

27 August 2009

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

Ms Sarah Sheppard  
Australian Competition & Consumer  
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**Partner**  
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Dear Sarah

## **CBH Access Undertaking: Further submission in relation to scope**

This submission addresses the ACCC's comments in Part 7 of its draft decision (**Draft Decision**) regarding the scope of CBH's undertaking.

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

### **1 Proposed scope section**

- 1.1 CBH proposes to replace section 5 of its undertaking with the new section 5 set out in **Annexure A** to this letter.
- 1.2 CBH also proposes to make a related amendment, by replacing the defined term "Access Agreement" with the following definition:

*"Access Agreement means an agreement between a User and the Port Operator containing provisions for the supply by the Port Operator of Port Terminal Services to the User, whether made before, on or after the Commencement Date."*

### **2 Reasons for amendments**

CBH is proposing the amendments to section 5 in relation to the scope of the undertaking to address the concerns raised by the ACCC, and specifically to:

- (i) not exclude Port Terminal Services which are provided pursuant to CBH's bundled "Grain Express" service offering. While CBH is proposing these amendments, it continues to disagree with the ACCC's view on this issue;
- (ii) consolidate (on a non-exhaustive basis) the Port Terminal Services previously set out in schedules 5 to 8 of the undertaking;
- (iii) generally clarify and simplify the description of the Port Terminal Services, on a non-exhaustive basis; and

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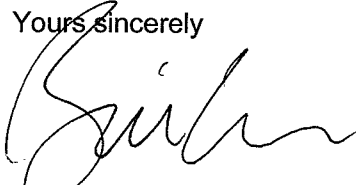
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lawyers

- (iv) include fumigation of insect infestation, and accumulation of cargo for export purposes, as part of the Port Terminal Services.

We would be grateful if you would advise whether this proposed draft scope section would be acceptable to the ACCC.

Yours sincerely



**Bill Keane**  
Partner