

GLENCORE GRAIN PTY LTD

ABN 29 106 378 885

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

20 January 2011

SUBMISSION to the PRE-DECISION CONFERENCE ON DRAFT NOTICE TO REVOKE EXCLUSIVE DEALING NOTIFICATION FOR GRAIN EXPRESS

A KEY ISSUES

1. New grain rail transport structure

CBH is setting up a \$175m new own rail service.

If they can set up a service, ARG should be able to continue.

If CBH can set up a service, other rail operators should be able to enter the local open access market.

As CBH is investing heavily in rail, competition is necessary to control its prices.

The only impediment to new rail services is the exclusive dealing notification for Grain Express. Thus the notification should be revoked.

2. CBH's tying and predatory pricing

CBH's domestic outturn fee of \$8.50 is a 30% buffer to the competition. Its purpose is to eliminate competition. Nowhere has CBH established the cost basis for the fee. Revocation will enable the fee to be rest on a cost basis in commercial negotiations.

3. Transport to port is organised by marketers not by port terminal operators nor growers

Everywhere but WA typically marketers organise transport to port. They have to do this to link with the ships that they charter for the grain they trade.

CBH does not have an incentive to organise the transport to port for multiple marketers.

The only impediment to marketers resuming their transport function is the exclusive dealing notification for Grain Express. It has to be revoked.

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4. Grain Express is only a freight issue. It is not related to grain quality or security

If grain can be in the custody of ARG or Watco it can also be in the custody of other rail operators like Asciano and others experienced in carrying grain.

5. Other rail operators can secure better rail rates than CBH

ARG are willing to carry grain for Glencore Grain at better rates than what CBH deducts from the grower.

Revocation is necessary so that we can offer this service.

B THE DRAFT NOTICE SHOULD BE UPHELD AND FINALISED

6. The exclusive dealing notification should be revoked for the reasons given in the Draft Notice, which are, on our reading

- CBH has caused a substantial lessening of competition in transport of grain to port.
- There is no public benefit in this.
- There is a detriment in that CBH has shifted the congestion risk to growers and exporters.

It is unfair and absurd that if CBH shifts the risk of grain not getting to port on time to the grower and the exporter, the grower and exporter cannot organise their own transport to minimise and avoid that risk.

7. Our submission of 12 January 2011 also points out that revocation is necessary to do away with the \$8.50 a tonne domestic outturn charge and related charges and be replaced with charges based on costs so that Glencore Grain and CBH face the same upcountry and port charges. We want a level playing field, whereas Grain Express and CBH's charges completely close the transport field to us.

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8. Our submission also submitted that there was no impediment to very prompt revocation and revocation is necessary to enable parties to contract road and train transport.

CBH have moved into train operation and want until May 2012 to set up their new services. Glencore Grain and other exporters would be given the same freedom if the revocation was prompt, that is by 30 June 2011.

9. We also pointed out that no one had at that stage submitted that the Draft Notice had errors.

C THE NEW SUBMISSIONS HAVE NOT SHOWN ERRORS IN THE DRAFT NOTICE

This refers to submissions on the website since 12 January 2011

None of the key points in the new submissions defending Grain Express are in our view valid or correct. Thus:

10. **CBH criticises motives of marketers for wanting to acquire CBH's supply chain coordination and logistics** (see Corrs' letter of 12 January para 1.1 and 1.3).

Reply: Glencore Grain and we believe other marketers and growers do not want to take over any function of CBH. CBH can still organise trains. There is no reason why Glencore Grain and others cannot organise trains also. The revocation is necessary so we can do this.

11. **CBH says its discretion over freight to port is what other bulk handlers have** (Corrs' letter para 3.10) and it quotes GrainCorp's Country Storage and Handling Agreement

Reply: that very GrainCorp agreement provides in cl 3.20 that a client (Glencore) wishing to move from GrainCorp storage by loading rail or road transport may do so by filling out the necessary forms. This is the very freedom we are denied under CBH's Grain Services Agreement and similar agreements.

Revocation is necessary for us to win back this freedom.

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12. **Aggregation #1.** The relevance of rail's economies of scale. The Draft Notice at para 5.262 recognises that rail may be more cost effective because of the volumes of grain that it may aggregate.

Response: In our view this does not show that there should be one aggregator or rail operator, as CBH infer at item 28 of their table of comments on the Draft Notice.

If rail is desirable its use should not be confined to one operator. The revocation is necessary so that there may be more than one rail operator.

13. **Aggregation #2.** The Freight and Logistics Council want to make it a condition of revocation that other operators have full train loads.

Reply: Glencore Grain has the tonnage to fill full trains and Glencore with other exporters have the tonnage to fill full trains. We are not in the business of running uneconomic loads. The condition is unnecessary.

Furthermore the ACCC does not in our view have power to make revocation subject to a condition.

14. CBH's scorecard

After two years of Grain Express CBH has not produced a single quantified benefit from Grain Express. No before and after measurement.

In fact Grain Express is associated with a 43% increase in rail costs (see p 2 of our submission of 12 January).

15. Alternative upcountry on farm storage of 2 million tonnes claimed by Frontier Economics

Response:

- We doubt this figure is correct. On farm storage helps meet domestic demand which is only 500,000 tonnes, leaving another 1.5m on farm tonnes to be exported. CBH charges a \$10 up country storage fee for this even though no storage is provided!!!
- The on farm storage is too small and in the above circumstances does not provide leverage over CBH's rates or practices.

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16. Morawa Geraldton example by Frontier is misleading

Response:

- 95 c transport charge is from CBH Geraldton port storage to Geraldton port terminal.
- \$10 storage not charged as elsewhere by CBH because Glencore Grain and other threatened a temporary port bunker to take wheat.

17. Timing of revocation

Cost reflective pricing for upcountry storage and handling is readily determined. A storage can be cleared for Glencore at the same time as it is cleared for CBH, in which no new costs to be determined.

Revocation does not physically impact on CBH operations.

Revocation does not necessarily impact financially on CBH - ARG contractual terms. If it does the impact can be established and be the subject of negotiations with ARG. Up to CBH to establish its case on this.

CBH already conceded revocation could start with next harvest. See their letter to ACCC of July 2010.

D THE CRITICAL ISSUE - MARKET IN TRANSPORT SERVICES

- We have CBH's monopoly and cross subsidies.
- On the other hand users only want to pay for the services they get. Only a market can fix the price for such services and spot the opportunities to be filled.
- Revocation is necessary to re-establish the market in transport services to port.

Chris Brooks
Managing Director