

Sydney
Melbourne
Brisbane
Perth

21 October 2010

By email: gina.d'ettorre@accc.gov.au

Mr Gavin Jones and Ms Gina D'Ettorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

Contact
Hilary Shanks (08) 9460 1713
Email: hilary.shanks@corrs.com.au

Partner
Bill Keane (08) 9460 1600
Email: bill.keane@corrs.com.au

Dear Mr Jones and Ms D'Ettorre

Cooperative Bulk Handling Limited (CBH) exclusive dealing notification N93439 (Notification) – response to opposing submissions

1 Introduction

- 1.1 This letter and its attachments respond to the submissions of AWB Limited (**AWB**), Glencore Grain (**Glencore**) and the WA Grains Group (**WAGG**) in relation to the ACCC's review of the Notification (**Opposing Submissions**).
- 1.2 While the Opposing Submissions do not contain a substantial amount of factual information, they do contain several similar claims and complaints. For that reason, and to avoid duplication, this letter addresses the following issues that are raised in two or more of the Opposing Submissions:
 - (i) What does the congestion experienced exporting from CBH's port terminals in February and March 2009 (**2009 Export Congestion**) tell us about Grain Express and the notified conduct? (**Section 2 of this letter**)
 - (ii) Has Grain Express or the notified conduct caused increases in prices or profits for storage, handling or freight? (**Section 3 of this letter**)
 - (iii) Has CBH used Grain Express or the notified conduct to dominate grain transport as the sole supplier of services and extract monopoly rents (through 'surge' charges or otherwise)? (**Section 4 of this letter**)
 - (iv) Has CBH used Grain Express or the notified conduct to prevent marketers from efficiently marketing grain quality or to obtain a quality arbitrage for itself? (**Section 5 of this letter**)
- 1.3 In addition to the above issues, the Opposing Submissions contain a series of assertions that are either misleadingly presented or demonstrably false. CBH provides information and commentary in response to these various matters in the following **annexures**:

21 October 2010
Mr Gavin Jones and Ms Gina D'Ettorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

CORRS
CHAMBERS
WESTGARTH
lawyers

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

- (i) Annexure 1 – Responses to AWB Submission;
 - (ii) Annexure 2 - Response to Glencore Submission; and
 - (iii) Annexure 3 - Response to WAGG Submission.
- 1.4 As a general comment, CBH observes that a substantial proportion of the assertions made in the Opposing Submissions do not concern the effect of the notified conduct on competition in relevant markets, nor are they relevant to the net public benefit of the notified conduct. Instead, many of the assertions are operational or commercial grievances that do not inform the ACCC's statutory function in this case. CBH responds to some of these assertions because they have been made in a public forum and have the capacity to cause CBH commercial harm if left unchallenged.
- 2 Grain Express did not cause or contribute to the 2009 Export Congestion**
- 2.1 The 2009 Export Congestion was not caused by the notified conduct. It was caused by a series of external factors that coincided to create unprecedented pressure on the supply chain in a concentrated period. In 2009, CBH tried to implement measures to manage demand for services during this period but marketers (including both Glencore and AWB) declined to participate. The issue has now been addressed by the introduction of a capacity auction, which is an efficient market-based means of allocating resources.
- 2.2 The Opposing Submissions point to the 2009 Export Congestion as having been caused by Grain Express¹ or the notified conduct. If this were true, you would expect the same problems to have occurred the following year because in another large harvest year², CBH continued to offer Grain Express and to engage in the notified conduct. As the ACCC knows, the 2009/2010 harvest was exported without substantial congestion problems.
- 2.3 CBH identified and explained the causes of the 2009 Export Congestion in its letter to the ACCC dated 14 May 2009 and again in answer to request 3 in the ACCC's request for information dated 13 October 2009. It is not efficient or necessary to repeat that information for the third time in this letter. However, it is relevant to note that none of the Opposing Submissions contain any information to contradict CBH's position. This year's submissions simply repeat the old allegations without providing any substantive or new information in support.

¹ Glencore Submission at 2.1 states "*The direct effect of Grain Express was disastrously felt by Glencore Grain at the end of January 2009...*". The AWB submission states "*Grain Express increased AWB's exposure to demurrage costs during the 2008/2009 season*".

² 2009/2010 harvest of 11.1 million tonnes v 2008/2009 harvest of 12.3 million tonnes

21 October 2010
Mr Gavin Jones and Ms Gina D'Etorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

CORRS
CHAMBERS
WESTGARTH
lawyers

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

- 2.4 Both AWB and Glencore suggest that without Grain Express, marketers could have addressed the 2009 Export Congestion arranging their own transport between CBH up-country storage and port. This claim ignores the effect of a single participant's actions on other participants in a supply chain by assuming that if a marketer arranged its own transport to port and secured lower freight costs for that movement³ such a decision would not have increased costs to other users of the system⁴ or created logistical problems for the system as a whole. As the Frontier Economics report states, such an approach would promote the interests of one competitor over the goals of competition and efficiency. One person queue-jumping does not decrease the length of the queue.
- 2.5 To the extent that complaints refer to demurrage costs, CBH submits that:
- (i) Marketers (not CBH) negotiate charterparty agreements and therefore make their own decisions on the balance of risk and return on demurrage and dispatch. That is why it is reasonable for marketers to bear the risk of these charges;
 - (ii) CBH has been prepared to negotiate sharing of demurrage risk with marketers, on the basis that a proportionate share of dispatch benefit would be shared also. No marketer has accepted such a proposal; and
 - (iii) When individual cases are examined (as they are in the schedules) delay and demurrage complaints are sometimes shown to be the result of factors unrelated to CBH, such as late nomination or unscheduled arrival of vessels.

3 Grain Express has not caused increases in prices or profits

- 3.1 All of the Opposing Submissions contain misleading and/or false allegations about price increases for storage, handling or freight services. In part, these kinds of allegations have been made possible because Grain Express was accompanied by:
- (i) changes in the structure of fees charged by CBH; and
 - (ii) increases in costs, including the freight fees charged by rail and road providers.
- 3.2 CBH's first response on this issue is to point out that, since it is not a profit-making corporation but a cooperative established for the benefit of the growers who use

³ This itself is not proved or likely to be possible over time with a fragmented supply chain

⁴ Since freight costs have a fixed cost component, this is unavoidable.

21 October 2010
Mr Gavin Jones and Ms Gina D'Etorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

CORRS
CHAMBERS
WESTGARTH
lawyers

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

its infrastructure⁵, it has no incentive to increase prices beyond its need to meet costs (including capital expenditure). For AWB to make allegations of this nature is not surprising, since AWB did derive profit from its own control of freight services prior to deregulation.

- 3.3 CBH's pricing structure has been evolving over time as CBH attempts to respond to the challenges presented by deregulation and promote efficiency in the supply chain. This evolution has caused some charges to increase and others to decrease.
- 3.4 Conducting a fair comparison of charges when the fee structure has changed in this way is not straightforward. Conducting a direct comparison of price lists does not accurately inform the issue because:
 - (i) participants use the system in different ways⁶, so any change in pricing structure has the potential to increase the relative price of services to one kind of participant; and
 - (ii) some items on CBH's list of charges are applicable only if a service is requested, or are payable only in particular circumstances. Simply adding up the charges on the list would assume that all charges are always applicable.
- 3.5 Similarly, comparing charges paid by an individual grower from year to year is also incomplete because an individual's use of the system may change from year to year.
- 3.6 The simplest comparison of pricing from year to year is a comparison of CBH's non-freight operations revenue per tonne which is the total of storage and handling fees paid by growers and marketers, divided by the number of tonnes stored and handled. That information is presented in the graph at page 12 of CBH's submission dated 29 July 2010. As the graph shows, CBH's revenue per tonne has been decreasing since at least 2007. This is hardly consistent with the narrative of opportunistic gouging that is presented in the Opposing Submissions.
- 3.7 On the issue of freight and overall supply chain costs, we refer to our letter dated 8 October 2010.

⁵ It also provides freight through an audited non-profit fund.

⁶ Growers deliver and store grain, marketers outturn grain.

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

4 Grain Express has not harmed competition in transport

- 4.1 The Glencore submission alleges that "*Grain Express lessens competition to one provider, CBH*" and "*thanks to Grain Express, CBH has a monopoly of road and rail lines and services*".
- 4.2 This claim incorrectly and misleadingly treats competition analysis as a simple arithmetic exercise focussed on CBH's role as an acquirer and arranger of services. As the Frontier Report states, "*it is important to distinguish between providing transportation services and arranging transportation services. While CBH will acquire transportation services from rail and road operators to move grain within its network, it does not actually perform the transportation function itself. The task of actually transporting grain will be conducted by rail and road operators contracted by CBH.*"⁷
- 4.3 As the ACCC will have noted, the Frontier Report concludes that, in the absence of the notified conduct, CBH would be likely to attain the same bundled storage, handling and transport structure through efficient pricing. However, if we assume, as the Opposing Submissions appear to do, that CBH would maintain its pricing structure in the absence of the notification, the Frontier Report observes that:
- "CBH's continuation of its current pricing structure in the face of the threat of inefficient entry is likely to continue to encourage too much entry into the stand-alone activity of transportation. That is, marketers may seek to arrange for the transportation of grain from up-country storage and handling facilities operated by CBH to port terminals. This seems to be CBH's description of the counterfactual on p.3 of its July 2010 submission to the ACCC.*
- While this may lead to a greater number of growers and marketers organising acquisition of their own transportation services, this should not necessarily be equated with an outcome that leads to an improvement in competitive outcomes in downstream markets. That is, it is not socially beneficial to facilitate competition for its own sake if this is associated with less efficient market outcomes."*⁸
- 4.4 CBH considers that its competitive tender processes for road and rail services promote, rather than lessen competition and provide a stable foundation for transport companies to efficiently invest in infrastructure. In this respect, AWB's

⁷ Frontier Report pp30

⁸ Frontier Report pp 34-35

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

claim that since Grain Express, there have been no new competitors or investment in road carriage⁹ is incorrect and misleading.

- 4.5 CBH provides the following information in response to AWB's assertion:
- (i) In 2010 Marleys announced a plan to invest in trucks and trailers as a result of winning the Kwinana Export task;
 - (ii) Southern Regional Haulage is a new addition to the contracted road transporter base since the introduction of Grain Express in November 2008;
 - (iii) Dunlop Transport was able to secure new loans for trucks, based on winning the Geraldton Depot contract for 5 years;
 - (iv) Pirones Transport has commenced grain transportation and has purchased new prime movers;
 - (v) Esperance Freightlines has commenced grain transportation;
 - (vi) Hall's Haulage has purchased at least 2 new prime movers;
 - (vii) Cropline Transport has purchased new prime movers and trailers specifically suited to grain.
- 4.6 CBH's road transporter grain contracts are specifically designed to ensure the road transporter is able to invest in new equipment. This provides growers and marketers with the most efficient equipment for the grain transport task, both in terms of price and service. Financiers have recognised that the 5 year contractual term CBH offers road transporters is sufficient to allow the road transporters to invest in new and more efficient equipment. [CONFIDENTIAL INFORMATION REDACTED]
- 4.7 CBH's road transport agreements are offered in an open market tender process, where all road transporters interested in the grain industry are invited to tender for the grain transport task. This ensures an open and transparent process for road transporters to compete (ie competition for the market, rather than competition in the market) and is a well-developed tool that provides CBH, growers, marketers and transporters real value.
- 4.8 CBH continues to see new investment of heavy haulage vehicles, and this issue is specifically addressed in CBH's road transport contracts. Schedule 10 of the contracts details the vehicles that are providing the grain haulage task (including the vehicle's manufacturer and build year). These Schedules are updated each

⁹ AWB submission para 2.19

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

year, so that CBH can easily identify which trucks have been retired and which trucks have been introduced.

- 4.9 All CBH's road transporters are improving their grain fleets. For example, Pirones in Geraldton (which became a new road transporter for CBH in 2008) purchased Mercedes Benz prime movers this year, as a fleet upgrade to encompass the grain haulage task. Both fuel and maintenance efficiencies offset the higher capital cost of these units. Halls Haulage recently notified CBH that it has purchased 2 new 10-wheeler/tri drive prime movers to provide services under its transport contract with CBH. This is in addition to 5 new prime mover/grain trailer units purchased the previous year. Cropline Haulage, which provides the dedicated fleet service, has invested in brand new prime movers and aluminium grain trailing gear, so that it can provide efficient and flexible units to perform multi-zone road transport tasks. All road transport contractors that cart grain acknowledge that, in order to attract and retain the best possible truck drivers, they must continue to invest in high-quality and new equipment.
- 4.10 CBH believes that its road transporters are proud to demonstrate their investment in new equipment for the WA grain industry. The road transporters strive to show they are adding value to, and contributing to the efficiency of, the grain task. Their commitment to investing in new equipment also positions them well for future tenders, as their grain haulage gear is cost-efficient for the task. CBH, growers and marketers capture the value created by the road transporters in the reliability of the service they provide, in efficient payloads and through efficient freight rates for the grain road haulage task.
- 4.11 [CONFIDENTIAL INFORMATION REDACTED] **EXCLUDED FROM PUBLIC REGISTER**
- 4.12 In relation to continued investment within its road transporter base, CBH has also introduced a higher level of safety to some road transports or heavy haulage vehicles, through modified specifications. These specifications are now being incorporated into all CBH's road transport agreements, to ensure a standard device specification can be provided to all road transporters. Road transporters are bearing the conversion and modification costs of this. Within the Albany and Esperance zones, CBH and the road transporters have agreed to share the costs of installing GPS tracking systems into grain trucks, to assist in-load and discharge point efficiencies. These technology and safety investments have only been introduced since Grain Express.
- 4.13 All CBH road transport contracts are CBH Code of Practice compliant. CBH's road transporters must pass strict audits to ensure that vehicle hygiene and movement traceability requirements are met. These high standards place

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

additional costs on each road transporter – yet the quality assurance of their grain fleets and their service is beneficial to all industry stakeholders.

