HERBERT
SMITH
FREEHILLS

Mr Sam Di Scerni
Regional Director
Australian Competition and Consumer Commission
3rd Floor
East Point Plaza
233 Adelaide Terrace
PERTH WA 6000

6 August 2013
Matter 82196275
By Hand

ACCC
6 AUG 2013
PERTH

Dear Sir

Notification - CSBP Limited

We act for CSBP Limited ("**CSBP**").

Enclosed with this letter is a Form G notification (in duplicate) in respect of conduct proposed by CSBP which may fall within section 47 of The Trade Practices Act.

Also enclosed is our cheque in the sum of $2,600 in payment of the relevant application fees (comprising $2,500 for the exclusive dealing aspect of the notification, and $100 for the third line forcing aspect of the notification).

The notification is lodged in respect of a contract (the "contract") which CSBP proposes to offer to certain of its customers. The notification follows previous notifications lodged by CSBP in June 2004 (N70383), February 2007 (N92829/N92830) and June 2010 (N94845/N94846) in respect of similar (although not identical) arrangements. The nature of the contract is described in detail in the notification, comprising (broadly speaking) an agreement by which CSBP will supply certain benefits to certain of the ultimate customers of its fertiliser products, and by which those customers commit in turn to purchase a quantity of their fertiliser products from CSBP distributors for a three year period.

'Annexure 1' to the submissions accompanying Form G contains commercially sensitive information. Restriction from publication of Annexure 1 on the ACCC's public register is sought, along with confirmation that Annexure 1 will be treated as exempt under the Freedom of Information Act 1982 and kept confidential for all purposes (the "confidentiality request"). The commercially sensitive information in Annexure1 falls into a number of categories –

(a) information about CSBP's sales targets, sales and input sources;

(b) information about CSBP's business plans, including in particular its proposed development expenditure, production facilities and capability, etc,

all of which information is not otherwise available to CSBP's competitors, and which is capable of being used by them to formulate strategies that might adversely impact on CSBP's business.

In support of the confidentiality request, we respectfully point out that the nature of the conduct (including the proposed terms and conditions) is set out in sufficient detail in the body of the submissions attached to the Form G so as to ensure that the material on the public register (in the event of the confidentiality request being granted) would convey to readers a clear understanding of the conduct the subject of the notification application.

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herbertsmithfreehills.com DX 255 Brisbane

We accordingly look forward to your response to our client's confidentiality request.

Please do not hesitate to contact our Mr Steve Standing if you have any questions or require any further information.

Yours faithfully

Steven Standing
Special Counsel
Herbert Smith Freehills

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ACCC
6 AUG 2013
PERTH

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

(Refer to direction 2)

N96903
N96904

CSBP LIMITED ABN 81 008 668 371

(b) Short description of business carried on by that person:

(Refer to direction 3)

Manufacture and supply of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors.

(c) Address in Australia for service of documents on that person:

Wesfarmers Limited – Corporate Solicitors Office, 11th Floor, 40 The Esplanade, Perth WA 6000 – Attention Christian Bauer

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Agricultural fertilisers

(b) Description of the conduct or proposed conduct:

CSBP proposes to offer 3 year FSA contracts by which contracted farmers will receive services and benefits from CSBP upon the condition that those farmers agree to purchase CSBP fertiliser products from CSBP or from distributors of CSBP fertilisers in quantities not less than 90% of the average annual quantity of fertilisers purchased by them over the previous 3 years. (Please see attached submission for details).

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

(Refer to direction 5)

Some farmers in WA. Please refer to attached submission for more details.

(b) Number of those persons:

(i) At present time:

Approximately 1000.

(ii) Estimated within the next year:

(Refer to direction 6)

Approximately 1000.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

N/A .

4. Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

The proposed conduct would support the use, maintenance and upgrade of local plant, production efficiencies, competitive pricing and other benefits. Please refer to attached submission for details (particularly section 9).

(b) Facts and evidence relied upon in support of these claims:

Please refer to attached submission generally.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

Market for agricultural fertilisers in WA. Please refer to attached submission for details (particularly section 6).

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

CSBP is unable to identify any significant public detriment – please refer to the attached submission (particularly section 10).

(b) Facts and evidence relevant to these detriments:

Please refer to attached submission.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Steven Standing
Herbert Smith Freehills
(Solicitors for CSBP Limited)
Level 36, QV1 Building
250 St Georges Terrace
PERTH WA 6000 (Telephone 08 9211 7777;
Facsimile 08 9211 7878)

ACCC
6 AUG 2013
PERTH

Dated..... 5 August 2013 .....

Signed by/on behalf of the applicant

.....
(Signature)

Steven Michael Standing
.....
(Full Name)

Herbert Smith Freehills
.....
(Organisation)

Special Counsel
.....
(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

   Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.

5. Describe the business or consumers likely to be affected by the conduct.

6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.

9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

Submission by CSBP Limited in support of notification to the Australian Competition and Consumer Commission under Section 93(1) of the Competition and Consumer Act 2010

Restriction of Publication of part claimed on the grounds of commercial confidentiality

1 Introduction and Background

This submission is provided in support of CSBP's notification made under section 93(1) of the Competition and Consumer Act 2010. The notification deals with proposed conduct by CSBP which may fall within sections 47(2) and/or (6) of the Competition and Consumer Act 2010.

Reference is made, in this notification, to conduct notified by CSBP in June 2004 (Notification N70383, February 2007 (N92829 and N92830) and June 2010 (N94845 and N94846). The conduct in the previous notifications was similar (although not identical) to that which is the subject of this notification.

2 Description of notifying party

CSBP is a wholly-owned subsidiary of Wesfarmers Limited. It is one of Australia's major suppliers of chemicals, fertilisers and related services to the mining, minerals processing, industrial and agricultural sectors. For the financial year 2012/13 it had operating revenues from all sectors of its operations of $867 million.

