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Committee Secretary  
Senate Rural and Regional Affairs and Transport References Committee  
PO Box 6100  
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Canberra ACT 2600  
Australia

### **Senate Rural and Regional Affairs and Transport References Committee Inquiry into Australia's Rail Industry**

Co-operative Bulk Handling Limited ("CBH") notes the Senate Rural and Regional Affairs and Transport References Committee's ("Committee") inquiry into Australia's rail industry in particular, how government procurement, including through the Australian Rail Track Corporation ("ARTC"), and other policy levers can improve the value for money, competitiveness, stability of work and capability of the rail manufacturing industry.

In line with section (b) of the Committee's Terms of Reference, CBH considers that barriers to growth could be lowered and improvements in productivity for Australia's rail manufacturing industry could be enhanced by ensuring the nation's existing above rail network becomes a more attractive and viable transport option through the introduction of a more appropriate and uniform regulatory framework.

This submission sets the imperative for this reform.

#### ***Background - the CBH Group***

CBH is a 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.

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 4,200 grain growers.

#### ***Response to the Terms of Reference***

The Western Australian grain industry is significant to the national economy with up to 50% of total grain exported from Australia originating from the State. 90% of Western Australia's annual crop is exported.<sup>1</sup> CBH itself exports to over 250 customers in 30 countries.

It is therefore essential for CBH and Western Australian grain growers to have access to an efficient and cost effective in-land transport network (rail and road) to ensure grain is available at port as required by the market and that Western Australia remains competitive with other international origins of supply.

Approximately 70% of CBH's freight task is transported by rail however access to the Western Australian Grain Freight Rail Network ("WAGFRN") has become increasingly difficult.<sup>2</sup>

<sup>1</sup> Western Australia's annual crop is around 11.3 million tonnes

<sup>2</sup> The second key element of the Western Australian grain supply chain is road transport; utilized by both growers delivering grain into the CBH storage and handling network during the harvest period and CBH in turn transporting that grain to port (around 30% of the annual crop).

In 2010/2011, CBH made a 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. The new operator chosen by CBH was Watco WA Rail Pty Ltd (Watco).

Following CBH taking control of the above rail, CBH had full visibility of below rail costs from Brookfield Rail (the lease for the WAGFRN is held by various Brookfield entities (it expires in 2049) and operated by Brookfield Rail; part of the Canadian based Brookfield Asset Management Group). Previously below rail access charges were "retailed" to Western Australian grain growers by the previous above rail operator; ARG (now Aurizon) as a package including above and below rail fees.

In 2013, CBH attempted to negotiate a long term below rail access agreement with Brookfield Rail however after 4 months, negotiations stalled and CBH made the decision to seek access to the WAGFRN under the Railways Access Code ("Code"), via the Economic Regulation Authority ("ERA").

### ***Below rail arrangements***

Unfortunately the current management and operation of the WAGFRN is making it difficult for CBH to realise any of the efficiency gains it has generated in its above rail operations.

Brookfield Rail's commercial objectives are increasingly at odds with the users of the WAGFRN on the basis that rail performance standards are decreasing while access fees are increasing:

- Growers currently pay on average \$6 per tonne in below rail access fees to Brookfield Rail which is approximately 40% of a grower's total rail freight cost and 11% of a grower's total average supply chain cost to get grain from their farm to port and loaded onto a ship;
- By contrast globally, below rail freight costs generally contribute 15-20% of the total rail cost of freight;
- In Victoria, the cost of below rail access of railing grain from Dimboola to port (300km) is ~\$1.90 per tonne. In Western Australia, the below rail access cost of railing grain from Merredin to port (300km) is >\$7.90/t. This comparison is based on non-Government subsidised, Australian Rail Track Corporation ("ARTC") rates; and
- Despite closing 509km of Tier 3 lines and proposing to place the Tier 2 Miling line into care and maintenance, Brookfield Rail is currently seeking to significantly increase rail access fees.

