

PORT TERMINAL SERVICES ACCESS UNDERTAKINGS

SUBMISSION

To

The Australian Competition and Consumer Commission (ACCC)

Prepared by: Grains Section President Mr Derek Clauson

Organisation: The Western Australian Farmers Federation (Inc)

President: Mr Mike Norton

Address: Ground Floor
28 Thorogood Street
BURSWOOD WA 6100

Postal Address: PO Box 6291
EAST PERTH WA 6892

Phone: (08) 9486 2100

Facsimile: (08) 9361 3544

Email: daniellewhitfield@wafarmers.org.au

Contact Name: Danielle Whitfield

Title: Executive Officer

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The Western Australian Farmers Federation (Inc), WAFarmers, understands that the rationale for the Access Test in the Wheat Export Marketing Act is to ensure that owners of port terminals who wish to market bulk wheat for export do not attempt to use their ownership of port terminals to derive an unfair advantage to their marketing operations.

This submission relates to the Port Terminal Access Test which must be passed by Co-operative Bulk Handling (CBH) to guarantee fair and transparent access to the Kwinana, Geraldton, Esperance and Albany port terminals.

As having the largest, by far, membership base of any rural lobby group in Western Australia, any such submission has at its focus the long-term efficiency and effectiveness of the supply chain with regards to the grains industry as a whole.

While the Undertaking is not required to, and does not, relate to any part of the export grain supply chain other than "Port Terminal Services", as a grower organisation it is important for us to note that a failure in coordination of grain accumulation from an up-country site or sites will impact on out-loading and vessel prioritisation.

It is to this end that WAFarmers supports the continuation of CBH's pivotal logistical role and believes that the prospect of new entrants establishing new port terminals would be detrimental to Western Australian growers 'bottom line'.

As a co-operative, with around 5,100 grain-grower-shareholder members, unlike other entities, CBH has an obligation to growers and their volume driven business should be supported to ensure that every tonne is captured in the network to maintain the viability of their extensive storage and handling system.

Generations of Western Australian growers have already paid for CBH's infrastructure through Storage and Handling fees and CBH's reinvestment in infrastructure. It is therefore growers' entitlement to look to CBH to provide cost effective and efficient storage and handling services in the long term which are in the best interests of Western Australian growers.

WAFarmers is very concerned about the concerted effort by marketers to break down CBH control with potentially misleading claims which would have greater implications with regards to Non-discriminatory Access.

If these marketers believe that costs are too high, then it is their responsibility to prove marketwise that these inefficiencies would be alleviated by by-passing the CBH system.

It is also important to address the perception, which some marketers appear to promote, that CBH's grain marketing subsidiary, Grain Pool Pty Ltd, benefits from information gains via access to information that disadvantages other infrastructure service consumers.

Many of the complaints about port management or access to ports revolve around the allocation or prioritisation of ships in the shipping stem, at-port grain storage management and ship loading schedules.

These complaints need to be categorised into those that are a result of the logistical challenges which have arisen within the first year of deregulation, and those that are not, to get a clearer indication of supposed non-performance and scrutiny.

Through regular interactions with CBH, WAFarmers is satisfied that CBH has amended and implemented its existing ring fencing arrangements from its Grain Express project as per CBH's Port Terminal Services Access Undertaking, Schedule 2 – Information and Operational Segregation Rules.

The new arrangements include provisions for the legally distinct entities to conduct trading activities, which has resulted in the physical segregation and accounting separation of these entities whereby information flow is restricted and compliance is ensured via external independent audits.

WAFarmers believes that Section 24 (i) of the Wheat Export Marketing Act already provides for disclosure and transparency and the fact that CBH is already bound by the State Governments Bulk Handling Act to provide access on fair and reasonable basis to its infrastructure under Section 19 Subject to this Act and the regulations, the Company shall allow a person, on payment of the prescribed charges, the use of any bulk handling facilities and equipment controlled by it at ports in the State.

As any costs will eventually find their way back to growers, with due respect, WAFarmers questions the requirement for an expensive Port Terminal Access Test when obligations are already fulfilled by compliance to the Wheat Export Marketing Act and Bulk Handling Acts.

The incentive to provide open access under the Acts and constraints on anti-competitive conduct means that further intrusive and prescriptive regulation is not necessary. Such an approach will add unnecessary costs which will be ultimately passed on to exporters and growers and make CBH less competitive relative to the other handling companies around Australia and the world.

With regards to anti-competitiveness, CBH is required to provide transparent records of both the shipping nomination and queuing processes as well as make the available shipping stem information to enable monitoring of compliance.

Over time, this shipping stem information would make transparent any anti-competitive practices and in so doing, there is an opportunity to adopt existing remedies under Section 46 of the Trade Practices Act to prevent further breaches.

In addition to shipping stem information, WAFarmers remains steadfast in it's request to CBH that as much information as is commercially viable be made available to growers so that they can make informed decisions given that they are individual marketers.

CBH has demonstrated that it has clear and equitable Export Accumulation Guidelines and a Port Queuing Policy that operate in conjunction with the customer's Grain Services Agreement that allows for disputes to be resolved in a logical and binding manner.

Port management guidelines, including required notice periods for ordering the use of terminal infrastructure are available to all users of infrastructure services and these guidelines, in conjunction with CBH's terms, conditions and prices for access to the infrastructure services should allow prospective customers the confidence to market their grain in a fair and transparent system.

While WAFarmers' remains supportive of Grain Express, this organisation will continue its commitment to regular meetings with CBH to resolve a variety of issues as they impact on Western Australian grain growers.