- 4.14 The grain road transport task is complex and contains high risk elements, such as seasonality, export demand and continuity of shipping task. CBH recognises these challenges, and endeavours to minimize these risks to road transporters by offering 5 year transport contracts, and by providing workable tonnage targets that reflect the annual grain haulage task. As growers ultimately pay for road freight, CBH has designed its service agreements to provide a fair and reasonable price to growers, and to deliver CBH marketing clients with capacities and reliability to meet their export demands.
- 4.15 Each of the Opposing Submissions raises concerns about surge charges. CBH has previously explained the structure and function of surge charges in its response to request 5 of the ACCC's request for information dated 17 September 2009. In short, growers pay for grain movements to port assuming a certain level of demand for services across the year. If demand for services is particularly concentrated in a period, marketers may elect to acquire a higher level of service to meet their preferred shipping programme. This is similar to the way that Viterra prices its Export Select freight rates on the basis of a flat annual task¹⁰ save that:
- (i) CBH does not alter Grain Express rates every month;
 - (ii) CBH does not make any margin on the provision of freight; and
 - (iii) CBH rebates unused surge charges in a non-discriminatory manner.

5 Grain Express does not inhibit efficient marketing of grain quality

- 5.1 AWB alleges that Grain Express prevents or inhibits niche marketing¹¹ of grain, and Glencore makes a similar allegation in a less detailed form¹².
- 5.2 Niche marketing of grain incurs costs, because it necessarily involves smaller segregations of grain and lower volume grain movements. For this reason, there is an inherent trade-off to be made in order to balance the demand for low cost supply chain services with demand for opportunities to optimise the price achievable for grain in a competitive global market.

¹⁰ See <http://www.viterra.com.au/grain/australia/storage-handling/export-select> and the notes to the various rate sheets. Viterra basis its charges on the annual estimated freight task averaged over 12 months during normal working hours. Note also that carting different season's grain costs different amounts despite the fact that the grain is physically very similar.

¹¹ AWB submission paragraphs 2.26 to 2.34

¹² Glencore submission page 9

21 October 2010
Mr Gavin Jones and Ms Gina D'Ettorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

CORRS
CHAMBERS
WESTGARTH
lawyers

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

- 5.3 CBH recognises the value in niche grain marketing, both to growers and marketers, and to the international reputation of Australian grain. CBH consequently offers all its customers a niche grain marketing service, known as 'earmarking'. CBH does not charge customers additional storage for earmarking requests.
- 5.4 CBH does charge additional storage fees for private segregations. This is because the more segregations CBH has to accommodate, the less storage CBH has available for other grain, including niche grain. Conversely, the fewer segregations CBH has to accommodate, the more storage CBH has available for other grain and for niche grain parcels. The cost of private segregations therefore reflects this trade-off, and the impact that it has on CBH's storage capacity.
- 5.5 [CONFIDENTIAL INFORMATION REDACTED] **EXCLUDED FROM PUBLIC REGISTER**
- 5.6 The central coordination of transport under Grain Express does not prevent marketers from earmarking grain to take advantage of niche grain marketing opportunities, or from requesting private segregations.
- 5.7 The physical limitations on CBH's storage caused by private segregations and niche grain parcels would still occur, regardless of whether or not Grain Express was in place.
- 5.8 AWB also alleges that CBH has a contractual obligation to outturn grain "to its own minimal receival standard"¹³. In response to this allegation, CBH notes the following:
- (i) CBH is obliged to comply with section 44 of the Bulk Handling Act, , which provides that a warrant holder "*is entitled to receive an equivalent weight of grain of the type corresponding with, and of a grade at least equal to, that in respect of which the warrant was issued*";
 - (ii) the CBH's minimum receival standards are not materially different from the Grain Trade Australia and Grain Industry Association of Western Australia standards, as used and accepted by the industry, so it is difficult to suggest that CBH's standards are in any way unreasonable;
 - (iii) CBH cannot guarantee that it will outturn the average receival quality, because matters outside CBH's control may prevent it from doing so. However, CBH does offer a financial guarantee that it will outturn grain to at least the receival standard;
 - (iv) [CONFIDENTIAL INFORMATION REDACTED]; and **EXCLUDED FROM PUBLIC REGISTER**

¹³ AWB submission paragraph 2.27

21 October 2010

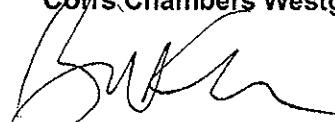
Mr Gavin Jones and Ms Gina D'Ettorre
Adjudication Branch
ACCC
Level 35
360 Elizabeth St
Melbourne VIC 3000

CORRS
CHAMBERS
WESTGARTH
lawyers

**Cooperative Bulk Handling Limited (CBH) exclusive dealing notification
N93439 (Notification) – response to opposing submissions**

- (v) since Grain Express' inception, AWB states that it has exported 3.4 million tonnes of grain from CBH's four port terminals, which is approximately 97 cargoes with an average size of 35,000 tonnes¹⁴. AWB has not officially complained about the quality of any of these cargoes to CBH.
- 5.9 When these facts are taken into account, it is difficult to understand how AWB can suggest that CBH, or Grain Express, acts as any sort of obstacle to the efficient marketing of grain quality.

Yours faithfully
Corrs Chambers Westgarth



Bill Keane
Partner

¹⁴ "2010 AWB AACC submission" attached to Dr Richard Williams' email of 24 Sep 2010

Annexure 1 – CBH response to AWB submission

Para	AWB submission	CBH response
	Introduction	
1.5	<p>Furthermore CBH has not increased the efficiency of the bulk storage and handling system but, instead, has used Grain Express to exercise monopoly power to:</p> <ul style="list-style-type: none"> (a) increase fees and charges to its customers for bundled services, under the guise of implementing efficiencies; and (b) significantly increase its revenues at the expense of growers, domestic consumers and marketers. 	<p>AWB has not provided any evidence to support its assertion at paragraph 1.5(a). We refer to section 3 of the covering letter to this schedule.</p> <p>The assertion at paragraph 1.5(b) is unsupported by CBH's evidence on average revenue received per tonne.</p>
1.6	<p>CBH argues that their storage and handling business and marketers' competitiveness will be significantly eroded if the Grain Express 'command' style approach is not maintained. AWB's position is that through the introduction of Grain Express, CBH has avoided the need to improve the efficiency and operation of its four port facilities, which if that was to occur, would substantially improve the capacity of the Western Australian export sector and alleviate the need to create rigid, expensive 'up-country' operating processes and policies that transfer higher costs and all operational risks to their customers.</p>	<p>AWB has offered no evidence to support this claim.</p> <p>CBH has provided the ACCC with evidence regarding the increase in export capacity CBH has achieved since assuming control of the transport function, including offering greater export capacity than was achieved when AWB controlled the transport supply chain.</p>
1.7	<p>Paragraph 2.37 of this submission discusses the events that led to the most significant inefficiency to have occurred during the operation of Grain Express and demonstrates that poor port planning and operation were the cause of a significant episode of value destruction within the industry in early 2009. CBH sought to blame its sole rail provider for the underperformance of the CBH system. In fact, the inefficiency was created by CBH incorrectly forecasting the grain quality required by the marketers at CBH's ports. As a result there was insufficient available capacity at port to accumulate the grain required by marketers to properly perform their sales contracts. CBH's command style of capacity planning and the asset utilisation planning that underpins Grain Express was the cause of these losses.</p>	<p>We refer to section 2 of the covering letter to this schedule. The 2009 Export Congestion was not caused by Grain Express and has not recurred.</p> <p>AWB has not provided any forecast of shipping demand linked to grain quality as requested in the Grain Services Agreement and Bulk Wheat Grain Services Agreement. This information could be used to forecast customer needs. As AWB and other marketers do not provide this information to CBH, CBH must forecast needs to the best of its ability. CBH is entitled to use its storage in a way that minimises its costs and those of its members. One way of doing this is by early movement of grain during harvest, which allows CBH to:</p> <ul style="list-style-type: none"> • keep sites open for grain receivals; and • reduce grain losses and its subsequent liability to grain owners. <p>CBH did not blame its rail provider for the 2009 Export Congestion.</p>
1.8	<p>It is relevant to note that when CBH realised the error of their approach, they unilaterally applied an overly expensive 'surge' charge that required immediate agreement from marketers, some of whom faced the prospect of breaching existing sales contracts and foregoing existing and pre-paid shipping slot bookings if they did not agree to the surge charge (see paragraph 5.4). AWB believes that a significant component of the unspent 'surge' charge was passed on to growers (members of the cooperative) rather than back to the exporters who directly carried the risk and overcharging to meet their contractual obligations to international customers.</p>	<p>We refer to sections 2 and 5 of the covering letter to this schedule.</p> <p>AWB's submission does not take into account the fact that marketers also contributed to the shipping congestion in the 2008/2009 season. AWB acquired a greater shipping capacity than indicated by its entitlement. Surge charges were proposed after CBH first attempted to allocate capacity by expressions of interest, which was not taken up by marketers. When marketers finally realised that congestion would be a problem, they requested CBH to act urgently.</p> <p>AWB's assertion that a significant component of the unspent surge charge was passed to growers is unsupported by evidence. The freight pool was audited, and both marketers and growers received rebates of approximately \$8 million and \$4.65 million respectively.</p>

Para	AWB Submission	CBH response
		<p>Marketers contributed approximately \$10.47 million to the freight pool, compared to grower's contributions of around \$83 million. As a proportion of freight payments made to CBH, marketers received a significantly higher proportion in rebates from the freight pool.</p>
1.9	<p>The submission highlights that Grain Express is an expensive and inefficient solution imposed upon the industry at the expense of a more targeted capital expenditure program at the respective Western Australia grain ports that could: (a) improve flexibility of operator for all exporters; (b) improve capacity planning for CBH; (c) allow for a more competitive inland transport market; (d) support more competition in the container packing sector; (e) give domestic processors more choice on the origin of their grain quality requirements; and (f) allow growers to be rewarded for grain quality in ways that Grain Express currently prohibit.</p>	<p>Whether or not additional investment should be made in port terminals is irrelevant to the Notification. In any event, there is no evidence that CBH's level of investment is insufficient.</p>
1.11	<p>Grain acquisition strategies predominantly target growers. Bids for grain are quoted on the basis of price, quality and time. Grain Express has effectively abolished the ability of marketers to discern and then maintain a specific quality profile offered by a grower at a local or up-country site market. This has removed a marketer's ability to discern and pay for specific quality characteristics. This has a two-fold effect. First, it has contributed to a decreased ability for Australian exporters (with the possible exception of CBH's marketing arm) to guarantee specific quality attributes to international buyers. This means a loss in the ability for Western Australian growers to earn quality premiums for their grain. As a marketer cannot obtain and retain control over that particular parcel of grain, there is no benefit to the marketer if it was to pay a premium to the grower for that higher quality of grain.</p>	<p>We refer to section 5 of the letter enclosing this schedule. CBH offers earmarking services at no additional dollar cost. There are some restrictions that arise as a result of entitlement being tied into a specific portion of grain, such as liability in the event of destruction or loss of earmarked grain not the result of CBH negligence.</p> <p>CBH notes that no evidence is adduced in support of AWB's allegation. In fact, CBH provides evidence of interactions between AWB and CBH that directly contradict this claim.</p>
2.1	<p>Since the commencement of Grain Express, Western Australian growers have invested more heavily in on-farm storage. AWB argues these growers are seeking to establish an alternative pathway to market as a direct result of the increased charges CBH has imposed on users of its system, (many of which are passed back to growers). AWB has been approached by several grower groups seeking alternative ways to move their grain to their market. However, as the growers do not have an alternative to Grain Express that is commercially viable, the increase in on-farm storage has not resulted in an increase in up-country competition. It merely results in a delay in that grain entering the Grain Express system. While AWB supports competition, CBH has a massive advantage through incumbency and scale which is uneconomic to replicate and compounded by the advantage conferred on CBH by the Grain Express notification. As set out in detail below, CBH is using its scale and the additional benefit of Grain Express to its advantage and to the detriment of growers and marketers. Grain Express in its current form is proving to be anti-competitive in the manner in which it has stifled transport and container packing competition. Competitive alternatives in both these service sectors would assist 'new entrants to develop alternative pathways to export markets.</p>	<p>CBH does not consider that investment in on-farm storage is a trend that can be attributed to Grain Express.</p> <p>CBH considers that efficiency is its main advantage in the provision of services.</p> <p>The 'Non-Grower Receival by Commodity" fee was in place long before Grain Express was introduced. AWB's assertion appears to be misconceived, if it considers that a further payment of \$11.10 is required to transport outside Grain Express. A ship can be loaded for only \$17.10 if grain is accumulated at port.</p>
2.4	<p>AWB has observed a reduction in competition in grain transportation since Grain Express. CBH charges marketers who arrange transport outside Grain Express a 'Non-Grower Receival by Commodity" fee of \$10.00 p/t for grain delivered into a CBH port from a non-CBH upcountry load site.</p>	<p>5628764/25628764/1</p>

