



CO-OPERATIVE BULK HANDLING LIMITED
ABN 29 256 604 947

Gayfer House
30 Delhi Street, West Perth
Western Australia 6005

GPO Box L886
Perth WA 6842

Tel: +61 8 9237 9600
Fax: +61 8 9322 3942
Email: info@cbh.com.au

www.cbh.com.au

OUR REF: 13145184
ENQ: KarlieMucjanko/Mark Neo
DIRECT LINE: (08)9237 9819

8 February 2013

Carole Gardner
Admin Coordinator
National Access Regime
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

By email: accessregime@pc.gov.au

Dear Sir/Madam

Submissions – National Access Regime

Co-operative Bulk Handling Limited (“CBH”) refers to the Productivity Commission’s National Access Regime Issues Paper release on 30 November 2012 (**Issues Paper**) and the Productivity Commission’s request for submissions from interested parties.

CBH welcomes the opportunity to participate in the Productivity Commission’s public submissions process and wishes to raise some of the issues it has encountered in relation to the Western Australian rail access regime (to which this letter solely relates).

Background

CBH is a co-operative with 4,700 grower members. CBH was established to promote the West Australian agricultural industry through the development and conduct of bulk grain storage and handling operations for the Western Australian grains industry. As a co-operative, CBH is unique in that it is committed to activities which are predominantly for the benefit of the industry as a whole. For a more detailed summary of the history of CBH, please refer to our website: www.cbh.com.au.

The Western Australian rail network used for transporting grain to port is a vital piece of infrastructure and provides the most efficient and safe method of transporting grain (as compared to road). The significance of the Western Australian grain industry to Australia’s national economy is evidenced by the fact that up to 50% of grain exported from Australia originates from Western Australia. Western Australian grain growers are export dependent with up to 90% of grain exported annually to over 20 international customers. Having access to an efficient and cost effective rail network is essential to ensuring that WA grain growers are able to compete against other international suppliers.

The Western Australian Rail Access Regime, Certification and the role of Ministers

The Western Australian Rail Access Regime established by the *Railways (Access) Act 1998 (WA)* and the *Railways (Access) Code 2000 (WA) (Code)* was considered by the National Competition Council (NCC) in December 2010 in accordance with section 44M of the *Trade Practices Act 1974* (as it was then).¹ The NCC considered whether the rail access regime ought to be certified as an effective access regime and recommended that the Commonwealth Minister **not certify** the access regime as effective.

Despite the findings and recommendation of the NCC, the Commonwealth Minister decided that the WA rail access regime is an effective regime under section 44N of the *Competition and Consumer Act 2010* on 11 February 2011.

Page 24 of the Issues Paper provides:

“However, the Hilmer Committee also noted that Ministers may face pressure to advance private interests, and as a result, proposed that declaration be based on explicit criteria and advice from an independent expert body — the NCC. Furthermore, the Committee recommended that the Minister could only make such a declaration if recommended by the NCC and only on the terms and conditions recommended by that body unless the infrastructure service provider agreed to alternative arrangements (these elements were not adopted).”

The Hilmer committee’s findings are clearly inconsistent with the process followed by the Minister’s certification of the WA Rail Access Regime - rather than base the declaration/certification on a NCC recommendation, the Minister certified the access regime as being effective notwithstanding a recommendation from the NCC that the Minister not certify the access regime.

CBH agrees with the Hilmer committee and is of the view that decisions should follow the advice and findings of an independent body (i.e. the NCC). This removes any political or commercial pressures that may be faced by Ministers to make declarations or certifications which favour private interest rights.

Another acceptable process would be for the Minister to make the declaration or certification only once the findings and recommendations of the NCC have been put into place. If this were adopted, current issues with the WA Rail Access Regime could have been addressed while there was political will and motivation to do so.

By way of example, in the NCC Final Recommendation paper dated 13 December 2010 for the Western Australian Rail Access Regime, the NCC acknowledges the difficulties associated with adopting a Gross Replacement Value (GRV) cost methodology, noting that the WA Rail Access Regime is the only regime to adopt the GRV and consistency in national regulation would be promoted with a review, and potentially replacement of the GRV methodology (at page 62).²

The NCC, at page 64, continues by saying that the content of the current review of the Code by the Economic Regulation Authority of WA (ERA) and the submissions made to the NCC by the WA Government suggest changes may be made to the GRV methodology which are expected to address some of the concerns.