CSBP's major chemical and fertiliser production complex is located at Kwinana, Western Australia. Major fertiliser despatch facilities are also situated at Geraldton, Bunbury, Albany and Esperance. Depots and field based agricultural advisers are located throughout Western Australia's agricultural regions. The company also owns 50 per cent of an integrated ammonium nitrate plant at Moura in central Queensland. CSBP employs more than 500 people in these operations.

3 Business units and core manufacturing capacity

CSBP's business comprises two streams; namely –

(a) CSBP Chemicals, the core products of which include ammonia, ammonium nitrate, sodium cyanide and caustic soda, together with a number of traded chemicals;

(b) CSBP Fertilisers, which through both its manufacturing and importing activities provides a wide range of products and services for use in broad acre cropping, livestock, horticulture and dairy operations. It also operates one of Australia's most modern soil and plant testing laboratories to assist in maximizing the productivity of rural producers.

4 CSBP Chemicals

Ammonia and ammonium nitrate are globally traded bulk commodities, usually denominated in US dollars, with an efficient and regulatory approved scale of import into Australia being cargo lots of approximately 20,000 tonnes for ammonia and 1000 to 4000 tonnes for ammonium nitrate.

Ammonium nitrate production capacity
In 1996, CSBP commissioned an ammonium nitrate facility at Kwinana with a production capacity of approximately 235,000 tonnes per annum, to replace imports and meet growing demand for nitrogenous fertilisers and mining explosives. Ammonium nitrate is manufactured by a process involving the combining of nitric acid and ammonia.

CSBP commissioned an expanded ammonium nitrate facility (with a further capacity of approximately 235,000 tonnes) in 2008.

In 2014 CSBP will commission an additional 260,000 tonne per annum ammonium nitrate facility costing $550 million.

The total Ammonium Nitrate capacity of the three ammonium nitrate manufacturing facilities will be 730,000 tonnes per annum. Currently it is anticipated that 90,000 tonnes of this capacity will be utilised in fertiliser manufacture in 2013/14; 85,000 tonnes in 2014/15 and 65,000 tonnes in 2015/16.

The three ammonium nitrate facilities will be used to service local fertiliser and explosives markets and to replace some imported fertiliser with locally manufactured product.

Approximately 87 people are directly employed by CSBP in the manufacture of ammonium nitrate.

4.1 Ammonia production capacity

In 2000, CSBP commissioned a $150 million ammonia manufacturing plant at Kwinana with a design capacity of 230,000 tonnes of ammonia per annum (replacing a much smaller plant which has since been decommissioned), for the purpose of reducing CSBP's requirements for imported ammonia. Ammonia is an essential feedstock in the manufacture of a number of downstream products including (as noted above) ammonium nitrate and nitrogen based fertilisers.

Approximately 58 people are directly employed by CSBP in the production of ammonia.

5 CSBP Fertilisers

The fertiliser division of CSBP markets a range of fertilisers, some of which it manufactures (using the core products produced by the CSBP Chemicals division) and some of which it imports.

CSBP markets both liquid fertilisers and solid fertilisers. These are described in more detail below.

5.1 Liquid Fertilisers

The main liquid fertiliser marketed by CSBP is urea ammonium nitrate (UAN) marketed as Flexi-N. This product is manufactured by mixing ammonium nitrate, urea and water together under certain process conditions to form the liquid fertiliser. CSBP currently sells around 175,000-200,000 tonnes per annum of this product, which CSBP predominantly imports, as it currently has insufficient ammonium nitrate feedstock available for manufacture. Flexi-N is a nitrogen fertiliser and is a substitute for urea, which is not produced in WA and is also imported.

Growth in demand for CSBP's liquid fertiliser products (in particular Flexi-N) during the period 1998 to 2013 has been substantial and was supported by the investment of approximately $16m in additional production and distribution facilities together with incentives for customers to provide on farm storage (storage facilities otherwise posing a significant distribution cost and inhibitor to sales).

CSBP directly employs 2 people in the manufacture of liquid fertilisers, increasing to 6 when the new ammonium nitrate facility comes on line in April 2014.

(a) CSBP liquid fertiliser sales

Australia-wide sales of liquid fertiliser by CSBP have increased from an almost zero base in 1998/1999 to very substantial levels.

Year	CSBP Flexi-N Sales (tonnes)
1998/1999	500
1999/2000	7,000
2000/2001	15,000
2001/2002	43,000
2002/2003	80,000
2003/2004	125,000
2004/2005	154,000
2005/2006	147,000
2006/2007	106,000
2007/2008	153,000
2008/2009	147,000
2009/2010	182,000
2010/2011	175,000
2011/2012	198,000
2012/2013	188,000

The $550 million expansion of the CSBP's ammonium nitrate manufacturing facility is in part premised upon the use the facility to manufacture Flexi-N to replace imported product. Approximately one third of the new production capacity (through the construction of the third ammonium nitrate facility) will be used for Flexi-N manufacture. Over time, CSBP expects demand from the mining industry to increase, resulting in a corresponding increase in the proportion of Flexi-N to be imported from 2015/16.

If there is a downturn in demand from the mining industry, CSBP will be able to direct Ammonium nitrate off-take back into Flexi-N production in order to utilise the existing and proposed capital investment.

CSBP predicts continued growth in demand for liquid fertilisers, due to superior handling and application qualities and better nutrient availability. CSBP's predictions for market growth are **Commercial-in-Confidence** and are set out in Annexure 1.

(b) Effects of market growth

Commitments from customers at volumes similar to those under the previously notified arrangements would partially underpin the operation of CSBP's ammonium nitrate production facilities for the next three years (2013/14 to 2015/16). The production from this new plant means that CSBP will be able to manufacture a greater volume of its UAN for Flexi-N manufacture by combining locally produced ammonium nitrate (from CSBP's ammonium nitrate plants) with water and urea. The net result would be the production, in Australia, of a locally produced value added product (Flexi-N) in substitution for imported UAN.

(c) UAN - Market certainty

Supplies of nitrogenous fertilisers continue to be subject to considerable vagaries of pricing, due to the substantial volumes of US dollar denominated imports. Although fertiliser is a key production input for farmers, fertiliser prices can (subject to some contractual risk mitigation measures) rise and fall from month to month.

CSBP Flexi-N, when domestically produced, would (unlike UAN and urea products imported by others) be less affected by the vagaries of the global economy, commodity markets and fluctuations in foreign exchange rates. When the exchange rate is low, domestic production has an advantage over imports. When the dollar is high (as it presently is) imports are relatively cheaper and may in absolute terms become cheaper than domestic production.

Although future production of Flexi-N by CSBP will use imported ammonia and urea, any percentage increase in the import price of these raw materials will result in a percentage increase in CSBP's total Flexi-N production costs that is less than the percentage increase in the import price of these raw materials, as there are other local components of CSBP's total Flexi-N production costs which are not affected by foreign exchange rates. In addition, the raw material prices do not move in unison and this will have a further buffering effect on manufactured Flexi-N costs. Approximately 88% of CSBP's total Flexi-N production costs will be made up of the import price of ammonia and urea.

Accordingly, the impact of import price variations on Flexi-N production costs is expected to be less than the impact of import price variations on the purchase price of imported UAN and urea that are sold in their imported form, and will result in more consistent pricing of locally manufactured Flexi-N. Farmers will benefit from greater consistency in the pricing of a key input into their businesses.

5.2 Solid fertilisers

CSBP operates a granulation plant at Kwinana which currently manufactures a range of solid cropping fertilisers under the Agras and MacroPro/K-Till brands and Granular Sulfate of Ammonia. These are predominantly nitrogen based fertilisers.

CSBP directly employs 49 people in the operation of its granulation plant.

CSBP also operates a superphosphate manufacturing plant at Kwinana. Superphosphate is predominantly a pasture fertiliser.

The superphosphate plant was upgraded in 2012 when CSBP invested $5.5 million for a regenerative thermal oxidiser which allows it to use different grades of phosphate rock sourced from different locations, which is intended to assist in maintaining a competitive manufacturing capacity in the face of low cost imported product.

Unlike the nitrogen based fertilisers (which are preferred for use as crop nutrients) superphosphate based pasture fertilisers support pastures used for animal husbandry farming.

Although some farmers focus solely on crop cultivation (and hence mainly require nitrogen based fertiliser) or animal husbandry (and hence mainly require superphosphate based fertilisers) the majority (particularly broadacre farmers) carry on both types of farming activities and hence require both types of fertilisers.

Demand for pasture fertiliser is closely related to livestock numbers. Over the past few years, livestock numbers in WA have declined very significantly (the sheep flock has declined from

an estimated 28 million down to 14 million. This has significantly reduced demand for pasture fertilisers.

CSBP currently employs 37 people at its superphosphate plant.

Current utilisation of solid fertiliser manufacturing operations

CSBP's solid fertiliser operations at Kwinana are forecast to operate at an average of approximately 70% of maximum capacity for the 2013/14 year (comprising the granulation plant at 84% capacity and the superphosphate plant at 55% capacity). Production has been constrained, and is forecast to continue being constrained, by limited demand and also reflects the fact that CSBP's solid fertiliser products compete with generally cheaper imported substitutes, which (like ammonia and ammonium nitrate) are freely traded on the world market.

Lower utilisation of the granulation plant than in previous years is due to exchange rate factors (with imports being more cost competitive than was the case three years ago).

Lower utilisation of the superphosphate plant is due in part to exchange rate factors, and in part to lower demand for product due to lower sheep numbers.

CSBP's gross solid fertiliser sales in WA for 2012/13 and domestic manufacture levels are set out in Confidential Annexure 1.

With continuing high levels of imports, CSBP faces difficulties in justifying significant expenditures on improvements in solid fertiliser assets.

(a) Positive effects of security of demand for solid fertilisers

If CSBP is (through the proposed new FSA Partnership programme) able to achieve a degree of security of demand over the forthcoming three-year period in relation to solid fertilisers, the following benefits would be likely to accrue –

(1) CSBP would be able to justify maintaining or increasing investment in the granulation plant for the purpose and to the degree set out in Confidential Annexure 1. CSBP's granulation plant is currently operating at moderate capacity (partly due to volumes secured through previous offers similar to the proposed offer) with relevant cost benefits already factored into current prices. However, the plant is not operating at full capacity due to exchange rate factors making imports more cost-competitive.

(2) Improvements in volumes through CSBP's granulation plant would increase efficiency and the competitiveness of the product against imports. CSBP anticipates that, if its granulation plant operated at close to 100% capacity, efficiency improvements would translate to a decrease in the operating cost of CSBP's solid fertiliser production to the extent set out in Confidential Annexure 1, with a corresponding increase in competitiveness of its solid fertiliser products against imported substitutes and reduction in price to farmers;

(3) Benefits in relation to CSBP's superphosphate plant are set out in Confidential Annexure 1;

(4) CSBP does not presently export solid fertiliser products. Any decrease in the price of CSBP's solid fertilisers may also improve the competitiveness of those products on the international market (although this will also depend on exchange rate factors).

6 The market for sale of fertiliser

Fertiliser is a high volume, relatively low value product, economic to import by ship from major off-shore production facilities to developed ports, but marginal or uneconomic to transport domestically. For that reason, WA has traditionally been regarded as a separate fertiliser market to the rest of Australia. To the best of its knowledge, CSBP considers the current market for fertilisers in Western Australia to comprise as follows -

6.1 Main sellers

(a) CSBP

Has an approximate share of around 61% of the market for fertilisers in WA, with annual sales in the order of about 900,000 tonnes. CSBP's market share fell from an estimated 89% in 1995-6 as new fertiliser suppliers entered the WA market, but has been stable over the last 11 years. CSBP has manufacturing facilities at Kwinana, Geraldton and Esperance and distributes fertiliser from Kwinana, Geraldton, Bunbury, Albany, Esperance and five inland depots.

(b) Summit Fertilisers

100% owned by Sumitomo Corporation (a Japanese company) since September 2005, primarily selling imported fertiliser, with approximate annual sales of 370,000 tonnes and an estimated market share in the order of 20-25%. Summit has distribution facilities at Kwinana, Geraldton, Bunbury, Albany and Esperance.

Summit Fertilisers has purchased Whitfert, a smaller operator in the WA market. The tonnages and market share reflect the combined Summit and Whitfert sales.

(c) Ravensdown (formerly United Farmers Co-operative)

A NZ based farming co-operative which is a provider of low cost imported fertiliser products, with annual sales in the order of 140,000 tonnes and an estimated market share of 10%-15%. Ravensdown has distribution facilities at Kwinana, Geraldton, Albany and Esperance and a country depot at Watheroo, as well as a compaction plant for sulfate of ammonia at its Kwinana facility. Ravensdown has recently announced that it intends to exit the Western Australian market and is looking to sell its Western Australian business and assets.

(d) Others

There are also a number of smaller operators and opportunistic importers of fertiliser products, including Superfert/Dongbu. It is estimated that the smaller operators and opportunistic importers account for 70,000 tonnes, or 5% of the Western Australian market.

6.2 Products sold

Total demand for fertilisers in WA increased significantly during the 1990s, but has now stabilised with the introduction of revised farming practices focussing on more targeted delivery of nutrition and reduced wastage. From 2002 to 2012 the WA fertiliser market declined at an average rate of 0.7 per cent per year and CSBP estimates the market is now stable at around 1.3 to 1.4 million tonnes each year.

The WA rural market for fertiliser comprises the following products –

(a) Imported commodity fertiliser

CSBP estimates the following commodity fertilisers are imported by all WA fertiliser suppliers and are either sold in commodity form, or blended with other fertilisers prior to sale to produce tailored analysis products or products for specialist applications (all quantities are in metric tonnes for each calendar year based on FIFA data).

Imported Product	2007	2008	2009	2010	2011	2012
Urea	262,474	296,003	299,903	325,723	294,047	292,332
Sulphate of ammonia	0	0	21,594	21,259	3,952	5,517
UAN	119,026	185,308	152,463	70,479	91,300	102,574
Diammonium phosphate	120,715	97,568	83,587	72,166	49,522	45,599
Monoammonium phosphate	296,940	261,352	243,360	260,097	208,759	219,236
Triple super phosphate	52,172	39,155	16,373	30,401	23,097	19,675
Single Super	15,659	12,509	16,126	30,782	31,451	12,372
Muriate of Potash	100,176	88,366	51,638	67,366	69,914	75,567

(b) Inputs from domestic suppliers

The following products are sourced from local suppliers (as by-products of the minerals processing industry) and used in the manufacture of final products and in blends by WA fertiliser suppliers (all quantities are in metric tonnes for each calendar year).

Domestic Product	2007	2008	2009	2010	2011	2012
Sulphate of ammonia	169,964	151,604	138,242	143,269	125,116	147,704
Ammonia	15,297	15,038	16,328	16,077	14,287	16,941
UAN	0	0	80,844	179,831	97,724	111,117
Diammonium phosphate	0	0	11,634	33,394	15,673	26,512
Monoammonium phosphate	0	0	11,094	28,720	25,628	43,066
Single Super	262,631	161,706	109,492	155,679	133,658	155,431

[NB. Tonnages in tables in sections 3.2 are based on figures obtained from the Fertilizer Industry Federation of Australia (FIFA) and differ from tonnages contained in previous submissions (obtained from ABS)]

(c) Locally manufactured fertilisers

The quantities of fertiliser products manufactured locally by CSBP are specified in Confidential Annexure 1.

6.3 Distribution methods

CSBP sells its products through a variety of agents and distributors, including Landmark, and over 15 independent operators. CSBP also sells directly to a number of end-user customers (ie. farmers).

Summit distributes its product through agents and distributors such as Elders and also sells product directly to farmers. CSBP estimates that approximately 60% of Summit's sales are made through agents and approximately 40% of Summit's sales are direct to farmers.

Ravensdown sells its product through one major distributor (CRT) and other independent distributors, but the majority of its product is sold direct to farmers.

Overall, CSBP estimates that approximately 16% of fertilisers in WA are sold direct to farmers (without the involvement of agents/distributors).

CSBP estimates that there are in the order of 8,000 agricultural operations in WA, of which approximately 4,000 comprise broad acre operations (with an average area of 3,400 hectares and an average annual fertiliser spend in the order of $220,000).

For all suppliers in WA, a key annual method of sales management, developed and operating in the market for many years, is the annual "benefits program" (CSBP's annual "benefits program" is known as the "Fertiliser Sales Agreement" or "FSA") which benefits both parties and operates as follows:

(a) At the beginning of each cropping season, suppliers (through their various representatives/distributors) take preliminary indicators of tonnage from individual farmers.

(b) Those suppliers then enter into a "benefits program" with those farmers. The CSBP FSA is a contract which has the following economic characteristics:

(1) the FSA establishes the approximate (subject to some contracted elections) quantities and collection dates for fertilisers;

(2) it sets out certain discounts and rebates to be received by farmers off the prices of their purchases of fertiliser products and also provides for certain other benefits;

(3) the nominated distributor or distributors – that is, the party (or parties) from whom the farmer actually purchases the fertiliser, and with whom the supplier will contract to supply, is fixed (often by the farmer, based on the farmer's preferred rural dealer, with whom the farmer will often have a long standing relationship, including credit arrangements); and

(4) the distributor takes the contract risk, and credit risk, in relation to supply to the farmer.

