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17 November 2009

The Productivity Commission
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MELBOURNE VIC 8003
By email: wheatexport@pc.gov.au

To Whom It May Concern:

CBH Group Submission to Productivity Commission Review of Wheat Export Marketing Arrangements

On behalf of Co-operative Bulk Handling Limited (CBH Group) I attach our submission to the Productivity Commission Review into Wheat Export Marketing Arrangements together with a report commissioned by the CBH Group and produced by ACIL Tasman. The CBH Group is in agreement with the recommendations contained in the ACIL Tasman report.

The CBH Group contends there is no need to continue with any partial regulation of wheat exports and consequently, the Wheat Export Marketing Act 2008 (WEMA) should be revoked immediately, allowing the grains industry to make the final transition to a fully deregulated environment.

Within this, the requirement for a legislative access regime to be in place for port terminal owners who also wish to export wheat in bulk should also be removed.

As major exporters of grain, Western Australian growers have responded positively to the increased marketing choice allowed them under the WEMA. As the sole shareholders of the CBH Group however, they have also borne the brunt of increased regulatory and compliance costs.

As a co-operative prohibited by its Articles of Association from returning profit to its members, the CBH Group invests profits into building the most efficient storage and handling supply chain for Western Australian growers while aiming to maintain the most competitive charges.

The CBH Group incurred costs in excess of \$1.2million as a consequence of the accreditation process and the access requirements under the WEMA. These costs are ultimately borne by Western Australian growers with no net benefit to them.

We note that the Government have expressed a desire in their recently announced Drought Management Review to see the development of a self-sufficient industry. We support this position



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and believe the success of the first year of wheat exports under the WEMA demonstrates the capability of the wheat industry to achieve this goal.

The CBH Group supports the view that the role of Government is to provide necessary services and safeguards to support industry without distorting the economic environment.

There is little precedent in export commodities being regulated in this way in Australia. It is now time to allow Australia's wheat export industry the flexibility to take advantage of the opportunities that await it, free from any additional layers of regulation.

We look forward to the opportunity to present our views at the upcoming public hearings.

Yours sincerely

For: Co-operative Bulk Handling Limited

A handwritten signature in dark ink, appearing to read "Dr Andrew Crane", is positioned above the printed name.

Dr Andrew Crane
Chief Executive Officer





Productivity Commission Review into Wheat Export Marketing Arrangements

November 2009

The CBH Group commissioned ACIL Tasman to review the Wheat Export Marketing Act. While the CBH Group agrees with the findings in the ACIL Tasman report (attached), the following is a summary of the CBH Group's views on key areas raised in the Productivity Commission Issues Paper.

Accreditation of exporters

Whilst the accreditation of exporters has been an effective transitional arrangement it is the CBH Group's view that there is no value in it continuing in the longer term.

Key considerations in this regard are:

- All other grains are exported successfully without any form of regulation.
- There is no precedent of other bulk commodity export industries (e.g. coal and iron ore) requiring regulation of this kind.
- Accreditation does not guarantee security of payment for growers and is therefore of little value.

Ultimately, the grower bears the additional cost in the supply chain. In 2008/09, the CBH Group incurred costs of \$200,000 in complying with the conditions of its accreditation (not including access test costs). Given that accreditation offers no protection of payment to growers and is in fact adding cost to the supply chain, there is no justification for maintaining this process.

If accreditation is continued following this Review, it should be independently reviewed to ensure a streamlined and efficient process that aims to avoid unnecessary compliance costs.

Port Terminal access and services

Competition concerns relating to port access are exaggerated and unfounded for a number of reasons:

- CBH is bound by Western Australian legislation, specifically section 19 of the Bulk Handling Act 1967 (WA) to provide access to its port facilities to third parties
- CBH is also subject to section 46 of the *Trade Practices Act 1974* (Cth) (**TPA**)
- CBH is a volume based business and must maximise volume throughput at its facilities. The sunk costs of port facilities and the nature of CBH's business is such that maintaining volume throughput is essential to ensure the ports are economically viable.
- CBH is a grower owned and controlled co-operative who would be acting against its own charter should it engage in activities that were detrimental to its shareholder members.

It must also be acknowledged that there is no historical behaviour to support the claims that CBH would deny access to its facilities.

Regional Monopolies

The CBH Group has always asserted that in the absence of regulation, the likelihood of regional monopolies forming is remote. This is because:

- the deregulation of the wheat export industry has opened up more marketing opportunities for growers;
- barriers to entry in grain exporting are relatively low – in the absence of conduct that would be both detectable and unlawful under section 46 of the *Trade Practices Act 1974* (Cth) (**TPA**), marketing businesses owned by port terminal owners have no discernable advantage over their competitors; and
- it is in CBH's best interests to ensure its storage and handling facilities, including its port terminals, are available to everyone who wishes to use them.

