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13 November 2014

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Senate Rural and Regional Affairs and Transport References Committee – Inquiry into Australian grain export networks

Dear Sir/Madam,

Further to the invitation to Brookfield Rail to forward a late submission to the Senate Rural and Regional Affairs and Transport References Committee ("the Committee") regarding ints inquiry into Australian grain export networks, we also took the opportunity to review a number of the submissions already forwarded. Having done so, Brookfield determined that it be necessary to both provide its submission and separately correct the public record, where erroneous statements have been made and presented as fact. This is in particular regard to the references to West Australian below rail operations made in the submission offered by the West Australian grain handler, the CBH Group.

The Committee may be aware of recent public debate in Western Australia regarding the transparency of Brookfield Rail's below rail operation. Whilst Brookfield Rail manages the state owned freight rail network through a 49 year long term lease, it is unique in that it is one of a few if not the only below rail operator in the world that is not part of a vertically integrated business or an agency of government. Brookfield Rail is a true private, independent, open access below rail provider. It is this independence and the ability to operate without the constraints of a vertically integrated business or as part of government that has enabled Brookfield Rail to actively promote and support freight on rail and achieve the following significant outcomes to Western Australian rail freight network users:

- The ability for customers to negotiate track access directly with Brookfield Rail, which has enabled greater transparency in rail freight pricing and performance.
- The ability for customers to introduce alternate above rail operators into Western Australia, which has provided greater choice and control for customers of their above rail services.
- The investment of significant private capital into the below rail network. Over $2 billion has been invested into the network supporting the growth of the rail freight task by more than 110% over the past 13 years.

There has also been some public debate in Western Australia regarding Brookfield Rail's commercial objectives in operating this important state asset. Some industry groups and the CBH Group have specifically advocated that Brookfield Rail's commercial objectives are at odds with those of network users. They suggest that Brookfield Rail's goals are not aligned or complimentary to local industry goals. This is not the case. The last five-yearly track audit conducted by the Public Transport Authority (PTA) and the recent Auditor General's report demonstrate that the Brookfield Rail freight network is in better condition than it was at privatisation in 2000. One reason for the view that

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Brookfield Rail's commercial objectives or goals are not aligned with local industry, may be due to individual network users not being willing or able to pay a fair and reasonable price to access rail infrastructure assets that require significant annual and cyclical capital investments in order to maintain required safety and performance levels.

In order to respond to this matter of transparency around rail access arrangements and to ensure that fair and equitable information is provided to the Committee, Brookfield Rail would like to correct the incorrect statements made on page 14 of the CBH submission to the Committee[1] regarding rail performance standards decreasing on the Brookfield Rail network whilst track access fees continue to increase.

1. *Statement: Below rail track access constitutes around 40% of a grower freight costs; average access cost are $7-8 per tonne across Western Australia.*

   Correction: Brookfield Rail track access fees currently represent around 30% of grower freight costs; average access cost is currently around $6 per tonne across Western Australia.

2. *Statement: CBH and the growers of Western Australia currently pay access rates to Brookfield that are 2.6 to 4 times greater than rates paid by Eastern Australia growers.*

   Correction: Eastern Australian grower access rates are subsidised, both annually and through cyclic capital investment by relevant state governments. Western Australian is also characterised by the fact that there is a significantly larger annual grain freight task and significant track kilometres exclusively employed by the CBH Group in this state. Grain growers in Western Australia must necessarily carry the burden of that exclusive arrangement.

3. *Statement: Freight rates in Canada and USA are 30-50% lower than Western Australia.*

   Correction: Access rate are only one component of freight rates. Furthermore, it is not commercially or operationally logical to make simple comparisons of access rates from Western Australia with those of Canada or USA, as there are many factors including distance to port, axle load, modal competition etc that impact on freight rates.

4. *Statement: In spite of plans to close over 800km of track, Brookfield Rail has proposed a significant increase in access fees.*

   Correction: The recent closure in of approximately 550km of lightly trafficked Tier 3 rail lines was a direct result of the joint industry / government Strategic Grain Network Review in 2009 and a jointly agreed decision for government to invest in roads and not rail in the Tier 3 areas. The CBH Group was a signatory to that agreement. With regard to recent access negotiations with CBH, Brookfield Rail has looked for a modest increase in fees in order to underwrite the required track investment to deliver a safe and sustainable network capable of delivering the necessary track performance.

[1] CBH Group, *Senate Rural and Regional Affairs and Transport References Committee; Inquiry into grain export networks,* (July 2014), p14

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5. *Statement: Despite Government committing $164.5m to fund required Tier 1 and 2 track maintenance, there are currently over 750 separate speed and mass restrictions.*

   Correction: In 2010, the state and federal governments agreed to invest approximately $150m into the dedicated narrow gauge grain rail lines. This government investment was in the form of an infrastructure grant that in essence provided a direct subsidy to the only user of those rail lines, the CBH Group. Contrary to the CBH statement, over Tier 1 and 2 rail lines there are currently 48 temporary and 132 permanent speed and mass restrictions.

The Canadian short-haul rail model is currently being promoted by the CBH Group as a desirable model of operating lightly trafficked Western Australian regional rail freight lines. Brookfield Rail believes this system is not applicable to Western Australia due to a range of factors including the location of the grain growing area to the export ports and the well-established rail safety standards that exist in Western Australia. In Canada, short haul rail lines operate at much lower safety standards, with subsequent significant higher risk of derailment. These short haul lines also feed grain accumulation sites on the rail mainline, where competitive mainline rail services operate to export ports over distances of around 1,000km.