### ***CBH's submission to the ERA***

CBH made its submission to the ERA as one of only three proponents to have sought access under the Code. CBH is also the only proponent to have had input from the ERA on the determination of costs relevant to the grain freight rail network operated by Brookfield Rail which is covered by the Code. This has given CBH unique insight into the many failures of the Code in giving effect to the Competition Principles Agreement ("CPA").

- While CBH submitted a proposal for access to the WAGFRN back in December 2013, only in May 2015 was CBH able to commence the process of negotiating with Brookfield Rail under the Code. CBH's proposal for access has only just reached the stage where CBH can commence arbitration.
- Since lodging its proposal, CBH has been forced to seek injunctive relief in the Supreme Court to enforce its rights under the Code (which was ultimately settled with Brookfield Rail before trial), and undertook arbitration proceedings to resolve a preliminary issue about capacity, which took over nine months to finalise.
- The process of obtaining access under the Code has had a significant negative effect on the efficiency of CBH's operations, and has resulted in uncertainty and increased costs for CBH and its grain grower members. Not being able to secure long-term access on reasonable terms to a vital part of the grain supply chain has jeopardised the competitiveness of Western Australian grain growers, and their ability to transport their grain efficiently and effectively to highly competitive international markets.

This directly affects the competitiveness of the Western Australian grain industry along with the reputation of rail as an effective and efficient mode of transport.

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### **Issues with the Code**

CBH's experience as an access-seeker is that the provisions of the Code do not give effect to the CPA and that significant reform is required in order to ensure that the Code promotes access to the railways covered by it.

Fundamentally, the Code does not effectively constrain the monopoly power of railway owners, and therefore does not deliver efficient access outcomes. This is on the basis that:

- The process under the Code is slow and provides a railway owner many opportunities to delay progress. This is compounded by the fact there are no "transitional" provisions that provide "default" access until the process (which may include multiple arbitrations, and potentially litigation) is completed;
- The access pricing outcomes under the Code are highly uncertain, which fundamentally undermines the utility of the process. The gulf between the floor price and ceiling price (which set the parameters for access pricing) is so large it essentially provides no real limit or guidance on pricing outcomes. In the case of CBH's access proposal, the annual ceiling price for access to the portion of the networks it uses is \$526 million higher than the annual floor price for that same portion; and
- The Code does not address the inherent "unevenness" of information between a railway owner and an access seeker. The lopsided nature of this relationship is fundamental to a railway owner's ability to take advantage of its natural monopoly over below-rail services. The Code needs extensive and immediate reform to address this problem.

Indeed, a range of key stakeholders consider the Railways Access Code (2000) provides little effective oversight having been:

- Found deficient by the National Competition Council (NCC) stating in 2011 that "*the Regime does not provide for a consistent approach to regulation of third party access to railways in Western Australia*"
- Criticised by the 2013 Western Australian Auditor General's report Management of the Rail Freight Network Lease: Twelve Years Down the Track as lacking "... *the requirement to meet the needs of rail users*" and
- Considered by the Western Australian Legislative Assembly Economics and Industry Standing Committee in its Report into the Management of Western Australia's Freight Rail Network Report as "*not having allowed the government's vision to be realised due to deficiencies in the lease instrument, the regulatory regime and the Public Transport Authority's (PTA's) management of the lease.*"

Australian rail networks are often spread across a large area and across multiple state access regimes. In order for Australian industry and consumers to benefit where rail has natural efficiencies, there is a need for a consistent regulatory framework ensuring more efficient price setting and performance monitoring. This will permit the movement of goods across Australia, and for export to be as cost efficient as possible. It is CBH's strong view that an opportunity exists for national rail access reform along the lines of a national rail access regime, which is modeled on the key principles provided in the current ARTC access undertaking.

Not only would this provide fairer and more consistent regulation across Australia for users and operators, it would also lower regulatory imposts on above and below rail operators across Australia, improving Australia's competitiveness where rail is a link in export supply chains. By extension, this would increase opportunities for productivity and growth for Australia's rail manufacturing industry.

If you require further information please contact me directly on (08) 9237 9728 or [brianna.peake@cbh.com.au](mailto:brianna.peake@cbh.com.au)

Yours Sincerely

**For: Co-operative Bulk Handling Limited**

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