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Department of Agriculture, Fisheries and Forestry
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Submitted online via: [Have Your Say website](#)

Second Review of the Wheat Port Code

Introduction

On behalf of Co-operative Bulk Handling Ltd (**CBH**), thank you for the opportunity to provide feedback to the Department of Agriculture, Fisheries and Forestry (**DAFF**) on the second review of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014 (**Code**).

Background

CBH is Australia's largest co-operative and is owned and controlled by around 3,500 Western Australian grain growers. We employ approximately 1,200 permanent employees and up to 2,100 casual employees during the harvest period. CBH's core purpose is to create and return value to WA growers, both current and future. Co-operatives, such as CBH, exist to deliver benefits to their members.

In fulfilling our purpose, we have a marketing division which acquires grain from growers and markets that grain internationally (CBH Marketing and Trading), a bulk handling supply chain (CBH Operations) which manages the complex logistics of receiving grain from growers at harvest at approximately 120 upcountry receival points and then storing, outturning, transporting and loading vessels for export at our port terminals, and a fertiliser division (CBH Fertiliser) with the aim of encouraging a more competitive domestic fertiliser market to reduce growers' on-farm costs.

The WA grain industry is the largest agricultural sector in WA and the fourth largest export industry overall, with CBH's grain grower members producing an average of around 17 million tonnes per annum – about 40 to 50 per cent of the entire Australian grain production and contributing approximately \$6 billion to the WA economy and regional communities every year.

Overview

The role and incentives of co-operative entities are different to those of a listed entity. In the context of CBH, as part of achieving our purpose to create and return value to WA grain growers we seek to facilitate a competitive market place for WA grain export sales. This means CBH Operations enters into arrangements with some of the world's largest grain marketers, who are our logistics customers. We have every incentive to provide them with an efficient and cost-effective service so they can offer the highest price to acquire grain from WA growers, creating a competitive market for WA grain.

As a co-operative, CBH was given an exemption from some of the provisions of the Code. Prior to the exemption being granted, CBH was not able to enter into long term export agreements with our major export customers, which would provide those customers with long term certainty in being able to access our critical port infrastructure. Long term export agreements also provide CBH with the certainty of utilisation of CBH's port and supply chain infrastructure and encourage investment in increasing this capacity to meet market demand, in turn ensuring that capital and capacity deployed was efficient and for the benefit of WA growers. Under the exemption, CBH was able to put in place long term and short-term agreements, meaning that capacity could be allocated on long and short-term basis to meet the needs of our long standing customers while also providing new entrants the opportunity to acquire capacity on a short term basis. If more capacity is needed, we aim to build that capacity if grain marketers are willing to commit to using it so that it is efficiently deployed. This approach has in our view, contributed to the greater number of grain marketers buying grain from WA growers.

As a result of the certainty to put in place contractual arrangements that were permitted by the exemption, CBH has invested heavily in its supply chain infrastructure, to increase export capacity to the benefit of WA growers as we outline in this submission. In the absence of the exemption, we do not believe that there was sufficient regulatory flexibility to allow the use of long-term access agreements that supported investment. Our submissions in response to the First Government Review explain what occurred in more detail as a result of the regulatory uncertainty, and therefore inefficiencies created, under the Code.

We have reviewed the ACCC's submission to DAFF from December 2023 suggesting that the Code be allowed to sunset. The ACCC does not recommend an alternative to the Code but refers DAFF to the industry for its experience with the regulatory burden and practical operation of the Code.

CBH, also believes that it is appropriate to allow the Code to sunset. The reasons for our view are from a different perspective than the ACCC. The Code was put into place in its original form to address infrastructure access arrangements as the grain industry transitioned from the AWB single desk for wheat exports, to a deregulated trading environment. Since that time the industry has transitioned and matured, and as the ACCC acknowledge in their submission, port access issues have been managed by the industry reasonably well and there does not appear to be significant ACCC competition concerns in relation to port access. Further, the global grain industry continues to consolidate, and just last month the ACCC allowed the merger of Bunge and Viterro in Australia. In WA our export customers and competitors are some of the world's largest grain marketers. As discussed earlier, as a co-operative, we have every incentive to service these grain marketers efficiently to benefit WA growers. In any event, if the global exporters were unhappy with our port infrastructure operations and commercial arrangements, they have the size and commercial capacity to develop their own infrastructure.

Further, as with other export industries, we are constrained by global market pressures and the need to keep costs efficient, or our operations will become uncompetitive to the

detriment of WA growers. Therefore, there is a natural commercial constraint and imperative in trade exposed industries such as ours that means we are commercially motivated to ensure efficient operations for customers. This is an important reason for the Code to be allowed to sunset and differentiates our industry.

