

CBH Submission to The National Competition Council
Regarding Certification of the Western Australian Rail Access
Regime, May 2010

June 17th 2010

Background

This submission has been written by Cooperative Bulk Handling Ltd (“**CBH**”) in response to the State of Western Australia’s application to the National Competition Council (“**NCC**”) that the Western Australian Third Party Access Regime for rail, as legislated in the *Railways (Access) Act 1998* and codified in the *Railways (Access) Code 2000*, is an effective access regime in relation to railway infrastructure, within the meaning of that term given in section 3 of the Access Code.

Purpose of Submission

CBH believes that the WA Rail Access Code has to this date been untested and believes the decision to certify should be postponed until at least one contract has been managed under the Code for a period of time; or at least certified for only a limited period before review.

It is CBH’s understanding that every Access Agreement has been negotiated outside, and is therefore managed outside of the Code.

CBH has concerns with the WestNet Rail designed methodology and assumptions which have been used to help WestNet Rail set their Access Floor and Ceiling prices to, what we feel, are unfair levels and is forcing a shift from rail use to road; to the detriment of both the rail and road networks.

CBH are also very concerned that ten years since the initial sale of the tracks there has been no real above-rail competition, especially on the Narrow Gauge, where the grain industry is most reliant. ARG have managed ours and many others’ Access agreements but, themselves, have an interest in preventing above-rail competition.

Whilst CBH in principal supports the Access Code framework, having only recently assumed control of the rail contract on behalf of the WA grain industry, CBH wants the opportunity to test and assess whether the Code is an effective and fairly managed regime before being able to support it.

Introduction

CBH is a West Australian grain grower based co-operative of around 4,800 members established in 1933. CBH operates a 200 receival point network of over 20 million tonnes of grain storage; including four major export port terminals, which export historically around 95% of the average annual crop production of between 10-12 million tonnes. WA exports represent up to 40 per cent of Australia’s annual production.

The CBH receival point Network covers 320,000 square kilometres of the South West of Australia and grew predominately along the rail network and it remains closely aligned. On much of the 5,100 kilometres of WA rail network, the grain industry is predominantly the sole user and has acted as its long-term custodian ensuring its long-term survival and viability through usage and investment in associated infrastructure. The majority of grain moved from the country sites to port is conducted by rail, though this proportion has recently been declining (as discussed later).

In November 2008, following the full deregulation of Wheat exports; for the first time CBH took control of the logistics task and transport contracts between our sites for all movements under the banner “*Grain Express*”. CBH successfully sought approval from the ACCC to allow the management and coordination of both road and rail movements after the grain had been delivered

to one of our sites. Prior to this, all road and rail contracts were managed by wheat and coarse grain single desk marketers; AWB Ltd and Grain Pool (“the Marketers”).

Up until 1999, both above and below-rail services were operated by the State Government owned Westrail. In 2000, a consortium of Wesfarmers and Genesee & Wyoming purchased the above rail assets and a 49 year lease for the below rail assets (tracks), as well as the remainder of the Grain Industry’s ten year agreement; up until 31 October 2007 for \$585m. Subsequently, in 2006 the rail company was separated and sold for over double the purchase price (\$1.3Billion); the above rail components sold to Queensland Rail, now operated by ARG; and the below-rail sold to Babcock & Brown Infrastructure (now Prime Infrastructure) and operated by WestNet Rail (WNR). Access charges payable to WestNet Rail have been paid by the grain industry via a bundled service agreement the Marketers, and now CBH, hold with ARG.

Since November 2007, a series of short-term interim agreements have been negotiated with ARG, who have continued to separately negotiate and manage Access directly with WestNet Rail on our behalf. CBH is currently conducting a global tender process for all above-rail grain services, which closes on 25th June 2010. This is the first time that the WA grain rail contract has ever been tendered. CBH is also intending on separating Access charges from the currently bundled above-rail charges, in order to have a transparent contract and relationship with WestNet Rail.

Competitiveness of Rail

Historically, rail transport has been the most competitive mode for WA grain to move to port. However, this proportion is declining; caused by uncompetitive pricing (both above and below rail) and a decline in productivity in terms of cycle times and restrictions placed on the tracks’ operating conditions, especially with heat during the dates 1 November to 30 April, where full trains are generally not allowed to run, except by special permission from WNR.

Prior to the expiry of the former rail WA Export Grain Transport and Handling Agreement (WAEGTHA) in 2007, very few of the 146 operational CBH Rail using sites (116 rail loading sites) were more expensive than Road transport to Port. In 2009 for the WA Government’s Strategic Grain Network Review, 46 of the rail using sites costed more in freight to rail than to road¹. Rail charges increased approximately 21% between 2006 & 2007; and a combined 36% between Nov 2006 and Nov 2008. i.e. the first two years after the expiry of the long-term agreement².

Anecdotal evidence suggests that Western Australian Access charges are four times that of similar Eastern States’ charges; and that Access is around 40% of the combined rail charges to CBH. This does not encourage competition on rail, but rather encourages less use.

Grain Express has allowed CBH to take the seasonal and monthly shipping demand volume risk of a rail contract, which individual marketers would not have been able to do without significant additional premiums to those which we as an industry are already being charged. This has not only helped coordinate the complex logistics task and deliver significant tonnages to port efficiently; it has minimised leakage to road which will and is beginning to occur without a viable rail alternative. In addition, the management of freight by CBH has been on a not-for-profit basis, demonstrated by the recent reimbursements to growers of \$8m and to \$4.5m to marketers from overestimations and savings generated in the 2008/09 Season.

¹ CBH internal doc #815916v1

² CBH internal doc #698466v3

Since the sale of the railways, very little, if any, investment has been made to improve the grain lines' track capabilities, yet over the same period, CBH has invested heavily (well over \$50m) in infrastructure which has increased the capacity of the rail Network as a whole. Rapid Rail Loading facilities and increased discharge speeds at Terminals have helped turnaround trains quicker, thus reducing potential 'leakage' onto road. This investment is not considered in the Network's replacement value assessment in deriving floor and ceiling costs for Access.

Pricing Methodology

During our initial investigations, CBH has major concerns with the methodology used to assess the Floor and Ceiling costs. Unlike other States' Codes, Western Australia's uses Gross Replacement Value of rail assets, and considers Modern Equivalent Assets values (MEA).

Apart from no consideration being given to the rail infrastructure CBH has contributed for the benefit of the Network, the "Grain Network" is predominately Narrow Gauge track which has relatively low volumes and has existed for many years; some sections for nearly one-hundred years and to compare against MEAs is unfair. Aside from the Standard Gauge line from Kwinana to Kalgoorlie (which Dual gauge from Kwinana to Northam), most Narrow Gauge track sections have some timber sleepers. Some sections have one in two steel, others only one in four steel; whilst the Bruce Rock to Yillimining is almost entirely timber, yet appears to use MEA methodology and does not account for the fact that some sections have gravel bases rather than ballast.

In addition, the weight of rail track used in the WestNet Rail model assumes that the lightest steel is 41kg/m, yet much of the tracks are 30 and 31kgs/m, which has a dramatic influence on the replacement costs. Rather than 2,700 kilometres at 41kg/m, CBH estimates from a WNR reference document that 625klms of the 2,700 should be 30kg/m and 781klms at 31kgs/m. This is also likely to have an impact on the amount of ballast, sleepers etc.

CBH has identified several other issues, especially around the methodology justifying maintenance and capital and wish to test the effectiveness of the regime.