that the needs of international customers is met, has never been more important.

This literally means getting grain from the paddock to its international destination in the quickest, cheapest, safest and most hygienic way.

In reality, this is the fundamental drive behind the inception of Grain Express, that being to have a central and efficient co-ordination of grain as it is moved from the header in the paddock to the port from which it is shipped to its final destination.

It must never be forgotten that the underlying purpose behind Grain Express was to provide an effective and efficient logistics, transport and handling system to enable this State's grain production to be delivered from farm-gate to port in a timely manner thereby ensuring overseas customers have the product they require in the timeframe they require and retaining our reputation as quality exporters.

The Western Australian grains industry supported that purpose because the majority of the players in this industry are focused on the benefits derived for the whole of industry, that being the long-term efficiency and effectiveness of the supply chain, as opposed to the focus of a few players who are motivated by deriving benefits only to themselves.

Given the ACCC's comments in the aforementioned correspondence that concerns have been raised about Grain Express, this organisation trusts that any claims made by any concerned parties be thoroughly assessed to see if there is merit in the claim, and to ensure that the statistics and facts presented are objective truths.

This organisation would not waste the ACCC's valuable time by suggesting that Grain Express is 100% perfect, for in reality, there are very few [if any] systems that can boast this label.

This organisation would, however, ask for the ACCC's acknowledgement that Grain Express has only two years of operation with which to draw experience from and is therefore in a process of ongoing refinement to ensure it moves grain as efficiently as possible and caters to the needs of the growers and marketers and therefore the end customers.

Through its regular meetings with CBH, WAFarmers is confident that CBH's on-going improvements to the Grain Express system will ensure that the system provides ongoing benefits to growers and marketers.

The WAFarmers Grains Council has witnessed CBH implementing positive changes since the inception of CBH in 2008, and will continue to push for changes which are in the best interests of growers, such as the removal of up-front payment of rail costs by growers who have consigned their grain into a pool or warehousing arrangement. This approach appears to be beyond the terms of normal commercial terms of operation and as such should be removed from CBH's dealings with growers as it is at a significant cost to growers

The Council feels confident that CBH is committed to continuing to introduce changes and looks forward to addressing these and other potential concerns as the system evolves.

As a co-operative, with around 5,100 grain-grower-shareholder members, unlike other entities, CBH has an obligation to growers and their volume driven business should be supported to ensure that every tonne is captured in the network to maintain the viability of their extensive storage and handling system.

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Prepared by WAFarmers, July 2010.

In the two years of deregulated trading, WAFarmers has not seen any broad-scale evidence that an alternate grain storage and handling system has been proposed which has the capacity to improve the efficiency of the current system, or lower its associated costs.

There is no evidence to suggest that Grain Express discourages alternate supply chains emerging, to the contrary competitors are free to use CBH's Direct to Port service or bypass CBH port facilities altogether if they do not perform or provide a commercially competitive offer.

In addition, there is nothing preventing new entrants from building competitive storage or port loading facilities, except perhaps the substantial financial investment in grain infrastructure that this would require.

Generations of Western Australian growers have already paid for CBH's infrastructure through Storage and Handling fees and CBH's reinvestment in infrastructure. It is therefore growers' entitlement to look to CBH to provide cost effective and efficient storage and handling services in the long term which are in the best interests of Western Australian growers.

The people and organisations who wish to see significant changes to Grain Express and to CBH have motives based in seeking a level of direct profit from the logistics chain in handling and moving grain to port. This amounts to cherry picking CBH's most advantageous sites and will have the effect of increasing costs for all the other growers. CBH as a grower owned and controlled non-profit cooperative should not be damaged by people and companies that seek to profit from its demise.

In this submission, WAFarmers has not attempted to answer all the questions posed by the ACCC, but rather comments that ongoing structural change in the Western Australian grain production and supply chain continues to impact upon the operational and cost efficiency of their operations, these interconnected factors include:

1. Grain marketing, post-deregulation has resulted in 'peaks and troughs' in export volumes on a per-month basis, rather than the flatter, more consistent volumes which occurred prior to 2008/09.
2. Western Australia's grain transportation systems feature an aging rail system with a complicated and multi-layered management regime, and a road network with questionable capacity to accommodate a significant increase in road based grain transport.
3. Western Australia's total grain production can vary significantly between years, and there is an expectation that a future grain handling and storage system will need to accommodate both current levels of production and a 'climate adaptation' response which is predicted by government agencies to result in

increased grain production in areas south and west of the State's traditional lower rainfall growing areas.