In relation to the ACCC's comments about the Code needing increased pecuniary penalties and the other areas that the ACCC mentions where non-Code issues have been raised, the existing provisions of the Competition and Consumer Act 2010 (**CCA**), with its recently increased penalties, have always applied to all commercial arrangements in the sector and continue to apply, irrespective of the existence of the Code. In addition, the absence of any significant anti-competitive conduct issues having been identified by the ACCC, is in CBH's view more suggestive that the Code is not needed, rather than of the need for higher penalties to be inserted in the Code to require compliance.

Finally, CBH notes that as set out in this submission, CBH as a WA grower owned co-operative is competing on a global stage against significantly larger global competitors. CBH welcomed the Government's co-operative exemption that allowed us to put into place commercial arrangements to provide long term certainty to invest. If the exemption were to be taken away or the Code modified, it would create uncertainty and significant concerns for us by changing the playing field on which we invest in WA and compete against these global players.

In these circumstances, in summary, CBH believes that the Australian wheat export industry has now sufficiently transitioned and matured such that the operation of the Code is no longer needed.

The changing Australian grain industry and our investment in WA

The purpose of the Code is to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. Since the Code commenced there has been considerable change in the industry, including an increase in the number of port terminal service providers (**PTSPs**) and port terminal facilities combined with the increased use of newer, lower capital cost, and smaller scale business models by new entrant PTSPs (including the use of mobile ship loaders and trans-shipment services).

When the Code commenced there were 7 PTSPs and 21 operational facilities. There are now 16 PTSPs and 32 operational facilities¹ with more under consideration. This significant new entry has led to many Australian ports having multiple providers of bulk grain export port terminal services according to the ACCC.

The presence of multiple providers of services in specific grain catchment areas has been a key reason why the ACCC has granted PTSPs exemptions from Parts 3 to 6 of the Code in relation to 21 of the 32 currently operational facilities².

In addition to the increase in PTSPs and the nature of business models, the average WA crop size is growing, and by 2033 it is forecast that it will increase from the current average of around 16-17 million tonnes to an average of 22 million tonnes, with a peak crop of almost 30 million tonnes. Last year, WA grain growers produced their largest ever crop of 26 million tonnes with an estimated value of \$9.5 billion to the economy. As a result of its exemptions from the Code, CBH was able to continue to fund improvement and enhancements to the network and assets to receive and export the record volumes,

¹ Australian Competition and Consumer Commission. 2023. Second review of the Wheat Port Code. ACCC submission in response to Discussion Paper. 14 December 2023. pp 6.

² Australian Competition and Consumer Commission. 2023. Second review of the Wheat Port Code. ACCC submission in response to Discussion Paper. 14 December 2023. pp 6.

resulting in a record 19.7 million tonnes shipped from CBH's four ports in 2023, an 18 per cent increase on the previous record, and a 48 per cent increase on the five year average.

To optimise grain value for WA growers and attract a price premium, the supply chain needs to be able to maximise grain exports in the first-half of the calendar year, before grain harvested by competitors in the Northern hemisphere become available in our contestable international markets.

In order to maximise value and cater for the growing crop size, the most critical challenge for the industry is to significantly increase the tonnes-to-port capacity of the supply chain from its current level. As a result, CBH has put in place a strategy to increase its export capacity from 1.6 million tonnes per month to 3.0 million tonnes per month by 2033.

To deliver this strategy will require significant capital investment. CBH and our grower members have therefore committed \$4 billion to invest in the supply chain, over the next 10 years to meet this requirement.

There is a specific focus on bottleneck transport pathways to port, particularly in rail out-loading projects that increase export capacity, as well as road infrastructure to complement and increase flexibility of the freight task from farm gate to port. CBH is co-investing in this space with Government.

To that end in 2021, the Federal and State governments announced a \$200 million commitment, alongside a \$200 million commitment from CBH, to Package 1 of the Western Australian Agricultural Supply Chain Improvements (**ASCI**), which was added to the Infrastructure Australia Priority Initiative List.

ASCI Package 1 allocated \$68 million for 11 rail siding upgrades; \$60 million to upgrade the main Midland rail line between Mingenew and Carnamah; and \$72 million for the recommissioning of tier 3 lines in the Narrogin-Wickepin–Kulin area.

The ASCI funding complements significant investment already committed by CBH to de-constrain its supply chain through: increasing its permanent storage capacity through the expansion of grain receival sites throughout the network; the purchase of 24 locomotives and 650 wagons to complement its existing fleet; and capital investment at its four port terminals, upgrading throughput capacity to support the tonnes-to-port strategy.

