



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2008/945-06
Contact Officer: Lauren Roy
Contact Number: 03 9290 1823

6 December 2010

By email: Richard.Codling@cbh.com.au

Dear Mr Codling

Exclusive dealing notification N93439 lodged by Cooperative Bulk Handling Limited – Draft notice to revoke notification

As you are aware, the Australian Competition and Consumer Commission (the ACCC) has been conducting a review of the exclusive dealing notification lodged by Cooperative Bulk Handling Limited (CBH) on 11 June 2008.

The notification involves CBH offering to supply storage and handling services to growers and marketers of grain on condition that they also acquire transport services supplied by CBH to transport grain to port.

The ACCC's draft decision

The ACCC has issued a draft notice proposing to revoke the immunity provided by CBH's exclusive dealing notification. A copy of the draft notice is attached.

The ACCC has issued the draft notice because it considers the notified conduct allows CBH to leverage its market power in supplying receipt, storage and handling services to prevent competition to supply transport services to customers who use CBH's up-country storage facilities.

The ACCC's draft notice relates only to CBH's conduct in forcing growers who use its up-country storage and handling facilities to also use its transport services.

If the ACCC does revoke the notification CBH will still be free to offer growers a bundled receipt, storage, handling and transport service as it does now. All that will change is that growers who store their grain with CBH will be free to choose whether to use CBH's transport services or organise their own transport outside the CBH system.

The draft notice does not remove the protection from legal action that is afforded by the notification. The ACCC is inviting submissions about the draft notice before deciding whether to issue a final notice revoking the notification. Details about how to make a submission are provided in this letter.

If, after seeking the views of interested parties about this draft notice, the ACCC does decide to issue a final notice revoking the notification the ACCC will have regard to the views of CBH and interested parties in deciding when the revocation will come into effect, with a view to ensuring that any revocation did not cause disruption to existing arrangements during the 2010/11 grain harvest.

The full reasons for the ACCC's draft decision are provided in Chapter 5 of the attached draft notice.

Next steps

Once the ACCC issues a draft notice, the notifying party or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference is a public meeting, which provides the opportunity for interested parties to make oral submissions in relation to the draft notice. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft notice, you must notify the ACCC in writing by **Wednesday, 5 January 2011**. If a pre-decision conference is requested it will likely be held in Perth in the week commencing 17 January 2011.

Alternatively, you are invited to make a written submission in response to the ACCC's draft notice. Written submissions should be lodged by **Wednesday, 12 January 2011**.

Written submissions and/or requests for a conference should be sent to the following address:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Submissions and requests for a conference can also be lodged by email to adjudication@accc.gov.au.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Guidelines for seeking exclusion from the public register are attached for your information.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please do not hesitate to contact Lauren Roy on 03 9290 1823 or by email at Lauren.roy@accc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Richard Chadwick', with a long horizontal flourish extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch