



CBH Group

Submission in response to the Competition
Policy Review Issues Paper

June 2014

1. Introduction

Co-operative Bulk Handling Limited (“CBH”) welcomes the opportunity to provide a submission to the Competition Policy Review in response to the Issues Paper of 14 April 2014. In particular, CBH in this submission will focus on the issue of agricultural competitiveness as a means of providing a platform for enhancing the contribution of agriculture to economic growth, employment creation and national prosperity, through increased innovation, productivity, investment and trade.

1.1 Background - The CBH Group

CBH is a relatively unique organisation with a history almost as long as the grain industry it serves. The co-operative’s commitment to maintaining a partnership with its Western Australian grain grower members has helped build an industry that has been the backbone of the State’s rural economy since the beginning of the bulk handling system 80 years ago.

This partnership has also been the basis of CBH’s strength and success.

CBH has constantly evolved, innovated and grown with operations extending along the value chain from grain storage, handling and transport to marketing, shipping and processing. Now Australia’s biggest co-operative and a leader of the nation’s grain industry, CBH is controlled by approximately 4,200 grain growers.

The co-operative exists for their benefit and the advancement of the grain industry in Western Australia.

CBH currently employs around 1,000 permanent employees supported by up to 2,000 casual staff during the months of harvest. These employees are located across the co-operative’s ten regional offices, 195 receival site locations, four ports, engineering workshops, representative offices in Melbourne, Hong Kong, Tokyo and Portland (USA) and a head office located in West Perth.

1.2 The co-operative approach

As a co-operative, rather than being motivated by profit and shareholder dividends, CBH seeks to invest in supply chain infrastructure and undertakes its business operations in order to ensure Western Australian grain growers are part of an efficient, well managed supply chain that contributes to their farm-gate returns. For example: CBH Group in its Response to the Agricultural Competitiveness Issues Paper, made the following points:

- In 2010/11 CBH took the decision to pursue enhanced above rail efficiencies by investing \$175 million in new rolling stock (locomotives and wagons) to be operated by a new above rail operator for the dedicated service of grain haulage in Western Australia. These arrangements provide a higher level of reliability, enhanced usage rates and greater productivity and have had a significant impact on the efficiency of the rail task. During the 2012/13 harvest, CBH reduced rail freight rates to growers by an average of seven per cent;
- CBH’s Grower Rebate Program allows growers to enjoy a reduction in storage and handling fees on the basis of their patronage with CBH Group. In 2013/14, growers enjoyed a rebate on the storage and handling fees up to \$2.60 per tonne, which promotes their competitiveness in the industry;

- Despite a very challenging cost environment, (labour costs alone have risen between five and six per cent in 2012/13) CBH has been able to maintain storage and handling fees at a consistent level in all but one of the past four years; and
- On the back of ongoing investment in the storage and handling system, the CBH network is arguably the most efficient, and the lowest cost, grain storage and handling system in Australia. During 2013 alone, \$155.2 million was spent on capital expenditure and maintenance activities throughout the network.

1.3 The grain industry in Australia into the future

CBH and the growers of Western Australia are aware of the many future challenges to grow and market crops profitably. Despite CBH's efforts to provide enhanced service at the lowest price, long term trends in inputs, yield, supply chain costs, pricing and new competitor origins are having an increasing impact on farm profitability (and sustainability) throughout Western Australia.

There have been many reports on the 'Asian Century' bringing new prosperity to Australia and creating unparalleled demand for Australia's raw materials and food. While this is an exciting sentiment, it is by no means certain that grain growers or Australia as a whole will benefit from this. Indeed, such an increase in demand and prices has to some degree just stimulated production from other geographic locations which are often assisted by lower input costs, higher yields and new investment in supply chains to global markets.

The more far-sighted reports suggest that the grain industry needs to look to ways that the Australian grain production and export industry can become more integrated and efficient, so it may benefit over the long term from growth in Asia.

This is not just a matter for the grain industry itself, but also requires the Australian Government to seek to ensure a fair and competitive playing field for Australian exports and enterprises in the global market in general.

2. The Policy Review Issues Paper

2.1 Scope of CBH Submission

CBH in this submission wishes to address as a whole, the following questions from the Issues Paper (using the paragraph numbering from the Issues Paper):

1.19 Key Questions

What should be priorities for a competition policy reform agenda to ensure that efficient business, large or small, can compete effectively and drive growth in productivity and living standards?

2.3 Key Question

Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

5.19 Questions

Should the recommendations in the Productivity Commission's report on the National Access Regime be adopted? Are there other changes that could be made to improve competition in the relevant markets?

6.2 Key Question

Are competition related institutions functioning effectively and promoting efficient outcomes for consumers and the maximum scope for industry participation?

6.4 Key Question

What institutional arrangements would best support a self sustaining process for continual competition policy reform and review?

