

The General Manager
Adjudications Branch
Australian Competition and Consumer Council
GPO Box 3131
Canberra ACT 2601

12 January 2011

FILE No:
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MARS/PRISM:

Dear Sir/Madam,

**ACCC Draft Decision – Exclusive Dealing Notification N93439 –
CBH Limited Grain Express**

The ACCC has correctly identified that Grain Express ties parties (growers and marketers) that use its storage and handling services to also use CBH's transport services for movement of grain from CBH owned upcountry sites to CBH owned ports.

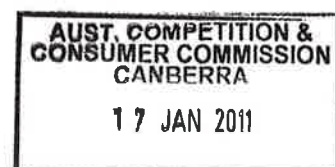
CBH therefore exclusively determines the quantum of transport services that will be available for the season, and at specific times during the season. Furthermore CBH exclusively determines the terms and the pricing of the transport services.

This places a significant burden upon CBH to decide the quantum of transport services that may be required for a season. In particular CBH must to an extent predict the shipping program that will eventuate. This will vary from season to season, and within a season. Such variation arises for a multitude of reasons, including the market structure of carries and inverses that demonstrate the strength of demand in the market, and provide incentive for owners of grain to hold stock or accelerate sales.

In the event where CBH makes an incorrect assessment of the level of demand for transport services the implications do not impact CBH exclusively, notwithstanding the fact that CBH negotiates the contract(s) for transport services exclusively.

If CBH underestimates the size of the transport task, either for an entire season, or for a particular portion of the season, this will potentially impact on both growers and marketers. If demand for grain in export markets is high at a point where there is a shortage of transport resources, the price signal may not be transmitted to growers, either because marketers know that there is not sufficient transport resources available, or because the potential surge charges reduce the net bid to the grower. This is at least an opportunity cost, if not a real cost should prices to the grower not compensate for the deferral of the sales program to a point where adequate transport resources are available. As the ACCC has noted, marketers who enter into forward contracts for the sale of grain without being able to ascertain the level of transport resources that will be available in the future have been exposed to higher costs in the form of surge and vessel demurrage charges.

Where additional transport resources are required in a given period, the only avenue to access these under Grain Express is via CBH. The buyer of these services may be subject to a surge charge. The buyer may have been willing to engage their own transport resources, without incurring any penalty rates, despite the fact that CBH was not willing, or determined exclusively that such resources would not be required. Where surge charges have been applied, there has been a lack of transparency between the surge charge applied and the actual costs of mobilizing the additional transport resources. It is quite likely that



marketers could have acquired some additional transport resources at no additional charge in an open market, including from transport operators excluded from or by CBH's tendering processes.

The ACCC has correctly identified that the existence of surge charges under Grain Express weakens CBH's incentive to effectively deal with logistics blockages such as congestion.

The ACCC has correctly identified that absent competition for freight CBH does not have a direct incentive negotiate the lowest rates and to ensure that grain moves to port at least cost. CBH has stated that its Cooperative structure and various other factors do motivate them to seek out the best rates, however, the introduction of a competitive market would be an additional and direct incentive.

The ACCC has correctly identified that the bundling of charges for storage and handling services, and transport services could still be undertaken without the exclusive dealing notification that is currently in place for Grain Express. CBH could therefore offer a bundled service and charges for a given volume of transport services, without precluding users of the CBH system from procuring (additional) transport resources separately from CBH. The ACCC has correctly identified that such a system is in place in other parts of the country.

On this basis Louis Dreyfus Commodities agrees with and supports the Draft Notice issued by the ACCC which proposes to revoke the exclusive dealing notification lodged by Cooperative Bulk Handling Ltd.

Louis Dreyfus Commodities believes that the revocation should come into effect prior to the next season, and that it should coincide with the conclusion of the current storage and handling agreements.

Sincerely



Alick Osborne
Managing Director