Furthermore, the Canadian short haul model is yet to be proven to be safe and sustainable for the medium to long term, without the need for significant government subsidies or investment grants. Recent evidence shows that due to a minimal maintenance approach, some Canadian short haul rail lines have not been able to keep pace with recent large harvests, with some growers experiencing significant delays in shifting their grain to port. Even with reduced rail safety standards that result in these short haul rail lines remaining operational in the short term, the clear lack of capital investment and maintenance backlogs will inevitably result in the failure of these rail lines, potentially with catastrophic results. In Brookfield Rail's opinion, having operated and maintained a significant multi-user rail infrastructure network with varying standards of track, the Canadian short haul rail model in its current form is not a safe and sustainable model for rail infrastructure management.

The Western Australian upcountry grain accumulation sites are on average around 200km to port which makes competitive rail freight challenging. Given this short distance to port and with an extensive road freight network across Western Australia, road freight has in recent decades been a competitive threat to the viability of rail freight. In particular, given the current road freight pricing regime, road freight is effectively subsidised by government, in that road freight users do not fully pay the cost of their infrastructure access. It is one of the key reasons why the state and federal governments agreed in 2010 to invest around $150 million in uneconomic dedicated grain rail freight lines in Western Australia, recognising that an uneven playing field exists between road and rail freight. Whilst road freight continues to be effectively subsidised and users do not pay the true cost of access, there continues to be a role for government to assist with rail infrastructure investment or subsidisation.

I trust these comments are of interest and assist the Committee with deliberations for their inquiry.

Yours sincerely,

Paul Hamersley
General Manager Commercial

Brookfield Rail

Senate Rural and Regional Affairs and Transport References Committee

Brookfield Rail submission for inquiry into grain export networks

July 2014

Executive Summary

As the operator of the below rail network in the southern half of Western Australia, Brookfield Rail is a key facilitator in the State's grain export supply chain.

Underpinned by a strong regulatory framework, the Brookfield Rail grain freight rail network provides independent, fair and open access to its customers and supports freight on rail without the constraints of a vertically integrated business or as part of government.

Brookfield Rail's grain freight rail network has the capacity to support the Western Australian grain task no matter the size. Since November 2013, during the most recent "record" grain harvest in Western Australia, the Brookfield Rail network facilitated the transportation of over 10 million tonnes of grain on an annualized basis.

Through its direct commercial relationships and focus on supply chain optimisation, Brookfield Rail has increased the productivity and utilisation of its network delivering cost savings to customers, greater transparency of services and superior efficiency across the entire supply chain.

The Brookfield Rail model in Western Australia demonstrates that bulk above rail services, sourced via a competitive process in the context of a regulated open access regime to below rail, will consistently provide the most efficient means to deliver grain from bulk country storage bin to port. Competitive tension between modes and above rail service providers has driven efficiency in Western Australia.

In the search for capital efficiency, the grain industry will face circumstances, such as that in Western Australia, where a single supplier provides industry level infrastructure. Where there is a lack of critical mass and inherent seasonal variability, a natural monopoly ensures the most efficient economic outcome for the transport economies of bulk grain chains. Accountability and transparency in natural monopolies can be delivered through commercially negotiated service agreements and effective regulated access regimes that drive sustainable commercial outcomes.

Brookfield Rail is of the view that, in the context of relatively low critical mass and inherent seasonal variability, investment capital in below rail infrastructure is best allocated through commercially structured single supplier agreements which are not conflicted, are aligned to government strategy and underpinned by regulation guaranteeing open access, price discovery and, where required, arbitrated outcomes.

Where functions are performed within a regulatory environment, it is important that operators are in a position to obtain an appropriate commercial return and make decisions that are commercially sound to ensure the necessary levels of reinvestment are directed on an economically sustainable basis.

With rail infrastructure assets requiring significant annual and cyclical capital investment to maintain required safety and performance levels, it is vital individual network users pay a fair and reasonable price to access the below rail networks.

Brookfield Rail's below rail network in Western Australia is fit for purpose, ensuring safe and reliable operations, and cannot be directly compared to operating models in place in other jurisdictions.

Background – About Brookfield Rail

In December 2000, the Western Australian State Government privatised its freight rail business, then known as Westrail. The above rail business, primarily the locomotives, wagons and maintenance depots was sold outright and the below rail business, primarily train control, track, signalling and communications infrastructure, was leased for 49 years. This lease provides Brookfield Rail with the exclusive rights to sell access to existing and potential new users of the rail infrastructure.

The Government's motivation to privatise was to find an owner who would introduce efficiencies, and grow and invest into the business to an extent not possible by government.[1] The Government was also looking for an entity that would have a vested interest in increasing the efficiency of the railway, facilitate investment and drive an increase in freight volumes for the benefit of the State.

Since December 2000, Brookfield Rail has managed the State's 5,500 kilometre freight rail network throughout the southern half of Western Australia. Our rail network is a complex mix of narrow, standard and dual gauge track, with axle loads ranging from 16 to 24 tonnes. Sleeper types vary across the network from timber sleepers, 1 in 4 steel/timber sleepers, 1 in 2 steel/timber sleepers, 1 in 2 steel/concrete sleepers and concrete sleepers. Rail sizes also vary from 30 kg/m rail, 41 kg/m rail 47 kg/m rail, 50 kg/m rail and 60 kg/m rail.

Figure 1: Brookfield Rail's Freight Rail Network

To operate and maintain its rail network, Brookfield Rail directly employs over 300 people, 25% of whom were employed prior to privatisation and many of whom live and work in the regional communities serviced by the rail network. Brookfield Rail also indirectly employs a further 150 staff

[1] Criddle, Hon Murray MLC, 'Government announces winning bid for Westrail freight business' (Media Statement, 30 October 2000) <http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsCourt&StatId=1434>

undertaking maintenance tasks primarily through contractor John Holland Rail. Our direct and indirect employees bring with them a depth of knowledge of the railway and its importance to the State.

As lessee of the freight rail network, Brookfield Rail is subject to oversight by three statutory entities:

- the Public Transport Authority;
- the Office of Rail Safety; and
- the Economic Regulatory Authority.