WAFarmers believes that plant breeding and agronomic improvements will result in varietal and management changes which will continue to see grain production from existing areas, thus in combination will see an overall increase in the State's production volume.

In this review, WAFarmers believes that the ACCC must make a holistic assessment of these impacting factors in the current operating environment and in the industry's future needs, prior to making any broad scale change-focussed recommendations.

The Productivity Commission's draft report of the Wheat Export Marketing Arrangements commented:

"An issue for governments is the level of investment in rail and road infrastructure, particularly in light of the commercial pressures for structural change in transport, storage and handling. Investment decisions by governments and industry should be directed at improving the efficiency of the transport, storage and handling system and be based on rigorous cost-benefit analysis. Inappropriate investment decisions can be wasteful of scarce financial resources and impede the development of an efficient supply chain, at the expense of growers (or possibly taxpayers). However, the costs of inefficiency in the transport, storage and handling system are ultimately passed back to growers as higher costs and lower farm gate prices."

WAFarmers welcomes the Productivity Commission's recognition of the 'push-back' of grain storage and handling charges, and of a level of inefficiency in the current system. WAFarmers believes that the ACCC has an opportunity to address these in this review.

WAFarmers believes that grain storage and supply chain costs should be applied to growers in a least cost environment, and where these costs, irrespective of the various marketing options, need to be made available to growers to assist them in their various decision making processes.

The current review presents another opportunity for a costed, alternate grain storage and handling system to be proposed. If critics of the current system are not able to do this, then the ACCC must support the majority of growers who are supportive of Grain Express as the best way to keep their costs down and so help them survive financially in times when even the most efficient farmers are finding their terms of trade declining rapidly.

From a social perspective, one of the biggest costs to the community if the Grain Express system was to be disbanded, would be the potential cost to human life if the transportation of grain were increasingly to occur on roads which are not fit for purpose, as opposed to rail.

This was acknowledged by the WA Minister for Planning and Infrastructure, the Hon Alannah MacTiernan, in a 2008 submission regarding the initial exclusive dealing notification, which states that "in the face of emerging trends associated with the deregulation of grain marketing, there could be a significant leakage of tonnes from the rail network". Grain Express has prevented this from happening, to the contrary, in 2009-10 there was an increase from 50% to 64% in the proportion of grain moved by rail.

In its 2009 Executive Summary, the Freight and Logistics Council of WA on behalf of the Strategic Grain Network Committee stated that CBH's Grain Express logistics system had a vital role to play in keeping this State's roads safe by providing the volumes to make rail transport where it is competitive:

"The rail network is vital to the WA grain industry, providing the means of moving a large part of Australia's grain export volume to market quickly and at a reasonable cost. It also protects the community and the regional road network from the impact of heavy trucking. CBH's freedom to manage cargo assembly for all traders under Grain Express allows it to manage stocks, bin operations and export demand via the best mix of road and rail transport assets at its disposal. Other exporters use trucking across the state's road network".

Before any radical changes are made to the Grain Express system, ramifications on a wide variety of additional areas need to be fully explored, these include:

- Impacts on growers' ability to freely choose who they sell their grain to regardless of their geographical location
- Inefficiencies created due to increasing the amount of smaller movements of grain by individual exporters as opposed to the bulk movements that are now currently co-ordinated by CBH
- Issues with respect to fumigation and phosphine resistance as storage facilities are opened on a more ad-hoc basis with potential varying levels of adherence to correct operating procedures
- The *real* impacts on supply chain costs in terms of the duplication of services
- The inability of growers to obtain value through CBH initiatives such as the grower weighted averaging systems currently on trial, which are made possible by the central co-ordination of the grain supply chain
- Impacts on grain producer's ability to 'harvest with haste, market at leisure'.
- Impacts on the future investment in grain infrastructure

CBH's innovative Grain Express logistics system has brought operational efficiencies, improved transport utilisation and ensured continued investment in the transport network, streamlined grower receivals and provided full marketing options to all growers which is also in the best interests of marketers.

This organisation trusts that the ACCC will consider the massive benefits afforded by Grain Express not only to the grains industry, but also the community as a whole and allow the system to mature into the future.