

Our reference
WAKCOOP2260-9071023

Woodside Plaza
240 St Georges Terrace Perth WA 6000
GPO BOX 9925 WA 6001
Tel (08) 9460 1666
Fax (08) 9460 1667
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth

11 April 2011

By email and post:

Richard.chadwick@accc.gov.au
Mr Richard Chadwick
Australian Competition and Consumer
Commission
Level 35, 360 Elizabeth St Melbourne,
Victoria 3000

Contact
Bill Keane (08) 9460 1600
Email: bill.keane@corrs.com.au

Dear Mr Chadwick

Review of CBH Grain Express notification N93439

We refer to your letter dated 8 March 2011 and our response to requests 1, 2 and 4. This letter contains CBH's response to request 3, which was for CBH to reproduce non-confidential portions of its letters dated 3 March and 23 April 2010 in a form suitable for entry on the public register.

Relevant portions of those letters are quoted below. The quoted sections should be read in context, as CBH's comments on the dates they were made.

1 Letter from CBH to ACCC dated 3 March 2010

"The domestic outturn fee is payable by any person (including CBH subsidiaries) that removes bulk grain from CBH's system other than by loading it onto an export vessel or into a container. It is paid by growers, domestic grain traders and end-users of grain, including flour mills and feedlots.

Background

1. CBH's domestic outturn fee has changed a number of times in the past few years as CBH seeks to put in place a charging mechanism that more correctly reflects the costs of providing a domestic outturning service.
2. Most recently in the 2009/10 season CBH changed the domestic outturn fee from \$3.20 per tonne to \$8.50 per tonne. This change resulted from a larger change to CBH's pricing structures caused by the imposition of an Access Undertaking under Part IIIA of the Trade Practices Act 1974 (Cth) pursuant to the Wheat Export Marketing Act 2008 (Cth)....
4. As a result of the ACCC's stance in relation to the structure of the Access Undertaking, CBH was compelled to reform its pricing in a substantial fashion in a single year. The old pricing system that had been created during the era of the single desk was no longer appropriate in the de-regulated environment. As part of the change in pricing:

- 4.4 CBH has eliminated certain charges that were ordinarily levied upon receipt of grain into the CBH system (eg Grain Assessment Fee and Transport Recovery Fee);
- 4.5 CBH has eliminated some charges levied whilst grain was stored in the CBH system (eg time based storage charges over the first year);
- 4.6 CBH has waived some time based storage charges to provide a smoother transition from the old pricing regime to the new pricing regime, notwithstanding that it was under no obligation to do so.
5. CBH considers that the domestic supply chain charges levied by it should be viewed in totality. The table below sets out the charges levied before and after the change.

Charge	08/09		09/10	
	From	To	From	To
Receival Fee	\$ 10.50	\$ 14.55	\$ 10.00	\$ 14.50
Grain Assessment Fee	\$ 1.15	\$ 1.15	\$ -	\$ -
Transport Recovery Fee	\$ 1.10	\$ 1.10	\$ -	\$ -
Time Based Storage (avg)	\$ 4.80	\$ 4.80	\$ -	\$ -
Domestic Outturn Fee	\$ 3.20	\$ 3.20	\$ 8.50	\$ 8.50
	\$ 20.75	\$ 24.80	\$ 18.50	\$ 23.00

6. The primary factors taken into account by CBH were maintaining the overall revenue received associated with the passage of domestic grain through the CBH system and ensuring clarity of pricing such that the costs of using CBH could not be misrepresented by variable charges. Accordingly, the new structure of pricing is designed to ensure that export services pricing does not involve a cross subsidisation of the domestic business. This transition has been occurring for a number of years since around the 2004/05 season when no charge was levied for domestic outturns.
7. The domestic outturn and re-delivery fee is a rarely used service which, if priced purely accordingly to cost recovery principles, would never be used at all. At present this service is occasionally used by marketers to outturn grain that needs to be cleaned to meet an export quality specification. The grain will be outturned from CBH one day and then returned to CBH generally on the same day or the following day. If CBH were to charge another receival fee when the grain is brought back into CBH it would result in a very adverse result for the marketer. The domestic outturn and re-delivery service is offered as part of the co-operative's efforts to assist its members and the development of the grain industry in Western Australia by permitting the upgrading of lower quality grain destined for export.
8. Although not directly relevant we note that some bulk handlers in Australia will charge an outturn fee and then a full receival fee in the event the grain is to be delivered back into the storage and handling system. Each bulk handling system is different and has a different method and rate of charging for the use of its facilities...