The Public Transport Authority (PTA), Brookfield Rail's landlord, is charged with providing oversight to assure government that the objectives of the lease are being achieved. The relationship between Brookfield Rail and the PTA is focused on ensuring that the railway is fit for purpose and is managed in accordance with the lease. Every five years the PTA undertakes independent audits on the state of the rail infrastructure. The last audit completed in 2010[2] confirmed that '*all the sections of railway were found to be in Fit for Purpose condition.*'[3]

The Office of Rail Safety (ORS) is a business unit within the WA Department of Transport, responsible for administering rail safety in Western Australia. This entity oversees Brookfield Rail's licence to operate as an accredited rail infrastructure manager in line with the *Rail Safety Act 2010* (WA) and *Rail Safety Regulations 2011* (WA). In addition to the continuous reporting that Brookfield Rail is required to provide to the ORS, an annual audit is also conducted on Brookfield Rail's operations. The most recent audit was completed on 12 December 2013 and concluded that Brookfield Rail had '*no Non-Conformances*'[4].

The Economic Regulation Authority (ERA) administers the Western Australian Rail Access Regime which was certified as an 'effective access regime' under the *Competition and Consumer Act 2010*[5].

[2] Willox, GJ., *WestNet Rail Audit of Compliance with the Initial Performance Standards as set out in the Track Infrastructure Leases* (Kalswan Pty Ltd, 2010).

[3] Ibid, p 3.

[4] Letter from ORS to Brookfield Rail, 12 December 2013, paragraph 9.

[5] Bradbury, Hon David MP, 'Decision to Certify the Western Australian Rail Access Regime' (Press Release, 11 February 2011) <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/004.htm&pageID=003&min=djb&Year=&DocType>.

The regime provides 'a framework to ensure effective, fair and transparent competition on Western Australia's railway network.'[6] The regime strongly encourages commercial negotiation between parties, while providing mechanisms to ensure that this occurs within economically reasonable boundaries. Brookfield Rail strongly supports this regime but equally believes some structural changes are needed in order to improve its application.

Investment in the Brookfield Rail Network

In addition to ongoing maintenance activities aimed at providing customers with an efficient and reliable rail network, Brookfield Rail has, over the last 13 years, invested over $2 billion dollars (not including government investment) while undertaking a number of significant capital expenditure projects which have delivered a modernised and upgraded rail network, including:

- installation of concrete sleepers on the narrow gauge rail line from Kwinana to Bunbury;
- upgrading the Kalgoorlie to Esperance line through re-railing and re-sleepering;
- upgrade of our Mid West rail infrastructure, including new concrete sleeper track, advanced asset protection technology, coloured light signalling and optic fibre communications, from Tilley Junction through to Geraldton Port;
- re-sleepering from 1:4 steel/timber to 1:2 steel/timber of over 1,247 km of dedicated grain lines;
- re-railing and replacement of concrete sleepers on the railway from Perth to Kalgoorlie; and
- installation of fibre optic cable data and open channel radio network over the 385km section of railway from Kalgoorlie to Esperance.

Underpinning the investment are commercial agreements with our customers and the financial support of Brookfield Rail's owner, asset management company Brookfield Infrastructure Partners L.P. Brookfield Rail charges its customers for access to the rail network by allocating capacity for a fee. Revenue can be received in one of two ways:

- as access charges across the duration of the agreed contract term; or
- as a combination of an upfront capital payment (received from the customer or the government in lieu of access charges) plus access charges across the duration of the agreed contract term.

Where Brookfield Rail cannot charge access rates that cover:

- Brookfield Rail's operating costs; or
- investment needed in rail lines to facilitate the customer task,

[6] Economic Regulation Authority, *Rail Access* (11 April 2014) <http://www.erawa.com.au/infrastructure-access/rail-access>.

government funding may be provided to subsidise the customer to enable the task to commence and/or continue on rail. This approach is not uncommon in the transport industry in Australia for tasks that are best transported by rail, but are uncompetitive in pricing compared to road[7].

The strong support from Brookfield Rail's owner provides Brookfield Rail with the backing needed to invest significantly in railway infrastructure to ensure it can deliver volumes for its customers and deliver on a key objective of privatisation namely to facilitate investment in the rail network.

[7] Australasian Railway Association, *Towards 2050 National Freight Strategy The Role of Rail* (2010) 26 <http://www.ara.net.au/UserFiles/file/Publications/National-Freight-Strategy-2010.pdf>

Terms of Reference

Principles and Practices Underpinning an Efficient Grain Supply Chain

Brookfield Rail – A Sustainable Model for the Future

Brookfield Rail's core purpose as an independent, open access rail infrastructure operator is to provide its customers with a safe, efficient and reliable freight rail network that facilitates competition and supports economic growth in the southern half of Western Australia.

Brookfield Rail's business is entirely focussed on providing below rail access and as such, it has a singular focus on providing above rail customers and exporters with an efficient and reliable below rail network. Brookfield Rail is not burdened with a vested interest in any one particular industry. This 'neutral' position means that Brookfield Rail's commercial objectives are aligned with the Western Australian State Government's key objectives for privatisation of the below-rail business, which were to:

- increase volume of freight on rail;
- facilitate investment in the rail network; and
- increase the efficiency of the railway;

for the benefit of the State.

The Brookfield Rail model in Western Australia demonstrates that bulk above rail services, sourced via a competitive process in the context of a regulated below rail access regime rail will consistently provide the most efficient means to deliver grain from bulk country storage bin to port. Efficiency in the Australian Grain Industry is found in supply chains where there is a logical balance between the need for competitive tension between modes and above rail service providers (the market), combined with the efficient use of associated capital infrastructure (the marketplace).