¹ The NCC Final recommendation is available at: <http://www.ncc.gov.au/images/uploads/CERaWAFR-001.pdf>

² CBH notes that the Productivity Commission has commented on this issue in its submission to the NCC’s Review of the WA Rail Access Regime: http://www.pc.gov.au/_data/assets/pdf_file/0013/8005/warailaccess.pdf

Since the NCC's Final Recommendation paper, the GRV concerns flagged by the NCC, the ERA, the State government and other industry participants are still unresolved. The ERA's 2009 review of the Code (the ERA is required to review the Code every 5 years) initially recommended the removal and replacement of the GRV to a cost methodology similar to those used by Eastern States railways and other infrastructure assets but later withdrew this recommendation after receiving push back from the leaseholder of the WA rail network.

The opportune time to make changes to the WA Rail Access Regime addressing NCC concerns (not just the GRV issue) would have been at the time the Minister was faced with deciding whether to declare/certify the access regime and not hope that the matters would be dealt with later. As of today, issues flagged by the NCC in 2011 have not been addressed and the ERA's Final Report (commenced in 2009) has been with the State government since December 2011 with recommended changes to the Code still to be implemented. The period of inaction has extended for so long that it risks overlapping with the next 5 year review of the Code by the ERA which is to commence in 2014.

Efficient Investment in Infrastructure

On page 21 of the Issues Paper, the following questions are raised:

"What is the evidence that the access regime has had an effect on investment? In particular, possible 'chilling' effects, or apparent strategic responses relating to investment decisions, including infrastructure capacity, to limit competitor access? What evidence is there that efficient investment has proceeded as a consequence of access regulation?"

These questions are particularly timely in light of the recently released Western Australian Auditor General's Report: *Management of the Rail Freight Network Lease: Twelve Years Down the Track*³ (AG Report).

The objective of the audit was to assess the management of the 49 year rail freight network lease by WA State Government, by determining whether the outcomes to date are in line with original objectives, and whether the WA State Government agencies are managing the rail freight lease to protect the State's interests into the future.

In respect of investment in the WA rail freight network used for grain, the Auditor General concludes:

"The condition of the narrow gauge lines used primarily for carrying grain has degraded. The 'grain lines' have required substantial government funding to remain in service. Two of the uneconomic 'Tier 3' grain lines have been placed in care and maintenance, and without further government funding, the remaining eight are likely to be taken out of service after 2013."

In other words, parts of the grain rail network are receiving little or no investment such that they are being put out of service and mothballed. CBH, as the primary user of these lines with dedicated loading facilities built along these lines, are effectively being denied access to these lines as they continue to remain under the control of the current lessor of the rail network.

On page 35 of the AG Report, the Auditor General provides:

"Placing the lines into care and maintenance while leaving them with the current lessee potentially obstructs prospective new operators from entering the market. This also benefits the lessee by reducing the likelihood of competition while allowing the

³ The Auditor General's report is available at: http://www.audit.wa.gov.au/reports/pdfreports/report2013_01.pdf

lessee to retain the right to future economic benefit from disused rail line corridors. The uncertainty over whether the market can provide an alternative viable operator can only be fully resolved by testing the market, which PTA has not formally done. However, it has received unsolicited approaches."

It is difficult to reconcile the findings in the AG Report with the objectives of the National Access Regime of "promoting the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets".

The Broader Policy Framework

In relation to rail, CBH notes that the Issues Paper summarises the requirements of the Competition and Infrastructure Reform Agreement (**CIRA**) to implement a consistent system of rail access regulation – using the Australian Rail Track Corporation (**ARTC**) access undertaking as a model.

CBH agrees with the CIRA requirements noting that WA rail access regulation diverts significantly from the ARTC model. For example, the ARTC model adopts a more appropriate asset valuation model (the Depreciated Optimised Replacement Cost methodology rather than the GRV model discussed above). The ARTC model also provides more transparency to access seekers including publically available information on track performance, investment strategies, pricing, capacity availability, access terms and conditions (amongst others) which are not available in Western Australia.

CBH requests that the Productivity Commission considers what measures (if any) are being undertaken to implement a consistent system of rail access regulation inline with the CIRA requirements.

Yours sincerely

For: Co-operative Bulk Handling Limited



Karlie Mucjanko
General Manager – Corporate Affairs