(c) While the nominated distributor is free to charge such price as it may wish, the supplier will provide additional discounts to the distributor or rebates to the farmer to ensure that the farmer gets the benefit of the discounts and rebates set out in the FSA.

For the supplier, these annual "benefits programs" perform an important role, given the seasonal nature of fertiliser requirements, in assisting with forecasting demand to better manage production, importation and distribution volumes. These "benefits programs" generally provide rebates or discounts for collection at particular times and at particular locations (facilitating distribution, and rewarding on-farm storage investments) as well as volume related rebates.

Strictly, there are usually three separate legal arrangements entered into, or given effect to, as a result of the CSBP FSA: first, a contract between the farmer and supplier (CSBP) under which the volumes and distributors are nominated and discounts, rebates and other benefits to be provided to the farmer set out; secondly, a contract subsequently entered into between farmer and the nominated distributor, under which the farmer will buy, and the distributor will sell, fertiliser (at a price determined by the distributor) and (in some cases) the provision by the distributor of finance; and finally, supply under a master supply agreement between CSBP and the nominated distributor which is effected at a price which reflects the selling price of the distributor to the farmer, less a commission to the nominated distributor. In some cases, the farmer will contract directly with CSBP for the purchase of fertiliser and so in that circumstance there will only be two legal arrangements.

Separately, CSBP, Summit, Elders, Landmark, Superfert and many of the rural services providers sell agronomic and farm management related services, on a fee for service basis. Some of those services, such as nutrient planning and management, benefit the farmer directly in relation to the selection of the type and quantity of fertiliser to be purchased and applied, and are logically linked to the purchasing decision. Some of the incentives offered by CSBP under the proposed FSA Partnership programme will be 'redeemable' for such services.

6.4 Barriers to Entry

In CSBP's view there continues to be only low barriers to entry into the fertiliser market in WA, for the following reasons –

(a) on-farm storage for solid fertilisers is estimated to be in the order of 900,000 tonnes, with increasing capacity for storage of liquid fertilisers, meaning that bulk fertilisers can be imported and distributed on an opportunistic basis;

(b) port access at key centres around the Western Australian coastline is readily available on commercial terms, and transportation and storage are both relatively cheap and available;

(c) Western Australian farm sizes are typically sufficiently large to mean that only a relatively small number of farmers in a district need to band together to bring in an import shipment of a fertiliser product without an intermediary;

(d) most relevant fertiliser products are widely produced and traded internationally, with price information easily available over the internet and from other sources to enable estimates of import parity prices to be made readily;

(e) distribution of imports can accordingly take place through a mix of larger and independent distributors and direct to farmers; and

(f) the fertiliser industry generally operates in a highly competitive, unregulated environment, in which regular and opportunistic imports of globally-traded commodity fertilisers occurs on a routine basis;

(g) WA has a relatively low number of fertiliser suppliers compared to the Eastern States;

(h) Chinese interests are making sizeable investments in WA rural holdings, and there is in CSBP's view a significant prospect of those interests targeting synergies involving the acquisition (or construction) in WA of multi-use storage and shipping facilities through which rural products can be exported and Asian manufactured fertilisers can be imported.

7 The proposed conduct

CSBP proposes to offer FSA contracts for an extended term of three years (known as 'FSA Partnership' contracts) to approximately 1,000 customers. These 1,000 customers (farmers) are anticipated to represent approximately 350,000 to 450,000 tonnes of fertiliser sales per annum (see Confidential Annexure 1), made up of the customers who accepted the three year FSA Partnership contract in 2010, plus a number of customers who accepted the three year FSA Partnership in 2007 (but did not enter into the 2010 contract). Tonnes secured will be dependent on the following factors:

a) the number of farmers who accept the offer; and

b) the purchase history of those customers.

In 2010, CSBP marketed its 3 year FSA Partnership offer to approximately 1100 potential customers, of whom approximately 550 contracted with CSBP.

If CSBP was able to secure a modest increase in FSA Partnership contracts from 550 to 600, that would involve approximately 15% of broadacre farmers in WA, or about 7.5% of all farmers. The proportion of total WA market demand for fertiliser secured by such contracts (noting that the contracts would only secure 90% of those farmers' requirements) would be about 15%.

If CSBP was able to secure FSA Partnership contracts with all of the 1000 broadacre farmers it targets, that would involve approximately 25% of broadacre farmers in WA, or about 12.5% of all farmers. The proportion of total WA market demand for fertiliser secured by such contracts would (again noting that the contracts would only secure 90% of those farmers' requirements) be in the range of about 24% to 27%.

Of the fertiliser used by the broadacre farmers, about 19% by volume is estimated to be for pasture (superphosphate) products, and the balance of about 81% by volume is estimated to be for cropping.

An advanced draft of the terms and conditions for the proposed three-year FSA Partnership contract to be offered are set out in Confidential Annexure 2.

The substance of the proposed FSA Partnership contract is that:

(a) the CSBP fertiliser customers to whom the offer is made would be required to agree to purchase a quantity of CSBP fertiliser (through CSBP or through distributors of CSBP fertiliser) in an amount not less than 90% of their rolling three-year average purchases of CSBP fertilisers over the previous three-year period;

(b) in consideration of those customers entering into the three-year contract, they would be entitled to the benefits set out in the contract, comprising access to managed farm

productivity services at discounted prices, priority access to new fertiliser products, free months storage for Set Price Contracts and quarterly fertiliser statements.

