



CBH Group

Status of consultations pre and post
lodgement of proposed undertaking with
ACCC

August 2014

1. Purpose of Submission

This submission is by CBH Group ("**CBH**"). CBH lodged a draft access undertaking with the Australian Competition & Consumer Commission ("**ACCC**") on 14 March 2014 ("**Proposed Undertaking**") seeking to replace the existing undertaking which expires on 10 October 2014. The only substantive change to the access undertaking was the inclusion of proposed long term agreements ("**LTAs**") in a similar manner as GrainCorp Limited ("**GrainCorp**") had also implemented on the East Coast of Australia with the approval of the ACCC. This submission provides an update to the ACCC and provides background to a proposed further variation to CBH's Proposed Undertaking.

This is a public submission of information provided earlier to the ACCC and to facilitate industry understanding of CBH's process in seeking to equitably allocate capacity under the LTA arrangements given the substantial oversubscription that has occurred.

2. Executive Summary

CBH ultimately received proposals from 14 customers (more than the 6 initially anticipated from industry discussions – discussions that have taken place over the last 24 months) for 14.6 million tonnes of LTA capacity. That demand exceeds the entire capacity of CBH's grain export terminals in Western Australia. Further, as negotiated with customers and accepted by the ACCC, CBH can only offer customers under the LTAs 66% of capacity at each of the terminals, with the balance of 34% minimum at each port, each month, being available for smaller shippers by auction. Importantly, any LTA allocation not subscribed for returns to the auction process.

In these circumstances, through despite multiple rounds of negotiations, CBH has not been able to meet each customer's desired LTA totals or shipping windows due to insufficient capacity at its existing grain terminals at the precise times that customers have requested. CBH forecasts that if it cannot put in place LTA arrangements, there will be the most significant capacity auction costs that the industry has seen in the coming export period. This will not be good for exporters, farmers or long term investment in the industry – particularly with these costs in a global wheat market being pushed back by most exporters to growers. This is not good for the Western Australian grain industry as a whole, as it does not promote commercial certainty in the wheat export task and does not allow CBH to efficiently manage the task at ports for customers because it will not know the actual exports that are likely to be shipped as it would under LTA arrangements.

CBH has sought to allocate capacity under the LTAs in the most efficient manner based on an equitable process having regard to the 3 year shipping averages and actual past shipping in Western Australia.

Nonetheless, while CBH has accommodated almost all exporters and over 90% of the export tonnage, unfortunately, CBH has not been able to accommodate all requests for allocated capacity under LTA's. Given, there is overwhelming support for LTAs, CBH is seeking to best accommodate requests and in order to do so wishes to have an additional clause in the Proposed Undertaking allowing it to allocate LTA arrangements in circumstances where almost all by majority and tonnage are accepting of that proposed export task. CBH believes such an approach deals with the majority of exporters most equitably and safeguards the export task for Western Australia's growers.

CBH now explains the process it has undertaken and reasons for the requested further variation to CBH's Proposed Undertaking.

3. Background

In 2011, CBH sought approval from the ACCC for long term agreements proposed by means of a draft access undertaking which involved a system for granting long term agreements to customers in Western Australia. Over a six month process of consultation and market feedback, the ACCC ultimately determined that it would not approve CBH granting capacity on a long term basis as outlined by CBH in that form.

CBH took on board the ACCC and industry feedback. Over the course of 2012 and 2013, CBH continued to have high level discussions with customers over LTAs and whether customers desired to enter into them.

In late 2013 and early 2014 CBH consulted with customers and the ACCC over its desire to enter into LTAs in relation to port capacity, so as to achieve longer term demand and investment signals. This was done with the general market sentiment against auctions of port capacity due to their impact in tying up industry funds in premium pools and lack of longer term commitment enabling certainty for customers to make export and marketing plans.

As a result of those consultations, CBH lodged its revised access undertaking including LTAs with the ACCC in March 2014 and since then further consultations with industry and the ACCC to the current time. The end result of those consultations was strong industry support for CBH being able to commit up to 66% of its capacity to customers on a long term basis, with the remaining 34% of every month at every port still being available for smaller exporters and generally in respect of capacity not allocated to the LTA's.

