



**CO-OPERATIVE BULK HANDLING LIMITED
(CBH GROUP)**

SUBMISSION TO

**REVIEW OF NATIONAL COMPETITION POLICY
ARRANGEMENTS**

**THE AUSTRALIAN GOVERNMENT
PRODUCTIVITY COMMISSION**

June, 2004

EXECUTIVE SUMMARY

National Competition Policy reform and its influence on the formulation of Western Australian State Government legislation (2002 Grain Marketing Act) has led to a significant imbalance for commercial participants operating in the grain industry at a state level compared to those operating at a federal level. More particularly, where the Western Australian context offers no restriction on the export of coarse grains in bags or containers, nor does it allow the main licence holder (Grain Pool Pty Ltd) any right of veto over export in bulk, the same is not the case federally for wheat given that:

- The holder of single desk for wheat (AWB International) has the right of veto over the export of wheat in bulk.
- Prospective exporters of wheat in bags and containers must apply specifically to the Wheat Export Authority for approval.

Given that these inconsistencies have offered a clear and very significant unfair competitive advantage to a particular market participant, The CBH Group recommends that the Productivity Commission seeks to address this imbalance by influencing legislative change at a federal level, in particular:

- (i) Wheat Marketing Act 1989 controls over the export of wheat in bags and containers be removed; and
- (ii) new guidelines for assessing and approving wheat export applications for bulk shipments be introduced with immediate effect to reflect international market requirements.

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1.0 Introduction

There is little doubt that the introduction of National Competition Policy (NCP) has had a significant impact across a range of business sectors throughout Australia. The grain industry in both Western Australia and indeed the entire nation is an excellent example of just such an area that has and continues to grapple with NCP reform to the extent that these changes have created a significant imbalance between commercial participants operating in the state and national arenas.

The purpose of the CBH Group's submission to the Productivity Commission's NCP Review, is to articulate this imbalance in further detail, to cite specific examples where NCP reform has in fact hindered competition rather than fostered its development and to make several recommendations as to how changes to federal legislation could adequately "level the playing field".

It is considered that the CBH Group's proposed recommendations fit comfortably within the Productivity Commission's brief in reviewing NCP reform. It is important to clearly understand the influence that NCP reform and more particularly, the impact that National Competition Council had on the way in which the Western Australian State Government formulated the 2002 Grain Marketing Act. As such, any review of NCP policy reform needs to be cognisant of this context and should consider how it can now use its influence to address the obvious inconsistencies that have arisen and to make necessary changes in order to remove what are "obvious impediments to efficiency and competition".

1.1 The CBH Group of Companies

The CBH Group of Companies stores, handles and markets grain. The Western Australian harvest averages ten million tonnes annually, of which approximately 90 per cent is exported, and represents up to 40 per cent of the nation's average annual production. The CBH Group is one of Australia's leading grains industry organisations, marketing grain to over 20 export

destinations and with a total storage capacity in excess of 16.5 million tonnes.

CBH is committed to maximising returns to its growers. It is controlled by over 7,500 grower-shareholders, who plant and harvest grain grown across some 320,000 square kilometres that comprise the Western Australian grainbelt.

CBH has diversified through two foundation subsidiaries - Grain Pool Pty Ltd and Bulkwest Pty Ltd.

The merger of CBH with the Grain Pool in November 2002 has greatly enhanced services to growers by integrating storage, handling and marketing. The Grain Pool, a 100% owned subsidiary of CBH, is a leading international grains marketing company operating a state-based orderly marketing system to export barley, lupins and canola from Western Australia. The Grain Pool markets around three million tonnes of cereals, pulses and oilseeds annually, and its wholly-owned subsidiary, AgraCorp Pty Ltd, trades a range of grains including those not covered by statute in WA, such as wheat, triticale and oats.

The Bulkwest Group comprises an engineering and a logistics company which service a range of rural, Australian and international customers. Bulkwest Engineering provides innovative design, manufacturing and 'turn key' construction solutions; and, Bulkwest Logistics specialises in transportation, warehousing and packaging.

