



COOPERATIVE BULK HANDLING LTD
ABN 29 256 604 947

Gayfer House, 30 Delhi Street
West Perth, Western Australia 6005
GPO Box L886
Perth, Western Australia 6842
Grower Service Centre
1800 199 083
T + 61 8 9237 9600
F + 61 8 9322 3942
info@cbh.com.au
cbh.com.au

5 May 2014

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 on draft ACCC decision - 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 Draft Decision of the Australian Competition & Consumer Commission ("**ACCC**") dated 10 April 2014 in relation to the regulation of GrainCorp's bulk grain port terminal in Newcastle.

In light of our submission dated 3 February 2014, CBH only wishes to make a short submission in relation to the ACCC's Draft Decision.

2. INDUSTRY CHANGE

CBH supports the ACCC's analysis in the Draft Decision in relation to the uncertainty that has arisen in the industry as to the introduction of the Code. As a result, CBH believes that at this time it is important that the ACCC takes into account the rate of change in this industry and seeks to address resulting issues that are arising in relation to the current regulation. In particular, CBH believes that having regard to industry dynamics, the current regulation is creating distortions and an unlevel playing field.

In this situation CBH believes that it is important that the ACCC approaches this matter based on competition principles and commercial reality, notwithstanding the differences in the application of existing regulation. For example, CBH believes that it is important to accept that export grain facilities owned by a grain exporter that is not subject to an access undertaking, are likely to provide an actual constraint on grain terminals subject to access undertakings, even if there are components of the relevant grain facility that

are owned by an additional party. Specifically, CBH sees no difference as a commercial matter that the Louis Dreyfus facility in Newcastle competes with GrainCorp's Newcastle facility, just because as the ACCC notes in section 5.3.2 of the Draft Decision, Qube owns the ship loader.

The practical economic reality of this form of new competition in the industry was brought home by the announcement in late March that Qube would build a new 1.3 million tonne per annum bulk handling depot at Port Kembla in a joint venture with certain grain exporters, initially with Noble and granting rights to Cargill Group and Emerald Group to join the joint venture.

It is understood that construction costs of the new Qube facility will be in the order of \$75 million¹. Irrespective of the precise corporate structure that is used, that facility will likely be a significant competitor to GrainCorp's Port Kembla grain export terminal.

It is interesting to note that that facility can provide immediately both open access and medium term take or pay arrangements, because of its corporate structure. That is something that GrainCorp's existing facilities cannot do and neither could CBH's facilities in Western Australia. As such, it is clear that the existing regulation does not provide a level competitive field in relation to grain export terminals.

In these circumstances, CBH does not disagree with the ACCC's analysis of likely competitive constraints on GrainCorp's Terminal at the Port of Newcastle.

3. **COMPETITION IN THE NEWCASTLE PORT ZONE**

CBH has reviewed the ACCC's analysis in relation to upcountry competition and the constraints this places on GrainCorp's Newcastle Terminal. CBH notes that while the ACCC has discussed the possibility of entry into that Port Zone by CBH, the ACCC has not focused on the fundamental question of entry barriers. At no stage of the introduction of wheat export terminal access regulation by the Federal Government has the ACCC, the Productivity Commission or the National Competition Council, suggested that upcountry storage facilities were monopoly infrastructure or that there were high barriers to entry in relation to such facilities.

CBH also notes that the Australian Grain Exporters Association submission to the Department of Agriculture - Agricultural Competitiveness Issues Paper² submitted on 17 April 2014 stated at page 11 as follows:

"It is expected that competing upcountry facilities will be built and in fact are already occurring through both on farm storage and private facilities. The extent of this will vary from region to region based on crop and market characteristics and service/pricing of existing operators."

While CBH understands the reasons for the ACCC's analysis, CBH strongly notes that based on fundamental competition principles, it is unlikely that GrainCorp would have any significant degree of market power in relation to upcountry storage and handling facilities while other parties could readily develop grain accumulation sites for an efficient export network.

¹ See Presentation by Qube Holdings Limited dated March 2014 - http://www.qube.com.au/downloads/announcements/Investor_Presentation_Capital_Raising.pdf

² http://agriculturalcompetitiveness.dpmc.gov.au/sites/default/files/public-submissions/ip361_australian_grain_exporters_association.pdf

Further, CBH has previously submitted that as demonstrated by the export coal terminals at Newcastle, the ability to put in place commercial take or pay arrangements at those terminals facilitated the investment and entry into long term rail haulage and other transport contracts along the Hunter Valley coal chain. CBH believes that the establishment of new grain export terminal facilities will drive that upcountry investment in transport whether "closed loop" as described in the ACCC's Draft Decision or open access.

Factual support for CBH's view that export terminal infrastructure will drive new transport investment and upcountry storage is demonstrated by the Qube Presentation referred to earlier, with the references in that presentation to "medium term take or pay commitments with each of Noble, Cargill and Emerald for substantial volume" and the establishment of substantial rail services involving 8 locomotives and 130 bulk rail wagons for rail services relating to:

"New rail services agreements between Qube Logistics and each of the stakeholders in Quattro Grain to transport grain from regional grain Storage Facilities to the New Quattro Grain facility."

Accordingly, while CBH notes the ACCC's analysis of upcountry competition at this time in the Newcastle Port Zone, CBH believes that it is a rather static analysis and does not sufficiently recognize the dynamic realities that large exporters put in place in terms of transport and accumulation facilities, whether "closed loop" or "open access".

4. **CONCLUSION**

As we have previously stated, CBH believes in competition and appropriate regulation and importantly an efficient and strong Australian grain export industry.

The Productivity Commission ("**Commission**") noted in its April 2014 Submission to the Agricultural Competitiveness Taskforce in relation to the ACCCs Draft Decision that:

"The Commission considers the ACCCs draft decision indicates an appropriate future direction for regulation of grain port terminals".

CBH similarly believes the ACCC's Draft Decision is heading in the right direction.

Recent developments of new entry by large scale export grain terminals highlight the importance of adjusting regulation to remove unnecessary regulatory burden and therefore assisting 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