9. *The domestic outturn fee of \$8.50 per tonne is payable by CBH's grain trading company, Grain Pool Pty Ltd, which is currently equivalent to the domestic outturn fee levied on any other customer of CBH. The containerisation fee of \$30.00 per tonne (assuming there is not a volume rebate)...*
18. *As noted above, each bulk handling company throughout Australia has a different charging structure. It is extremely difficult to compare total costs of use of the different supply chains. However on a simplistic analysis CBH considers that the rates it charges are comparable to those charged elsewhere. For instance, one Australian bulk handler charges outturn fees from its receival points between \$5.53 and \$7.13 per tonne unless the destination is a container packer where it is between \$5.53 and \$9.17 per tonne where the destination site is container packer..."*

2 Letter from CBH Group to ACCC dated 23 April 2010

"[We] enclose copies of two recent Co-operative Bulk Handling Limited ('CBH') invoices issued to Grain Pool Pty Ltd (now known as GBH Grain Pty Ltd or, CBH Grain) dated 2 March 2010 and 1 April 2010 setting out the \$8.50 per tonne domestic outturn fee charged to Grain Pool Pty Ltd¹. You will note that the invoices refer to a "Domestic Standard Fee" and a "Domestic Express Fee", both of which are \$8.50 per tonne. The "Domestic Standard Fee" refers to domestic outturns where the customer has organised their own transport to pick up the grain and the "Domestic Express Fee" refers to domestic outturns where CBH has organised the pick up and delivery of the grain to the end-user.

Factors taken into account in determining a domestic outturn fee

1. *By way of further detail, the factors which determine the outturn fee are:*
 - 1.1 *Gross revenue derived from all fees. Because CBH charges a range of fees, its primary factor in setting the level of particular fees is whether the aggregate revenue from all fees will meet all costs. This may be surprising, since the ACCC may be used to reviewing entirely cost reflective pricing methodology. However, it is not unusual for cooperatives to set prices in this manner because they are not obliged to derive profits for shareholders.*
 - 1.2 *No cross-subsidies between export and domestic services. This factor is necessary because the export and domestic supply chains operate at different scales and have different costs. The export supply chain involves greater scale, substantial related efficiencies (such as the use of unit trains) and lower direct out-turn costs because export outturn occurs when grain is bulk loaded onto a vessel. Domestic outturn involves loading of trucks and trains, which is a less efficient exercise for bulk quantities. Much of the grain in the export supply chain is dealt with under the Grain Express system, which enables CBH to derive additional efficiencies through the aggregation of parcels of grain as part of a single congruent stock.*

¹ The invoices referred to in this paragraph are confidential and should not be placed on the public register.


- 1.3 *Competitive position. CBH reviews the pricing of substitutable services and comparable services of other bulk handling companies to ensure that it is competitive with the market.*
2. *CBH has not conducted the complex exercise of quantifying each and every cost input involved in a domestic outturn and reflecting them in charges. However, with the implementation of port regulation, CBH reached the view that the \$3.20 outturn fee was too low because:*
 - 2.1 *the abolition of the grain assessment fees, transport recovery fees and time based storage would produce a revenue shortfall unless some remaining fees (such as the outturn fee) were increased; and*
 - 2.2 *the fees charged by CBH's competitors for similar functions were similar or higher. Please refer to paragraphs 18 and 19 of our 3 March 2010 letter. For instance, we note that Tamma Grains charges \$18.60 on receival and then charges nothing at the time of domestic outturn.*
3. *The domestic outturn fee cannot be viewed in isolation from CBH's other fees as it is not solely attributable to the service provided at the point of domestic outturn. The domestic outturn fee also contributes revenue for other activities associated with the storage and handling of grain in the network. This is similar to the receival fee payable by growers as a result of delivering grain which entitles them to use our supply chain and associated services such as sampling, grading, storage and fumigation.*
4. *What is critical is the overall throughput cost for using the various services associated with receival, storage, handling, fumigation and outturn. Grain that comes into our system must leave at some point or other.*
5. *The nature of handling a common pool of bulk grain associated with our up-country receival network drives a simple and clear charging system associated with the entry of, and exit of, grain from our system. CBH considers that it is an appropriate method of charging because it would be difficult to charge based on the actual costs incurred at any particular time.*
6. *It would be impossible and/or uncommercial to reconcile whether a parcel of grain has been handled one or more times before it was delivered to the outturn site and therefore should be charged for all activities associated with handling that parcel of grain. Under our current system CBH bears the risk of overhandling grain and driving up its costs.*
7. *By way of example, if CBH were to charge a fee purely for the unloading and outturning of grain for a domestic customer, that fee would suffer the following problems:*
 - 7.1 *for months where there is less volume of grain in the storage network, a higher fee would have to be charged to account for fixed costs being spread over fewer tonnes of grain;*
 - 7.2 *to overcome this issue, customers would be driven to aggregate demand simultaneously in order to achieve a lower price. Inevitably,*

because of capacity reasons, some customers would miss out and bear markedly higher costs in the next pricing period.

8. *Each of CBH's 193 receival sites are unique. For the following reasons, it is not feasible that each and every site have a different cost attributed to it:*
- 8.1 *the billing system and cost tracking associated with having site specific costs would be immense and most likely unworkable;*
 - 8.2 *costs at traditionally cheaper sites would rise as they were forced to deal with grain beyond their capacity whilst other sites would sit idle;*
 - 8.3 *the less grain a site receives the higher the fee would rise until there was an unmanageable fee per tonne making it uncommercial and impractical for the first grower to deliver grain there. As a result, harvest planning for grain flows would become impossible and grain growers would be disadvantaged."*

If you wish to discuss, please contact me on 9460 1600.

Yours faithfully
Corrs Chambers Westgarth



Bill Keane
Partner