Under its Grain Express initiative, CBH considerably lowered the barriers to entry by making it possible for acquirers to post prices online to all growers irrespective of location. Growers physically deliver their grain to their nearest receipt facility, however the grain is 'sold' at the port facility. The stock is then managed on an overall network basis by CBH who ensures the equivalent grain is in a shipping position when required by the acquirer. Effectively this enables the acquirer to accumulate exportable volumes across the state rather than small volumes in economically inefficient locations.

The Access Test

The CBH Group contends the requirement for port terminal operators who also wish to be accredited wheat exporters to have a formal access undertaking accepted by the ACCC pursuant to Part IIIA of the TPA in place is unnecessary and inappropriate.

The WEMA imposed a 'compulsory voluntary undertaking' process that, in practice is a de-facto access declaration regime without the appropriate protections of that regime under the TPA. Under this process, port terminal owners were placed under substantial time pressure and severely reduced negotiating power, knowing that any failure to meet the 1 October access test deadline would result in them being unable to export wheat.

Further, this additional layer of regulation imposed on bulk handlers also wishing to export wheat has added significant costs to the Australian grain supply chain. In 2008/09, the CBH Group has incurred external costs of over \$1.0million to put in place its ACCC negotiated Access Undertaking. This is money that could have been spent on improving the supply chain.

The Access Undertaking was granted for a period of two years resulting in a subsequent limitation in Grain Pool's reaccreditation to two years by the WEA. Rival exporters who do not have port terminal interests have been reaccredited for three years, providing them with a distinct competitive advantage. Further, to avoid the same situation in 2011, CBH will need to commence negotiation on a new Access Undertaking in July 2010, thus incurring further costs.

The Access Test was not applied consistently across all port terminal operators with the owners of Melbourne Port Terminal, who are also accredited wheat exporters, not required to submit an Access Undertaking. This puts those bulk handlers subject to the Access Test at considerable competitive disadvantage.

Given that protection for parties exists already under the TPA, the access test is unnecessary, inappropriate, and should be removed.

The CBH Group seeks the removal of the Access Test. If considered necessary, a voluntary access arrangement would be acceptable. This could be developed through a voluntary

industry code of conduct, making provision for a dispute resolution process to be overseen by an appropriate grain industry body.

Shipping Congestion

The major factors that combined to cause congestion in the Western Australian export grain supply chain in the 2008/09 harvest were:

- (i) a substantial increase in the number of marketers involved in the export of grain, due to the changes implemented by the WEMA;
- (ii) a large harvest in Western Australia and small harvest in Eastern Australia;
- (iii) a late harvest;
- (iv) miscellaneous factors including underperformance of rail infrastructure; and
- (v) a flood of shipping nominations for the same shipment period partly due to more favourable freight rates from Western Australia, a drop in shipping rates and price conditions for wheat at the time.

CBH considers that Grain Express reduced the effect of these factors as it enabled the movement of grain from country storage to port to occur in a coordinated fashion. But for those changes, congestion may have been endemic throughout the supply chain.

Despite the delays, it should be noted that record grain volumes were exported from Western Australia throughout this period, culminating in a record 1.55 million tonnes leaving the state in March 2009.

Since this time, CBH has developed a capacity allocation system designed to ensure shipping capacity is matched to demand. This has taken the form of a descending clock auction system operated by an independent party, Tradeslot Pty Ltd. The first two auctions have taken place under this new system with the market bidding for capacity in slots throughout the year.

Grain Express

In a deregulated environment, grain movement would be inefficient and potentially dysfunctional without the coordinated management of the land based supply chain. Grain Express serves this purpose.

In the 2008/09 harvest, Grain Express made the following differences to the management of the Western Australian supply chain:

- Record tonnages were moved to port due to CBH's ability through Grain Express to manage stock in the most effective manner to meet the needs of the market. Nomination of ownership was low in the early stages of last harvest, however CBH was able to confidently move grain to port without site limitations. Without Grain Express, grain would have been moved in relatively low volumes and from many sites.
- Ships could be loaded and grain exported regardless of the specific location of the physical grain that was acquired by the exporter as a result of the flexibility in stock management that Grain Express affords.
- Grain was out-turned from fewer sites in larger volumes leading to the most efficient use of manpower to load trains and trucks in wholesale clearances of sites.

Grain Express resulted in record tonnages of grain being exported from Western Australia during a time of unprecedented export demand.