It is also important to note that the proposed amendment does not alter CBH's commitment to provide 34% of all capacity for allocation through the auctions. In its draft decision at page 36 the ACCC note:

"In summary, the ACCC's preliminary view, considering the likely take up of LTAs, historical export operations of CBH's customers, and the flexibility to trade/transfer capacity, is that the availability of near term capacity seems appropriate having regard to the efficient use of port infrastructure and interests of access seekers, as specified under subs. 44ZZA(3) of the CCA. Furthermore, the ACCC considers the capacity allocation process in the Proposed Undertaking is in the interest of the public as it is likely to facilitate competition in the bulk wheat export market."

Given the broader than expected take up of LTA capacity under the CBH proposed allocation there will be more exporters than ever to acquire grain from WA growers for export thus facilitating competition in the bulk wheat export market (even before near term capacity is allocated) and the market to acquire bulk wheat and other grains from growers.

4. Requests for LTA capacity

Following the draft decision of the ACCC of 26 June 2014 indicating it would accept the proposed undertaking and in light of the restricted time until the next Western Australian harvest commences, CBH sought indications from customers on how they would apply for capacity under the proposed undertaking.

CBH received overwhelming demand for LTA capacity (the extent of which surprised us) from a range of existing and new customers, with some ports and months being significantly oversubscribed. In fact, some ports had a demand in excess of the total capacity (LTA and near term auction). All up customers sought approximately 14.6 million tonnes of capacity against an average export task of just under 10 million tonnes. CBH accordingly advised customers seeking LTAs that there was a significant oversubscription and asked customers to please reconsider their demand. The customers ultimately did not make any significant changes, only reducing demand to

13.8 million tonnes. CBH revealed to the customers the scale of the oversubscription and again asked them to reconsider or face the likelihood of an auction in 2014/15 and no real prospect of LTA's. This ultimately resulted in a reduction in demand for LTAs to 13.1 million tonnes.

5. Reconsideration of LTA application process

Given the very strong support for LTAs and customers keenness to take it forward, at the request of several customers (but not of CBH Grain) to just make offers of capacity as CBH would have a better understanding of available capacity, CBH contacted the ACCC and informed ACCC staff of the proposed course of action to see if it was possible for CBH to seek agreement from customers.

CBH then examined the applicant's demand, revised demand, three year shipping history and current YTD shipping to attempt to determine what CBH reasonably considered would be the minimum level each customer would likely accept in order to try and accommodate everyone. CBH also examined a pro-rata allocation of capacity, but considered that it would not be possible to allocate on that basis due to the number of small and unshippable parcels which resulted and also the undesirability of a process of pro-rata scale backs because it would set in place incentives for customers to over nominate (in order to be scaled back to more realistic numbers). CBH provided its correspondence to the ACCC in relation to this process contemporaneously and consistent with what CBH advised ACCC staff as to the process that was carried out.

Finally, in making the proposals, CBH manually allocated shipping to customers in certain windows and ports in sizes that reflected either the customers' usage or at least an average shipment out of Western Australia. CBH also considered the historical exports of customers of grain in Western Australian and their consistency of supply.

Ultimately, CBH endeavoured to give customers shipments with the profile outlined by the customer's application. That is if a customer was seeking shipments in between January and June in a particular port, then CBH sought to provide at least a full shipment in that period. The task was incredibly difficult in seeking to meet the needs of 14 customers. Ultimately, no customer was obtaining the full spread of capacity that they had indicated they wanted in an ideal long term agreement process. However, all customers would potentially gain some certainty on exporting grain from Western Australia and CBH would gain certainty to allow the customer to invest with greater understanding of the likely demand and commercial certainty of the ability to ship over the next 3 years.

CBH also notes that it pointed out to all customers that a significant amount of capacity representing almost 6.2 million tonnes (not including the 10 per cent tolerance) would remain to be auctioned after the Long Term Capacity allocation process. CBH notes that this is important as the capacity not allocated goes back into the auction available to these customers and any other smaller customers.