8 Purpose of proposed conduct

The purpose of the proposed conduct is to provide to CSBP a degree of certainty of demand for its products over a three-year period so as to support the ongoing investment by CSBP in domestic production as follows -

(a) in the case of liquid fertilisers (primarily, Flexi-N) to promote the use of liquid fertilisers in Western Australia and maintain an alternate use for product from CSBP's ammonium nitrate plant (in additional to mining industry explosives) for CSBP to utilise wherever possible;

(b) in relation to nitrogen-based solid fertilisers, securing a level of sales sufficient to justify CSBP maintaining and increasing investment in its granulation plant at Kwinana, and (via improved plant efficiencies gained from maximising use of plant capacity) allowing competitive pricing so as to compete with cheaper imported substitutes, and to potentially enhance the competitiveness of CSBP's solid fertilisers on the international market (subject to exchange rate factors);

(c) in relation to superphosphate based fertilisers, the matters identified in Confidential Annexure 1. The proposed conduct would also support the investment made by CSBP in 2012 in respect of its regenerative thermal oxidiser, which allows CSBP to use different grades of phosphate rock sourced from different locations, potentially maintaining a competitive manufacturing capacity in the face of low cost imported product.

9 Public benefits of proposed conduct

The proposed FSA partnership arrangements would have the following benefits in relation to solid and liquid fertilisers.

9.1 Solid fertiliser production

In relation to solid fertilisers, the following public benefits would (assuming sufficient acceptance by farmers so as to guarantee likely sales of solid fertiliser of at least 175,000 tonnes per annum for three years) accrue from achieving the targeted certainty of demand over a three-year period:

(a) assist in underwriting the continued operation of CSBP's granulation plant and superphosphate plant;

(b) enabling expenditure on improving and upgrading the granulation plant to improve product quality and handling characteristics. CSBP has plans (contingent on demand for solid fertilisers) to improve/upgrade the granulation plant over the next few years (2013/4 to 2016/17) – proposed expenditures are shown in Confidential Annexure 1. A degree of certainty of demand for solid fertiliser reduces the risk of these improvements and upgrades being deferred or cancelled;

(c) securing higher volumes through both the granulation and super phosphate plants. This would improve plant efficiency and enable fixed costs to be spread across more tonnes. Lower fixed costs can be passed through in lower and hence more competitive customer pricing (both through the discounts offered through the three-year contracts, and generally in the market). This would enable CSBP's locally manufactured product to compete more effectively with cheaper imported substitutes, in the manner indicated in Confidential Annexure 1;

(d) the benefits in relation to CSBP's superphosphate production capacity outlined in Confidential Annexure 1; and

(e) various direct and indirect local economic benefits arising from the above, including the maintenance of local employment and manufacturing skills, and the purchase by CSBP of local goods and services required for the manufacture of solid fertilisers.

9.2 Liquid Fertiliser production

In relation to liquid fertiliser production, the following public benefits (again assuming sufficient acceptance by farmers of the FSA Partnership) would accrue from achieving the targeted certainty of demand over a three-year period -

(a) ongoing support for the significant capital investments already made in local ammonium nitrate production;

(b) the potential substitution of locally manufactured products in place of imported product (dependent on offtake from the mining industry);

(c) collateral benefits of local production, which include maintenance of local employment and local manufacturing skills, and the purchase by CSBP of local goods and services required for the manufacture of liquid fertilisers;

(d) the advantages which local production has over imports, which include convenience, flexibility/certainty of supply (farmers are able to order product when they need it rather than when shipping schedules dictate), and quality control;

(e) ensure the CSBP fertiliser research group continues to invest in on-farm research to improve the application and effectiveness of Flexi-N with a direct positive impact on farm production and profitability;

(f) continued development of trace element mixes suitable for use together with Flexi-N to improve crop productivity in micro-nutrient deficient soils. Post-seeding application of micro nutrients provides a cost effective way to increase total production.

9.3 Additional benefits

The proposed three-year contract is also expected to have the following, further, benefits:

(a) cheaper soil and plant analysis, nutrition management services and information/education services are able to be offered as part of the FSA Partnership package, leading to greater efficiency and better targeting of fertiliser use, more efficient and sustainable land use, and greater efficiency of crop uptake; and

(b) the discounted agronomic services offered as part of the FSA Partnership package encourages farmers to adopt "best practice" management of fertiliser usage, minimising nutrient waste and the adverse effects of fertiliser run-off. The services include 'Fertlogic' and 'Crop Health Monitoring'. These programmes use satellite imagery and computerised fertiliser distribution equipment to enable farmers to vary the rate of application of fertiliser according to the actual requirements of particular areas of their farms.

10 Public detriment

CSBP submits that there will be little, if any, public detriment flowing from the proposed conduct. In particular:

(a) the proposed conduct would be targeted at a limited number of existing consumers of CSBP products, with a view only to maintaining certainty of existing demand from

those customers for a three-year period. Even in respect of those customers, the contract would be based on 90% of historical demand and would therefore afford the opportunity for purchase of competitive products;

(b) sales volumes are already committed by farmers on a periodic basis. Sales to FSA Partnership customers would remain contestable on a periodic basis;

(c) the proposed conduct would occur in a highly competitive and well informed market characterised by a high degree of import competition. Historically, previous FSA Partnership programmes have not increased CSBP's market share with market share being relatively stable since 2002. The currently proposed programme would (as with previous programmes) provide a degree of security in relation to CSBP's existing market share and local production capacity against increasingly cost competitive imports. As noted above, if 600 FSA Partnership contracts were entered into, it would likely involve only about 7.5% of all farmers in WA (or about 15% of broadacre farmers), and about 15% of the total demand for fertiliser in WA, would be directed at existing or targeted FSA Partnership customers, and (because it is based on 90% of historical purchases of CSBP product) would allow even those customers to purchase some of their requirements from competitors. Even if all 1000 of the targeted farmers signed contracts, that would represent only about 12.5% of all farmers in WA (or about 25% of broadacre farmers), and somewhere in the range of about 24% to 27% of total demand for fertiliser in WA;

(d) there will be further contestability for the requirements of farmers who enter into an FSA Partnership contact, within a relatively short period;

(e) existing market share is unlikely to be significantly changed by these arrangements;

(f) Although it is arguable that the proposed conduct involves a form of third line forcing (in that most farmers will purchase a large proportion of their fertiliser requirements from CSBP's distributors) there is no compulsion for farmers to buy fertiliser from a distributor rather than directly from CSBP. The arrangements simply reflect, (rather than distort,) existing market behaviour, because CSBP's products have always been available only through distributors. Unlike a typical third line forcing situation, the primary focus of the proposed conduct is upon the third party product (in this case, fertiliser, which is produced, but not always/necessarily sold, by CSBP), with the services and products directly offered by CSBP being a subsidiary, and closely related, benefit to the supply of fertiliser.

