

11 January 2011

Gavin Jones
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Gavin,

Review of Cooperative Bulk Handling (CBH) exclusive dealing notification N93439

WestNet Rail provides the following written response to the Draft Notice in respect of the exclusive dealing notification lodged by Cooperative Bulk Handling in relation to Grain Express.

WestNet continues to support the compulsory bundling of storage, handling and transport services under Grain Express (notified conduct). WestNet believes that this arrangement provides the most efficient and reliable supply chain for the grain industry in Western Australia and ensures continued infrastructure investment.

WestNet acknowledges that many of the initial submissions in favour of Grain Express detailed the benefits of a coordinated supply chain but did not specifically address the specific issue of why the bundling of storage, handling and transport services should be compulsory under Grain Express.

In this regard, WestNet believes that decision by the ACCC to revoke the notified conduct is not based on a full understanding of the issues specific to Western Australia and is justified by a number of arguments that are fundamentally flawed.

ACCC view

The ACCC acknowledges the public efficiency benefits of a coordinated supply chain which is able to optimize the use of rail assets. However, the ACCC presents a simple argument that, if Grain Express delivers such benefits, then customers should not need to be forced to buy it. This is repeated a number of times:

".....if a product can be jointly produced more cheaply, and the bundled sale price reflects these costs savings, then customers would not need to be forced to buy it. Rather, they would so of their own accord." - Para 5.237 pp54.

".....if the arrangements generate a genuine benefit to the grower relative to organising their own transport, there should be no need to force them to continue to participate in the arrangement." - Para 5.245 pp55.

Using this simple argument as a base, the draft Notification argues that the benefits of the coordinated supply chain do not require the compulsory bundling of transport services:

"Accordingly, the ACCC does not consider that the forced tying arrangement the subject of CBH's notification is necessary to the realisation of many of the benefits resulting from CBH offering a bundled storage, handling and transport service."

WestNet Response

This line of argument does not recognise the existing market failure in the grain transport industry, brought about by the implicit subsidisation of road infrastructure costs for truck operators. The cost of providing and maintaining the railway is borne by the customer, whilst the equivalent cost of road infrastructure is heavily subsidised, a fact accepted by the Productivity Commissions Inquiry into Infrastructure Pricing which stated that:

"It is likely that road freight transported in regional areas is cross-subsidised to a significant degree¹."

The ACCC fails to make the connection that the notified conduct ensures that CBH have the volume to achieve the efficiencies offered by rail transport and subsequently overcome the pre-existing market failure.

Without compulsory bundling of transport, individual marketers will make short term decisions to move their grain to port. These organisations will simply not use rail to the extent that CBH does under Grain Express. Rail services require long term, high volume commitments that smaller individual grain marketers and acquirers cannot make.

In summary, the revocation of the notified conduct will lead to more grain on road, thereby reducing the ability of CBH to overcome the failure in the grain transportation market and deliver the public benefits of a more efficient supply chain.

ACCC view

The ACCC is of the view that the certainty of volume delivered to the rail system is dwarfed by the seasonal variation in harvests.

".....the variability caused by seasonal factors has a far more significant impact on volumes transported than would any variability created by some growers choosing not to use CBH's transport services if they had the option not to do so. The fact that the transport task supplied by CBH is able to accommodate the major variability in volumes caused by seasonal factors suggests that the comparatively smaller additional variability that would be introduced if growers were able to elect not to use CBH's transport services would not be a significant issue." - Para 5.252.

WestNet Response

The ACCC has fundamentally misunderstood the way the grain industry deals with seasonal variations. CBH and WestNet have long term investments in infrastructure which are positioned to long term returns. The notified behavior ensures that, over the long term, CBH are able to commit sufficient average volume to rail to allow the rail industry to invest and earn returns. Similarly, returns on CBH's efficient loading infrastructure investments are based on long term average returns.

¹ Road and Rail Freight Infrastructure Pricing Productivity Commission Inquiry Report No. 41, 2006, p.216

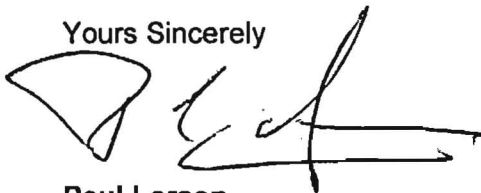
To further emphasise this point WestNet directs the ACCC to the recent Strategic Grain Network Committee report² which assesses the most efficient supply chain by using long term average volumes. All participants in the grain industry understand that they must be in a position to deal with seasonal variability whilst ensuring that sustainable returns are earned over the long term with average volumes.

The removal of the notified conduct will result in CBH not being in a position to offer certainty of rail volumes in the long term. Whilst above rail operators may compete at the margins, these services will be ad hoc in nature and will not be backed by the long term, high volume contracts required to facilitate investment in an efficient supply chain.

WestNet submits that without the notified conduct, average rail volumes will decline over the long term. This will erode the benefits offered by a more efficient, rail based supply chain and is a clear justification for the continuation of compulsory bundling of storage, handling and transport services.

Grain Express is a key component of the WA grain supply chain. The ACCC's Draft Notice to revoke the notified conduct will reduce the grain industry's ability to invest in an efficient supply chain by removing certainty of volume over the long term.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Paul Larsen', written over a white background.

Paul Larsen
Chief Executive Officer
WestNet Rail

² http://www.transport.wa.gov.au/mediaFiles/freight_Strategic_Grain_Network_Report.pdf