

# GLENCORE GRAIN PTY LTD

ABN 29 106 378 885

Level 6, 437 St Kilda Rd Melbourne, Vic, 3004

---

28 February 2011

Dr J Walker  
Commissioner  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601  
adjudication@accc.gov.au

Your ref C2008/945-06

For the attention of Mr G Jones

Dear Dr Walker,

## REVOCATION OF EXCLUSIVE DEALING NOTIFICATION FOR GRAIN EXPRESS -

### REPLY TO CBH'S FURTHER SUBMISSION OF 3.2.11

We are writing to clarify or reply to a number of issues disputed by CBH in its letter to you of 3 February 2011.

1. **No grounds to delay revocation.** No contractual, operational or financial reason has been given by CBH to delay revocation til after the 2011-12 harvest. We understand after consulting ARG that no such reason exists. The belated and unjustified request for delay in revocation should be rejected.
2. **The \$8.50 outturn fee cannot be avoided.** Frontier's example of grain from Beacon to Kwinana does not prove that grain could be moved to port in competition to CBH without the \$8.50 impost because invariably such grain would first be delivered to the Beacon primary receival site of CBH (which at 350k to port is too far for direct transport). Here the grain would be outturned to CBH for free, but anyone else would be slugged the \$8.50 outturn fee. No other examples of competition are given.
3. **Morawa to Geraldton example is incomplete.** In this case CBH dropped its fees because of the threat of competition from a makeshift loader at port. These and other details have not been given to understand the relevance of this case, which also involved a potential competitor to CBH being squeezed out.
4. **The WA grain trading system.** In Western Australia trade in grain is exclusively based on warrants to grain stored with CBH, which warrants can be swapped for grain **both** at storages up country **and** at port, this system being legislated by the Bulk Handling Act 1967. Grain Express denies a trader the ability to get grain up country. It is not the case, as Dr Crane says in the second page of his letter, of

# GLENCORE GRAIN PTY LTD

ABN 29 106 378 885

Level 6, 437 St Kilda Rd Melbourne, Vic, 3004

---

growers using Grain Express to choose a "port-based entitlement system". Grain Express while notified is a naked denial of entitlement to grain at up country storages.

Frontier's claim that access to CBH's storage and handling facilities is not necessary for competition is divorced from this reality.

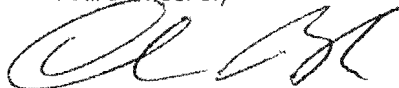
Revocation will restore the proper system of trading in the state.

5. **The significance of measured benefits.** CBH's criticism of rates and fees is unfair when they have not publicly quantified any alleged benefit of Grain Express.
6. **Stock swaps are routine.** Stock swaps as a means of filling whole trains occur in NSW, Victoria and elsewhere and are not 'contentious' nor expensive as claimed by CBH.

The significance of CBH confirming it is acquiring railway rolling stock and contracting Watco to manage its own train service is that it has chosen that particular arrangement to carry grain to port, in addition to its contracting trucks for such carriage. Glencore Grain also wishes to choose a mix of rail and trucks to carry grain to port (as it does in other states and around the world) and ARG should be able to chose to carry grain to port for Glencore Grain or any other party that wishes to do so. The revocation of the exclusive dealing notification for Grain Express allows Glencore Grain, ARG and other carriers and marketers the same choices as CBH, and thus restores their freedom to compete.

Accordingly it is submitted that the latest letter from CBH does not alter the case for revocation in the commission's draft notice. As no case has been made for delay, revocation should be immediate or before the coming harvest as submitted previously.

Yours sincerely



Chris Brooks  
Managing Director