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Australia Western Foreland Pty Ltd  
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4 March 2011

Mr G Jones  
Director – Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3000

Dear Mr Jones,

**SUBMISSION IN SUPPORT OF ACCC ASSESSMENT CONTAINED IN DRAFT  
NOTICE DATED 6 DECEMBER 2010 IN RELATION TO NOTIFICATION N93439**

Further to our letter dated 12 January 2011, we write to clarify and reply to a number of issues disputed by CBH in its letter to the Commission dated 3 February 2011.

In general ARG believes that there are a number of misleading, un-substantiated and incorrect statements in the CBH document. For example, in the CBH cover letter it claims that in a site entitlement system, grain is moved without reference to the operation of the system as a whole and that this means that:

*1. Smaller Parcels of grain are removed and transported on an ad hoc basis*

ARG Response. When Grain Express was first contemplated, CBH argued this point as a clear outcome in the absence of the introduction Grain Express. Given Grain Express has now been in place for some years, CBH has chosen not to provide any substantiated evidence supporting whether this hypothesis is indeed the case. In the absence of any such evidence, this statement is nothing more than an unsubstantiated claim.

*2. Marketers tend to choose road resources over rail.*

ARG response: Another unsubstantiated claim. ARG strongly contends that if above rail competition were to exist and pricing remains attractive, marketers will continue to be attracted to the use of rail. In circumstances where Grain Express is retained, ARG's substantial rail assets will no longer be available, thereby encouraging significant volumes onto road, particularly in high volume years.

*3. Supply chain costs increase.*

ARG response: CBH has failed to provide clear evidence that Grain Express has in fact delivered on savings to Growers. Why should the market simply accept that the revocation of Grain Express will increase supply chain costs?



The notes from Frontier Economics also make a number of misleading and inaccurate statements.

1. *Frontier: The \$ 10.50 receival fee at port under Grain Express does no prevent competition in the market for grain transport.*

ARG response: The frontier comments are misleading and fail to address the issue. The facts in this instance are quite simple. CBH imposes an \$ 8.50 or \$ 11.50 charge to out-turn to road and rail respectively at "selected" domestic sites. These charges theoretically recover CBH's costs in out turning grain to these modes for domestic delivery. Although domestic out turns attract these additional charges, the *physical outloading process* performed by CBH for export (which is covered within the standard export storage and handling fee) is virtually identical to the domestic out-turn that attracts these additional charges. Trucks or trains get out-loaded in the same way regardless of destination. Sites are opened at times and locations convenient to CBH. In other words, these charges are *specifically designed* to prevent the exporter from exercising a choice to transport its own grain under Grain Express. In the case of rail, an \$11.50 in supply chain cost ensures that it is commercially impossible for an exporter to use an alternate rail provider within the Grain Express model. If the revocation of Grain Express proceeds, ARG believes that CBH will endeavour to retain these charges in order to use its market power to create an un-level playing field and drive ARG out of the market.

2. *Frontier: CBH has awarded the rail contract to itself.*

ARG response. ARG stands by these comments. CBH has chosen to invest \$175 million in rail assets. It is in the process of negotiating a below rail access Agreement with Westnet Rail. Depending on the haulage model implemented by CBH, the West Australian Office of Rail Safety may require CBH to become an "accredited rail operator". Although CBH claims that it has not decided to enter the rail transport industry, these facts speak for themselves. The important point is that CBH now has an imperative to drive a return on its investment in rail assets. Competition is the only means of ensuring that Growers get a transparent and fair market price for rail freight.

3. *Frontier: Rail volume will not necessarily move to road.*

ARG response: A central argument by CBH in support of Grain Express is that it will maximize rail volume and the use of the regional rail network. ARG contends that there has not been any evidence provided by CBH that supports this position. The revocation of Grain Express will allow exporters to engage with non CBH rail and road transport providers. They will use alternate rail/road where it is efficient to do so. It is ridiculous to suggest that Exporters will use half filled trains where these trains are inefficient relative to full CBH rail consists. Any suggestion of "part train loads at a site" defies sense and demonstrates the skew inherent in Frontier Economics' arguments.



What is clear and requires no further evidence is the fact that where Grain Express is retained, the dedicated ARG grain fleet comprised of 150 drivers, 27 locomotives and 668 wagons will become redundant or redeployed and lost to the grain industry in Western Australia. This represents an average movement capacity of over 6 millions tones. The drift from rail to road transport from this fact alone makes any theoretical argument around modal drifts in the absence of Grain Express quite farcical (Frontier Economics quotes 15%) and hardly worthy of comment.

The State and Federal Governments are in the process of rolling out significant investment in West Australian grain rail infrastructure. Any outcome that ensures the redundancy of the ARG grain assets would seem to undermine the intent behind this investment.

We trust that you find these comments of some value and look forward to the outcomes of your deliberations.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Tim Collins", is written over a light grey diagonal line that extends from the bottom left towards the center of the page.

**Tim Collins**  
**General Manager Agribusiness**  
**ARG a QR Company**