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Mr. David Salisbury
Deputy General Manager
Fuel, Transport and Prices Oversight
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

By email: transport@acc.gov.au
cc: Mr. Michael Eady
email: michael.eady@acc.gov.au

Dear Mr. Salisbury

Invitation for interested parties to make a submission - application by GrainCorp Operations Limited ("GrainCorp") to vary the 2011 Port Terminal Services Access Undertaking (the "Undertaking") in relation to its Newcastle Port Terminal (the "Application")

1. INTRODUCTION

We refer to the Issues Paper of the Australian Competition & Consumer Commission ("**ACCC**") dated 12 December 2013 inviting any interested party to make a submission on whether the regulation of GrainCorp's bulk grain port terminal in Newcastle ("**Carrington**") should be reduced as proposed by GrainCorp.

We set out our views as follows:

1. Summary of our submission
2. Our submission on competitive constraints
3. Our submission on competitive disadvantage

We trust this will be of assistance to the ACCC, and would be pleased to assist if further requested.

2. CBH GROUP

CBH is a Western Australian based integrated grain storage, handling and marketing cooperative controlled by growers. It exports grain to more than 25 countries. CBH operates through 197 sites in Western Australia including four grain export terminals. In 2013, CBH Group shipped 11.5 million tonnes of grain and reported total sales of AU\$2.93 billion.

As the ACCC is aware, CBH is required, pursuant to the provisions of the *Wheat Export Marketing Act 2008* (Cth) ("**WEMA**"), to provide an access undertaking to the ACCC in relation to the export of wheat from its port terminals in Western Australia. CBH also has a minority interest in the Newcastle Agri Terminal.

3. **SUMMARY OF OUR SUBMISSION**

GrainCorp has submitted that the Undertaking obligations at Carrington should be largely removed because it now faces competition from two other bulk wheat export facilities (the Louis Dreyfus Commodity Terminal and the Newcastle Agri Terminal).

GrainCorp has submitted it is at a competitive disadvantage as a result of inequitable regulation at Newcastle. The issue is said to arise because the two competing export terminals are not currently subject to regulatory oversight, whereas Carrington is subject to the "access test" in the WEMA. Our view is that unequal application of regulation creates an uneven playing field and distorts the operation of efficient markets with an adverse impact in both domestic and international wheat markets.

The next relevant question is the extent that the two new export facilities provide competitive constraints on Carrington. As CBH only has a minority shareholding in the Newcastle Agri Terminal it is not possible for CBH to be definitive at this time of the extent of constraint that that terminal and the Louis Dreyfus Commodity Terminal place on Carrington. However, if GrainCorp has provided sufficient evidence of the level of actual or potential constraints, then CBH as a matter of principle has no objections to the access requirements being removed.

4. **COMPETITIVE CONSTRAINTS**

The stated object of Part IIIA of the *Competition and Consumer Act 2010* (Cth) ("**Part IIIA**") is to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided. The access regime is designed specifically for circumstances in which there is only one facility that provides essential infrastructure services and where it is not economically viable to build more facilities. The policy rationale is based on the notion that competition, efficiency and public interest are increased by overriding the exclusive rights of the owners of "monopoly" facilities.

It follows that where services are available in a competitive market environment, access regulation is unnecessary. To apply this regulatory burden to owners of facilities who are already subject to competitive constraints would in our view be contrary to the objective of promoting "effective competition".

CBH has observed over the last 5 years that entry to the market for the provision of port terminal services has occurred in several geographic locations, including at Newcastle (NSW), Fisherman's Island (Brisbane, Qld), Bunbury (WA) and Albany (WA). Given this marked increase in new entry, it follows that the application of the access regime to the wheat export port terminal services may no longer be necessary in these markets, where competition is providing constraints. It is in the interests of productivity and effective competition that regulation is removed in these circumstances so that it does not create unintended distortions, it allows industry participants to be free to compete on a level playing field in the most effective and efficient manner and that they are able to make long term commercial investments in infrastructure based on market forces.

5. **COMPETITIVE DISADVANTAGE**

Unequal application of regulation places those entities which are subject to regulation at a competitive disadvantage compared to their non-regulated competitors. This is because regulated entities face high costs and burdens associated with regulatory compliance, operational constraints, and inflexibility in applying prices and managing how to acquire and export wheat. For example, it takes time to make adjustments to the commercial terms covered by an undertaking to deal with changes in market circumstances (including changes made at the request of customers).

This competitive disadvantage creates a distortion in commercial terms available in the market for the export of wheat and conceivably in relation to export terms for wheat from Australia in the global market. Such an uneven playing field makes it very difficult for the regulated entities to compete effectively.

6. **CONCLUSION**

CBH believes in competition and appropriate regulation and importantly an efficient and strong Australian grain export industry.

CBH believes it is important that regulation and associated costs be removed in appropriate circumstances to relieve unnecessary regulatory burden and assist in increasing Australia's productivity and competitiveness.

Please do not hesitate to contact us should you wish to discuss this submission further.

Yours sincerely



Richard Codling
Group General Counsel
CBH Group