The annual combined turnover of the CBH Group of Companies is more than \$1.3 billion with net assets of \$730 million and around 750 full-time staff.

2.0 Background – The Influence of National Competition Policy on the Western Australian Grain Industry

It would appear that one of the primary focuses of NCP reform was directed at removing the influence of Statutory Marketing Authorities. In Western Australia, this has meant a significant change for the Grain Pool (of Western Australia) as the main licence holder to market coarse grains (barley, lupins and canola) out of the state.

As a result of this focus, the Minister for Agriculture in Western Australia formed the Grain Licensing Authority with the following charter:

The Grain Licensing Authority was created by the Grain Marketing Act 2002. The Authority is responsible for the issuing of bulk export licences for prescribed grain exports from Western Australia. The prescribed grains are Barley, Narrow Leafed Lupins and Canola.

The creation of the Authority separates the role of regulation and marketing of grain and provides independence in assessing opportunities for grain exports from Western Australia. (Source: GLA Website, 2004)

There are a significant number of stakeholders who have argued that the introduction of the GLA was in fact unnecessary in Western Australia given:

- The performance of the export single desk holder (Grain Pool Pty Ltd, now the marketing subsidiary of the CBH Group) was performing adequately and delivering an appropriate return for Western Australian growers.
- That there was and is majority support for the existing system of orderly marketing in Western Australia. A recent survey undertaken by the Grain Pool Pty Ltd (GPPL) indicated that growers in the state are delivering 83% of their aggregated barley, lupin and canola harvest into export focused pools operated by GPPL.
- That around 85% of coarse grain grown in Western Australia is bound for export making it less relevant for usual NCP reforms.

- That the local domestic market for coarse grains was de-regulated in 1989 and since then, organisations have been able to export grain in bags and/or containers without the necessity for export permits and/or approval from the main export licence holder.

Despite these issues and as a result of pressure exerted on the Western Australian State government by the National Competition Council, the GLA was formed and introduced in time to consider and grant grain bulk export licences for the 2003/2004 harvest as follows:

| Grain | Region | Tonnage | Shipped Date | To | Status |
|----------------|--------------|---------|--------------|----|--|
| Feed Barley | Middle East | 433,000 | 339,791 | | |
| Canola | Subcontinent | 48,000 | Nil | | |
| Lupins | East Asia | 20,000 | Nil | | |
| Malting Barley | Asia | 35,000 | Nil | | Approval through Appeal, Extended to 04/05 |

Source – GLA Website, 2004

While the figures above give some indication as to what was at stake for GPPL in terms of loss of tonnage (and associated revenue), the organisation has always given “in principle support” for the introduction of the GLA and the legislation under which it operates. The CBH Group Board has stated that the fundamentals of “orderly marketing” prescribed under the 2002 Grain Marketing Act legislation provides an appropriate framework to support the benefits derived by growers under single desk while allowing alternative market participants the opportunity of pursuing niche opportunities in bags and containers.

This being said, GPPL has raised a number of concerns direct with the GLA regarding the manner in which the legislation is being interpreted:

- To ensure that the GLA recognise the effect that loss of volume has on GPPL’s ability to successfully manage pools.

- That the GLA places a greater emphasis on licences being sought to markets and countries in which GPPL does **not** currently operate
- To ensure that those new markets are offering a long term and sustainable net return to growers (not relying on a “one-off” market premium).
- To benchmark the licence operation in Western Australia to the operation of the Wheat Export Authority (WEA).

Given the context of the CBH Group commenting on the effects of NCP policy, it is this last point that requires further articulation.

3.0 The Inconsistency Between State and Federal Marketing Legislation

The Productivity Commission would be aware of the national single desk for wheat as enounced under the Wheat Marketing Act (1989) and the recent restructuring of the Australian Wheat Board undertaken in 1999. As part of that review, The Wheat Export Authority (WEA) was established as an independent statutory authority.

The WEA was set up to control the export of wheat, after the transfer of the Government’s wheat marketing and selling role to a private company controlled by wheat growing shareholders (AWB Limited). The WEA operates independently from AWB Limited and its subsidiaries, which include AWB (International) Ltd (AWB(I)).