6. Customer Feedback on proposals

CBH has now received the following indications from customers (noting actual feedback by email has been provided to the ACCC to be transparent):

- Effectively 11 of 14 Customers accepted the CBH proposals;
- Of those 11 – effectively 4 indicated some level of concern over the process. We understand that concern, but we sought to engage with the ACCC on the process and to re-allocate based on historical parameters given the inability to meet the requested LTA capacity. We have tried extremely hard to accommodate all customers, but we acknowledge and regret that we are not going to be able to please all customers in this process. For example, CBH

has allocated LTA capacity to new entrants without a track record to foster competition, at the same time some existing shippers believe that such capacity should have been allocated to them because of their track record. We hope that if LTAs are put in place this year they will provide proper commercial signals to invest for next year and all parties will then be more accepting of the process;

- Only 3 of 14 customers rejected the CBH proposals;
 - 1 customer indicated that it appreciated the effort CBH had taken to grant LTA but the profile did not suit them;
 - 2 customers indicated they were unhappy with the amount of capacity granted, the profile and the process; and
 - 1 customer has its own port terminal in Western Australia (to which open access is not provided) but wanted the requested LTA capacity.

We have provided on a confidential basis to the ACCC all customer offers, CBH proposals and the customers' individual requested demand profiles so that it can understand the shipping windows and available capacity.

7. Significant acceptance of CBH proposals and equitable outcome

CBH believes the outcome CBH is proposing for the LTA allocations is consistent with the terms of the access requirements under the Competition & Consumer Act ("**CCA**"). The customers accepting proposals make up 91% of CBH 2013/14 shipping and 93% of shipping in the three years prior to the current year. They also were allocated 93% of total capacity offered by CBH under the LTA proposals. CBH would therefore submit that the process has resulted in an equitable outcome in terms of capacity allocation. In the overall circumstances it has resulted in a situation where there continues to be significant competition in the grain export market which will drive significant competition in the grain accumulation market offering the benefits of competitive vigour to CBH's grower members and growers in Western Australia in general.

In relation to the three customers rejecting the proposals, CBH is disappointed that it could not meet their needs in the LTA process to date. However, CBH does point out that there remains sufficient capacity in the near term capacity auction to meet their needs in aggregate. It is noted that some ports are more in demand than others and CBH is not providing capacity equivalent to the total customer demand for capacity for that port. Even if CBH were to provide capacity equivalent to the total aggregate demand of customers that demand significant exceeds the long term average crop exports from Western Australia.

The three customers rejecting demand total 9% of current years shipping and the two customers rejecting the proposal who had process concerns comprise 6% of current year shipping and less than 0.5% of the prior 3 years shipping.

Even those customers who have some level of process concerns (from minor to significant levels of concern) total only 13% of all proposal tonnes. It is also important to put this in context that this dissatisfaction is only in relation to LTA capacity, not overall access to the CBH port terminals.

CBH further notes that if the rejecting customers were more flexible in the months in which they would ship exports, then it is likely that their entire LTA demand would be satisfied.

8. CBH proposed way forward

CBH proposes that its draft undertaking be amended to include the express ability for CBH to follow the process it has undergone in the last week by including a new sub-clause 3.3(e)(iii)

- "(iii) provide all Customers with proposals that represent its best effort to balance out Long Term Capacity requirements of all Customers taking into account the historical exports of Customers, over a 3 year average as well in the current year to date and taking into account the length of time that the customer has been shipping from the Port Operator's port terminals. Any proposals must:*
- (A) obtain acceptance of at least 75% of Customers provided with a proposal by number; and*
 - (B) not be rejected by Customers who in aggregate represent more than 25% of exports in the both current year and over the 3 years prior to the current year."*

CBH believes that clause 3.3(e)(iii) contains significant safeguards for customers. The introduction of this new clause effectively provides a way of ensuring that an allocation can be made which is acceptable to the vast majority of the industry in circumstances where industry cannot coordinate the level of demand. Without this clause there are incentives for single customers or competitors to hold CBH and industry hostage with the aim of bettering their individual outcome.