With regard to below rail infrastructure, the lack of critical mass and inherent seasonal variability associated with Australian export grain chains are such that investment capital is best allocated through commercially structured, single supplier arrangements which are not conflicted, are aligned to government strategy and underpinned by regulation guaranteeing open access, price discovery and where necessary arbitrated outcomes. Where functions are performed within a regulatory environment, it is also important that operators are in a position to obtain an appropriate commercial return and make decisions that are commercially sound such that the necessary levels of reinvestment can be directed on economically sustainable basis.

In its recent review of the management of the Western Australian freight rail network[8], Western Australia's Auditor General stated that 'The mineral and general freight carrying lines are in better

[8] Western Australian Auditor General's Report, *Management of the Rail Freight Network Lease: 12 Years Down the Track,* Report No 1(2013)

condition now than when they were leased'[9] and that 'The sale and lease of the rail freight network met many of its original objectives. The State was able to step out of the freight rail business, freeing itself from the costs of running the network, and many of the risks of owning the network'[10].

In Western Australia the key regulatory mechanisms are in place but remain the subject of ongoing review as they adjust to the changing needs of the market. Brookfield Rail remains an active participant in that process.

Increases in Overall Freight Volumes

As demonstrated by Figure 2 below, since privatisation tonnages moved on the Brookfield Rail network have more than doubled, increasing by about 113%, with net tonnages for 2013 reaching over 71 million. This demonstrates the successful *increase of volume of freight on rail*, fulfilling a key government objective.

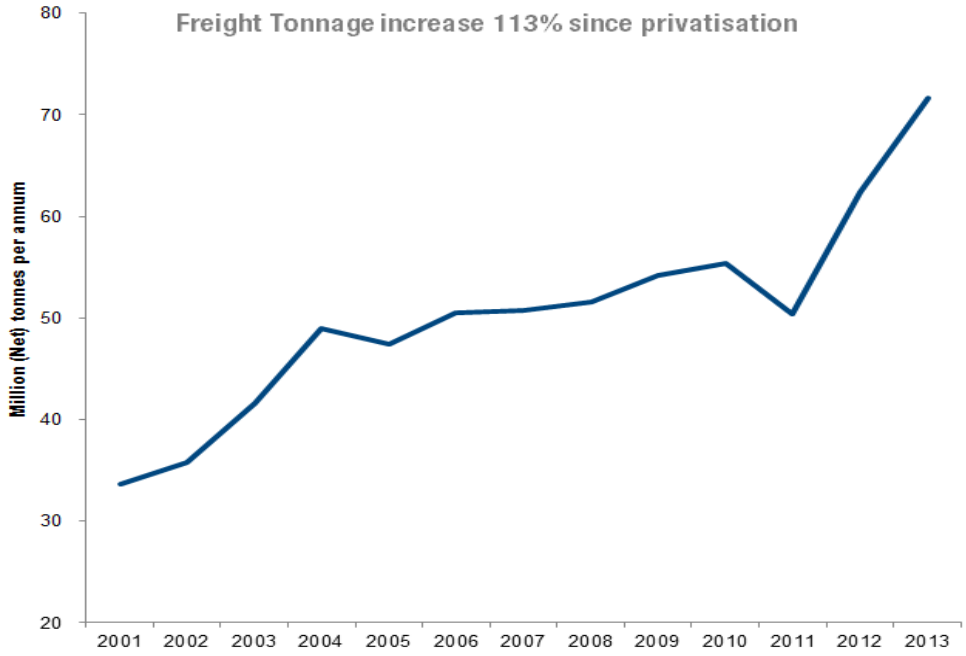

Figure 2: Increase in freight transported on rail

The freight task has changed constantly throughout the history of the Brookfield Rail network in response to the changing needs of industry and the broader economy. Throughout this period, changes to the freight task have continued with the move to longer and heavier trains driving continued productivity improvements and facilitating the significant increase in bulk products transported on the Brookfield Rail network.

Figure 3 highlights the changing nature of the freight task on the Brookfield Rail network since 2001.

2001 **2005** **2013**

[9] Ibid, p8.
[10] Ibid, p8.

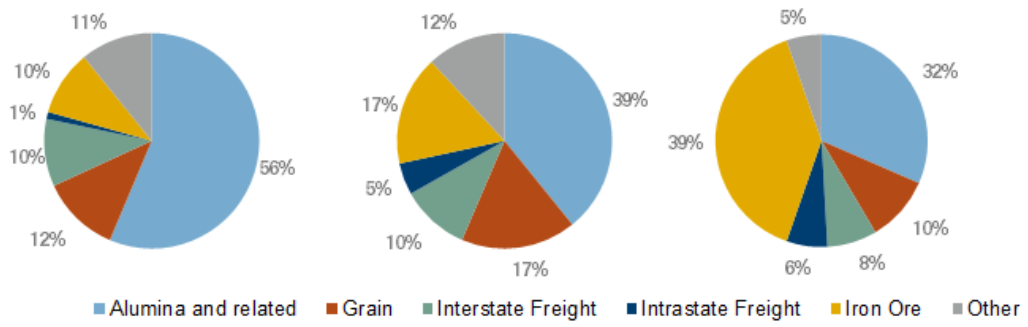

Figure 3: Changing freight task since privatisation by volume

The freight task will continue to change over time and Brookfield Rail will continue to improve the network to support new projects and economic growth. The increase of iron ore exports through Geraldton Port demonstrates how a previously low volume rail line was completely transformed by changing customer demand and the investment by Brookfield Rail of more than $500 million.

In this instance, what was previously a 16 tonne axle load, timber sleeper rail line carrying 3 million tonnes of product per annum; is now the (approximately) 200km, 21 tonne axle load, dual gauge, concrete sleeper rail line from Tilley Junction to Geraldton Port. This railway line is now one of the highest standard and busiest sections on our rail network, delivering over 16mtpa of iron ore and grain to Geraldton Port.

As indicated above, the significant growth in the freight task would not have been possible without substantial investment into our rail network. Over the past 13 years Brookfield Rail has invested over $2 billion (not including government investment) directly into our railway and associated infrastructure.

