

30 August 2009

**By email:** Sarah.Sheppard@accc.gov.au;

Ms Sarah Sheppard  
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Dear Sarah

## **CBH Access Undertaking: Further submission in relation to other issues**

This submission addresses the ACCC's comments in Part 13 of its draft decision (**Draft Decision**) regarding other issues.

CBH intends to amend its undertaking to address the comments and recommendations in the above referred Part of the Draft Decision.

### **1 Proposed new section**

CBH proposes to insert a new section in its undertaking as set out in **Annexure A** to this letter.

### **2 Reasons for new section**

2.1 CBH is proposing to insert the new section to address the concerns raised by the ACCC, and specifically to:

- (i) publish on its website information about the:
  - (A) stocks of grain (including Bulk Wheat) at its ports;
  - (B) key port terminal information; and
  - (C) key service standards; and
- (ii) provide additional levels of transparency regarding CBH's provision of access to Port Terminal Services under its undertaking.

2.2 The ACCC will observe that the key service standards proposed differ from the suggested indicators in the Draft Decision. In this regard, CBH submits that:

- (i) cargo accumulation times are not indicative of the performance of the Port Operator, as they are not within the control of the Port Operator. Cargo accumulation times are reflective of the performance of the entire supply chain, including the behaviour of exporters themselves. CBH

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submits that the information proposed to be published under clause 12(c)(i),(ii), (iii) and (v) is more relevant.

- (ii) transport queuing times are substantially affected by the number of vehicles arriving at a Terminal at any given time. CBH has no control over the arrival of grower deliveries. CBH's only way to affect queue length is to unload vehicles quickly. With such a substantial variable inherently unknown, the indicator is at best useless and at worst, misleading;
- (iii) the Port Operator has insufficient knowledge to publish information about demurrage. Demurrage is a matter of contract between an exporter and its shipping company. Even if the Port Operator had such knowledge, demurrage is not indicative of the Port Operator's performance. Any number of factors unrelated to the Port Operator may cause demurrage, including the performance of the up-country supply chain. CBH submits that the information proposed to be published under clause 12(c)(i),(ii), (iii) and (v) is more relevant. We would be grateful if you would advise whether this proposed new section would be acceptable to the ACCC.

2.3 We look forward to your comments on this new section.

Yours sincerely



**Bill Keane**  
Partner

# Annexure A

## 12 Publication of key information

- (a) Within the last three days of each month, the Port Operator will publish on its website a statement of the total amount of grain (including Bulk Wheat) situated at each of the Port Terminal Facilities. The Port Operator must use reasonable endeavours to ensure that the statement is accurate within + / - 5%.
- (b) By the close of the Business Day following the Business Day on which the Port Operator receives a vessel nomination from a User (including its Trading Business), the Port Operator will publish the nomination on its website. Vessel nominations received after 4pm on a day will be deemed to be received at 8am on the next Business Day.
- (c) Within the last three days of each of December, March, June and September, the Port Operator will publish on its website a statement of the key indicators of its performance of the Port Terminal Services at each Port Terminal Facility, including details of the:
  - (i) average number of days between the ETA on original vessel nomination and the date of the presentation of the Notice of Readiness;
  - (ii) average number of days between presentation of a Notice of Readiness and Commencement of Loading for vessels that arrive within their contracted Shipping Window;
  - (iii) average number of days between presentation of a Notice of Readiness and Commencement of Loading for vessels that arrive outside their contracted Shipping Window;
  - (iv) number of vessels rejected in the year to date;
  - (v) number of vessels presenting a Notice of Readiness outside of the contracted Shipping Window in the year and month to date;
  - (vi) Quantum of tonnes of wheat exported in the year and month to date; and
  - (vii) number of vessels loaded in the year and month to date.