The allocation and entry into LTAs provides significant benefits recognised by the ACCC in its draft decision here and earlier decision in relation to GrainCorp and CBH believes those amendments should not be denied to CBH, it's accepting customers and Western Australian growers.

Where subclause 3.3(e)(iii)(A) and 3.3(e)(iii)(B) are met, the proposals accepted will be deemed to be applications re-submitted by each accepting Customer except for any reductions requested by the relevant Customer.

CBH proposes renumbering the existing 3.3(e)(iii) to 3.3(e)(iv) and amending to read as follows:

- "(iv) accept the application following a variation of the offered Long Term Capacity and Total Capacity in accordance with clause 3.1(c) or as re-submitted by one or more Customers under clause 3.3(e)(ii) or 3.3(e)(iii)."*

Each of the Customers currently declining LTA offers will be offered the opportunity to reconsider their rejection in light of the changes offered here and on the understanding that the Long Term Capacity will be awarded.

However, there is only a finite time in which there is an opportunity to enter into LTAs with the Western Australian harvest again approaching. The adoption of CBH's proposed clause will permit CBH and its Customers to gain commercial certainty.

CBH is confident that there remains sufficient time to consider the additional clause and still conduct auctions in a timely fashion. Customers have been considering the LTA process and the proposed outcome for some time now and a short consultation process is possible. All parties have a reduced time period and regulation must be able to work within commercial timeframes to avoid detriment to all parties.

CBH therefore requests the formal consultation period be limited to 7 days from the publication and distribution of this submission. CBH notes the dramatically shortened consultation period for the GrainCorp and Emerald undertakings and hopes that the ACCC can be similarly flexible with an additional minor change to CBH's proposed undertaking. The rate of change in the industry does not allow CBH or Western Australian growers the luxury of deferring consideration of the new clause in what is otherwise a non-contentious undertaking.

9. Rejection of proposals and CBH amendments

If CBH's endeavours to find a method of allocating capacity on a long term basis and to meet the objectives of its customers cannot be taken forward, CBH will have to assess its options. One option is to resort to offering capacity through its existing auction system. This, in our view, will be problematic from a regulatory perspective for CBH with the current access regime as over the course of 3 years CBH will have been unable to offer its customers (including its own export operations) greater certainty, nor receive appropriate investment signals (because of excess demand that CBH could not accommodate) as to what is actual demand and invest in new capacity to meet that demand. In particular CBH has had concerns raised that some customers have overestimated their LTA requests in order to obtain their entire capacity needs from LTA's and avoid participating in the auction and paying the attendant premiums so that it does not represent the true "demand".

Nonetheless, CBH considers that the demand shown through the LTA process will highlight that there will be strong demand during the auction potentially resulting in larger auction premiums than has previously been seen. This will result in significant sums being tied up in auction premium pools and will serve as a disincentive to customers exporting grain from Western Australia. The reduction in customers exporting from Western Australia may reduce competitive tension between exporters acquiring grain from Western Australian growers which would be a detrimental outcome.

A rejection of the proposed clause would also represent an inequitable outcome as one of the few objectors to CBH's allocation of Long Term Capacity, is a competing port operator who operates a port terminal to which no other exporter has access. Given that mandatory access arrangements do not apply to that applicant's terminal, CBH believes this has created a significant distortion and issue.

CBH's proposed undertaking, even as amended in this submission, would preserve the competitive tension, encourage CBH to invest in expanding its infrastructure, encourage exporters with Long Term Capacity to make a 3 year commitment to exporting from WA (including investing in operations to acquire grain from growers) and overall deliver better deregulation benefits to the Western Australian grain industry and growers in particular. New entrants will continue to have the opportunity to acquire capacity in the near term and following a demonstration of long term commitment may be able to acquire Long Term Capacity at the conclusion of the current 3 year Long Term Agreements.

Nothing in CBH's proposed allocation method nor the actual allocation of capacity would substantially lessen competition and therefore CBH does not consider that the interests of the infrastructure owner and the vast majority of existing users should be subsumed to one or two prospective customers. To reject the proposed amendment is a rejection of the ability of an infrastructure owner to contract with its customers. The provision of the results of the allocation contemporaneously with the allocation method should provide sufficient comfort as to effect of accepting the amended clause.