Increase in WA Grain Freight Volumes

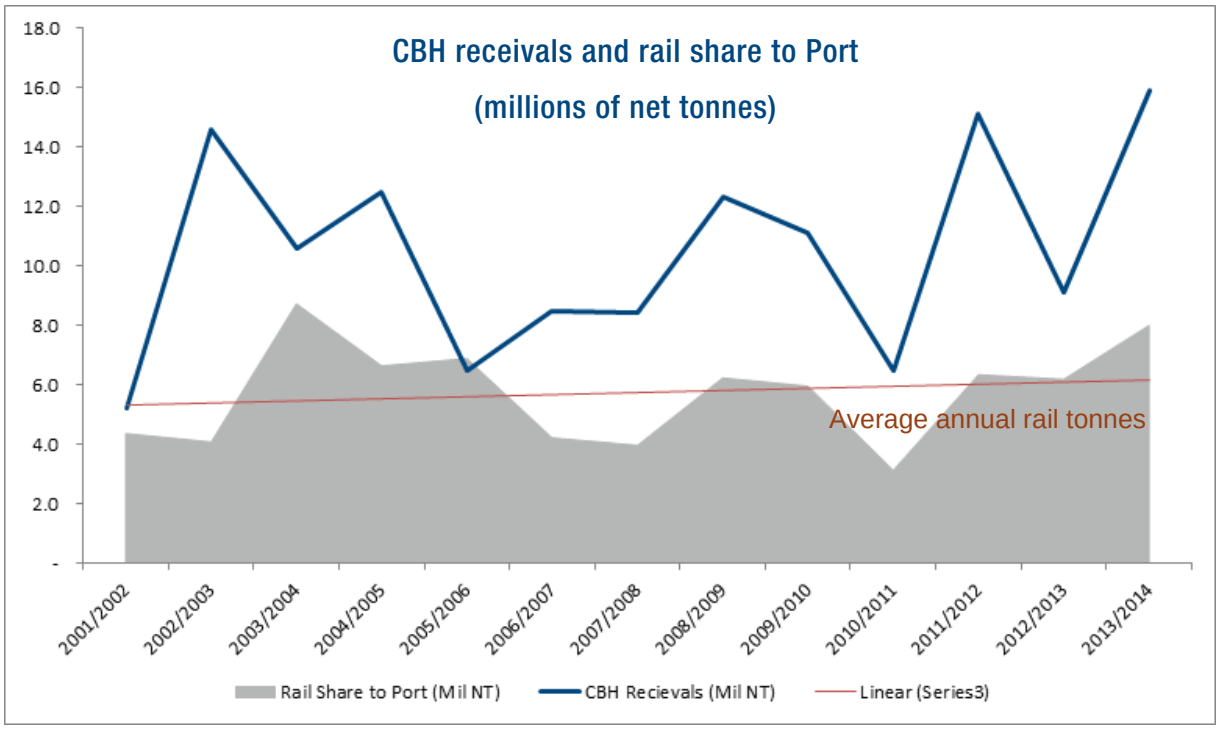

Figure 4: Increase in grain freight transported on rail

Over the same corresponding period, the grain related task on the Brookfield Rail network has also experienced a period of steady, modest growth in the context of significant seasonal fluctuation. Although grain represents its most operationally challenging commodity, Brookfield Rail has consistently demonstrated its ability to meet the demands of the Western Australian grain harvest. There is no doubt that further efficiencies might be available in the context of closer business to business and business to government collaboration.

Increases in efficiency of the Rail Network

The traditional contracting model (refer to Figure 5), used historically in the vertically integrated rail industry, saw above rail operators contract directly with the below rail infrastructure owner for access to rail capacity (train paths). End customers (eg mining companies etc) would then contract directly with the above rail provider for rail haulage.

In response to our customers' needs, Brookfield Rail developed a contracting model (refer to Figure 5) which puts rail capacity directly in the customers' hands. Half of our largest customers have entered into direct commercial agreements with Brookfield Rail for rail network access. This is a significant change from the traditional contracting model and has played a significant part in promoting above rail competition. This change has been facilitated by the split of the Western Australian vertically integrated railway in 2007.

Having control of their below rail train paths, customers now have a far greater ability to competitively choose their above rail operator as well as change their above rail operator if performance does not

meet expected levels. This new model, which also enables greater transparency of services provided across the supply chain, has provided some customers with the confidence to introduce new above rail operators into the Western Australian rail market and purchase their own locomotives and wagons, a positive development for competition that has driven further efficiencies for customers.

Through this separation of vertically integrated above and below rail services, Cooperative Bulk Handling (CBH) in 2012 was able to introduce its own above rail operations through the purchase of its own rail fleets. Without the separation of above and below rail in Western Australia, CBH would not have been able to implement this change.

