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By email and post:
Richard.chadwick@accc.gov.au

Mr. Richard Chadwick
Australian Competition and Consumer Commission
Level 35, 360 Elizabeth St
GPO Box 520
Melbourne VIC 3000

Dear Mr. Chadwick,

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

We refer primarily to the CBH letters to the Commission dated 5 April and 11 April 2011.

In providing its response, ARG remain significantly concerned at the length of time that is being taken to conclude deliberations with regard to the Notification. At our meeting with Commissioner Walker on 20 January 2011, ARG asked the Commission to note several factors including the need for an expeditious decision and any ensuing appeal process. The benefit of prompt decision making is due to the fact that continued uncertainty regarding Grain Express is significantly undermining ARG's ability to prepare its operations for competition in 2012. Further delay will profoundly undermine the benefits in circumstances where the ACCC's final determination is to revoke Grain Express. As we write, future competition in grain freight above rail in Western Australia is being significantly damaged as uncertainly leads ARG drivers to immediately seek alternate employment out-side of grain transport whilst QR National is forced mitigate its risk and re-locate assets into other industry sectors or locations. Please also note that CBH has informally advised ARG that it intends to recruit a substantial component of its new rail work-force from ARG's current ranks in the months leading up to April 2012. This process has already begun and will further undermine ARG's ability to offer competing services.

For the sake of brevity, ARG will make specific response to the CBH letters by quoting paragraph numbers. We first address the CBH letter dated 5 April 2011:

1. CBH Para 1.1. (i) ARG is of the view that there is plain and simple evidence that the notified conduct will substantially lessen competition in market for rail transport in Western Australia. The revocation of Grain Express will allow ARG's substantial grain fleet of up to 27 locomotives and 667 bulk grain wagons to compete in the grain freight services market.
2. CBH Para 1.1(ii) ARG notes that the majority of the submissions referenced by CBH presume that the revocation of the notification will lead to a modal shift away from rail to road. The claim of a loss of supply chain efficiency arising from the notification relies almost entirely upon this presumption. If allowed to compete, ARG will help ensure that the use of bulk rail in grain is maximized and therefore the forecast loss of supply chain efficiency is a myth.
3. CBH Para 1.1(iii) ARG's discussions with grain marketers suggest that they wish to use competitive freight services for the purpose of ensuring that they place the most

attractive grain purchase offer to growers. Rather than boosting margins as CBH suggest, revocation will ensure transparent and comparative freight rates where Growers and the market can benefit from competition. The market will use any freight advantage to improve their grain purchase offer to the grower.

4. CBH Para 1.2 As already noted, ARG strongly suggest that if revocation is delayed until October 2012, any opportunity for effective above rail competition will be gone. If it is the ACCC's intention to ensure competition for grain freight services in Western Australia, it is crucial that revocation takes place no later than October 2011. With regard to grain rail freight, a revocation date later than is will both substantially and practically undermine prospects for meaningful competition.
5. CBH Para 1.3 & 1.4 ARG note that if revocation takes place from October 2011, CBH will have been given ten months to prepare from the date of the draft notice. Whilst ARG recognize that CBH needs to plan effectively for revocation, it is unclear as to why CBH should be effectively given two years to do so, particularly given that revocation effective October 2012 will practically ensure the demise of the ARG West Australian Agribusiness unit. CBH is well aware of this fact and may well be relying on it to achieve their own commercial objectives.
6. CBH Para 2.1 ARG agrees that supply chain logistics is a complex task. No doubt system changes at CBH in preparation for Grain Express did require planning and preparation. ARG argue that CBH should have been planning for revocation since the draft notice in December 2010 and that industry should not be asked to wait a further eighteen months to October 2012 for CBH to conclude its preparations. ARG further note that the revocation will operationally revert CBH back to pre 1998 circumstances.
7. CBH Para 2.3 ARG suggests that the points made here are not relevant to the timing of revocation and quite mis-leading. Whilst freight rate setting is currently done on a whole of season basis, this is not driven by current contract terms but rather a reliance on the guarantee of seasonal volume from one year to the next. This is simply due to the fact that CBH has enjoyed substantial market power and monopoly conditions for many years. It is not a function of Grain Express. For example, CBH freight pricing for 2011/12 will be made by October 2011 and on the basis of freight rates already committed under contract to CBH. With regard ARG, these rates were established in 2010 and will carry through to the end of the current contract in April 2012 regardless of the existence of Grain Express. Pricing after April 2012 will be a function of the price points agreed between WATCO and CBH Operations. ARG understands that the same applies to current road transport Agreements. CBH pricing for the year is not contingent on Grain Express related contractual terms and conditions as they do not change mid season. Terms and conditions are the subject of long term Agreements.

