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**Submission on the Productivity Commission draft report March 2010
“Wheat Export Marketing Arrangements”**

This submission represents my personal views, as a Western Australian grain grower, on port access arrangements.

I note that I have been a Director of the (former) Grain Licensing Authority of Western Australia (GLA).

Also I declare that I am a member of Wheat Exports Australia (WEA) and as such I will not address issues directly related to the role of the WEA in administering the Wheat Export Accreditation Scheme, as covered in chapter four of the Productivity Commission Draft Report (“Report”).

At the outset I would like to voice my concern that the views of growers have not been fully addressed in the Report. There appears to be a bias towards recording the views of the major marketers and bulk handling companies. I also note that the views attributed to a number of growers in Western Australia are from growers who are also Directors of Cooperative Bulk Handling (CBH), which I believe should have been recorded.

There are many threats to my business as a grower. The main three are weather, input costs and the price of grain.

Also, a major factor affecting the price I receive for grain (wheat) is the export cost. Being a Western Australian grower my primary concern is export grain and as such most of the comments in this submission relate to CBH although I do know that growers from the other states face similar issues. I acknowledge that CBH have made efforts in the last few years to encourage innovation both on farm and in the supply chain.

The deregulation of the export wheat market has given growers many new opportunities to market their grain. However, these opportunities and future industry innovations could be substantially compromised by the three major Australian bulk handlers (and port operators). This was also a concern of the Federal Government as the Minister for Agriculture Fisheries and Forests, Tony Burke in his second reading speech to the *Wheat Export Marketing Act 2008* said “One of the concerns identified during consultation was the risk of a single wheat export monopoly being replaced by three regional monopolies.”

The Report firmly supports greater deregulation with regard to the bulk handlers and has largely ignored the submissions of other parties who have expressed concern with the port access arrangements.

The future for me as an Australian grower is significantly affected by having contestability in the ports. This is the only way as a grower I can be sure that this significant supply chain cost is minimised.

I was looking forward to a report that provided hard analysis of the costs and benefits of the port access agreements. There is no such analysis, and I find it alarming that the Commission can draw conclusions from such a basic examination of public submissions.

Recommendation 5.1 suggests that the access test should be abolished by September 2014. The Report does not acknowledge or address the fact that the port access undertakings have only been in place for 6 months and are not yet working effectively. The Report provides no economic analysis to back the Commission's view that the access test should end then or at any other time.

"The Commission's View" on pages 155-156 lists a number of factors that supposedly limit the extent to which port operators can take advantage of their market power. Many of these factors are insignificant at best. For example, contrary to the Report's assertions:

- the claimed competition from container exports is really only at the margins, as they serve a quite different market.
- there is no competition from port terminals in other states (at least as far as WA is concerned).
- competition from non-grain port terminals is as yet non-existent and highly problematic, given the strict phytosanitary requirements for grain handling.
- the countervailing power of other exporters is not that significant and in fact less than that which applied under the single desk.
- the threat of rival facilities being constructed even if uneconomic is hardly real in a commercial world.

The Commission "*considers it is better to err on the side of the infrastructure owners/operators*", even though the three major Australian port owners are in a dominant, monopolistic position.

Further, the Commission states it is not attracted to heavy handed regulation for port terminals. My understanding is that the current access undertakings are relatively light handed compared to access undertakings for other monopoly infrastructure. The Australian Competition and Consumer Commission (ACCC) stated in their "Decision to Accept" (for each of the three proposed undertakings by CBH, ABB and GrainCorp) that "*overall, its views and recommendations about the appropriateness of the measures in the September Undertaking are less prescriptive than they might otherwise be in relation to longer term undertakings in other industries.*" For example, "*a prescriptive regulatory approach including ex ante price setting is not warranted at this time, and a less prescriptive publish-negotiate-arbitrate approach is appropriate.*"

The Commission suggests a voluntary code of conduct for port operators instead of the current access undertakings. Behaviour of the monopolistic bulk handlers to date indicates that a voluntary code of conduct would be a totally inadequate replacement.

There has been no analysis of the costs to the broader grain industry imposed by the bulk handlers (this includes price and other barriers), only concern for the relatively small costs incurred by bulk handlers in having their port access undertakings approved by the ACCC.

Recommendation 5.4 suggests that sanctions should be introduced via the *Wheat Export Marketing Act 2008* to encourage port owners to meet access test requirements from 1 October 2011 to 30 September 2014. There will be difficulties in imposing yet another layer of regulation to the grain industry and the form of sanction envisaged has not been described. Wheat Exports Australia already has sanctions available if a port operator is not complying with the access test – WEA has the power to suspend or cancel an exporter's accreditation.

The Commission have also stated that after 2014 access to ports should only relate to spare or excess capacity. This will be the death knell for competition. What will stop a port operator from locking up the ports for their own requirements and only making them available to other exporters at other times.

The Government has made it very clear on numerous occasions that it supports equal access for all exporters to port facilities. Also, the ACCC stated in their "Decision to Accept" it *"is of the view that appropriate non-discrimination measures should prohibit CBH from discriminating in favour of itself."*

The privileged position given to the bulk handlers by State governments of rare, prime port land, is irreplaceable and will hold prospective competitors out for many years (if not forever). Limiting the sharing of capacity to excess only, will destroy the incentive for the bulk handlers to improve peak handling capacity of the ports.