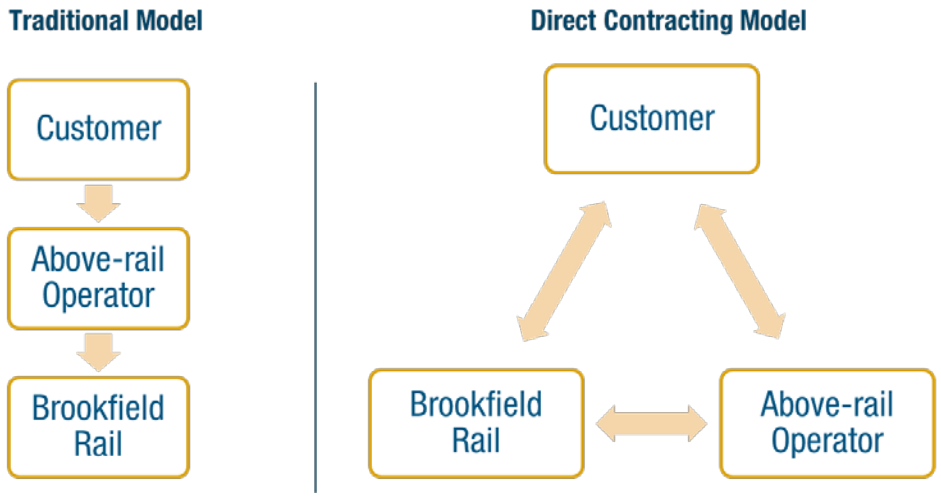

Figure 5: Contracting model

Through its direct commercial relationships, Brookfield Rail has increased its focus on working with customers to optimise the performance of the freight supply chain. Brookfield Rail works closely with customers, port operators and above rail operators on the supply chain with a clear focus on delivering customers' tonnage goals. Increasing the productivity and utilisation of our rail network capacity through supply chain reporting, coordinated outage planning and other initiatives delivers cost savings to our customers and greater efficiency of the entire supply chain.

This process delivers more tonnes on rail and optimises above rail resources enabling both reduced costs and increased tonnages, which benefits all stakeholders. As an example, for one of Brookfield Rail's customers, the increased transparency of performance across the supply chain and focus on improvement resulted in more than a 50% increase in the reliability of their rail services within six months. Another customer now achieves over 95% utilisation of their contracted rail capacity, delivering substantial increased profitability for their business.

Facilitating State Development

In line with our core purpose, Brookfield Rail has and continues to focus on:

- increasing tonnages transported on our rail network;
- investing directly into upgrading and modernising our rail network; and
- working with our customers and stakeholders on initiatives which improve the efficiency of the rail network.

The Grain task in Western Australia

The Western Australian grain industry is an important contributor to the State economy. The forecast increase in global grain consumption in the long term should underpin both the price and demand for grain. Western Australia is the highest grain producing state in Australia. The outlook for grain production both in Western Australia and the rest of Australia continues to be positive.

Grain is currently transported on 3,300 kilometres of Brookfield Rail's rail network. Grain is the sole product transported on 2,400 kilometres of our rail network (dedicated grain lines). Of these dedicated grain lines, operation on 509 kilometres of rail ceased on 30 June 2014 (known as the Tier 3 lines).

Western Australia's annual grain production varies between 6 and 15mtpa, with two of the last three harvests setting new records for total production. On average, approximately 55% of WA's annual grain production is transported by rail, with the remainder moved by road. For Brookfield Rail, on average, grain represents 9% of the total tonnes transported on our network, yet is the sole user of approximately 49% of the rail freight network to move grain to market. This scale diseconomy provides Brookfield Rail with its greatest single network maintenance challenge.

State Government Assistance for the Grain task in Western Australia

Unlike grain rail networks in other states, Brookfield Rail does not receive an annual payment from government to subsidise grain growers for the cost of moving their product by rail.

The Independent Pricing and Regulatory Tribunal's review[11] showed that, to enable rail access rates to be competitive with road transport, the NSW government heavily subsidises the grain freight rail network in that State. The review highlighted that, for the 1,118.5km grain line network in NSW, 97.7% of the operation and maintenance cost of the grain lines is paid by the NSW government, with only 2.3% recovered through access charges to growers[12]. This annual NSW government subsidy, which in 2010/11 totalled $36.7 million, reduces the below rail prices paid by NSW growers and distorts the comparison with below rail charges in Western Australia, which receive no annual government subsidy.

[11] Independent Pricing and Regulatory Tribunal, *Review of Access Pricing on the NSW Grain Network Transport – Final Report* (April 2012)
[12] ibid, p5

The annual subsidy provided by the NSW government approximates the average total annual revenue received by Brookfield Rail for the entire grain task in WA, a task that involves dedicated grain lines that are more than twice the distance of the NSW grain line network.

In its information paper[13], the Australian Export Grains Innovation Centre (**AEGIC**) examined the supply chain costs of each of the grain producing states. The AEGIC information paper also detailed a comparison of rail transportation prices charged to growers in SA, WA, Qld, NSW and Vic. Table 2, taken from that information paper, shows that Western Australian growers pay less for rail transportation no matter what distance grain is being transported.

Distance from bin to port	100 km (± 10km)	200 km (± 10km)	300 km (± 20km)
SA			
$/t	15.6	27.5	29.6
$/t/km	0.16	0.14	0.10
WA			
$/t	10.2	19.3	24.3
$/t/km	0.10	0.10	0.08
Qld, NSW, Vic			
$/t	14.5	22.7	31.0
$/t/km	0.14	0.11	0.10

Source: AEGIC 2013

Table 2: Freight charges by distance

Based on Brookfield Rail's assessment of this analysis, unlike their interstate counterparts, Western Australian growers receive a very competitive rail freight rate in the absence of any annual subsidy being provided by the Western Australian government to Brookfield Rail.

For the grain task, Brookfield Rail has only one customer, Cooperative Bulk Handling (**CBH**). On average the Brookfield Rail charge to CBH for the use of rail represents:

- approximately 30% of the CBH charge to growers for transportation of their grain;
- less than 15% of CBH's charge to growers for storage, handling and transport of their grain; and,
- approximately 2% of the FOB price received by growers for wheat.

[13] Stretch, T, Carter, C and Kingwell, R, *The cost of Australia's bulk grain supply chains an information paper*, Australian Export Grains Innovation Centre (2014)

Conclusion

In conclusion, Brookfield Rail is of the view that the principles and practices that underpin efficiency in Grain Supply Chains depend upon:

1. alignment with Government strategy;
2. collaboration between supply chain partners;
3. competitive tension between modes and above rail operators;
4. an absence of conflicted interests;
5. commercial returns that are sustainable and attract investment; and
6. open access to appropriately capitalised, common user infrastructure, underpinned by effective regulation.