5.19 Question

What is the experience of business in dealing with the ACCC, the Australian Competition Tribunal and other Federal regulatory bodies?

2.2 Australian productivity and competitiveness in the agricultural sector

In our submission to the Agricultural Competitiveness Issues Paper dated April 2014, CBH raised concern over the nature of grain export supply chain regulation in Australia, in particular port access arrangements. CBH's view is that the extent of port access regulation has led to an unlevel playing field and market distortion in how the wheat access test is being administered by relevant Government Departments. Further, the ACCC's approach to port access regulation does not sufficiently recognise the inefficiencies and adverse impact on Australian companies such as CBH of the distorted regulatory landscape. These inefficiencies and increased costs, particularly in the case of CBH as a co-operative, are ultimately borne by the grower.

CBH's view aligns with various submissions and reports made by the Productivity Commission and the National Competition Council.

The Productivity Commission in its Report on Wheat Export Marketing Arrangements (2010) found that initial issues on the Wheat Export Marketing Inquiry were around grain export terminals. However, it subsequently found and noted that (see pages 15 and 16 of the Productivity Commission's Submission to the Agricultural Competition Taskforce) that:

page 15:

"In the long term the benefits are likely to diminish and the associated costs (particularly related to investment incentives) are likely to become more significant and outweigh the benefits."

Page 16:

- "• the 'access test' introduced at the time of wheat marketing deregulation had been effective in ensuring a relatively smooth transmission to the new arrangements but, over time, the benefits would diminish and associated costs would be more significant*
- the access test should be abolished and access to grain terminals be subject to Part IIIA of the [then] Trade Practices Act (with merit in the adoption of a voluntary code to govern port access)."*

The Productivity Commission went on to state in its submission to the Agricultural Competitiveness Taskforce at page 18 in relation to "Efficient scale: competition policy and international competitiveness"

"For the purposes of enhancing agricultural exports, there may be some benefit from larger scale producers and integrated processing facilities... The issues of more concentrated

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ownership structures in agricultural industries producing internationally-traded goods would be an appropriate matter for consideration by the current Competition Policy Review."

In the Productivity Commission's Report in relation to the National Access Regime (no. 66, 25 October 2013), it stated that (at page 2):

"When considering whether to regulate access to infrastructure services in the future, governments should seek to demonstrate that there is a lack of effective competition in the market for the service that is best addressed by access regulation. An assessment of the net benefits should determine whether access regulation is most appropriately applied at the facility or industry level.

- Facility-based arrangements impose net costs if they are incorrectly applied, and provide incentives for lobbying. Such arrangements should be limited to where there is a clear net benefit from tailoring access regimes for a specific facility.
- Further industry-specific regimes should apply only where there is sufficient similarity between infrastructure services within the industry and where the industry has features that justify different regulatory treatment from that offered by the generic National Access Regime.
- Caution should be exercised before mandatory undertakings are implemented in the future. Where mandatory undertakings are used, they should be subject to upfront and ongoing assessment to ensure they are used to target the economic problem. Safeguards for the provider and other existing users of the service should be consistent with those for declared services."

Similarly, the National Competition Council ("**NCC**") stated in its letter dated 11 November 2009 to the Productivity Commission, as follows:

"In the Council's view, to date little if any evidence has been provided to establish that it is necessary to regulate access to port terminal services for bulk wheat export. The increasingly deregulated environment and the greater number of market participants militate against the exercise of monopoly market power by wheat marketers that own handling facilities. There is also a question as to whether some of the transport and handling facilities used to provide wheat export services, particularly up-country grain storage and handling facilities but also some port storage and handling facilities, have natural monopoly characteristics.

In such circumstances, the Council considers that it is undesirable and risky to continue imposing access regulation to port terminal services (or to introduce any additional access regulation other than where the processes and requirements of Part IIIA of the TPA are met). In the absence of clear evidence of a need for regulated access, unnecessary costs and regulatory burdens are likely to be imposed on wheat export marketers and other participants in wheat markets. In particular, inappropriate access regulation could restrict investment and innovation, and impede desirable change. In a period where the wheat industry is emerging from a period of regulated monopoly, it is important that the processes and structures which arose in that period are not cemented by unnecessary regulation that introduces rigidities and barriers to change.

In the event that access regulation is needed the Council's view is that access to port terminal services can be appropriately regulated under the National Access Regime."

Notwithstanding the rather polite, but clear comments from the Productivity Commission and the forthright submission from the NCC, there has been limited movement on regulatory reform in this area. Although the ACCC's approach to GrainCorp's application to vary its existing access undertaking to no longer cover the Newcastle Grain Terminal is a step in the right direction, that

process has proven complicated and time consuming. CBH's own experience in relation to putting in place long term port access contracts, notwithstanding universal positive feedback from customers, is at best a 5 month process compared to the statutory time frame of 6 months (disregarding clock stopping that could arise).