10. Conclusion

CBH believes that by putting in place the LTAs that such long term arrangements will create the certainty in commercial arrangements that will underpin new investment and that it will facilitate new entry and increased competition by having proper investment signals.

Reverting fully to an auction with very unclear demand signals (to what is actual demand requirements) does not provide commercial certainty and will not provide incentives to invest. This position is very similar to what has occurred with long term contracts with the coal terminals in Newcastle in the face of open access before the ACCC granted an authorisation with access requirements based on long term agreements. Although initially some smaller new entrants were not able to have their full demand met, the entry into long term agreements resulted in new capacity being invested in and delivered, which in due course provided sufficient capacity to meet their actual

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needs over time. This also mean that capacity was able to be put in place in a more considered basis as over investing in unnecessary capacity will see unnecessary costs passed on to all exporters and therefore growers.

In summary, the proposed undertaking including the amendment to clause 3.3(e)(iii):

- Is in the legitimate business interests of CBH (the infrastructure owner);
- Is in the interests of the vast majority of existing bulk wheat exporters and the wheat exporters by volume;
- Facilitates competition in the bulk wheat export market as well as the market for the acquisition of bulk wheat from growers;
- Takes into account the interests of prospective bulk wheat exporters (users of the service); and
- Promotes the economically efficient use of, operation and investment in the port terminal infrastructure;

In contrast, if CBH were not able to go forward with the proposed clause, the level of LTA demand would mean that it would not be possible to put in place the LTA arrangements and it would revert to all wheat capacity going through the auction process.

Given the existence of other new developments in the grain industry such as the expansion of Bunge in Western Australia (see Annexure A) which "operates as a port in Bunbury" that is not subject to an access regime, the existence of other new entrants such as Qube/Quattro Grain (which has recently announced in their results presentation of 22 August 2014 that they are actively looking to expand in other States, CBH believes that greater consideration should be given to allowing CBH as a co-operative to manage grain exports on an efficient basis for all Western Australian growers. Being able to do so under the LTA arrangements as they provide commercial certainty and clearly encourage new entrants and additional competition to the benefit of growers.

Annexure A

- North America (North-America)
- South America (South-America)
- Europe (Europe)
- Asia Pacific (Asia-Pacific)
- Africa & Middle East (Africa-and-Middle-East)
- Caribbean (Caribbean)
- Central America (Central-America)

With growing economies and expanding per capita income, Asia is a driver of global growth in demand for agricultural commodities and food products.



Bunge supplies grains, oilseeds and related products to Asia via dedicated supply chains that start at our country elevators in North and South America. We also operate processing facilities in China, Vietnam and India that supply local markets with high-quality products, and export sugar and grains from the region.

Countries	Description	Products & Services
<p>Australia Bunge Australia http://www.bunge.com.au/</p>	<p>Bunge originates grains from Australia, where we have an office in Melbourne, and operates a port in Bunbury.</p>	

8/21/2014

Bunge to build grain export terminal at Geelong | The Australian

THE AUSTRALIAN

Bunge to build grain export terminal at Geelong

SUE NEALES THE AUSTRALIAN AUGUST 21, 2014 12:00AM

THE business of owning grain ports in Australia is hotting up, with global agribusiness giant Bunge yesterday announcing plans to build a new \$20 million export grain terminal near Geelong in Victoria.

The new terminal, which will load 450,000 tonnes of wheat and barley annually onto bulk ships, is the second Australian grain port to be built, owned and operated by New York-listed Bunge, after it opened its \$40m West Australian port at Bunbury in July.

The move will give one of the world's leading commodity traders better control over its supply chain of wheat and barley from Australia, rather than being dependent on ports owned by rival traders such as GrainCorp and grower co-operative CBH.

Bunge, better known in Australia as a stock feed manufacturer, is a global flour milling company, with much of its Australian wheat and barley destined for its own mills and to other international customers.

The new Bunge port, with a grain receival terminal and three storage bins of 8000 tonnes capacity each, will be built in Corio North, not far from GrainCorp's massive Geelong grain shipping terminal and on land and wharves previously used by the Midway group to export woodchips.