CBH have indicated to the Commission that the cost of completing an ACCC port access undertaking was around a million dollars. Even if this claim is correct, this cost can be amortized over the number of years of the undertaking, and is probably a valid tax deduction anyway. If you relate this cost to grain received by CBH in one year it is approximately 20 cents per tonne.

It is likely that future undertakings will be for five years or so, thereby reducing the annualised cost to just a few cents a tonne.

At the Grain Logistics Conference in Perth in March 2010, Tim Collins from CBH revealed that CBH are holding in excess of \$60 million in auction premiums. The cost of the withdrawal of this capital from the grains industry as a whole is considerable and far outweighs the cost to CBH of the port access undertakings.

In South Australia (SA), Viterro Pty Ltd impose a charge of five dollars per tonne to nominate a spot on the shipping stem. CBH charge three dollars per tonne in WA. In WA failure to ship also incurs loss of auction premium, loss of potential rebate of premium and loss of the loading fee. This can amount to a figure of around \$35 per tonne.

Viterro booked a significant amount of the shipping stem in SA, believed to be in excess of 80% of slots available for the six months following the last harvest. They then forfeited a

large percentage of these within two weeks of the shipping time, way too late to allow alternate exporters to ship in these slots. Viterra and CBH have nothing to lose from over booking slots and then failing to ship, as the money forgone in the slot fee just moves from one arm of the organisation to another. So effectively if they don't ship they don't lose any money. All other exporters in this situation have to pay the bulk handlers thus giving the bulk handling companies and their marketing arm a significant advantage.

Grain Express in WA also causes a major distortion of the supply chain. Grain introduced into the bulk handling system at the point of export incurs the same charge as that which has been stored for many months. People wishing to use their own supply chain or on farm storage are penalised with substantial charges at the point of delivery. This makes gaining a suitable return on investment in alternate storage and supply chain systems difficult. Grain Express has the effect of hand-cuffing growers and traders to the CBH system. The coupling of Grain Express to the access undertaking exacerbated this problem.

The Commission indicates that bulk handlers and their marketing arms have access to information on grades and grower details including the amount of grain unsold. The Commission is of the view that this does not provide a marketing advantage. In my view this information places the bulk handler at a distinct advantage over other traders and exporters as it has details on the quantity of each grade unsold at every site (no other exporter has this information). This lets the bulk handler economically target their purchases and provides a distinct advantage in negotiating an international sale as they know the exact quality profile of all unsold wheat, as well as wheat stocks held by other exporters (i.e. their competitors).

It has been argued by some that the *Bulk Handling Act 1967 (WA)* is sufficient to control the behaviour of CBH. However, during the deregulation of coarse grains in WA alternative exporters had extreme difficulties getting port access and the *Bulk Handling Act 1967 (WA)* and Part IIIA of the *Trade Practices Act 1974* provided no protection.

Page 159 of the Report talks about price monitoring. Price is only one of many ways that the bulk handlers can control or frustrate other exporters. Grain Express in particular distorts the supply chain costs. CBH can move grain at will from one site to another. However, if an exporter wishes to transport grain by road to port, CBH will charge another fee to reintroduce the grain back into their system. This fee coincidentally is equivalent to the difference between the rail freight CBH charge and the cost saving in transporting by road.

Other methods that prevent non-bulk handlers (exporters) from accessing port facilities include fumigation, no stock or wrong grade at the up country silo and port upgrades. This latter method was claimed by some exporters to have been used at Albany port in 2007 to prevent Grain Pool's competitors from gaining access to the port for a considerable period.

There appears to be two alternatives to this problem:

- 1) The Bulk Handlers to divest themselves of their marketing arms, or
- 2) Fully effective ACCC access arrangements.

Ring fencing has major problems with respect to Grain Express, it failed for AWB pools, and should not be considered to be a solution to this problem. Nothing short of the above alternatives will give the industry the level playing ground that is necessary for the successful development of the deregulated export wheat industry. Failure to address this issue will put the rest of the industry (which is larger than just the bulk handlers) into a position that is possibly worse than the situation under the single desk.

Of all the issues raised in the Report, port access is by far the most important. While it may seem strange for me (as a long-standing deregulator) to be pleading for some regulation it is a reality that without it there is little future for traders and exporters outside of the bulk handlers. While it may appear that farmers have not put together a strong enough case for the continued regulation of port access. The timing of the Review (although outside of the Commission's control) has ensured that any input from farmers and their organisations has been severely limited. The limited financial resources of farm organisations makes it impossible to commission submissions of the scope and detail that commercial interests employ. This does not make their representations of less value.

In order for grain growers to take advantage of the reforms introduced by the *Wheat Export Marketing Act 2008*, a contestable supply chain is essential to deliver choice in marketing. This can only be achieved if exporters are granted fair and open access to grain terminals.

Experience to date has shown this must be via a form of regulatory oversight, that does not impose excessive costs (that will be passed back to growers) but is effective in managing the risk of anti-competitive behaviour at port. As a grower, I cannot take comfort from the Commission's draft recommendations without greater explanation on how the proposed changes will work for 2011-2014 and beyond.

Without proper consideration of these matters, growers may be justified in feeling the objective of the Act "to promote the development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers" will be placed at risk by the Commission's lack of rigor in its final report.

Kim Halbert