Para	AWB submission	CBH response
2.5	<p>plus an additional fee known as the "Additional Non-Grower Receipt Fee" of \$1.10 per t. CBH says the "Additional Non-Grower Receipt Fee" is to cover sampling and the manual process of CBH accepting the grain, yet CBH provides the same service to growers for no additional charge.</p> <p>CBH's charge structure under Grain Express makes it cost prohibitive for marketers to outturn grain from the up-country silos, where it is delivered and sold by the growers, for transportation to CBH's port terminal facilities and penalises marketers who wish to arrange their own transport. The Grain Express notification therefore enables CBH to charge higher prices, regardless of the cost of the rail service, because marketers have little, if any, option but to use Grain Express. It also means suppliers of transport services have little or no market to service outside Grain Express.</p>	<p>over a 21 day window from outside of the CBH supply chain.</p> <p>CBH is required to guarantee the quality and quantity of each parcel of grain outturned from the system. Whilst the grain is in CBH's care, it does not need to make such stringent checks. CBH is not providing the same service to a marketer as to a grower as CBH does not have an automated interface to allow receipt details to be easily input into the stock management system when the delivery is made by a non-grower. Grower stocks and marketer stocks are handled differently within CBH's IT system as a result of the way that the industry has been structured for the last 80 years. When marketers seek to introduce grain owned by them to the system many things must be handled manually.</p> <p>There is no evidence that CBH freight charges are higher than the counterfactual or rates negotiated by marketers. Considering that CBH acquires bulk freight services at high volume on long term contracts in a competitive tender process and does not derive a profit from transport, it would be surprising if an individual marketer were able to negotiate lower rates. CBH has also provided significant data that shows that CBH is not charging artificially high freight rates.</p>
2.6	<p>The ACCC considers the ability of growers and, to a lesser extent, procurers of grain to arrange transport outside Grain Express will provide sufficient competitive tension for CBH to maintain low prices. This is unrealistic and has not transpired. CBH has increased its prices since Grain Express was introduced and there is no real ability for growers or marketers to arrange transport outside Grain Express. The additional charges CBH imposes on marketers who choose to arrange transport outside Grain Express means it is not feasible for marketers to use alternatives to Grain Express. In order for the opportunity to arrange transport outside Grain Express to provide sufficient competitive tension for CBH to maintain low prices, marketers have to be free to choose their own provider without incurring additional costs.</p>	<p>Growers choose the point at which they wish to input grain into the CBH system. They can therefore transport grain outside Grain Express if they consider that there is a transport saving to be made.</p> <p>CBH's average charges per tonne have not increased since Grain Express was introduced. In addition, gross revenue per harvest tonne has not increased since Grain Express was introduced. Over the last 5 years, there has been a significant trend downwards revenue per harvest tonne.</p>
2.9	<p>The area in which CBH previously faced significant competitive tension was the container export market. Independent container packers grew in size in Western Australia between the 2006/2007 and 2008/2009 seasons. In the 2008/2009 season, CBH increased its container packing charges from \$23.25 to \$27.50 per m³ (i.e. \$4.25 per m³). At the same time, its domestic outloading fee only increased from \$2.90 to \$3.20 per m³ (ie. \$0.30 per m³). This meant that CBH's container packing services were not as competitive as alternative suppliers. However, in 2009/2010, CBH increased its domestic outturn fee from \$3.20 to \$8.50 per m³ (ie. \$5.30 per m³). As CBH does not apply that outturn charge to marketers who use CBH's container packing services, alternative container packers could not compete with CBH on price and it was not economically viable for marketers to use independent container packers. This resulted in some well established East Coast service providers such as Professional Grain Service Pty Ltd (ABB as then it was), Adams Packing Pty Ltd and AWH Pty Ltd ceasing to operate in Western Australia.</p> <p>As a result of the above, whilst alternative container packers closed their operations and moved to the Eastern states, the service fees at CBH's container packing facility have increased from \$19.50</p>	<p>EXCLUDED FROM PUBLIC REGISTER</p> <p>CONFIDENTIAL information redacted.</p> <p>CBH also notes that:</p> <ul style="list-style-type: none"> Container packing grew during the period when the single desk was deregulated for containerised grain but maintained for bulk grain. During this time, container packing enabled marketers to export wheat and favourable container freight rates encouraged a growth in container packing businesses. During that period, CBH's low domestic outturn fee, which was below the cost of providing the relevant service, further encouraged the expansion of container packers, whose entire business model in WA relied on double handling grain. When the bulk market freight rate reverted to the normal level, and marketers could export wheat in bulk, the demand for exporting in containers from WA plummeted. <p>According to this analysis, the combined effect of CBH's increase in domestic outturn fees and its increase in container packing fees should make independent container packers more competitive on</p>

Para	AWB submission	CBH response
	<i>In 2006/2007 to \$30.00 in 2009/2010. That is an increase of 54%.</i>	price to CBH than they were in 2006/2007.
2.10	<i>Without the restrictions imposed by Grain Express, marketers would accumulate grain on a lowest cost and transparent freight model, similar to that which exists on the East Coast.</i>	We refer to our letter dated 8 October 2010 and query the transparency of freight fees on the East Coast.
2.15	<i>Grain Express prevents marketers from choosing the most cost effective mode of transport. Road carriage is a feasible transport option within a 300km radius of port. Road carriage is more cost effective than rail in areas like in Geraldton and Esperance where approximately 60% of transport occurs by road. However, marketers are unable to capture the cost efficiencies of road transport in these locations if CBH's services are used.</i>	CBH itself uses a portion of road transport and captures those efficiencies where available. However, CBH is able to capture a broader range of efficiencies associated with transportation of grain by rail than would be available to a single marketer. CBH has detailed these efficiencies in previous submissions to the ACCC and notes that its position is supported by WALGA and the State Government.
2.17	<i>In an open, free supply chain market, a road or rail carrier could move transport assets across from the East Coast to the West Coast to increase capacity. It is common practice for repositioning to occur in the East Coast states.</i>	The Notified conduct does not prevent or discourage this from occurring in WA.
2.18	<i>CBH's proposal to sign four to give (sic) year contracts with road transport providers will prevent other entrants from seeking to provide road transport services. East Coast transport carriers (road or rail) would not consider moving surplus capacity across to Western Australia if the work is contracted out for a long period of time.</i>	We refer to the letter enclosing this submission. Competitive tenders for fixed term contracts are competitive and enable efficient investment in transport infrastructure.
2.19	<i>Since Grain Express, there have been no new competitors or investment in road carriage and, thus, marketers have no flexibility as to which carrier to use.</i>	We refer to the letter enclosing this submission.
2.20	<i>There is no competition for port terminal services in Western Australia because CBH controls all grain export ports in Western Australia.</i>	Port Terminal Services are provided under an Undertaking that has been accepted by the ACCC.
2.21	<i>Since the introduction of Grain Express, there has not been an increase in capacity at the ports.</i>	CBH has invested in, and continues to invest in, its four port terminals. CBH provides port terminal facilities which expedite the loading process, and which allow marketers to ensure that they generally have the capacity to earn despatch. Since Grain Express, CBH has commenced renovating the Geraldton Concrete Silo Block and installed additional road grids at Kwinana.
2.23	<i>By forcing growers to use the bundled services, growers pay for the whole of those bundled services, not just the services they require. The effect is a potential increase in cost to growers, which impacts on a marketers' position when purchasing stock to fulfil export contracts.</i>	AWB does not specify which services are not required by growers.
2.24	<i>Grain Express also disadvantages marketers. Marketers pay CBH additional freight charges but, unlike growers, were not entitled to the freight rebate paid in 2008/09 on account of the surplus funds remaining from freight revenue after payment of expenses. CBH is yet to confirm whether it will pay a freight rebate for 2009/2010.</i>	Marketers were given a surge freight rebate on the element of freight that they paid. Marketers did not pay the majority of freight charges in the 2008/09 season and therefore should not expect to receive the majority of the rebate. This information on surge freight rebates has been provided to the ACCC in late 2009. CBH has not yet audited the freight funds accounts for 2009/10 and therefore it is difficult to confirm whether or not a rebate can be paid to growers in relation to freight costs paid by growers. However, on the basis of the small amounts of surge transport requested to date in the 2009/10 season CBH does not expect that there will be any rebates of surge charges.

Para	AWB submission	CBH response
2.25	<i>Grain Express passes the risk of poor quality stock to the marketers, who do not have the control (ownership) or access to information (regarding quality) to be able to manage their commercial risk or the fulfilment of their contractual obligations.</i>	We refer to the letter enclosing this submission.
2.26	<i>Under Grain Express, marketers have no control over their grain or the standard of grain they will receive at outturn. This reduces marketers' ability to service niche markets and achieve better prices, ultimately to the detriment of growers and the public for the reasons set out below.</i>	We refer to the letter enclosing this submission.
2.27	<p><i>CBH has a contractual obligation to outturn grain to its own minimal receival standard. CBH is not obliged to outturn grain to a higher receival standard, despite the fact that a higher standard of grain might enter the Grain Express system. The system allows CBH to blend wheat to achieve only minimum quality specifications, to the detriment of Australia's reputation and export marketing opportunities. It also means that if marketers identified grain from a grower that it knew would comply with standards required by an overseas buyer that are higher than receival standards offered under Grain Express:</i></p> <ul style="list-style-type: none"> (a) <i>marketers could not buy that grain in the knowledge that it will be the grain outturned by CBH (and therefore would not know if they would be able to perform a sales contract); and</i> (b) <i>Grain Express has removed the ability for marketers to reward growers, in the form of price premiums, for producing wheat with particular quality attributes.</i> 	We refer to the letter enclosing this submission.
2.28	<i>Grain is not a homogenous product. Under Grain Express, marketers are only entitled to receive grain at 15 Destination sites. This limits marketers' ability to monitor the quality and characteristics of stock and capture regional differences in grain specifications. It also prevents growers from receiving premium prices for grain that has particular quality attributes. This combined with the high fees charged by CBH to outturn from a CBH site, means that it can be cost prohibitive to service any niche markets.</i>	We refer to the letter enclosing this submission.
2.29	<i>Historically, Australian wheat has had a reputation of exceeding minimum specification. Since Grain Express, AWB has had to notify Japanese customers that grain from Western Australia would not meet Japanese minimum specifications. This has the potential to compromise Australia's reputation in the Japanese market, limit export opportunities and reduce the price which Japanese customers might be prepared to pay for premium wheat.</i>	We refer to the letter enclosing this submission.
2.30	<i>CBH says it is committed to accommodating niche grain entitlements upon request, although at a higher price that (it says) reflects the extra cost of providing the service and CBH will not guarantee that it can deliver grain to service niche markets.</i>	We refer to the letter enclosing this submission.

Para	AWB submission	CBH response
2.31	<p><i>It is cost prohibitive and practically impossible for marketers to service niche markets through CBH for the following reasons:</i></p> <ul style="list-style-type: none"> (a) <i>To service niche markets through CBH, marketers first need to accumulate or stack earmark grain in order to meet quality specifications, for which CBH charges:</i> <ul style="list-style-type: none"> (i) \$0.70 p/t for the first month (ii) \$0.70 p/t for the second month; and (iii) \$2.10 p/t for the third and each subsequent month. (b) <i>If the grain is not earmarked (and there is only one chance to do this), CBH can move the grain on behalf of any other shipper.</i> (c) <i>CBH has offered to earmark stock up to 25% of a grade by that marketer's zone entitlement. However, the marketer with the largest proportion of stock in the zone has first priority to accept this service. As CBH's trading arm is the largest holder of grain in Western Australia, it enjoys the right of first request.</i> (d) <i>Marketers bear all the risk involved because CBH will use only "reasonable endeavours" to meet an agreed quality management plan.</i> 	<p>We refer to the letter enclosing this submission. CBH does not charge additional storage for earmarking requests. CBH does charge for private segregations.</p>
2.32	<p><i>Upon request, CBH has provided site specific ownership data to AWB. AWB intended to use that information to tailor grain parcels for specific customers. However, this was not feasible given the amount of grain that could be reserved due to CBH's reservation/earmarking rules.</i></p>	<p>CBH requires further particulars of this allegation in order to respond. It is not clear why CBH's rules prevented AWB from executing its proposed plan of action.</p>
2.33	<p><i>AWB has not tried to reserve specific stock due to the terms and conditions of CBH's storage and handling agreement that pass on any added risk to the marketer, should anything happen to the stored grain. The combination of CBH's earmarking/reservation rules and the terms of CBH's storage and handling agreements means that AWB incurs additional costs and execution risks, without CBH committing to providing any additional service.</i></p>	<p>As AWB is aware, CBH generally outturns the average receival quality. CBH cannot guarantee that it will outturn the average receival quality, because matters outside CBH's control may prevent it from doing so. However, CBH does offer a financial guarantee that it will outturn grain to at least the receival standard.</p> <p>CBH considers that AWB's assertion that it has been deprived of niche marketing opportunities is misleading. CBH attaches an email chain demonstrating its efforts to work with AWB to outturn grain from a particular location for AWB to pack into containers.</p>
2.34	<p><i>The Grain Express system is highly anti-competitive as it represents a lost opportunity to service niche markets, imposes charges that do not reflect actual cost and it creates the opportunity and incentive for CBH to provide its marketing arm with information about the quality of its stock and to blend stock or "mine" for high quality stock. This occurred recently when marketers (other than CBH's marketing arm) were advising Japanese buyers of noodle wheat that they did not have the wheat which complied with their specifications. At the same time, AWB was informed that CBH's marketing arm advised the Japanese buyers that they would be able to supply wheat which met the required specifications. CBH's marketing arm would not have been in a position to give this advice unless they were privy to information which was not available to other marketers and/or CBH "mined" for high quality stock to meet the required specifications.</i></p>	<p>AWB's assertion is unfounded. AWB does not know what grain CBH Grain has in its stocks, just as CBH Grain does not know what grain AWB has in its stocks.</p> <p>The allegation of information misuse and stock mining is recklessly false considering the seriousness of the allegation and the public forum in which it is made. [CONFIDENTIAL] information redacted!</p> <p>CBH Grain had no information advantage. It just made better use of its information than AWB.</p>
2.35	<p><i>AWB has not observed an increase in efficiency or timeliness of the system under Grain Express.</i></p>	<p>We refer to section 2 of the letter enclosing this schedule.</p>