The WEA operates under the Wheat Marketing Act 1989 (the Act) and has the following statutory functions:

- *to control the export of wheat from Australia; and*
- *to monitor AWB(I)’s performance in relation to the export of wheat and to examine and report on the benefits to growers of that performance.*

Section 57(9)(a) of the Act also requires the WEA:

- *to cooperate with and assist the independent review panel reporting on AWB(I)’s performance in the operation of Australia’s*

wheat export arrangements and the WEA's performance in carrying out its legislated functions.

The Act entitles AWB(I) to special wheat exporting privileges. AWB(I) does not need to apply to the WEA for consent to export wheat. All other wheat exporters must apply for written consent from the WEA.

Exports of wheat in bulk, containers or bags by exporters other than AWB(I), are subject to WEA approval following consultation with AWB(I). The WEA must have AWB(I)'s written agreement before issuing a consent to export wheat in bulk.

(Source – WEA Website, 2004)

While a number of industry stakeholders suggested that opening the export of wheat in bags and containers could offer alternative exporters the opportunity of adding value to growers in Australia without necessarily compromising the position of single desk, the current environment in fact places significant restrictions on any organisation exporting wheat from Australia in any form (bags, containers or bulk).

At this point, it is worth noting The CBH Group's in principle support for the notion of single desk "orderly marketing" for wheat. The CBH Board has gone on record stipulating that it holds this view while "it continues to provide net benefits to, and supported by, Western Australian grain growers and does not erode growers' value in CBH".

Irrespective of this stated position, it is the CBH Group's view that the federal position (Commonwealth Wheat Marketing Act of 1989) is in direct contradiction to the situation in Western Australia since the State Government's introduction of the GLA (2002 Western Australian Grain Marketing Act). The result of changes at a state level compared to an environment of legislative stagnation federally, leaves a situation where the Western Australian market has become more competitive while wheat at a federal level remains unchanged (and in fact significantly less competitive).

In an environment when National Competition Policy is attempting to actively foster and encourage competition, this imbalance between the state and federal contexts is simply not acceptable. Not only have these

inconsistencies derived significant and unfair competitive advantage to some parties and exposed severe disadvantage to others, they serve to undermine Australia's competitiveness and reputation in international markets.

What is important to note is that the changes in Western Australia took place on and above an existing market for coarse grains that was already markedly more "competitive" than the federal situation for wheat given a deregulated trade for the export of coarse grain in bags and containers (in place since the Grain Marketing Act Review, 1989).

More specifically, the Western Australian context offers no restriction on the export of coarse grains in bags or containers, nor does it allow the main licence holder (Grain Pool Pty Ltd) to have any right of veto over exports. The same cannot be said federally in the context of wheat given that:

- The holder of single desk for wheat (AWB International) has the right of veto over the export of wheat in bulk.
- Prospective exporters of wheat in bags and containers must apply specifically to the Wheat Export Authority for approval.

3.1 Veto Rights for Bulk Shipments

AWB Limited has demonstrated its predisposition to exercise its power of veto over applications to export wheat in bulk¹. Given this position and despite The CBH Group's stated support for Single Desk, it is difficult to see how the Wheat Export Authority could effectively position itself to form a truly considered view of the economic merit of an application, nor does it allow alternative industry participants any hope that there will be any sense of "equality" emerging between the state and federal levels.

• ¹ The WEA received five applications for bulk consent to export wheat between 1 July, 2002 to 30 June, 2003. AWB(I) objected to all five of the applications on the grounds that these shipments would impact the National Pool returns.

Source: Wheat Export Authority The Growers' Report 2003 pages 6 & 7

It is The CBH Group's view that the unilateral exercise of veto over bulk wheat export applications should not be allowed and that immediate steps should be taken to remove AWBI from its market regulator role. The Wheat Export Authority would then be in a position to determine in a totally independent and rational manner, the merit of approving applications to export wheat in bulk effectively bringing the federal context for wheat in line with the GLA system operating in Western Australia.