If the export capacity of the grain supply chain does not keep pace with the projected growth in grain production in WA, then the cost to grain growers, regional communities and the broader economy will be immense. That cost has several strands:

- Firstly, if grain cannot be delivered from up-country to port at a rate which keeps up with export demand, then shippers will incur additional significant demurrage costs while they queue to be loaded. In some cases, that can amount (and has amounted in recent years) to around \$30 per tonne of additional cost to a shipment.
- Secondly, commoditised grain that can be shipped prior to the beginning of the Northern hemisphere harvest typically earns a premium of \$25-35 per tonne. This premium is lost on tonnes that are shipped after that time.
- Thirdly, if a trader cannot ship grain within a reasonable time frame, it will be less willing to buy grain from growers for fear of the price falling before it can be shipped and incurring carry costs. The effect of this is that traders build a risk margin (i.e., a discount) into the local cash prices they are willing to offer growers. This is particularly a problem when international prices are highly volatile as they are now.

- Fourthly, if the market believes that there will be a significant carry-out of old season's stock into the next year, that carry-out will serve to undermine local cash prices both in relation to supply side economics and logistics.

On the other hand, if we can invest in infrastructure projects in line with CBH's strategy to enable the WA grain supply chain to get more tonnes to port and meet the international demand for our grain, then there is a significant opportunity to avoid these costs and capture the \$25-35 per tonne early shipping price premium.

To date, CBH's investment in the supply chain has facilitated an increase in the volume of grain that can be outloaded from the CBH system which grew from 14.5 million tonnes in 2021 to 21.9 million tonnes in 2023, allowing for two back-to-back record crops to be exported efficiently. In summary, these changes mean the market and its participants are now noticeably different to those which existed at the time the Code commenced and that in WA, with the benefit of the co-operative exemption, CBH has invested heavily to facilitate the increase in exports of grain from WA to the benefit of WA growers. CBH does not believe that this investment would have been possible without the exemption from the Code.

Regulatory burden and limitations of the Code

CBH notes the comments by the ACCC in its submission that an increase in the Code's overall regulatory burden, automatic coverage of all PTSPs, significant limitations and limited enforceability and effectiveness mean that the regulatory burden it imposes now outweighs its benefits³.

Regulation should only be warranted where there is evidence of market failure. CBH has provided numerous historical submissions citing that there is no evidence of market failure at in the WA grain supply chain, including at export facilities, and that regulation ultimately leads to increased costs for growers at a time when they are seeking to remain competitive in global markets.

As noted in CBH's previous submissions on this matter, the direct costs of dealing with port access undertakings over the five years 2008-2013 were estimated to have impacted detrimentally on CBH and WA growers by between \$2.6 and \$3.5 million for just wheat exports at CBH's four ports.

As a grower owned co-operative, CBH has no incentive to benefit or gain from exploiting either growers, or exporters, in their supply arrangements. Rather, CBH and its grower members have a significant interest in ensuring that grain is supplied into global markets by way of an efficient and effective supply chain, at competitive price, underpinned by competition from marketers to purchase grain from WA growers.

As we note above, CBH's perspective is from a different approach than the ACCC. That is the ACCC has not identified any significant competition concerns in port export arrangements with the application of the Code being largely exempted from the larger port operators. In these circumstances there would not appear to be the regulatory need for the Code to ensure compliance as the trade exposed nature of the industry means that there are natural incentives to ensure reasonable access terms. Further, in relation to other issues that the ACCC has noted that are outside of the terms of the Code, these remain subject to being governed by the general operation of the CCA.

³ Australian Competition and Consumer Commission. 2023. Second review of the Wheat Port Code. ACCC submission in response to Discussion Paper. 14 December 2023. pp 9.

Conclusion

Providing an efficient and low-cost export supply chain ensures the WA industry is attractive to marketers in accumulating and exporting wheat, allowing for a competitive market for WA grain and infrastructure capacity in the supply chain to achieve efficiencies of scale, further supporting investment in the supply chain to the benefit of growers.

Long-term planning for export infrastructure and efficient harvest receipt and outloading programs in the agriculture industry require deep knowledge, experience and clear focus given the variable Australian climate and rapidly changing market. There is significant potential to create regulatory inefficiencies and unintended consequences by well intentioned, but problematic regulation. The investment that CBH has made with the benefit of the co-operative exemption, is indicative of allowing co-operatives in trade exposed areas to be focused on delivering and protecting value for growers in dynamic and complex environments that are influenced by global markets dynamics, environmental and political challenges.

CBH is therefore of the view that the Code should be allowed to sunset.

The Australian grain supply chain and trade industry, through Grain Trade Australia (GTA) is currently drafting a proposal for self-regulation to support DAFF in a transition to the sunset of the Code on 1 October 2024 if this is the outcome of this review process. CBH, as a member of GTA, is open to working with DAFF to explore this proposal further.

The opportunity to make a submission is greatly appreciated and we encourage you to contact our Head of Government and Industry Relations, Rob Dickie, on 08 9216 6313 or rob.dickie@cbh.com.au if you require any further information.

Yours sincerely,

For: Co-operative Bulk Handling Limited



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