Para	AWB submission	CBH response
	<p>The problems experienced at the Western Australia ports in the 2008/2009 season provide a good example of Grain Express' inadequacies. Despite controlling the flow of grain to port, CBH was unable to transport sufficient grain through its system to port for loading onto waiting vessels. As such, marketers experienced severe delays in loading grain onto their vessels. It was only the historically low freight rates and associated low demurrage rates that reduced the financial cost to the industry.</p>	<p>Grain logistics is obviously a complex task. However, CBH at least is in possession of information for the whole of the supply chain. Marketers can only (and should only) know of their own entitlements and plans. AWB's proposed solution assumes that its grain movement decisions would have no effect on other supply chain participants. This thinking unintentionally discloses the reason why central supply chain coordination by an informed entity is essential.</p> <p>In many instances, Grain Express delivers flexibility and efficiency benefits to marketers that are gratefully accepted, yet AWB does not refer to these in its submission. For example, on 29 June 2010, AWB requested that CBH substantially amend the blend of grain to be loaded on a vessel that was arriving the following day. Prior to Grain Express, CBH may have been unable to make the requested change because AWB may not have had sufficient stock at port. However, the entitlement system that is at the heart of Grain Express enabled CBH to load grain on the basis that AWB had grain entitlement in the system as a whole.</p> <p>The value of this entitlement system is evident when the quantity and grade profile of the harvest is understood. Attached is a pie chart that depicts the 5 year crop profile for WA. AWB advocates a system in which CBH could not move grain to port without marketer instruction. Under Grain Express, CBH moves grain in anticipation of export requirements in order to keep its receival sites open and to cater for the different order in which grain comes off the land.</p> <p>CBH tends to move the common grain types that feature on most Cargo nomination requests. As the pie chart shows, there are several grades which average over 1 million tonnes and APW2 which averages nearly 3 million tonnes. With this knowledge, CBH can responsibly enhance efficiency by moving these common bulk grains to port early. When forecasting the export profile (in the absence of specific information to the contrary by the marketers) it is not unreasonable to move these common grains.</p>
2.36	<p>Had it been possible (physically and economically) for marketers to transport their own grain to port outside the Grain Express system, the delays in loading the waiting vessels would have been greatly reduced.</p>	<p>We refer to section 2 of the letter enclosing this schedule.</p>
2.37	<p>Under Grain Express, the protocol requires marketers to have ownership of and nominate notional stocks at port no less than 22 days prior to the carrying vessel's estimated time of arrival. That date cannot be later than the last day of the shipment period. Grain Express should move this stock into a shipping position. The market, marketers, and the protocols in place should drive Grain Express to accumulate the grain in accordance with the market's requirements. However, movement to port is controlled by CBH's forecasting. CBH chooses the grain that it will move to port. CBH usually moves grain from one area at time. CBH's forecasting can and has been incorrect, meaning that marketers cannot properly perform the sales contracts. Under the terms of its storage and handling agreements, CBH does not bear any responsibility for its decisions.</p>	<p>We refer to section 5 of the letter enclosing this schedule. In response to this specific Iranian example CBH notes that AWB has not provided all the relevant information about these cargoes. In particular, the 2008/09 season had a higher protein level than the minimum receival standard of wheat. Yet there was some difficulty in getting grain to meet the required falling number analysis standard. This was not typical of WA grain but was a seasonal variation that had to be catered for. In previous seasons it was possible to put a larger quantity of "non-major" milling grade wheat on board without jeopardising the</p>
2.38	<p>Grain Express is inefficient and out of touch with real market demand, as can be seen from what occurred in the 2008/2009 season. In the early part of 2009, AWB consistently had issue with CBH not making its grain entitlements available at port when required, despite AWB complying with CBH's notification requirements. A specific example involved the sale of wheat to Iran. Iran experienced a drought in 2008 which led to a significant importation program in 2009. In planning and physically moving tonnes to port, CBH moved milling grade wheat to port before the market</p>	<p>We refer to section 5 of the letter enclosing this schedule. In response to this specific Iranian example CBH notes that AWB has not provided all the relevant information about these cargoes. In particular, the 2008/09 season had a higher protein level than the minimum receival standard of wheat. Yet there was some difficulty in getting grain to meet the required falling number analysis standard. This was not typical of WA grain but was a seasonal variation that had to be catered for. In previous seasons it was possible to put a larger quantity of "non-major" milling grade wheat on board without jeopardising the</p>

Para	AWB submission	CBH response	
	<p>gave the signal to accumulate certain grades for the Iranian program. The predominant grades required for the Iran program were non-major milling grades. The grain specifications required to fulfill the sales contracts were lower than that which was being held by CBH at port and that which was being moved to port under Grain Express. Australian marketers could not supply the minimum standard grain required to comply with the Iranian contracts and provided grain that exceeded contract specifications. This specific example had the following negative ramifications:</p> <ul style="list-style-type: none"> (a) Marketers paid additional surge cost to acquire transport to move grain to port to mitigate vessels demurrage; (b) Marketers paid additional surge cost to acquire transport to move specific grades of grain to port to attempt to maximise contract value; (c) Marketers obtained a lower price than should have been achieved for the same quality of grain; (d) The quality of that higher standard of wheat left in Australia for sale and export was less than should otherwise have been the case; and (e) Australia was left with a larger quantity of lower standard of wheat for sale from Australia than should otherwise have been the case. 	<p>falling number specification. In 2008/09 it wasn't possible and the marketers either weren't willing to take the risk of a cargo being out of specification or didn't have the required grain types. CBH did not move the wrong grain type to port but its operational planning was detrimentally affected by the protracted harvest, shipping congestion and a lack of usable information flow from the majority of the grain marketers. However, CBH did attempt to meet the marketers demand with the options available to it and the particular marketer in question.</p> <p>Marketers addressed this issue in a number of ways, including blending grain to meet the specification or putting whatever grades that they had on the vessel in order to meet the outturn specification. In particular marketers were constrained by the grades of wheat that they owned at the time that their vessel was due. CBH cannot be held responsible for whether or not a marketer has the required stocks of grain.</p> <p>The first two consequences listed are not related to the quality issues highlighted in the opening words and are merely a re-statement of the congestion issues.</p> <p>The third consequence is something that is within the control of the marketers and not CBH. If the marketers failed to understand all circumstances surrounding their grain entitlement and the sale contract it is not something that CBH can remedy. CBH does not control the specifications in the grain sale contract.</p>	
2.39		<p>The following price increases were made by CBH from the 2008/09 to the 2009/10 season:</p> <ul style="list-style-type: none"> (a) CBH's Outturn & Re-delivery Fee increased from \$3.20pt/l in 2008/2009 to \$8.50pt/l in 2009/2010. (b) CBH's Carryover Fees increased from \$3.99pt/l 1 Oct 08/09 to \$3.50pt/l 09/10; from \$2.10pt/l 1 Nov 08/09 to \$2.50pt/l 09/10; from \$2.00pt/l 1 Dec 08/09 to \$2.50pt/l 09/10; and from \$1.90pt/l 1 Jan-2 Sept 08/09 to \$2.00pt/l 09/10. (c) CBH's Domestic Outturn Fee increased from \$3.20pt/l in 2008/2009 to \$8.50pt/l in 2009/2010. (d) CBH's Domestic Outturn to Rail Fee increased from \$5.70pt/l in 2008/2009 to \$11.00pt/l in 2009/2010. (e) CBH's Export Fee increased from \$8.00pt/l in 2008/2009 to \$14.10pt/l in 2009/2010. (f) CBH's Upfront Marketer Fee is a new fee of \$3.00pt/l. 	<p>We refer to section 3 of the letter enclosing this schedule.</p> <p>We refer to section 3 of the letter enclosing this schedule.</p> <p>We refer to section 3 of the letter enclosing this schedule.</p> <p>We refer to section 3 of the letter enclosing this schedule.</p>
4.3	AWB's passing of risk to the grain storage		We refer to the Frontier report and our letter to the ACCC dated 16 September 2010. It is not surprising

Para	AWB submission	CBH response
	Express system. This is due to the excessive outturn fee and the limited alternative transport that is now available.	that it is costly for a marketer to outturn grain from a CBH storage facility, transport the grain to port and then re-introduce it to the CBH storage at port. This process would require CBH to hold grain up-country awaiting a marketer's instructions instead of moving grain to port in efficient high volume movements to reduce costs and anticipate expected demand. It also involves additional functions and costs because CBH must test and weigh grain removed from its custody when it is reintroduced at port. Finally, CBH is confident that freight rates negotiated by individual marketers are likely to be substantially higher than those negotiated by CBH.
	[REDACTED]	[REDACTED]
5.3	The marketers pay for the surge through buying surge capacity (once the normal operating capacity is consumed surge capacity can be booked). There is no transparency in regards to the actual costs required to accumulate or whether the grain was accumulated without the need for additional costs. There is also no rebate to marketers in 2009/10.	We refer to paragraph 4.15 of the letter enclosing this submission.
5.4	CBH required AWB to pay a surge fee in the 2009/10 season. ¹ AWB received an email from CBH on 17 February 2009 in which CBH advised AWB that it was implementing a "surge" fee. AWB was given until the close of business on 18 February 2009 to accept the imposition of the new fee. The surge fee was forced on AWB in circumstances where it had no alternative but to accept the charges or risk delays or penalties (the cost of demurrage).	AWB asserts that CBH required AWB to pay a surge fee in the 2009/2010 season, but refers to an email relating to the 2008/2009 season. CBH has previously provided information on the process of implementing the surge fee in 2008/2009 to the ACCC. The surge fee was paid by all marketers to increase accumulations in proportion to each marketers' shipping amount. The surge fee was used to obtain additional transport resources in order to accelerate the accumulations of all marketers, thereby keeping the queue properly ordered. The surge fee was an equitable method of dealing with the costs of removing port congestion.
5.5	CBH claimed that the fee was necessary to increase the rate of accumulation of grain at port zones. CBH did not explain why the fee was charged or the basis on which the fee was calculated.	As CBH has explained, the surge fee was calculated on a per tonne basis to meet the costs of accelerating accumulation. It was divided across all marketers in proportion to the tonnes of shipping that they had on the shipping stem. AWB was informed of this by email and in a telephone conference. CBH explained what the fee was for, or how it was calculated.
5.6	The surge payments caused the accumulation program to be front ended, versus an accumulation program. CBH's yearly forecasts should be based on historical export patterns on a month by month basis. This would mean that additional capacity in CBH's rail contracts under Grain Express would occur at some point during the season. Depending on their contracts with ARG and road carriers, CBH may not have been required to pay for this unutilised capacity. However, a lack of transparency means that whether this has taken place is not known.	CBH misleadingly reverses cause and effect. The surge payments did not cause the accumulation to be front-ended. The surge payments were a response to a front-ended export program chosen by the market. AWB asserts that CBH should have based the acquisition of transport resources on historical export patterns. This is exactly what CBH did, and one of the main reasons why the shipping congestion developed when all marketers decided to export at the same time. AWB was aware of the nature of the logistics contract in place immediately prior to Grain Express, because it was involved in negotiating that contract. That contract did not "front-end" the provision of rail resources, nor did it allow CBH to obtain freight resources for which it did not pay. If CBH wished to have freight resources available CBH would have had to pay a fixed amount to ensure they were