Terms of Reference: Competition Constraints on Grain Transport Services

In 2013 the Australian Competition Tribunal (ACT) affirmed the Australian Competition and Consumer Commission's (ACCC) decision to revoke CBH's exclusive dealing notification, which allowed CBH to require WA grain growers and marketers who used its 'up-country' storage facilities to also use its transport services to deliver grain to port for export.[14] Justice Mansfield of the Federal Court found that '…the potential for efficiency gains to be driven by increased competition in the grain transport markets are substantial'[15] .

In rejecting CBH's notification to maintain an exclusive bundled storage and transport option known as Grain Express, the tribunal concluded that any benefits in CBH controlling all grain movements did not outweigh the public detriment resulting from the substantial lessening of competition. 'It is clear that conduct that greatly decreases the capacity of other providers of transport services to enter the market has a substantial effect on competition, as does conduct that limits the potential range of services.'[16] 'The Tribunal's decision means that for the first time since deregulation of wheat export marketing in 2008, growers and marketers in Western Australia will be free to make their own arrangements for transporting grain to port for export'.[17]. Brookfield Rail believes that Western Australia's current system of regulated open rail access acts as a catalyst to market competition and the realisation of efficiencies described in Justice Mansfield's decision.

The Risk of Market Failure in Australian Grain Supply Chains

The ACT finding demonstrated that efficiency in Australian grain supply chains will rely upon competitive tension throughout the chain. This means that a vibrant and competitive market needs to exist at every point; from farm, freight, storage and handling through to the final consumer. In the absence of this structure, efficiencies established by vibrant competitive markets within one point in the chain are at risk of being undermined at other points.

Constraints to competition in the grain freight task can also come in the form of road transport. It is an Australia-wide issue for the rail industry. Reports have highlighted the continuing decline in the condition of grain lines and the impact on communities and cost to government through increased transport of grain by road.[18] Road freight transport does not pay the true cost for its use of roads[19]. As a result, the rail industry has been constrained in its ability to charge customers the true cost of operating rail. This pricing constraint has affected private investment in grain freight rail networks resulting in a continued deterioration in the condition of these lines. Across Australia no sustainable solution has yet been identified to address these issues.

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[14] 'Competition Tribunal affirms ACCC decision to open WA grain supply chain to competition', ACCC website, https://www.accc.gov.au/media-release/competition-tribunal-affirms-accc-decision-to-open-wa-grain-supply-chain-to> (accessed 12 November 2014).

[15] Federal Court of Australia; Australian Competition Tribunal Application by CBH (No 3) [2013] AComp T3 dated 19 April 2013 at paragraph 360.

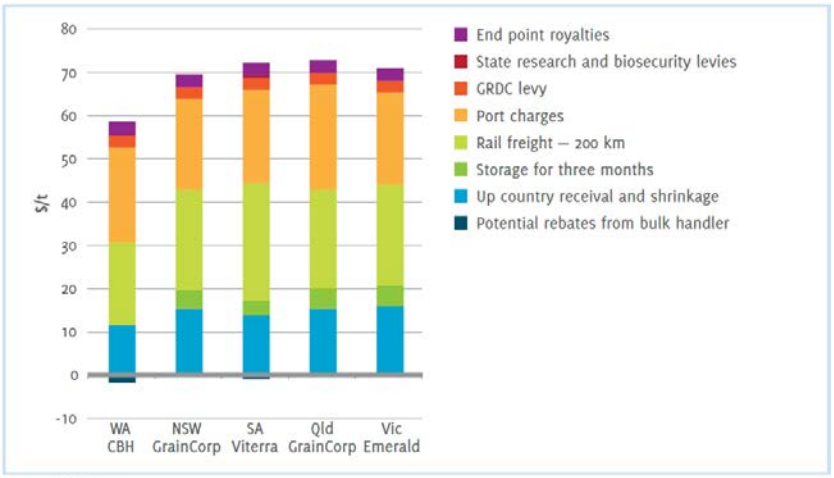
[16] Ibid, paragraph 325

[17] Above, note 17

[18] See Victorian Government, *Grain Logistics Taskforce Report* (2011) and see Independent Pricing and Regulatory Tribunal, *Review of Access Pricing on the NSW Grain Network Transport – Final Report* (April 2012)

[19] Above, n7, p26.

In its information paper[20], AEGIC also examined the supply chain costs of each of the grain producing states. As shown in Figure 5 below, Western Australia has the lowest post farm gate wheat supply chain costs of any state, approximately 20% cheaper than all other states. The findings in this report are also reflected in a CBH report submitted to the Australian Competition Tribunal and referenced on page 23 of the Australian Competition Tribunal judgement dated 19 April 2013. Although questioning the value of the CBH report, the Tribunal stated 'CBH conducted a comparison of fees as a result of a 'benchmarking exercise' conducted for the purpose of setting 'grower return on capital'. CBH benchmarked its storage and handling fees against bulk handlers in other states because it has no competitor in Western Australia. In the case of both storage and handling fees *and rail freight fees*, CBH fees appear to be significantly below those of the bulk handlers operating in other states.'



Source: AEGIC 2013

Figure 5: Composition of post-farm gate wheat supply chain costs by State for 2013-14

Table 1 below provides a detailed breakdown of these costs. It shows that, along with lower up-country storage costs, the rail freight cost is a substantial contributor to the Western Australian supply chain cost being the lowest in Australia. Based on the AEGIC analysis, the Western Australian rail freight cost is 43% cheaper than the most expensive state, South Australia.

This comparison highlights the cost advantage that Western Australian growers have compared to growers in the rest of Australia, an advantage derived in part by rail's strong market share of task driven by the lowest rail costs in the country.

This analysis demonstrates that the Brookfield Rail network delivers a national competitive advantage with a combined free and fair access delivered through the government regulated access regime. Network users have the choice of rail access within or outside of this regime.