Transport and storage

As discussed in the section above, it must be noted at the outset that any concerns of access to any CBH facilities are unfounded and unnecessary. The CBH Group has no interest in denying any party fair and reasonable access to its facilities for the following reasons:

- CBH is bound by the section 19 of the Bulk Handling Act 1967 (WA) to provide access to its port facilities
- CBH is subject to the section 46 of the TPA
- CBH is a volume based business and seeks to maximise volume throughput at its facilities
- CBH is a grower owned and controlled co-operative and would be acting against its own charter should it engage in activities that were detrimental to its shareholder members.

It must also be acknowledged that there is no historical behaviour to support the claims that CBH would deny reasonable access to any of its facilities.

There is no evidence to suggest that alternative storage and handling arrangements are being inhibited by current arrangements. Regular media reports in Western Australia suggest that alternative storage and handling options are emerging rapidly.

CBH's upcountry storage facilities are readily duplicable and may be in part be substituted by alternative forms of on-farm storage. Indeed, on-farm storage in Western Australia is proliferating at a rapid rate due to a range of factors such as:

- Harvest storage
- Flexibility to maximise marketing opportunities throughout the year
- A growing domestic market
- The desire to capture arbitrage value by blending grain

On-farm storage capacity in Western Australia has grown significantly in recent years and is set to double in the next three years.

As discussed previously, CBH's Grain Express initiative has also significantly lowered the barriers to entry for grain accumulators. Acquirers can enter the Western Australian market and acquire grain from growers across the state without regard to where that grain may physically reside.

Information provision and market transparency

The CBH Group is of the view that it and the wider industry already provides detailed information to aid decision-making on the farm and in the supply chain. Release of any further level of detail should be at the agreement of those that own the grain i.e. growers or marketers, with the balance of decision residing with our grower members who have built and still own the central storage system

As a grower-owned co-operative, we are reluctant to release information that we believe could potentially disadvantage growers.

The CBH Group already releases a significant amount of information on the grain delivered into our storage and handling network – more than any other like organisation in Australia.

The CBH Group believes there may be a need to ensure *improved and faster access* to the grain market information which already exists.

This would include the aggregation and publishing of all grain market information in an easily accessible central and/or independent location such as a website or portal co-ordinated by the Grain Industry Group of WA or the Australian Grain Institute.

The CBH Group currently provides:

- Monthly wheat stocks held in our system broken down into feed and milling grades. This is currently given to the Australian Bureau of Statistics on the first business day after the end of the month and is published by the ABS approximately 3 weeks later.

- Weekly harvest reports showing total grain receivals by port zone.
- A daily list of all bulk cargo departures from CBH ports by grain type, tonnage and exporter via the Shipping Stem on the CBH Group website.
- Updates throughout the growing season and harvest on CBH Operations forecasts for total grain production in Western Australia.

The CBH Group's concerns about releasing more detailed information on grain production and stocks in WA include:

- It potentially could result in growers getting lower prices. Publication of stocks by grain type, grade, location and/or sold/unsold is incredibly valuable to the buyer, particularly if there is a large crop of wheat, barley or canola.
- There are mixed and polarised views among farmers over the level of information which should be released.
- Anecdotal evidence indicates the slower rate of responses this year to CBH Grain Operations' production estimates survey may have been affected by (unfounded) concern that the information is given to marketers including Grain Pool. If we chose or were required to release this information it is likely the rate of response would fall further.

It is imperative that Australia does not erode any competitive advantage by releasing detailed stock and quality information that is detrimental to the returns of wheat growers.

In Summary

- CBH is a cooperative, owned and controlled by Western Australian grain growers, established to offer the most efficient storage and handling system in the best interests of its grower shareholders.
- The accreditation system has been useful during the transition period however it offers no real value to growers and should be removed.
- CBH has no incentive to deny access to its infrastructure. It aims to maximise its return on investment in infrastructure by increasing throughput of tonnes.
- Alternative supply chains are emerging in Western Australia as a result of liberalised wheat export arrangements, not as a result of access regulation.
- Unnecessary regulatory burdens and compliance costs are borne by the grower at the end of the day. Given the world wheat price is set on a global market rendering growers price takers rather than price makers additional costs are ultimately paid by the grower.
- Wheat should not be treated any differently than other grains.
- The industry has adapted and is ready to move forward.

Recommendations

That the Wheat Export Marketing Act 2008 be abolished.

If Government is not amenable to this, then the Access Test under that Act should be abolished. Instead, consideration could be given to a voluntary access arrangement through an industry code of conduct that makes provision for a dispute resolution process to be overseen by an appropriate grain industry body.