CBH freight pricing in this context is therefore not subject to terms and conditions, it is however largely contingent on seasonal crop volume. Volumes impact CBH's ability to recover against fixed overheads inherent in their pricing structures as they might do for any bulk business. Whilst CBH is subject to the vagaries of seasonal conditions with regard to crop volume, Grain Express means that it currently enjoys an ability to capture all available export crop volume in the absence of any market competition. This makes freight rate setting relatively simple for CBH, its reliance benefits CBH alone, it does not drive any industry efficiency and is not time sensitive. Regardless of the timing of the revocation notice, CBH reliance on this volume certainty will remain for as long as it is available.

8. CBH Para 3.1(iii) ARG suggest that new processes at country storages required in the context of revocation will be minimal as the core process will not change. ARG also believe that increases in the occurrence of up country out turns will not necessary follow. Full trains currently collect grain up country now and if ARG has the opportunity to

compete, will do so after revocation. Therefore it does not follow that any significant additions to out turns will follow revocation.

9. CBH Para 3.1(v) CBH routinely conduct Grower meetings across Western Australia and has a very mature and effective Grower communications network. This communications requirement is routine and will not prove onerous for an organization that prides itself on an ability to connect with the Grower.
10. CBH Para 3.1(vi) CBH currently operates a “port based” entitlement system under Grain Express. Prior to 2008 CBH operated a “site based” entitlement system. Neither system is new to CBH.
11. CBH Para 3.3 CBH harvest planning comprises the following major functions:
 - a. Volume forecasts by location;
 - b. Grain Quality planning;
 - c. Manpower planning for receival points;
 - d. Site maintenance and physical preparation activities;
 - e. Storage and segregation planning;
 - f. Storage, handling and freight rate price setting;
 - g. Grower communications;
 - h. Capital planning;
 - i. Fumigation planning;
 - j. Preparation of temporary storage;
 - k. Transport planning; and
 - l. Port capacity planning.

ARG suggest that its is self evident that the vast majority of these harvest planning activities are not impacted by revocation and that CBH have over stated this impact in order to delay revocation. CBH know that any delay to revocation will significantly impact ARG's ability to complete above rail beyond April 2012.

12. CBH Para 3.5 Grain Express represented a new system and therefore required system development. Revocation of Grain Express essentially represents a system reversion.
13. CBH Para 3.9 ARG suggest these comments are alarmist and not based on fact. CBH's intended consequence in delaying the revocation is to protect its investment in rail assets (Its biggest ever single capital expenditure) by ensuring that ARG's Agribusiness in WA, its primary potential competitor, is effectively closed down prior to CBH Rail and WATCO being exposed to the marketplace.
14. CBH Para 3.10 This paragraph demonstrates just how long CBH has had to plan for revocation.
15. CBH Para 3.14 – 17 As the bulk of third parties to the CBH operation support the revocation, ARG believes that CBH will be given support and understanding in dealing with these issues.
16. CBH Para 3.25 ARG stands by these comments and would like to re-iterate that grain haulage services to the market will not be disrupted by immediate revocation.
17. CBH Para 3.27 ARG agrees that it has significant incentives for the revocation to occur prior to October 2012 but not for the reasons outlined by CBH ARG does not believe CBH is exposed to serious penalties under the existing rail haulage Agreement where revocation occurs prior to October 2012. ARG has contractual commitments to provide



fleets to CBH until 30 April 2012. ARG will honour this Agreement. If CBH retains significant concerns, it should be noted that it has chosen not to raise these concerns with ARG.

ARG agrees that the task of reconciling movement tasks post revocation will require some thought. ARG does not agree that failure to do so will simply result in a detriment to CBH. These issues might equally apply to ARG and both ARG and CBH will have reason to properly resolve this issue.

ARG's incentive for revocation prior to October 2012 is quite simple. Unless revocation takes place by October 2011, ARG's grain related freight business will be significantly and permanently marginalized to the point where it will effectively be closed for business..

18. With regard the CBH letter dated 11 April 2011, ARG makes the following general comments:

- a. By its own admission, the CBH charging structure is not cost plus but rather a basket of fees derived to achieve an overall revenue outcome for the business. This demonstrates two things:
 - i. Why it is critical that service components within an organization like CBH are exposed to market based competition if service recipients are to receive fair value, and
 - ii. That CBH has at least the potential for significant cross price subsidy in its operations. ARG is acutely concerned that in circumstances of the revocation, CBH will apply the same pricing principles to its new rail freight business and use its significant market power to either cross subsidise rail services or impose monopoly rents on specific services such as export out-loading in order to drive out above rail competition.
- b. ARG request that the ACCC ensure that in any decision to revoke Grain Express is accompanied by price setting controls or checks that protect the market against such predatory pricing.

Please allow me to thank the ACCC for the opportunity to contribute to this debate. We look forward to the outcomes of our deliberations.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'K Potts'.

Ken Potts
Group General Manager Bulk West
ARG a QR Company