In recent times the regulatory landscape has become even more uneven and uncertain. As GrainCorp notes in its submission dated 14 May 2014 to the ACCC in relation to the variation of its latest Undertaking, the Department of Agriculture, Fisheries and Forestry determine whether terminals should be subject to the access test, not the ACCC. This leads to distortion and uncertain application of the access tests as CBH understands the Department's views may well depend on ownership of unloading conveyer belts at terminals. If this was confirmed CBH could arguably undertake a similar process outside of the spirit of the legislation and lease the conveyer belts to take grain on ships and avoid the regulation. Nonetheless, at this time GrainCorp is correct that there is an uneven competitive landscape and it appears that market distortion is being fostered by the current regulation.

In these circumstances, CBH appreciates the frustration shown by GrainCorp as to the competition it is facing at Newcastle and Port Kembla from unregulated terminals. To be forthright, CBH also has a self interest in this issue, as CBH faces the same issue arising for it in respect of the Bunge terminal near Bunbury and the new terminal near Albany.

In summary, CBH supports the Productivity Commission view that the existing regulatory arrangements in the agricultural industry are worth reviewing because of the inefficiencies that they create, the distortions to competition and the disincentives to invest in this regulatory environment. CBH believes that the current arrangements are creating inefficiencies and distortions. The next section raises some of those distortions and inefficiencies for the Review's consideration.

3. Areas CBH wishes to raise with the Review

CBH wishes to raise with the Review, against the background set out in the previous pages, the following matters:

1. Grain Terminal Access regulation is no longer providing benefits in terms of access arrangements that are creating net benefits to the economy. There should be a progression to equal application of Part IIIA or an equal application industry code so as to allow competition on a level playing field and efficiencies in export supply chains. Any previous competition justifications for the access test have dissipated.
2. The national interest in productive grain export markets is not being facilitated by the access regulation as it is creating distortions in application and therefore creating disincentives for investment in export supply chains. For example incumbent grain exporters who own export terminal infrastructure have limited incentive to invest when un-regulated competitors can provide more attractive terms and price differently in responding to market forces, thereby undermining any investment incentive for the incumbent.
3. Notwithstanding the lack of support or need for continuing intensive regulation of grain export terminals in Australia, at this time the regulation is continuing by regulatory inertia with attendant delays, costs and uncertainty in how the regulation is being administered. The NCC was very clear in their views as to the ACCC applying the access test in a manner which did not adequately acknowledge the legitimate interests of the access providers in exporting their own product finding that this deters long term investment in infrastructure. The regulatory structure of the legislation also does not allow for appropriate merits reviews so that the ACCC's approach can be tested and there is appropriate regulatory accountability.

4. The imposition of access regulation should occur where there is evidence of market power, the risk of misuse of that market power and a lack of competitive constraints. Questions arise in relation to the extent of application of that access regulation to CBH given that as a co-operative, it has no incentive to exploit growers in their export supply arrangements. Accordingly, the imposition of access requirements is not necessary or at the very least is not necessary in the face of actual or potential constraints from new terminal operators that are now arising.
5. The current export regulations suffer from regulatory inconsistency and do not provide a level playing field for competition. The ability for some of the world's largest, vertically integrated agricultural exporters to have export terminals not covered by the access test and competing on different terms to incumbent Australian exporters, does not promote investment in efficient or effective supply chains.
6. There needs to be consistency in access regulation across key domestic infrastructure which facilitates exports (eg. ports and railways). Having less effective access regimes whether State or Federal, creates distortions in investment in different parts of the country.
7. As the Productivity Commission noted in its submission to the Agricultural Competitiveness Taskforce at page 18, consideration should be given to whether there should be a policy reset to facilitate Australia's own version of Fonterra. This may need to be a pro-active policy consideration rather than Australia becoming merely a series of branch offices of multi-national entities.
8. Although Australia is in a position that commentators suggest provides great opportunities for exports to Asia, as the NCC has previously recognised, there is significant risk of stagnation and underinvestment in an important export commodity sector for Australia due to the nature of regulation in this industry. Now is the time where there should be appropriate deregulation and removal of red tape for a sector that should be successfully increasing exports from Australia.

4. Mandatory Code of Conduct

The Department of Agriculture on 3 June released an exposure draft mandatory code of conduct for bulk wheat exports. CBH is reviewing the draft code. However, CBH has concerns with the proposed code. In particular, it seeks to apply regulation as a default solution – not as a means of last resort.

5. Conclusion

As recent submissions from Glencore and Cargill and Plum Grove in response to CBH's new proposed Undertaking have noted, the Australian grain industry has a sufficient level of maturity that allows participants to rely on contractual arrangements rather than mandatory access regulation. Given the level of investment in new grain export terminals, this sector is appropriate for review.

CBH would be pleased to meet with and discuss this submission with the Review Committee.

CBH

9 June 2014