¹ CBH paid a rebate for surge costs in 2008/2009.
5628764/25628764/1

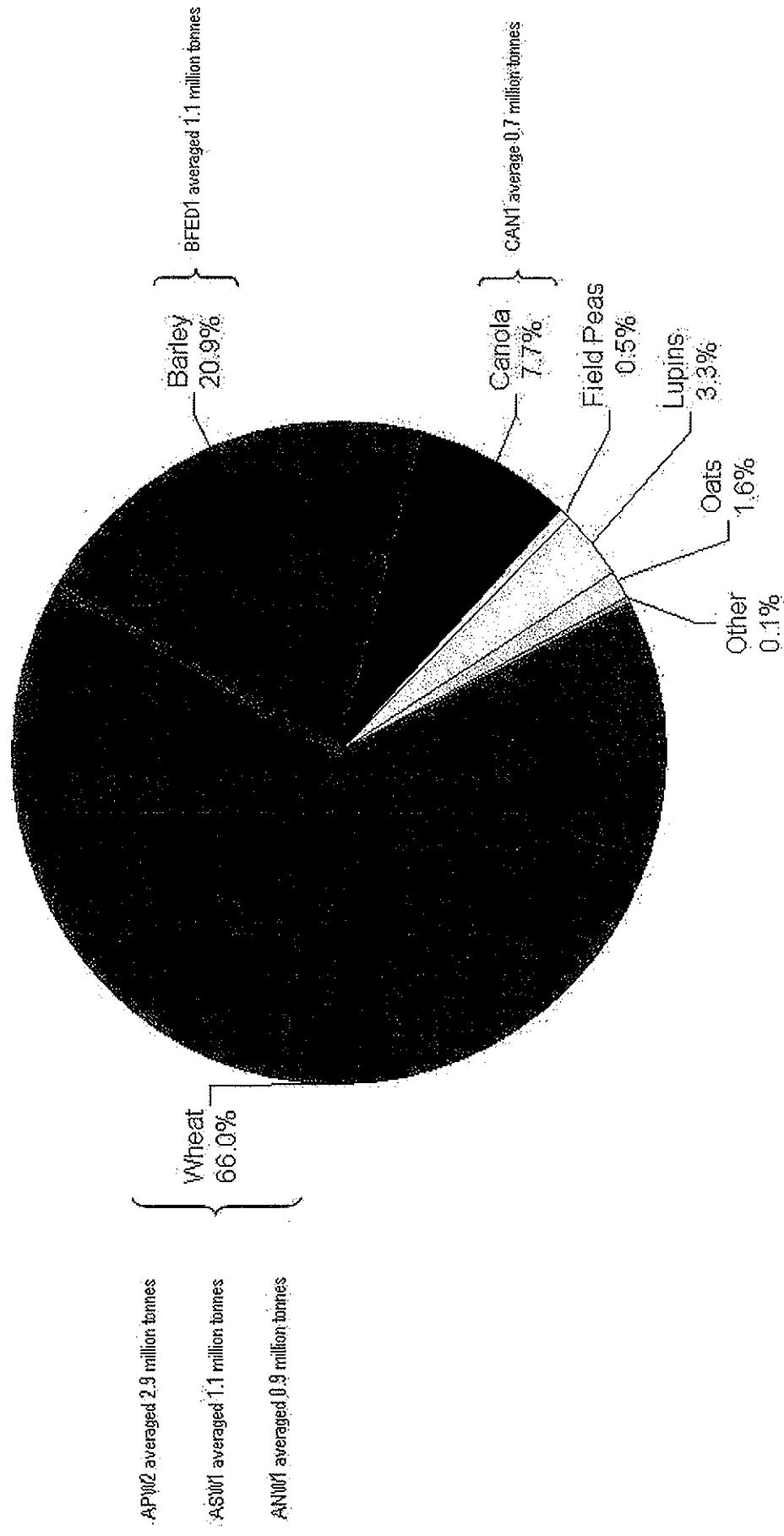
Para	AWB submission	CBH response
5.8	<i>AWB does not know if Grain Pool was charged a similar surge fee.</i>	CBH Grain paid surge fees commensurate with the tonnage it shipped.
5.11	<i>In theory, it is possible to source transport in Western Australia (i.e. trucks). However, it is not economically or practically feasible for marketers to use alternative transport because of the limited number of Destination Sites from which the grain can be outturned, the high costs of outturn (\$8.50 per mth) and the high cost of re-delivery to the CBH system at port (\$11.10 per mth).</i>	AWB's assertion that a re-delivery at port for a shipment costs \$11.10 is incorrect. If AWB were to bring grain to port for a vessel accumulation, it would be charged \$17.10 to receive and export the grain.
6.1	<i>Grain Express results in marketers having no control over or visibility of the planning process, and therefore no ability to directly influence their own vessel's accumulation. Yet under CBH's storage and handling agreements, all the risks of execution are borne by marketers including, but not limited to demurrage costs.</i>	<p>CBH considers this assertion is misleading. The shipping stem provides visibility over the order in which CBH accumulates cargoes. As accumulation and exporting of each cargo can have an impact on other shippers, it is necessary for CBH to place some limitations on marketers' ability to influence their vessel nomination.</p> <p>However, the key way in which marketers can ensure that their accumulation flows smoothly is to ensure that they actually own the grain that they wish to export. One of the major impediments faced by CBH early in the year is that marketers do not own sufficient grain to load a cargo. If CBH was to move all the grain to the port without sufficient ownership, there would be potential for a port to be blocked out until the marketer acquires sufficient entitlement.</p> <p>Another major impediment to efficient accumulation is if marketers change the quantity and grade of grain in their cargo request after accumulation has commenced.. This can often be linked to the marketers' entitlement issue, with changes occurring as the marketer acquires more grain.</p>
6.5	<i>Then, CBH imposed the Auction System in 2009/10 which is biased towards CBH's marketing arm. Marketers' entitlement to a rebate (once the total auction results are known) is measured against the total tonnage shipped during the relevant period, without reference to the premium paid at auction. As CBH's marketing arm is the largest shipper of grain from Western Australia, it stands to benefit the most from the Auction system.</i>	<p>This allegation makes no logical sense. The auction system is entirely non-discriminatory. The payment of rebates based on volume shipped distributes auction premium according to use in order to manage capacity efficiently by increasing the relative price of services in peak demand periods. If rebates are paid according to the amount of premiums paid, the auction process is pointless.</p> <p>If this is correct, then AWB cannot argue that Grain Express caused the 2009 Export Congestion. It is commercially unfeasible for CBH to accept responsibility for demurrage, especially because it does not have control over demurrage rates, and, unlike marketers, CBH does not have the ability to load risk in the demurrage rate to achieve a cheaper freight rate.</p>
6.6	<i>In part the Auction system has reduced the demurrage problems of 2008/09. However, AWB still has concerns that quality optimisation is in the hands of CBH, which can result in the quality of the grain being used to perform export contracts exceeding specifications or marketers risking further demurrage. AWB's position is that Grain Express cannot operate efficiently without the terminal taking full responsibility for demurrage as per standard global practice.</i>	CBH has discussed entering a demurrage despatch agreement with AWB. AWB has not shown any interest to enter into any such agreement with CBH.
6.7	<i>CBH requires marketers to have ownership of a notional grain entitlement at port. In the current system CBH does not participate in vessel demurrage. It should be a natural extension of an efficient notional stocks system for the risk and associated costs (and benefits) of an integrated export system to be borne by both the marketers and CBH</i>	[REDACTED]

Para	AWB submission	CBH response
7.1	<p><i>The necessity for liquidity in the secondary market requires marketers to nominate the Grain Express supply option. In order to trade on the secondary market, a marketer has to trade like with like. To the best of AWB's knowledge, there are no 'Direct to Port' option Trade slots available for trade on the secondary market. This means marketers are forced to nominate the Grain Express supply option. To do otherwise means limited or nonexistent participants in the secondary market to buy a Direct to Port Access shipment slot.</i></p>	<p>There are no direct to port slots in the secondary market because to date, marketers have opted to acquire the Grain Express service. CBH should not be responsible for ensuring that there is liquidity in another supply chain, demand for which does not yet exist. CBH did not limit the number of direct to port slots. It therefore cannot be responsible for the lack of liquidity in the secondary market for those slots.</p>
7.2	<p><i>The Auction system has not been a success, save that it has managed to reduce the demurrage problems that occurred in 2008/09.</i></p>	<p>If this is correct, then AWB cannot argue that Grain Express caused the 2009 Export Congestion. Given that the only complaint about Grain Express in 2008/2009 was the shipping congestion, CBH considers that the fact that it managed to alleviate that congestion, whilst still exporting a similar volume of grain, should mean that Grain Express should be viewed as a significant success.</p>
7.3	<p><i>The Auction system has failed for the following reasons:</i></p> <ol style="list-style-type: none"> <li data-bbox="583 1138 646 2058"><i>Excessive premiums paid by the market for slots, based on the fear that CBH would control the stem;</i> <li data-bbox="646 1138 710 2058"><i>The cost and risk imposed by the half month shipping periods imposed under the Auction system; and</i> <li data-bbox="710 1385 773 2058"><i>Ambiguous rules that are applied subjectively and without clarity.</i> 	<p>AWB's reasons for the auction system failing (which appear to contradict previous indications from AWB to CBH that the auction system works) effectively boil down to CBH requiring marketers to take a position on shipping grain at particular times. Given that efficient operation of the supply chain requires CBH to deploy resources in anticipation of market requirements, it is reasonable and efficient for capacity to be allocated to those prepared to commit in advance to using it.</p> <p>AWB's assertion that marketers paid excessive premiums to obtain slots, based on a fear that CBH Grain would otherwise dominate the stem, appears to be an attempt to hold CBH accountable for an erroneous assumption by marketers.</p> <p>The cost and risk imposed by half-month shipping windows is within marketers' control, and is something that AWB has endeavoured to push onto CBH. CBH considers that it is reasonable for marketers, including AWB, to be responsible for having a ship arrive at port within a globally-acceptable window (when chartered most vessels are aiming for a 7 to 10 day window of arrival). CBH provides some flexibility, however, given that AWB's actions may impact on shippers subsequent to them, CBH considers that price signals to encourage efficiency are appropriate.</p> <p>CBH does not consider that its rules are ambiguous, nor that they applied subjectively or without clarity. CBH has invested a significant amount of time explaining its rules to the market, and it applies those rules rigidly. In fact, the predominant complaint that CBH has received from industry participants is that CBH applies the rules too rigidly.</p> <p>Whilst auction premiums are paid to CBH, CBH does not retain those premiums. Rather, they are a method of compensating those who chose not to acquire capacity at peak periods. CBH does not consider that Western Australia needs more port terminal facilities, as there is sufficient capacity to export from the existing terminals.</p>
7.4	<p><i>Excessive premiums have been paid for slots which were not justified as it transpired that there was more supply of shipping capacity than there was demand. The first two annual auctions lasted nearly two days each with premiums \$14.00 over par, or 28 rounds. Subsequent auctions lasted no more than two rounds or \$1.00 above par with the last three auctions trading at par. Shipping slots were not a scarce resource.</i></p> <p><i>Premiums were high because CBH booked a significant proportion of the stem and their cost of not</i></p>	<p>CBH Grain's cost of non-execution is the same as for any other marketer in its position. If CBH Grain does not perform, it must still pay for capacity that it does not use.</p> <p>CBH cannot control the actions of marketers, nor any erroneous assumptions that marketers may make about CBH or CBH Grain. In the 2009/2010 auctions, CBH Grain endeavoured to obtain capacity required to fulfil its shipping forecasts. It will do likewise in the 2010/2011 auctions.</p>

Para	AWB submission	CBH response	
7.5	<p>executing or lost capacity (\$14.10) was different compared to other traders. CBH's lost capacity or the take or pay cost of not shipping was paid to the operations part of the business, an internal transaction with no actual cost to the business. Marketers viewed this as an advantage to hoard the stem and felt compelled to remain in the auction to secure supply and access to the stem. In short, marketers felt that CBH were running up the auction premium, with less consequence to themselves than to others.</p>	<p>The average Auction premium is \$7.77 per mt in addition to a \$3.00 per mt up-ont marketers fee. However, the Auction premium has reached \$14.00 per mt. CBH's charge for non performance of a shipping slot is \$14.10 per mt. These three fees mean that on average, the marketer will pay \$24.87 per mt for a service, whether or not is used. However, based on historical figures, the combined fees could total \$31.10 per mt. These fees distort the Australian export market. There are examples of marketers entering into "fixe sale" contracts to sell grain at lower than market rates. If the discount on the sales price is less than CBH's fees, the marketer's loss will be less than had it not used the vessel slot.</p>	<p>AWB's assertion is based on the incorrect assumption that CBH retains the auction premium. CBH is paid \$17.10 per tonne to export grain from its terminals. Marketers either pay a premium to ship, or receive a rebate on shipping from other marketers. It is marketers who determine when they are willing to ship, and how much of a premium they are willing to pay, not CBH. If marketers balance their export demands, they will pay \$17.10 regardless of when they ship. The auction system is a mechanism for the market to adjust its demand to the capacity of the relevant terminal.</p> <p>If the marketer does not wish to take the risk of paying a lost capacity fee, the mechanism exists to reserve spare capacity (if available) when the marketer has a contract and can be assured of proceeding. AWB appears to assert that CBH should guarantee AWB's ability to ship without any commitment by AWB to actually do so.</p>
7.8			<p>The Auction system created half month shipping periods. This was a significant change to a market that previously could determine required laycans, i.e. Japan historically had shipment periods from 10th to the 10th of the next month, covering 3 periods under the new system. Now a marketer is required to buy one slot and manage their risk if a vessel presents outside this period. The cost and risk associated with a vessel presenting outside the 15 day shipment period is unknown. The risk cannot be managed with existing FOB sale contracts or charterparties. Buyers will not accept this risk nor the inflexible terms and new costs imposed by CBH. This means that the marketers must bear the risk associated with CBH's ever changing rules and fee increases.</p>
7.9	<p>Under CBH's port terminal rules, trading in the secondary market cannot occur less than 30 days prior to the first day of the shipment period. However, CBH has the discretion to and has on occasion waived this requirement. CBH's ability to change the rules at its discretion creates a lack of certainty for participants in the Auction system and negatively impacts liquidity in the secondary market.</p>		<p>CBH has removed this restriction in the July 2010 Port Terminal Rules variation.</p>
7.11	<p>CBH asked marketers for feedback and suggestions on the Tradeslot auction for the 2010/11 season. Most of the debate centred on flexibility to move shipment slots between periods, the cost of lost capacity and the rebate. CBH then published a Notice to vary the port terminal rules for 2010/11. For the most part, the changes address industry requirements. A significant issue AWB has with the proposed changes revolves around the risks that CBH incurs vis-a-vis other marketers. In particular, CBH proposes that an Auction participant will receive the weighted average of the auction premium as a rebate, as per tonnage acquired by that marketer, regardless of whether the tonnage is shipped or not, or traded in the secondary market. In AWB's opinion this opens the Auction and the market up to distortion. CBH in particular has less risk associated with lost capacity</p>		<p>CBH has reverted to the previous method of calculating the auction premium, which effectively addresses AWB's assertion at paragraph 7.11. CBH considers that this reversal highlights the transparent method in which the proposals were made, the existence of a consultation process and bona fide consideration of points raised by marketers.</p>

