



## Minister for Transport; Housing

Our ref: 30-13981  
Your ref: C20081945-06

Ms Jill Walker  
Commissioner  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001

Dear Ms Walker

### **Cooperative Bulk Handling Ltd - Exclusive Dealing Notification N93439**

Thank you for the letter dated 6 December 2010 from Mr Gavin Jones regarding the exclusive dealing notification lodged by Cooperative Bulk Handling Limited (CBH).

This submission is in response to the draft notice of the Australian Competition and Consumer Commission's (ACCC) intention to revoke the notification to CBH, in relation to its Grain Express system for handling and transporting export grain in Western Australia (WA).

The Western Australian Department of Transport (DoT) has worked closely with the grain industry and CBH to achieve a shared aim of gaining the most cost-effective pathways for export grain into the future. In the course of its dealings with the industry DoT has gained a solid understanding of the complexities of the grain logistics market, and the economics of the use of rail and road transport for export and domestic grain. This has been reflected in the Government of WA's recent decision to invest in the grain freight network.

### **Summary**

Grain Express was developed in response to the deregulation of grain marketing, in order to provide an efficient transport and handling supply chain for export grain in WA. It was intended and provides for efficient cargo assembly which increases the productivity of the grain logistics system, especially in the absence of inter-port competition. It also assists greatly in minimising the risk of delay in delivering grain by avoiding congestion, especially at port terminals.

It is possible that the absence of Grain Express will encourage greater use of road transport. Any significant shift in grain freight from rail to road will create inefficiencies for state and local governments (supported by the Commonwealth) to provide a safe and efficient 'dual' system of parallel roads and railways to carry competing road and rail vehicles, especially when it would reduce the scope and scale economies currently accruing to rail.

This was a fundamental premise of the economic analysis carried out during the Strategic Grain Network Review (SGNR). Its conclusions, aimed at strengthening the rail system to be the primary 'default' grain carrier (which is supported by Grain Express) were unanimously endorsed by the Strategic Grain Network Committee, representing all stakeholders in the grain logistics system, including growers, above and below rail service providers, the peak body of local governments and Main Roads WA.

## **Recent History**

DoT has administered a ministerial review of the rail and road investment needs of WA's grain industry, the SGNR, which involved close consultation with all of the major grain logistics players, as well as grain grower groups and all levels of government.

In 2008, DoT commissioned its own research to ascertain whether Grain Express would have a positive or negative impact on the ability of WA's grain growers to achieve least cost pathways to port for the product. The main concern related to the ability of the railway operators to operate efficiently and remain competitive with road transport, and the likely mix of road and rail traffic which would transpire, in the wake of the deregulation of export grain market.

The conclusion at that time was that Grain Express would be beneficial to growers getting their grain to port, principally by simplifying the cargo assembly process. It would make it much easier for grain to be accumulated at port to meet the shipping needs of the exporters (for example, CBH and all other traders), primarily through the 'zone entitlement' aspect of Grain Express.

Zone entitlement allows the bulk handler to determine how best to provide a shipload of grain of the required quality at a port for an exporter. Under the previous system, marketers would order the make-up of a cargo from their holdings at various bins in the system, which resulted in institutionalised inefficiency in the deployment of trucks and trains and the bulk handler's operating staff.

## **ACCC's Draft Notice of 6 December 2010**

I note that the current notice relates to revocation of the protection for CBH to bundle its transport services with other storage and handling services provided to growers and traders using its country bins. The intention of the draft notice is to require CBH to provide the freedom for owners of grain in its bins to make their own transport arrangements.

The concern is that the benefits that might accrue from this initiative in the form of increased competitive outcomes in the transport market could be outweighed by negative outcomes, including increased externality costs to Government and the community, greater pressure on the road network and reduced rail capacity in peak seasons.

## **Competition in the Transport Market**

The Government of WA accepts that the current requirement on grain owners to use Grain Express transport contracts tends to restrict competition in the transport market and that some growers and traders would resist this forced obligation. In general, it accepts that increased open competition decreases costs and increases efficiencies in many markets.

It should be noted that the WA transport market for export grain is not a mature, perfect market. There are two distinct but interrelated segments.

The first is the year round statewide market which is split between road and rail operators, traditionally on a 40:60 basis, although road transport has been handling an increasing percentage in recent years. Rail handles a high proportion in areas where rail lines are available and rail and road distances to port are similar. Road transport is used where rail lines are not available or where rail distances to port are much greater than road. Road transport is also used in rail serviced areas where summer heat restrictions limit rail use, and where rail capacity cannot meet export demand.

The second is the single site seasonal domestic market for the transport of grain from CBH sites and farms. This is a road only mode market.

Therefore, across the grain network in WA, a percentage of transport is undertaken by rail, while some of the transport task is undertaken by road. The SGNR undertaken by the Government of WA and the resulting investment decisions by state and Commonwealth governments was based on keeping a balance between the two and investing in the associated infrastructure.

## **Infrastructure Investment Decisions**

The revocation will potentially compromise the approach to investment in road and rail upgrades recently announced as the outcome of the SGNR process referenced earlier in this paper. In November 2010, the former Minister for Transport, Hon Simon O'Brien MLC announced that the Government would invest in the Grain Freight Network. Effectively, in total \$222.5 million is to be spent on the upgrade of several rail lines in the grain network, with a further \$121.3 million to be spent on widening and improving roads in places where the rail system was no longer viable.

The context of this set of investments is the reality that in many areas of the grain belt, there is no case for providing both road and rail infrastructure of sufficient quality to handle the heavy freight needs of the grain industry. Where funds are being spent on upgrading the rail network to support ongoing rail services, there is no additional allocation for widening roads. WA therefore has some dependence on the ability of CBH to maximise the use of rail in these areas. Any substantial drift of volume on to the road system may result in an increased need for additional road investment on top of the rail upgrades, which is an expensive and undesirable outcome.

The support for Grain Express and the transport bundling power is not unconditional. There may be circumstances under which the benefits of competition would outweigh the costs. Some such circumstances would be:

- the emergence of a competing port terminal, which would open up potential new supply chains outside the CBH system. While there is no obvious need for new export capacity, there is apparent interest in this potential within the industry. If it were to occur, there would be a stronger argument for exporters to control the freight of their product from CBH bins to the new port terminal; and
- any change to the grower co-operative status of CBH. If CBH were to privatise or substantially change its ownership and charter, it would favour a regular review by the ACCC of its performance in respect to the transport market and the transport outcomes, which the Government currently sees as beneficial to the greater community.

## **Conclusion**

In summary, the current arrangements:

- provide the basis of an efficient supply chain, in total, for the grain export sector including a balance of road and rail transport;
- allow competition between rail and road for statewide transport services; without compromising competition by road transport operators within the single site location market segment; and
- support recent state and Commonwealth government investment decisions.

If in the future, it were possible for the ACCC to remove restrictions and increase competition as it relates to rail transport without causing a drift from rail to road, the Government of WA would support this decision.

Yours sincerely



**TROY BUSWELL MLA**  
**MINISTER FOR TRANSPORT**

02 FEB 2011