Overall, it is difficult to articulate any likely public detriment from the proposed conduct, particularly given that the proposed conduct involves contracts for only a three-year term. The investment strategies and infrastructure of CSBP's competitors over the medium term are unlikely to be significantly affected.

11 Balance of benefit and detriment

It is submitted that the benefits of the proposed conduct are obvious and strong, and far outweigh any detriment from the conduct. The conduct is only intended to provide a degree of security in relation to CSBP's existing market share and local production capacity against increasingly cost competitive imports. In respect of liquid fertilisers, it is intended to provide ongoing support for the significant capital investments already made by way of alternate markets for ammonium nitrate and potentially the expansion of employment and substitution of domestic products in place of imported product (dependant on offtake from mining industry). In the case of solid fertilisers, the conduct is intended to support the efficient use, maintenance and upgrade of that plant, which will in turn support lower prices and import

replacement. All of these are factors which have been identified either by the legislature (*Competition and Consumer Law* section 90(9A)) or by the ACCC (*Re ACI Operations Pty Ltd (1991) ATPR (Com) 50-108*) as constituting material public benefit.

By contrast, the discussion in paragraph 10 above indicates that the conduct would lead to little if any competitive detriment.

In the circumstances, it is submitted that any detriment arising from the proposed conduct would be incapable of outweighing the clear benefits to the public.

Herbert Smith Freehills

HERBERT SMITH FREEHILLS AS SOLICITORS AND AGENTS FOR CSBP LIMITED

General Terms and Conditions

1. CSBP Limited (ABN 81 008 668 371) ("CSBP") offers to you, as a valued CSBP fertiliser customer, the opportunity to participate in this FSA Partnership. The offer to enter into the FSA Partnership is open for acceptance until 31 October 2013, or such date as determined by CSBP.

2. Unless clearly indicated to the contrary, "GST" and other terms used in clause 9 (and in other provisions of these Terms and Conditions where the GST meanings are expressly intended) have the meanings ascribed to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any replacement or other relevant legislation and regulations.

3. In these Terms and Conditions:
   "Act" means the Competition and Consumer Act 2010 (Cth).
   "FSA" means Fertiliser Sales Agreement.
   "Rolling Three Year Average CSBP Purchase Quantity" means, in respect of any three Year period, an amount equal to the sum of the total number of tonnes of CSBP fertiliser that you purchased during that three year period, divided by three.
   "Term" means the period from 1 October 2013 to 30 September 2016.
   "Vendor" means either CSBP or the sales agent that you purchase CSBP fertiliser products or services from in any particular case.
   "Working Days" means a day which is not a Saturday, Sunday or a public holiday in Perth, Western Australia.
   "Year" means any 12 month period during the Term running from 1 October in one calendar year to 30 September in the following calendar year.

4. If you accept this offer of the FSA Partnership you must purchase, in each Year during the Term, a quantity of CSBP fertiliser products that is not less than 90% of your Rolling Three Year Average of CSBP Purchase Quantity over the previous three year period.
   Example:
   If your CSBP fertiliser collections in:
   1. the period from 1 October 2010 to 30 September 2011 was 260 tonnes;
   2. the period from 1 October 2011 to 30 September 2012 was 250 tonnes; and
   3. the period from 1 October 2012 to 30 September 2013 was 270 tonnes,

   then the average annual quantity of CSBP fertiliser you purchased over these three Years is 260 tonnes. Under the FSA Partnership, you must purchase no less than 90% of 260 tonnes of CSBP fertiliser in the period from 1 October 2013 to 30 September 2014 (i.e. not less than 234 tonnes of CSBP fertiliser).

5. If you have not purchased CSBP fertiliser products in each or any of the past three years, your required purchase volume for each Year of the FSA Partnership will be determined on a case-by-case basis as agreed by CSBP.

6. If you fail to purchase, in any Year during the Term a quantity of CSBP fertiliser products that is no less than 90% of your Rolling Three Year Average CSBP Purchase Quantity over the previous three year period, then CSBP may take such action as it considers appropriate in respect of that breach, including requiring you to pay damages for losses suffered by CSBP as a result of that breach. Consideration will be given on a case- by-case basis to the impact of seasonal conditions (eg drought, frost, flood) or changes in your property on fertiliser purchases.

7. You must provide your initial annual nominations to CSBP by 31 October in any Year during the Term.

8. The FSA Partnership will operate in conjunction with the CSBP Fertiliser Sales Agreement for 2013/14 and other CSBP benefit program offers as notified by CSBP to you annually in September as operating in conjunction with the FSA Partnership.

9. If GST becomes payable by a party ("Supplier") in relation to any supply that it makes under, in connection with or resulting from these Terms and Conditions or the FSA Partnership to the other party ("Recipient"), then the parties agree that:
   a) any consideration provided for that supply in these Terms and Conditions or under the FSA Partnership other than under this clause 9 or any value deemed for GST purposes in relation to that supply ("Agreed Amount") is exclusive of GST;
   b) an additional amount (or if no consideration is payable for the supply, an amount) will be payable by the Recipient to the Supplier equal to the Agreed Amount for that supply multiplied by the applicable rate of GST; and
   c) the additional amount or amount referred to in clause 9(b) is payable upon issue by the Supplier to the Recipient of a valid tax invoice for that supply. To the extent that any consideration for a supply is specified in these Terms and Conditions or in the FSA Partnership to be inclusive of GST, that consideration shall be excluded from the Agreed Amount for the purposes of this clause 9.