Para	AWB submission	CBH response
	<p>as it becomes an internal transaction. There must be equal and equitable penalties for all parties, (including CBH), that do not perform on shipping slots. For example, CBH should incur the same cost to their business as other parties, in the event that they do execute a shipment slot, not just a ledger transaction between divisions. AWB views this change to the rebate as another mechanism that will reduce liquidity in the secondary market and create an unfair advantage to CBH.</p>	<p>The secondary market is not constrained by the auction system. The secondary market is primarily constrained by the market for grain. When the market for grain exports fell in 2010 the secondary market for shipping capacity contracted significantly.</p>
7.12	<p>The secondary market for shipping slots has been greatly constrained by the Auction system for the following reasons:</p> <ul style="list-style-type: none"> a) The Auction system allocates a narrow period within which the vessel must arrive at port to ensure that the marketer is not exposed to further costs and/or loss of vessel slot; b) When seeking to trade on the secondary market, the marketer can only trade like with like. That is, where a marketer has a shipping slot for grain that is to be delivered Direct to Port (outside the Grain Express system), it cannot sell that slot to a marketer wishing to purchase a vessel slot for grain that is in the Grain Express system and vice versa. To the best of AWB's knowledge, there are no "Direct to Port" option Trade slots available for trade on the secondary market. 	<p>The July 2010 Port Terminal Rules variation notice allows the nomination of the supply chain to be deferred until a point in time closer to the nomination of a vessel.</p>
7.13	<p>Instead if an auction system is to be used, that system should create a tradable commodity in shipping slots. To do this, the following is required:</p> <ul style="list-style-type: none"> a) Unambiguous rules (which are not open to subjective interpretation or CBH's discretion) to participate in the auction and the services provided by CBH; and b) Equal and equitable penalties for all parties including CBH, i.e. CBH needs to be exposed to the same business costs as other marketers, if they do not execute a shipment slot, not just a ledger transaction between divisions. 	<p>CBH notes that auction system as it currently exists already provides these things. AWB's assertions at paragraph 7.13 that it does not are unsubstantiated.</p>

5-year WA crop profile (10.2 million tonnes)



Annexure 2 -- CBH response to Glencore submission

Glencore submission	CBH response
The railways of Western Australia had no legislated monopoly to haul grain to port and in fact the railways have had for years a declining share of the transport task to port and road has had an increasing share. The railways had been privatised in 2001 and since then the Westnet railway network, which served the wheat producing areas, was expressly open access.	Western Australian railways have had a legislated monopoly to transport grain to port, for a considerable time, which was included in the <i>Bulk Handling Act</i> until approximately 1989. Further, whilst the Western Australian Government Railways were privatised in 2000, and whilst they have been open access, the majority are narrow gauge rail which is not consistent with grain rail operations in Eastern Australia.
1.4 How Grain Express lessens competition to one provider, CBH	We refer to section 4 of the letter enclosing this schedule.
Grain Express requires CBH to be the sole provider of transport of grain to port. By CBH (i) making it a condition, under its 2008 Grain Services Agreement, of receipt of grain at its ports and receipt of grain at its upcountry storages that only CBH could organise transport of the grain to port and (ii) CBH controlling all the storages and all the ports, the only buyer of road and rail haulage of grain to port, and only provider of such haulage, was thus CBH.	The objective of this requirement was to provide CBH with advance notice of the likely resources it would require for the Grain Express transport task. The Port Terminal Rules have now been varied to provide that nomination of the supply chain need not be made until 30 days prior to the first day of a shipping window. Accordingly, if a bidder chooses to transport Grain to Port from alternative storages, it need only provide CBH with 30 days notice that a particular capacity is not required to be serviced by CBH.
1.6 Exclusion of other transport suppliers	We refer to section 4 of the letter enclosing this submission.
Every other successful bidder for a shipping slot was and is in exactly the same position as Glencore Grain, and cannot use any other transport supplier but CBH.	We refer to section 4 of the letter enclosing this submission.
1.7 Substantial lessening of competition in transport to port	We refer to section 4 of the letter enclosing this submission.
The direct result of Grain Express being imposed on Glencore Grain and the potentially up to 20 other grain marketers was that there was only one supplier of transport to port, namely CBH, and no competition in such supply. There has been a substantial lessening of competition or, to be correct, competition has been eliminated.	The commission's acceptance of CBH's notification of Grain Express has been to extend CBH's own iron curtain around its upcountry storages and around its ports - iron because of CBH's excessive withdrawal or outturning charges - to the road and rail lines and services from the storages to the ports. Thanks exclusively to Grain Express CBH has a monopoly of the road and rail lines and services.
Thus if Glencore Grain wanted to develop its own storage it would have to pay the costs of that storage as well as the \$6 levy component of CBH's port loading fees, which makes the development uneconomic, especially as Glencore Grain typically requires a month or two of storage, which in a free market, as in the other states, costs about a \$1 a tonne a month.	There is no evidence to support this assertion. CBH Grain is supplied services on non-discriminatory terms and conditions.
If, further, Glencore Grain wanted to develop its own port, using CBH storage upcountry it would have to pay an outturn fee of \$8.50 a tonne to CBH which makes the exercise uneconomic. Note that CBH does not charge itself or its customers this same outturn fee when it outturns grain from CBH.	CBH does not understand this allegation. It is not clear how Glencore has concluded that it is required to pay a levy.
	It is misleading to suggest that CBH does not charge itself or its export customers for the service of loading grain onto trains or trucks for transport to port. Grain Express export customers are not charged a fee called "Domestic Outturn Fee" because their grain is not outturned domestically. It is,

Glencore submission	<p>CBH's response</p> <p>If there was no Grain Express there would be other grain transporters in the market who would expose the exorbitant \$8,50 outturn fee and the levy component of the port loading fee. CBH's pricing structure would be challenged. However while Grain Express continues so does the pricing structure which in turn makes uneconomic the development of competitive ports and storages.</p> <p>2 Detriment to the public</p> <p>2.1 Demurrage and surge charges 2009</p> <p>The direct effect of Grain Express was disastrously felt by Glencore Grain at the end of January 2009 when CBH failed to deliver grain to port to meet Glencore Grain's shipping slots, failed to use all the trains available to it and refused Glencore Grain permission to organise alternative road transport. The details follow.</p> <p>Under the 2008-2009 version of the GSA to which Glencore Grain was party with CBH, Glencore Grain had five "EOI Export Windows" or shipping slots at Kwinana, Albany and Esperance for a total of 295,000 tonnes of barley and canola. The total export of barley and canola from Western Australia in 2008 - 2009 was of the order of 2 million tonnes making Glencore Grain's export shipping slots 15% of the total.</p> <p>For the slot, or laycan, at Albany which was available from 23 to 31 January 2009, Glencore Grain nominated on 12 January 2009 the vessel "F&K" which nomination CBH accepted. Under the then version of the GSA CBH was then obliged to get the necessary quantity of barley and what (since by agreement some wheat had been substituted for barley) to Albany to enable loading within this laycan.</p> <p>At this time I had phone discussions on the problems of delays in transport to port with [excluded from public register] all of CBH, and offered for Glencore Grain to itself truck the grain to port for the F&K and the other ships which we had chartered, and thus to reduce the delay in their loading. These offers were rejected by CBH.</p> <p>The delays continued and the F&K was not loaded until 7 March 2009, which was 36,538 laytime days late, which incurred Glencore Grain demurrage of \$US155,000.</p> <p>There were similar delays with the four other shipping slots, incurring for Glencore Grain further demurrage of \$US808,868.70, a total demurrage charge of \$US1,463,868.70.</p>	<p>however, loaded onto transport to port and the fee for this service is incorporated into CBH's Grain Express pricing.</p> <p>There are differences between the process of loading grain onto CBH arranged transport and loading grain onto transport arranged by others. Outturning grain domestically is likely to involve smaller volumes (and hence higher costs) than export outturn and will involve interacting with transporters that may not be familiar with CBH facilities or processes.</p> <p>We refer to section 2 of the letter enclosing this submission and CBH's previous submissions in relation to this issue.</p>	<p>CBH has provided the ACCC with details of the Glencore vessels loaded in January – February 2009.</p> <p>Glencore had 4 vessels which were priority harvest ships. These vessels were contracted to be loaded before 10 January 2010. This did not occur and the vessels were subsequently caught up in the 2009 Export Congestion. In each case Glencore failed to nominate a vessel to comply with the harvest shipment contract prior to the end of the shipping period. In CBH's view this was because Glencore had not acquired sufficient grain from growers in order to risk nominating a vessel.</p> <p>This vessel was a priority harvest ship which was meant to be nominated and loaded between 25 November 2008 and 10 January 2009. Under the terms of that agreement Glencore should have forfeited its booking fee of \$180,000.</p> <p>In fact, Glencore did not nominate a vessel until 12 January 2009, with that vessel not arriving until 27 January 2009. At the time nominating the vessel, Glencore did not have sufficient entitlement to ship the cargo. In addition, the nomination gave 7 days less notice than was required under the GSA and CBH's Export Accumulation Guidelines of the time.</p>	<p>This point assumes that the actions of one participant in a supply chain have no effect on other participants. In CBH's view, this action would have ultimately slowed down the accumulation of other marketers who had nominated ships appropriately and complied with their notification requirements and grain entitlement requirements.</p> <p>In February 2009 CBH loaded 1,134,088 tonnes of grain and in March 1,551,823 tonnes. In CBH's view, if it had enforced its contractual rights, Glencore would have forfeited \$180,000 and not loaded any grain at all.</p>	<p>In CBH's view, it was Glencore's failure to abide by the Export Accumulation Guidelines and Grain Services Agreement which caused the majority of its delays. In a number of instances Glencore nominated vessels without providing the 21 days notice required and then had vessels arrive before their ETA.</p> <p>CBH estimates that had Glencore complied with the Export Accumulation Guidelines and Grain Services Agreement, it could have reduced its delays by 20 days. Further, Glencore substituted another vessel which had the effect of bringing its ETA forward by 8 days on short notice during a busy shipping period.</p> <p>An example of Glencore's failure to comply with the Export Accumulation Guidelines and Grain Services Agreement, is an occasion when the nomination for one of Glencore's vessels was not accepted by CBH. Despite this, Glencore had their vessel arrive and wait to be loaded for 41 days.</p>
----------------------------	--	--	--	---	--