Bunge Australia general manager Chris Aucote said the company aimed to develop a modern, low-cost, efficient and effective facility that would provide a competitive new export pathway for grains in south-eastern Australia.

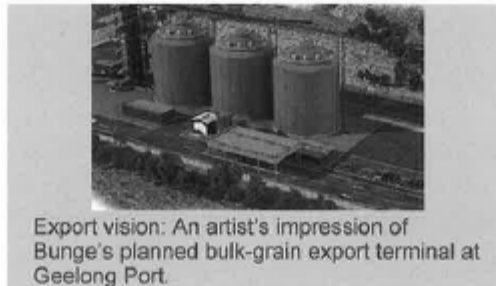
"A competitive export supply chain is widely acknowledged as vital for Australia's grain industry, as is additional capacity to service export markets at key times of the year, so our investment meets both aims," he said.

The spotlight was put on the monopoly ownership of grain ports on Australia's east coast last year when GrainCorp, with its eight eastern states ports, was the target of a contentious takeover bid by US-giant Archer Daniels Midland.

The ADM offer was knocked back by Joe Hockey on national interest grounds.

Bunge Australia plans to build new bulk-grain export terminal in Geelong

Darren Gray August 21, 2014



Export vision: An artist's impression of Bunge's planned bulk-grain export terminal at Geelong Port.

One of the world's biggest grain traders, Bunge, is expanding its Australian footprint with a new bulk-grain export terminal in Geelong.

The proposal revealed on Wednesday by Bunge Australia would be its second in Australia, following another at Bunbury in Western Australia and would be the fourth such facility in Victoria.

The proposed terminal would export about 450,000 tonnes of grain each year and so would be similar to the Bunbury facility, which loaded its first vessel last month.

Victorian farmers and Geelong mayor Darryn Lyons immediately welcomed the announcement, saying the facility would increase competition and export options.

Bunge Australia general manager Chris Aucote said the company wanted to develop a modern export facility that would offer a competitive export pathway for grains. The terminal would be built on land owned by Midway Limited, he said.

"The new terminal is intended to assist Bunge to offer better prices to grain growers and better service to customers," he said.

"A competitive export supply chain is widely acknowledged as vital for Australia's grain industry, as is additional capacity to service export markets at key times of the year, so our investment meets both aims," he said.

"Like Bunbury, we decided on Geelong due to the capabilities of its port, complementary infrastructure and good transport access for grain supply," Mr Aucote said.

The Geelong announcement is not the only significant development in the Australian grains industry in recent times. A new grain export facility expected to cost about \$75 million has been announced for Port Kembla, in Wollongong. And a

new grain export terminal was commissioned in Newcastle within the past 12 months.

In Geelong, Bunge has sought planning permission to build a grain receiving facility and three storage silos, each able to hold 8000 tonnes of grain, adjacent to Corio Quay North.

Bunge Australia is a wholly owned subsidiary of Bunge Limited, one of the world's largest grain trading companies. Bunge did not reveal the cost of the project, but industry insiders speculated that it would be a \$15 million to \$20 million project.

Ports Minister David Hodgett said the announcement was "more fantastic news for the Port of Geelong, on the back of three consecutive years of record growth. This will be great news for job creation in Geelong, and fits in with the Coalition government's vision of continuing to expand the Port of Geelong as a bulk port."

Cr Lyons said the proposal was "yet another positive investment proposal for our region". He said the project would create 100 jobs during construction and up to 15 new ongoing jobs.

"This proposal makes a lot of sense as it is building on existing infrastructure and will boost the export capacity of the Australian grain industry," he said.

"Bunge's investment endorses Geelong as a great place to do business", he said.

Brett Hosking, president of the grains group of the Victorian Farmers Federation, said the terminal would "make a significant difference to grain exports" from Victoria.

"It's really good. We welcome any new investment in agriculture and the grains sector," he said.

"It's a confidence booster. It recognises the fact that our industry has a lot of growth potential. Bunge has recognised that and is prepared to invest."