



3rd March 2011

Dr. Jill Walker
Commissioner
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Dr. Walker:

After attending the Pre-Decision Conference of 20 January 2011 in Perth, and upon additional investigations including the digestion of recent submissions into this matter, we make the following comments in further support of ACCC's draft decision to revoke the CBH Grain Express notification.

Support of Draft Decision

We are supportive of the ACCC's draft decision, as it accurately reflects the state of affairs as they relate to limiting competition in provision of freight services in the Western Australian grain industry.

We re-iterate the following, stated in our July 2010 submission:

The following is stated in [ACCC's] letter:

The conduct covered by the Grain Express notification is a form of exclusive dealing. This form of exclusive dealing involves the supply of goods or services on condition that the buyer will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier. This type of exclusive dealing will breach the Trade Practices Act 1974 (the Act) if it has the purpose or effect of substantially lessening competition. (Emphasis added.)

The key question then, seems to be, "Does *Grain Express* have the purpose or effect of substantially lessening competition?" Our unequivocal answer to both is "yes."

CBH Investment in Rail Rolling Stock

CBH venturing into the rail freight business exacerbates all of the problems associated with a sole provider (in the absence of competition) forcibly bundling services. Our members are concerned about the significant risk involved with the implementation and execution of their ambitions. CBH has no experience in rail operations, but must have its equipment and systems in place by April 2012. According to some industry experts and analysts, that is going to be a huge challenge in itself.

There is some doubt as to whether CBH has even solidified plans for the funding of the rail rolling stock. A recent letter¹ demonstrates that CBH is seeking financing through a bond offer to grower-shareholders, within which “investment in above rail assets (locomotives and wagons)” would be funded.

Should CBH and Watco be unprepared for full operations prior to April 2012, in the presence of the continuation of Grain Express in its current form, there is a very real risk that the amount of grain moved by rail will decrease dramatically. This would see significant leakage to road and leave below-ground rail resources (into which the State and Commonwealth Governments are currently investing \$222.5 million) under-utilised.

ARG have committed to competing in the rail grain freight task in the absence of forced tying arrangements. The fact that ARG has approximately 27 locomotives and 670 wagons that cannot be effectively used in the East not only bodes well for competition in WA rail services, but also provides backup in case the new CBH rolling stock is not fully operational when the current contract terminates.

In the letter from the WA Department of Transportation, Minister Troy Buswell stated:

“If in the future, it were possible for the ACCC to remove restrictions and increase competition as it relates to rail transport without causing a drift from rail to road, the Government of WA would support this decision.”

The existence of ARG in conjunction with the entry of CBH/Watco in above-rail operations ensures that competition will be increased, and removal of approval of the notified behaviour will ensure that we maximise grain on rail while improving the industry’s ability to move toward the lowest cost pathway to market.

Should the behaviour that is in contravention to the Trade Practices Act be allowed, however, ARG will have little choice but to remove their equipment, technical expertise and operational nous from the market. This would be a blow to provision of competitive above-rail services.

WA Department of Transport Submission

Subject to Section 86A(10) of the Wheat Export Marketing Act of 2008,

Nothing in any prescribed State or Territory enactment operates to prevent a party to a contract, agreement or arrangement referred to in subsection (6) or (9) discharging obligations under the contract, agreement or arrangement according to its terms.

We are concerned that the State, in its submission on this issue, is supporting an arrangement which limits grain traders’ ability to competitively discharge their obligations contracted under the Wheat Export Marketing Act.

Conclusion

Many resources have been spent on this issue, both by proponents and opponents of Grain Express. If all participants in the WA grains industry had expended this time,

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money and energy into providing better services at competitive rates in a voluntary market system, significant efficiencies likely would have already been achieved.

We encourage ACCC to stand by the draft decision on this notification, and to do so without further delay.

As always, should you require clarification or additional information, please do not hesitate to contact us.

Yours faithfully,



Rick Wilson
Chairman
PGA Western Graingrowers



Rob Gillam
President
Pastoralists & Graziers Association

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If you don't mind, I would like to get your feedback on a potential new product CBH could offer growers.

CBH requires external funding for a variety of purposes both project related and business as usual. Examples of these would be:

- Capital re-investment in the network (ongoing)
- Investment in down stream processing (e.g. interflour)
- Investment in above rail assets (locomotives and wagons)

Rather than generating the funding from other external parties, another funding option that is currently being considered is via the issue of a subordinated bond to growers. This bond would be available to all growers, as a way of investing in CBH and receiving a direct return. While the exact features of the bond are still to be determined, it would essentially enable the grower to invest in CBH over a period of time and then redeem their funds at a later date, including any interest accrued. One of the main benefits for the grower would be the ability to achieve a market related return on an investment aligned with their business.

- How do you feel about this concept of growers being able to invest in CBH, in order to receive a return?
- Do you think growers would be interested in investing in CBH? Under what circumstances?
- What do you think would be the most important features of the GB for growers?
- How much do you think growers would be willing to invest in the GB?
- How do you feel about the following features:

Feature	Component to test	Level of interest / Appeal	Comments
Interest Rate	Fixed		
	Floating		
	Below the market		
	Equal with the market		
Investment term	Above the market		
	2 years		
	5 years		
Transferable to another grower	10 years		
	Yes		
Investment Funds	No		
	Using surplus funds		
Redemption	Using super funds		
	At maturity		
Other Features	Before maturity, with penalty		

I understand if you don't want to have any input but I thought I'd give you the opportunity.

Thanks, guys
 Reid

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