Glencore submission	CBH response
<p>The delays were exacerbated by CBH reducing the number of train sets it used by one in September 2008 to save money and not resuming using this set until the crisis in loading ships in February 2009.</p> <p>The financial impact was exacerbated by CBH demanding on 17 February 2009 that Glencore Grain and other exporters pay a surge charge of between \$4.78 and \$6.14 a tonne and that the demand be accepted within 24 hours on penalty of loss of shipping slots. A total of \$515,837.64 in surge charges was paid by Glencore Grain to CBH under protest. Of this surge charge some 55% has been repaid to us without interest leaving the sum of \$232,000 unrefunded.</p>	<p>CBH managed to load this vessel between 11 and 20 days before its contracted loading slot. This complaint is not relevant to the notified conduct. The decision Glencore refers to was made in September 2008 based on CBH's estimates of likely demand. The 2009 Export Congestion occurred months later after circumstances had changed.</p> <p>CBH never threatened to take away shipping slots. CBH did note that those people who did not pay for additional resources would not get the benefit of them. In Glencore's case, the additional amount claimed by Glencore to be un-refunded was expended to contract transport resources which moved tonnage to port for Glencore vessels.</p>
<p>2.2 Demurrage charges 2010</p> <p>In January this year we incurred demurrage charges of \$US274,000 due to CBH's late loading of the <i>Priscilla Venture</i> at Kwinana. CBH failed to bring grain to port for loading, advising us of this only at the last minute.</p>	<p>Glencore arranged for this vessel to arrive prior to its loading slot by 5 days. The vessel would have been allocated 5 days loading (under AustWheat).</p> <p>Glencore notes that this vessel incurred USD274,000 for a delay of 8 days 23 hours and 40 minutes under AustWheat. In this instance that represents demurrage of USD30,491.50 per day. This appears higher than should be the case for a vessel booked a standard time before the relevant window. CBH rates for the relevant time indicate a panamax vessel should have a demurrage rate of approximately USD22,500 per day. Therefore under AustWheat CBH considers that this would have incurred USD202,187.50 in demurrage at a rate of USD22,500 per day.</p> <p>However, if Glencore's vessel had not arrived early it would have sailed 112 days after it arrived. Assuming a Notice of Readiness accepted on the 1st day of the shipping window, and a demurrage rate of USD22,500, CBH calculates Glencore would have incurred only approximately USD89,687.50 in demurrage.</p> <p>CBH itself would normally load canola vessels under the Ausgrain 2002 Charter Party. Using the Ausgrain Charter Party and a demurrage rate of USD22,500 CBH calculates a demurrage cost of USD23,703.13. This shows that it was Glencore's choice in its booking of a vessel that substantially affected the demurrage incurred. Whilst CBH might have incurred USD23,703.13 Glencore alleges that it has incurred USD274,000 in demurrage.</p> <p>CBH did not fail to bring grain to the port for this vessel. At the time of the vessel arrival on 26 January 2010 CBH still had 279,000 tonnes to load in accordance with the Port Terminal Rules before it could attend to the Glencore vessel.</p> <p>Unfortunately, CBH had a significant number of vessels nominated in the last half January window which arrived towards the end of that window. This resulted in CBH still having approximately 100,000 tonnes of LH January capacity to load at 1 February 2010.</p> <p>Glencore's example is an operational issue rather than a systemic deficiency of Grain Express. Whilst regrettable, it is not grounds to demonstrate that Grain Express does not work. In fact, at the time when CBH realised that congestion was starting to develop CBH worked to obtain additional shifts. The key limiting factor was the availability of AQIS staff to assist in loading through the night. CBH ultimately made arrangements to transport, at its cost, additional AQIS staff to Perth to allow additional loading shifts. This is estimated to have saved Glencore in the order of 3 days demurrage which, at Glencore's rate of demurrage, saved USD91,474.50.</p> <p>2.5 Increased transport costs</p> <p>Glencore Grain regularly and each month monitors road and rail transport costs by obtaining prices from carriers. We calculate average charges by road and rail carriers are as follows in the mainland states:</p>
	<p>We refer to section 3 of the letter enclosing this submission and CBH's previous submissions in relation to this issue.</p>

Glencore Submission

CBH Response

State	Average Road Rate cents per km	Average Rail Rate cents per km
Qld	8.5	8.5
Nth NSW	9.5	9.5
Sth NSW	8.5	8.5
VIC	9.5	9.2
SA	9.5	9
WA	8	6

In the Kwinana zone Glencore Grain would assume that CBH would charge somewhere around 7 cents per kilometre given they do 75% of their movements on rail. However CBH's grower freight rates in the Kwinana zone average 8.3 cents per kilometre which would mean they could do everything by road and still make money. There is some narrow gauge rail in Kwinana zone which might run at 7 cents per kilometre but this should not push the average up anywhere near 8.3. Thus in the Kwinana zone CBH's transport charges are some 1.3 c a tonne higher than what would be available from others.

It is unclear how Glencore has determined this figure. Even a cursory examination of the CBH rates would determine that the arithmetic average of CBH rail NTR's is \$0.07 per tonne per km. The average road rate is \$0.08 per tonne per km. The average rail move is 50km further than the average road move.

We refer to our letter dated 8 October 2010.

In the Kwinana Zone, the average rail rate is \$0.07 per tonne per km and the average road rate is \$0.08 per tonne per km. The average rail movement is 310 km and average road distance is 267 km. The differential is maintained. Therefore notwithstanding that rail is required to move grain further, it is still competitive with road. CBH examination has shown that it is paying access rates up to 4 times greater than access costs in the Eastern States.

Further, CBH understands that access rates for the Merredin feeder lines in Western Australia are of a similar magnitude to those on the standard gauge rail. Notwithstanding the disparate maintenance and capital worth of the Merredin Feeder lines versus the standard gauge rail line, CBH is paying a similar amount to WestNet Rail. CBH also has to transfer grain from the Merredin Feeder lines Narrow Gauge lines to the standard gauge. Notwithstanding these additional costs, it is still competitive with the road rates disclosed by Glencore.

CBH notes that there are restrictions in the length of road trains that can be run to Kwinana (they are limited to a length of 27.5 metres, versus 36.5 metres for the regional terminals). Further, there is 2300 km of narrow gauge rail which has 2 differing axle load limits (16 ton and 19 ton) which contains on average 2,838,807 tonnes of grain. By comparison there is about 2,288,354 tonnes moved on Standard Gauge (which includes 638,632 tonnes transferred from the Merredin narrow gauge feeder lines). Some of the grain ordinarily transported on Merredin narrow gauge feeder lines will move to the standard gauge if these lines close, but some (perhaps the majority) will be loaded onto trucks and moved to port, especially if the State Government's Transitional Assistance Package is removed.

We refer you also to secs 3.2 to 3.4 of our letter of 13 August 2009 on increases in transport rates under Grain Express and attachment 3 showing increased transport rates.

2.6 Further public detriment caused by Grain Express include:

- the 2009 surge charges, which were nothing more than a levy for transport (see sec 2.4 of letter of 13 August last year), and the continuation of surge charges under the present PPSA and Port Terminal Rules,

- the denial of cheaper road transport (see sec 3.3 of 13 August letter) and overcharging (sec 3.4 of 13 August letter) and arbitrage, that is (as set out in sec 3.10 of our submission of 5 May to the Productivity Commission) Grain Express allows CBH:

Glencore has not provided any evidence to establish that it offered cheaper road transport than that available in WA.

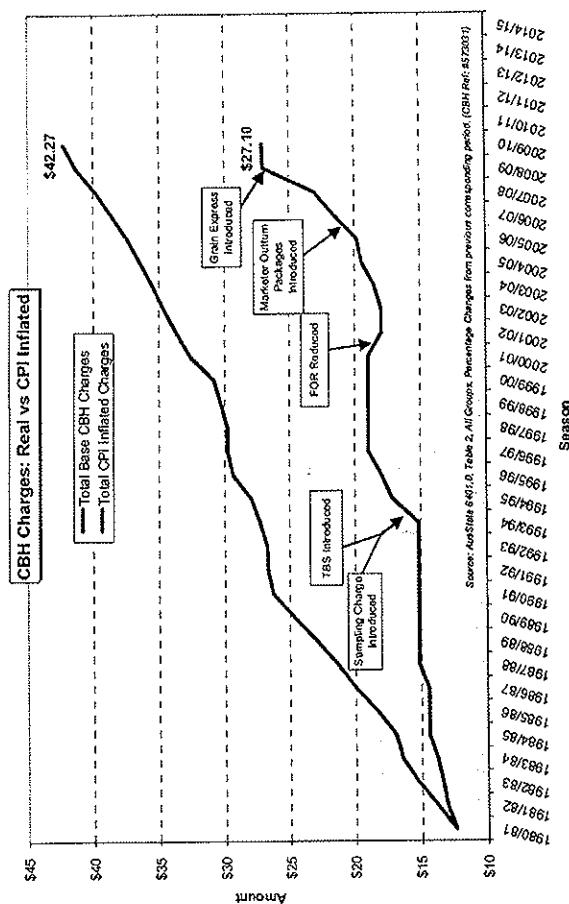
We refer to our letter dated 8 October 2010. CBH makes no profit from freight.

Glencore submission	CBH response	CBH response	CBH response
<p>freight arbitrage, that is agreeing to move to port at a set price to the customer or a marketer grain at an up country storage but meeting that obligation with grain closer to port. CBH pocketing the saving in transport costs.</p> <ul style="list-style-type: none"> o quality arbitrage, that is agreeing to create at a port or other storage grain of a particular quality based on the cost of transport of the component grains to the storage, but meeting that obligation with grain closer to the storage - CBH pocketing the saving in transport costs. 	<p>We request the commission note:</p> <ol style="list-style-type: none"> a. The CBH email provides a link to the "full benefits" of Grain Express. That link does not work and the CBH website does not appear to contain the "full benefits" of Grain Express. c. The meaning of 'grower weighted averaging' is unclear. This might be a reference to comingling which elsewhere CBH have claimed would be threatened if Grain Express ended. However the facts are that on the east coast where there is competition in storage and logistics a commingled system has been running for many years. Glencore Grain organises its own truck and trains with the many road and rail providers and coordinates these movements with the bulk handlers with no major problems. If we own grain in the same silo as another marketer it is commingled and we are only guaranteed the minimum standard for that grade. CBH run more or less the same system because they do not guarantee that you get the grain that you purchased. They again only guarantee the minimum received [sic] standard. None if this is threatened or affected by Grain Express coming to an end. 	<p>What Glencore calls quality arbitrage, CBH and growers call efficiency. Treating grain as a fluid commodity is a core benefit of Grain Express.</p>	<p>CBH considers that the link worked for Growers (the intended recipients of the email) at the time the email was sent, but may not have worked for Glencore as it was not the intended recipient of the email.</p> <p>Grower weighted averaging is not a reference to commingling, which CBH has been running since 1933 when CBH commenced. It is a reference to the Quality Optimisation proposal CBH is currently intending to trial in 2010 by a name that more growers in Western Australia are familiar with. Quality optimisation permits a grower to average the qualities of their loads post delivery but before nomination. The intent is that if a grower delivers 10 loads in specification it can use the quality of those loads to bring a load that may have missed a specification up to standard. The net effect is that all 11 loads would be within specification if they had been delivered together in one large batch. It is an attempt to permit a grower to not be harmed by the variability in loads of grain.</p>
	<p>d. As to efficiency at CBH sites, cutturning grain into a dozen trucks or a train is exactly the same, and involves the same spout mechanism whether the trucks or the train are under CBH's control or someone else's. Truck drivers generally know the procedure at a terminal whoever they work for.</p>	<p>This assertion by Glencore is incorrect and suggests a lack of understanding of the logistic issues involved in handling grain in bulk. The loading of a single train of 3500 tonnes of grain is significantly more efficient than loading the equivalent number of trucks. CBH can load grain onto a train at 1000 tonnes per hour at key sites. This would be equivalent to 20 road trains in an hour.</p>	<p>Glencore is incorrect in stating that the transport costs are bundled with CBH's handling costs. Each is separately invoiced to the respective parties.</p>
	<p>e. That there has been no increase in storage and handling costs is difficult to claim because the costs are not transparent and are bundled, and the claim is grossly untrue if you add the outturn fee that CBH would impose on us if we transported grain to port.</p>		



Annexure 3 – CBH response to WAGG submission

Page	WAGG assertion	CBH response
	<i>Domestic outturns by road charges have increased by 293% over pre Grain Express.</i> <i>Domestic outturns by rail/charges have increased from \$5.70/tonne to \$11.00/tonne (93%) in the first two years of Grains Express.</i>	We refer to section 3 of the letter enclosing this schedule. In isolation this may be correct. However, it could also be noted that domestic outturn fees increased an infinite percentage when they went from \$0 to \$1.20 per tonne in 2004. WAGG's assertion does not take into account the fact that CBH removed charges for transport recovery, time based storage within that season, and blending, amongst others. This statement fails to take into account the average cost of using the system for a domestic user. CBH records show that the average cost of a domestic user of grain has dropped following the pricing change in 2009/10. This has previously been illustrated to the ACCC.
	<i>In the first two years of Grain Express the charges to export grain rose in the order of \$36.00/tonne (approximately 12%) over pre Grains Express.</i>	WAGG's assertion regarding increased export charges is incorrect. Overall, charges to export grain have, on average, remained the same.
	<i>The charges to use the CBH system to store grain for the domestic market have increased over pre Grain Express due to the increase in domestic outturn charges.</i>	Whilst the headline notional FOB charge has risen, the overall cost to move a tonne of grain through the CBH system have not increased and has certainly not increased faster than CPI.
	<i>CBH have increased FOB charges in the order of 45%.</i>	