3.2 Consent Arrangements for Wheat in Bags and Containers

In the opinion of The CBH Group, the consultation requirement associated with applications for licences to export wheat in bags and containers is an administrative and marketing burden that is destroying value and should therefore be removed, particularly in the context of the relatively small outlet bags and containers represent compared to bulk.

| Period 1 Oct - 30 Sept | | Bags* | Containers* | Bulk | Total |
|---------------------------|--------|--------|-------------|------------|------------|
| 2000/01 | Tonnes | 48,824 | 540,607 | 15,374,239 | 15,963,670 |
| | % | 0.31% | 3.39% | 96.31% | 100% |
| 2001/02 | Tonnes | 14,956 | 215,528 | 15,790,370 | 16,020,854 |
| | % | 0.09% | 1.35% | 98.56% | 100% |
| 2002/03 | Tonnes | 8,637 | 121,221 | 8,796,442 | 8,926,300 |
| | % | 0.10% | 1.36% | 98.55% | 100% |
| 3 Year Average | Tonnes | 24,139 | 292,452 | 13,320,350 | 13,636,941 |
| | % | 0.18% | 2.14% | 97.68% | 100% |

* Includes AWBI exports

Source: Wheat Export Authority web page

There is the obvious opportunity for conflict between an applicant with a clearly developed market and/or seeking to meet buyer demand and the organisation advising the WEA on marketing matters and the consent to export in bags and/or containers. The Wheat Export Authority Growers' Report 2003 records a high level of AWBI opposition to the issue of licences.



- The WEA received five applications for bulk consent to export wheat between 1 July, 2002 to 30 June, 2003. AWB(I) objected to all five of the applications on the grounds that these shipments would impact the National Pool returns.
- Of all long term applications received by the WEA, AWB(I) supported 56% while the WEA approved 95%. Of all the short term applications received, AWB(I) supported 63%. Long term applications are those that have niche characteristics. One of the main niche characteristics is wheat certified as organic. The markets for organic wheat applications approved by the WEA included China, Malaysia, New Zealand, Switzerland and Singapore.
- During the period, non AWB(I) exports were approximately 5% of the total volume approved by the WEA. This is believed to be a result of the recent drought and, in part, exporters vying for the same export business.

Source: Wheat Export Authority The Growers' Report 2003 pages 6 & 7

An issue the Productivity Commission needs to consider very carefully in the context of the effect of NCP reform is the level of control exercised by AWBI over the granting of consents to export in bags and containers. While AWBI has a legitimate consultative role, The CBH Group would encourage the Productivity Commission to develop a thorough understanding of:

- How wheat export “quotas” are fixed (both for markets and volume) during quarterly meetings between AWB Limited and the WEA?

- To what extent is the intellectual and market knowledge of applicants protected throughout the export consent system for export in bags and containers?
- Has the consent system for bags and containers (including AWBs consultative role) prevented legitimate exporters from establishing a trading history to support subsequent applications to export?

4.0 Conclusion

The recommendations made by the CBH Group within this document are very much in line with the Productivity Commission's charter as outlined by the Hon Treasurer Mr Peter Costello where he states:

The Commission is to report on:

- a) the impact of NCP and related reforms undertaken to date by Australian, State and Territory Governments on the Australian economy and the Australian community more broadly...*
- b) at the Australian, State and Territory level, areas offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition, including through further legislation review and reform programme, together with the scope and expected impact of these competition related reforms.*

The CBH Group has sought to highlight the very clear imbalance that exists in the grain industry between the state and federal environments and that by raising these issues, the Productivity Commission can either make a recommendation and/or seek to exert its influence to make the necessary legislative changes at a federal level to the extent that:

- (i) Wheat Marketing Act 1989 controls over the export of wheat in bags and containers be removed; and

- (ii) new guidelines for assessing and approving wheat export applications for bulk shipments be introduced with immediate effect to reflect international market requirements.

As a significant grain industry stakeholder, the CBH Group has always been committed to a process of continuous business improvement that is in the best interests of both grain growers and the community as a whole. We have taken some time in considering this submission to the Productivity Commission's review into the effects of NCP reform and believe that with those changes outlined above, the Australian grain industry participants can benefit from increased prosperity while delivering greater value to the entire Australian economy.

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