10. To the extent permitted by law (but subject to paragraph 11), CSBP does not make any representations or warranties:

a) in relation to any CSBP fertiliser product (including but not limited to their quality, handling or storage characteristics); or

b) in relation to the goods and services to be provided by CSBP under the FSA Partnership,

other than the representation and warranties expressly set out in these Terms and Conditions and the representations and warranties expressly set out in any other applicable CSBP benefit program or offer.

11. Save for those representations, warranties and, guarantees (including those under the Act and similar State legislation) which cannot be lawfully excluded or modified, all representations and warranties not expressly set out in these Terms and Conditions are excluded.

11. Save for those rights and remedies (including those under the Competition and Consumer Act 2010 (Cth) and similar State legislation) which cannot lawfully be excluded or modified, to the extent permitted by law, CSBP's liability to you, in relation to, or in connection with any claim relating to the supply of goods or services pursuant to this Agreement or relating to this Agreement and the offers set out in this FSA Partnership (including in respect of any negligence by CSBP or any of its employees, agents or contractors), and including in relation to, or in connection with, to the supply or non-supply of fertiliser) is:

a) limited, where CSBP supplies any goods or services under the FSA Partnership (except where such goods or services are of a kind ordinarily acquired for personal domestic or household use, or where you establish that reliance upon this clause would not be fair and reasonable)

i in the case of goods, to the replacement of the goods or, at the election of CSBP, to the supply of equivalent goods or the repair of the goods or the payment of the reasonable cost of replacing the goods or of acquiring equivalent goods; or

ii. in the case of services, to the supplying of the services again or, at the election of CSBP, to the reasonable cost of having the services supplied again; and

b) in all other cases and except where inconsistent with the above, excluded to the fullest extent permitted by law.

For the avoidance of doubt, the limitation of liability in this section does not limit any rights or remedies you are entitled to under the *Competition and Consumer Act 2010* (Cth) and which cannot lawfully be excluded or modified.

12. To the extent permitted by law CSBP will not be liable for any indirect, incidental, special, punitive and/or consequential loss or damage whatsoever, or any loss of business, opportunity, or profits, arising out of or in connection with this FSA Partnership or the supply or non-supply of goods or services (including any claim in relation to, or in connection with, any negligence by CSBP or any of its employees, agents or contractors, and including in relation to, or in connection with, to the supply or non-supply of goods or services), even if CSBP have been advised of the possibility of such damages or losses.

13. If CSBP is interrupted in or prevented from carrying out all or any part of its obligations under or in relation to this FSA Partnership by reason of a Force Majeure event then CSBP shall be excused from performance of and shall not be liable for any failure in carrying out any of its obligations to the extent and for the time that it is prevented in whole or in part from doing so by the Force Majeure event. Any delay in performance as result of a Force Majeure event will not constitute default or give rise to any claims for damages.

14. For the purposes of these terms and conditions, "Force Majeure event" means any event or circumstance, not within the reasonable control of CSBP, including but not limited to any of the following:

a) fire, explosion, flood, earthquake, cyclone, natural disaster, epidemic;

b) riots, civil commotion, malicious damage, sabotage, act of public enemy, act of God, war (declared or undeclared), blockade, revolution;

c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, embargoes, work bans, blockades or picketing, not reasonably within the control of CSBP;

d) the failure by any of CSBP's suppliers to supply any input, product or service to CSBP;

e) the refusal of, revocation of, or delay in obtaining any necessary consents or approvals from any governmental or regulatory agency;

f) the failure or breakdown of or accident to, plant or machinery.

15. All monetary values stated in this FSA Partnership are exclusive of the Goods and Services Tax (GST). 10 per cent GST will be added to any prices and fees charged, and rebates and discounts paid.

16. a) CSBP has lodged a notification under section 93 of the Act with the Australian Competition and Consumer Commission in relation to the provisions of the FSA Partnership. If the ACCC serves a notice on either of the parties under section 93A(2) or 93(3) or 93(3A) of the Act in respect of that notification (each an (ACCC Notice), then the receiving party will promptly inform the other party of the existence and contents of the ACCC Notice.

b) If either CSBP or you receive an ACCC Notice under section 93A(2) or 93(3) or 93(3A) of the Act then:

i. whoever receives the notice must notify the other immediately and must notify the ACCC within 14 days of receipt of that notice, that they require the ACCC to hold a conference pursuant to section 93A(5) of the Act; and

ii. CSBP must participate at the conference in a manner which seeks to ensure that the ACCC does not give a notice

under section 93(3) or (3A) of the Act.

c) If either CSBP or you receives an ACCC Notice under section 93(3) or 93(3A) of the Act, we will meet to negotiate in good faith and seek to agree appropriate amendments to the terms and conditions of the FSA Partnership to ensure that the ongoing performance of the FSA Partnership will not contravene section 47 of the Act.

d) If we do not agree amendments prior to protection conferred by the notification ceasing, pursuant to section 93(7) or (7C) of the Act, then CSBP may terminate the FSA Partnership at its absolute discretion.

e) Upon termination of the FSA Partnership the rights and obligations of each party under the FSA Partnership (other than your right to receive accrued rebates on fertiliser already contracted for or delivered in the then current Year) will be discharged.

17. Nothing in this document is to be treated as appointing or constituting a party as the partner or joint venturer of the other.

Disclaimer: While the advice provided by CSBP in the term of this FSA Partnership is intended to assist you to increase your productivity and profitability, CSBP cannot, except in the case of statutory rights or remedies whether under the Act or otherwise and which cannot be excluded, be held liable for the application of this advice