Page	WAGG assertion	CBH response
	Australian FOB costs are in the order of four times dearer than the United States; 3.5 times more expensive than Germany and France and 10% dearer than the Ukraine.	<p>A direct comparison of FOB costs does not take into account the many factors that influence FOB costs in different countries, which may include:</p> <ul style="list-style-type: none"> • the exchange rate; • quality in versus quality out; • receival charges; • rail car demurrage rates; • turn through the facility; • pest control costs; • delay in loading charges; • elevator overtime charges; • weighing charges; • blending fees; • dockage; and • facility charges.
	CBH have introduced a new deadline of March 1 st for the nomination of domestic grain outturn from a domestic bin. The March 1 st deadline was not communicated to growers. If a grower wishes to outturn grain from the stack into which it was delivered, he/she may not be able to do so because the grain has been physically shifted "closer to port". In some cases this is away from the domestic market increasing freight costs.	This is not a new deadline, and is in fact contained in the <i>Bulk Handling Act 1967 (WA)</i> . The vast majority of grain goes to port, but growers can make arrangements with CBH if they wish to store grain up-country. Otherwise, CBH may move the grain to port. CBH will endeavour to give a grower grain at a convenient local site and compensate for any freight disadvantage, but to do otherwise currently risks significantly increasing costs and the risk of grain loss.
	CBH have substantially altered the structure of charges for CBH services in the life of Grain Express claiming financial benefits to growers. The benefit is not a reduction in charges just a redistribution as to the way charges are made.	Not increasing charges is a real benefit to growers. The change in pricing was forced on CBH by marketing deregulation, and changes in the regulatory landscape. To link the changes to Grain Express is incorrect. When Grain Express was first introduced, the charging was structure was largely unaffected.
	CBH's Grain Service Agreement dictates that CBH want the outturn of grain pre September of the year following delivery. CBH use "cliff face" storage fees and the threat to invoke Section 24 of the Grain Service Agreement to achieve this aim. This action is about "clearing the decks" of grain heading up to the next harvest and is prohibitive of growers to operate stepped time sales strategies (personal pool).	CBH requires old grain to be outturned in time for the current season's harvest, because CBH must ensure that it has sufficient storage capacity available to store the current harvest.
	CBH has rebated over \$8M to growers due to freight overcharges from the 2008 harvest of 12.3Mt. The freight rebate made by CBH was in the order of \$0.65/tonne. CBH claim that this is the first time that a rebate has been paid to growers which is true, as historically it was paid	CBH agrees that where transport costs were below the estimated costs for CBH Grain pools the pool return would increase, no money was rebated to growers who had sold their grain by cash contracts. However there was a reduced incentive on the pool manager to actively manage costs, as any increase in

Page	WAGG assertion	CBH response
	<p>back to marketers. In fact rebates for freight were operational under the monopoly grain trading system (single desk), and the rebates were paid to pools and not directly to the growers.</p>	<p>transport costs would mean less money paid to growers over the life of the pool. At this point the grower was committed to the pool and there was little transparency as to where responsibility for this cost increase lay. CBH has never had the responsibility to pay for freight and therefore CBH has not been able to make a freight rebate.</p> <p>Under Grain Express, CBH is required to estimate freight and to ensure that its costs do not exceed the freight pool revenue. To do otherwise rightly risks grower backlash at requesting more dollars for freight. The system is therefore significantly more transparent than the mechanism employed in the previous wheat pooling system operated by AWIB.</p>
	<p>CBH claims that Grain Express prevents the arbitrage of freight by marketers in the grain trade through the use of Grain Express as the monopoly freight system. However at this point in time growers have not seen freight to port charges decrease with the claimed efficiencies produced through Grain Express. Freight rates have been held constant in the two years of Grain Express.</p>	<p>CBH considers that this is indicative of a real reduction in freight costs.</p>
	<p>At a base level CBH's revenue on a dollar per tonne basis over the last three years has increased. (Refer to table 1). Note that the year ended October refers to the previous harvest year i.e. Year ended October 2007 refers to the 2006 harvest year.</p>	<p>The turnover figures WAGG refers to include the revenue CBH obtained to pay for the freight associated with grain delivery. To get a true indication of CBH's turnover, this revenue must be removed. CBH has previously provided financial information to the ACCC, which, for the year ended October 2009, shows CBH's revenue per tonne of \$27.14 in 2008/2009.</p>
	<p>4.1 Domestic Outturn by Road</p> <p>WAGG believes that Grain Express for domestic outturn via road has increased costs.</p> <p>Pre Grains Express it cost \$2.90/t to outturn grain domestically by road. In 2008/09, domestic outturn by road was \$3.20/tonne. In 2009/10 domestic outturn by road, there was a charge of \$8.50/tonne (293% increase over 2007/108). (Refer Figure 1)</p> <p>The current upcountry outturn charge makes it cost prohibitive to use an alternative grain pathway to port.</p>	<p>CONFIDENTIAL information redacted.</p> <p>EXCLUDED FROM PUBLIC REGISTER</p>
	<p>4.2 Domestic Outturn by Rail</p> <p>WAGG believes that Grain Express has increased domestic grain rail outturn charges.</p> <p>In the first year of grain express 2008/09 the charge to outturn grain domestically by rail was \$5.70/t. In 2009/10 the charge has risen to \$11.00/tonne. WAGG has been unable to determine the domestic outturn charge by rail in the year before Grain Express due to a lack of transparency in the system.</p>	<p>There was no domestic outturn charge by rail in the years before Grain Express as it is not something that has historically happened. In any event, many of the matters CBH raises in relation to domestic outturn to road continue to apply, including the removal of certain other fees that would ordinarily have applied such as time based storage.</p> <p>It is also important to note that outturn by rail involves outturning the grain into a truck, weighing the grain, dumping the grain back into the grid and putting that known quantity of grain into a garner bin over the rail. This is a significant double-handling of grain. Without doing this, CBH will not know what quantity of grain it outturns.</p>
	<p>4.3 Export Outturn</p> <p>Table 2 and Figure 3 demonstrate that in the first two years of Grain Express that the charge to export grain rose in the order of \$6.00/tonne (approximately 12%) over the</p>	<p>CBH considers that this table of fees has no probative value, as it does not contain true representations of CBH charges. The table also includes fees which may not be charged, and fees which do not exist (non-bulk handler fees).</p>

Page	WAGG assertion	CBH response
	charge of the pre Grains Express year of 2007/08. <i>Table 2: CBH fees and charges for domestic and export wheat for 2007/08 to 2009/10. This assumes a June outturn in the year following delivery and a constant freight rate. (Source: - CBH Frequently Asked Questions for Marketers: Pricing Restructure As at 14 September 2009 and CBH Harvest Handbook 2007/08)</i>	WAGG claims that it was cheaper to export grain in 2007/08 whilst leaving out a number of charges that would have been incurred in 2007/08. In actual fact, the cost of exporting one tonne of wheat in 2009/2010 (including \$25.00 freight) would be \$52.10/tonne. The CBH cost for a domestic outturn would be \$18.50/tonne, adjusted by any freight differential between the entitlement location and the location at which CBH can offer grain. Even if any credibility is attributed to the table, then when correctly calculated it would show that Total Export has gone from \$51.65 (including \$25 freight) to \$52.10 (including \$25 freight). This is a drop in costs in real terms when taking into account the increases in CPI in WA over the corresponding period and the maintenance of \$25 freight is also a drop in charges in real terms over the same period.
	4.4 CBH Free on Board (FOB) Charges <i>CBH FOB charges are currently \$17.10. CBH have restructured the way that charges are proportioned in 2009/10 and CBH have claimed that these changes have "lessened the cost to growers". What CBH fails to acknowledge is that no matter what the FOB charge, growers pay the charge in the end mostly with a premium attached. For instance, a \$17.10 FOB for 2009/110, will see CBH Grain (formerly Grainpool of WA) charged \$22.61 for their benchmark pool. This represents a \$5.51 premium over the flat fee for storage and handling charge. (Ref: Kondinin Group, 2010 "Western Australian Wheat Pools Performance Comparison") The grower is charged \$22.61 and not \$17.10.</i>	CBH has always attempted to highlight that the total supply chain cost is important to growers because growers are essentially price takers. For this reason, CBH has fixed its charges so that grain traders cannot misrepresent the CBH costs by including all time based storage charges until September regardless of whether the grain was sold and outturned prior to that. The Kondinin report includes a number of costs that are not levied by CBH and rolls them into the FOB cost. In the instance referred to by WAGG, CBH Grain is not adding a premium to the CBH charge to arrive at the \$22.61 for the Benchmark Pool, it is adding other separate charges including Wharfage, AQIS and stevedoring. These are all associated with the cost of putting grain into a FOB position, notwithstanding that they are not all levied by CBH.
	4.5 CBH FOB Vs International FOB <i>In the international marketplace Australia lags behind as a nation when it comes to the charging of FOB.</i>	CBH repeats the matters it outlined above that need to be considered when comparing FOB rates and notes that very little detail has been provided as to what is included and what is excluded in these figures. On that basis the probative value of these charges is minimal.
	<i>Alan T Tracy the President of the US Wheat Associates in his presentation to the Agribusiness Crop Updates 2010 demonstrated that the average Canadian export fobbing charge to Canadian wheat producers is approximately \$9.00/tonne.</i> <i>In a document provided to WAGG by Peter McBride General Manager - Corporate Affairs AWB Limited from the AWB Geneva office, he clearly states that Australian FOB costs are in the order of four times dearer than the United States; 3.5 times more expensive than Germany and France and the Ukraine is in the order of 10% less expensive in FOB charges..</i>	CBH notes that, without Grain Express, freight charges increased every year. However, in the first year after Grain Express was introduced, freight rates were held stable following the first year that CBH had responsibility for centrally managing freight.
	<i>In response to the claims in figure 8 we would like to pose the following questions:-</i> <i>Total freight charges have not reduced under Grain Express so why would growers expect that that would be any different without Grain Express?</i>	

Page	WAGG assertion	CBH response
	<i>Why will storage and handling increase when the same grain is stored and will require the same treatment?</i>	The costs of storing and handling grain are intrinsically linked to the transportation of grain, for example: <ul style="list-style-type: none"> • clearing sites more quickly involves fewer instances of re-tarping and fumigating grain; • moving more tonnes each time a site is accessed allows increased staff and equipment productivity; • clearing open bulkheads quicker reduces the risk of grain loss; and • increasing unit trains allows greater efficiency in receipt of grain at port.
	<i>Why will not having Grains Express prevent the implementation of grower weighted averaging? Grain Express is about a grain freight logistics system and Grower Weighted Averaging is about averaging receival quality. How are the two fundamentally linked?</i>	CBH will not be able to implement grower weighted averaging, as it will be forced to retain site entitlement. Site entitlement comes with an obligation on CBH to retain grain at sites, and this will prevent CBH from being free to handle the grain as it sees fit and limit the ability of CBH to offer this product. Once CBH is restricted in waiting for an individual marketer's movement instructions, CBH cannot allow growers to average their deliveries because they could be delivered to different marketers. This will lead to CBH being required to operate by having sites filling and closing, which in turn may force growers to travel further. Unless grain is located in the same stack, CBH will have to engage in significant double-handling to accomplish grower weighted averaging without accepting undue risk.
	<i>Why will the port intake capacity decrease? Are CBH planning to reduce their port intake capacity or have CBH confused capacity with throughput? Is this about Grain Express as a system or is this about retaining market share?</i>	Port intake capacity is a measure of the logistic efficiency of bringing grain to port. The less organised the logistics, the less grain that can be brought into a port. For example, a 3500 tonne single grain train is more efficient to discharge than receiving multiple road transport vehicles, which will have different types and grades of grain because the grain will not all be for one customer. Each change of grain type requires a blow down of the elevator on a flow path. This can take up to 15 minutes. So if four different grain type trucks arrive at a grid, CBH may waste an hour cleaning flowpaths. In the time taken to receive those 4 road transports (totalling 200 tonnes, for example), CBH could have unloaded the entire 3500 tonne train. The removal of Grain Express will result in more grain going by road. This will therefore reduce the intake efficiency of the port terminal facilities. CBH uses the term 'capacity' in this sense to mean the reasonably likely throughput capable of being achieved at intake.
	<i>CBH have suggested that without Grain Express and "port pricing" that marketers will not post prices at all receival sites. Why won't marketers post prices at port and receival sites? Are CBH worried about stranded assets if all receival points don't have posted prices, or are CBH worried about other companies undercutting CBH freight rates? All prices will default to port if there is no receival site price listed which, is no different to Grain Express. Is this really about Grain Express or sustaining a port monopoly?</i>	CBH notes the behaviour of marketers in the "partially deregulated" world of barley, canola and lupins. CBH observed that marketers did not post prices at all sites, and instead concentrated on sites where they hoped to obtain logically sensible parcels of grain. Smaller sites were often ignored, which consequently meant that growers delivering to those smaller sites had few marketing choices. This was observed practice in the partial deregulation of coarse grains. CBH sees no reason to doubt that it will occur again. Port based pricing will be less transparent, as growers will not know the freight rate that can be achieved to get the grain to port. The price may default to port, but if growers or marketers cannot obtain efficient freight rates to port, then growers' net proceeds will diminish. CBH is not concerned about other companies undercutting CBH transport rates, because CBH considers that the current transport rates are competitive. However, CBH is concerned that growers will be less able to compare pricing. It may be more difficult for growers to know whether marketer A is offering a price

Page	WAGG assertion	CBH response
	<p>CBH for all intents and purposes appear to have developed a system that can work in a deregulated market. Marketers and growers now have experience with Grain Express. If Grain Express is working then marketers and growers will support the system and Grain Express should not be exempt from competition.</p> <p>Grain Express in its current form locks growers and marketers into using CBH's grain handling and transport system once the grain is in the CBH system which is a monopoly.</p>	<p>better than marketer B, when growers do not understand the freight rate that the marketer assumes.</p> <p>Grain Express cannot survive if there is choice in transport between CBH sites for two very important reasons:</p> <ul style="list-style-type: none"> • CBH will not acquire transport resources to move the entire crop if it is unsure that it will actually move the entire crop. Acquiring resources or locking them in costs CBH if the resource is not used and subsequently no revenue is received. CBH makes no margin on transport resources under Grain Express. In a non-Grain Express system CBH will be required to make a margin (like all marketers wish to do) on the movement of grain in order to cover the risk it is assuming. The people who will ultimately pay that margin are the growers. • CBH will be unable to run a port entitlement system for export. Marketers will force CBH to offer site based entitlements and will not permit CBH to move grain without their consent. CBH's harvest offering will therefore be less flexible than it is now.