[20] Stretch, T, Carter, C and Kingwell, R, *The cost of Australia's bulk grain supply chains an information paper*, Australian Export Grains Innovation Centre (2014)

2013/14	WA — CBH	NSW — GrainCorp	SA — Viterra	Qld — GrainCorp	Vic — Emerald
	($/t)				
FOB price (assume same at all ports)	320	320	320	320	320
Port charges	21.90	20.99	21.78	24.11	21.11
FIS price	298.10	299.01	298.23	295.89	298.89
Up country receival and shrinkage	11.49	15.18	13.64	15.39	15.85
Storage for three months	-	4.50	3.30	4.50	4.80
Rail freight — 200 km	19.00	23.00	27.20	23.00	23.40
GRDC levy	2.73	2.71	2.59	2.64	2.64
State research and biosecurity levies	0.30	-	0.50	-	-
End point royalties	3.00	3.00	3.00	3.00	3.00
Other					
Total supply chain cost before rebates	58.42	69.38	72.01	72.64	70.80
Potential rebates from bulk handler	-1.75	-	-1.10	-	-
Supply chain cost after rebates	56.67	69.38	70.91	72.64	70.80
Farm gate price	263.33	250.62	249.09	247.36	249.20

Source: AEGIC 2013

Table 1: Breakdown of post gate costs by State

The success of the Western Australian rail access regime is further demonstrated by the progressive growth in network volume and the number of above rail operators who freely and fairly operate on the network. However, Brookfield Rail would argue that the market does fail and competition is indeed constrained in the context of modal competition. Although rail users must pay for access, users of the road network are effectively subsidised thereby pushing investment and grain into less efficient export chains. This complex issue needs to be addressed. However despite this shortcoming , the AEGIC report demonstrates the value offered by rail and the Western Australian export grain export model (58% rail) in that Western Australia has the lowest post farm gate grain supply chain costs of any other State.

Conclusion

Brookfield Rail therefore concludes the following in relation to competition:

1. fair and open access to logistic infrastructure will facilitate competition in grain transport chains;
2. competitive tension between modes and between above rail service providers will drive efficiency; and
3. in the search for capital efficiency, the grain industry will face circumstances where single suppliers provide industry level infrastructure. Given the scale and seasonal variation inherent in the grain industry, this is often a necessary outcome. In this context, effective regulated access regimes that drive commercial outcomes will be the key to success and industry sustainability.

Terms of Reference: The Extent to which Transport Arrangements are Transparent and Accountable

Transparency – Fair and Equitable Access

Much has recently been debated regarding the transparency of Brookfield Rail's operation of the below rail business in Western Australia. Whilst Brookfield Rail manages the state owned freight rail network through a 49 year long term lease, it is unique in that it is one of a few if not the only below rail operator in the world that is not part of a vertically integrated business or an agency of government. Brookfield Rail is a true private, independent, open access below rail provider. It is this independence and the ability to operate without the constraints of a vertically integrated business or as part of government that has enabled Brookfield Rail to actively promote and support freight on rail and achieve the following significant outcomes to Western Australian rail freight network users.

- The ability for customers to negotiate track access directly with Brookfield Rail, which has enabled greater transparency in rail freight pricing and performance.
- The ability for customers to introduce alternate above rail operators into Western Australia, which has provided greater choice and control for customers of their above rail services.
- The investment of significant private capital into the below rail network. Over $2 billion has been invested into the network supporting the growth of the rail freight task by more than 110% over the past 13 years.

Accountability - Railways (Access) Code 2000 and its Subsequent Reviews

Transparency and accountability are fundamental to efficient supply chains. Whilst a free and open market will always find its own truth in the price/service mix, as noted earlier, the heavy capital, lack of critical mass, inherent variability and associated demands of the Australian grain export chain means that single supplier arrangements for industry level infrastructure (natural monopolies) will at times deliver grain chains the most desirable commercial outcome. Whilst circumstances such as these will at times draw superficial criticism their alternatives are a recipe for high cost and poor performance.

As noted by Mr Lyndon Rowe, then Chairman of the Economic Regulation Authority (ERA) of Western Australia to the Western Australian Parliament's Legislative Assembly Economic and Industry Standing Committee on 18 June 2014 [21]; "If they are natural monopolies, then the problem is that you can't get competition, because it does not make commercial sense to have more than one set of railway lines that are running down (sic) … If it is a genuine natural monopoly , what you need is good regulation". These are the circumstances that have led to the establishment of mechanisms such as the mandatory Port Access Code for Grain Export terminals and the *Railway (Access) Code 2000* (WA) ("Code").

[21] Economics and Industry Standing Committee Inquiry into the Management of WA's Freight Rail Network dated 18 June 2014.

The Code commenced in September 2001. The Western Australian Economic Regulatory Authority (ERA) undertakes a review of the Code every five years to advise the Western Australian government on how effectively the Code enables the State's rail regime to meet the objectives of the Competition Principles Agreement. Reviews of the Code including public submissions were completed in 2004 and again in 2010. These documents can be sourced from http://www.erawa.com.au/rail/rail-access/railways-access-code-2000-reviews.

In each instance, while specific amendments and improvements to the Code were recommended and in some cases applied, the Code was endorsed and re-endorsed as effective in ensuring open, fair and equitable access to the Western Australian rail network. In 2014 elements of the Code have been practically tested and it has been found that there are areas for improvement which need to be addressed if the Code is to remain an effective conduit to open access into the future.

Brookfield Rail believes that good regulatory regimes ensure transparency and accountability in bulk grain transport. They are necessary; but only as a process backstop. For example, at the time of writing, Access Agreements under the Rail Access Code in Western Australia have generally not been attempted and none concluded. As noted by Mr Greg Watkinson of the ERA to the WA Economic and Industry Standing Committee Inquiry [22] "... the effectiveness of the regulatory arrangements does not mean that the parties need to have an agreement under the access arrangement. The point of regulation is to provide a backstop; so if commercial negotiations break down, they have got a back stop to go under the code (sic)."

Conclusion

1. Brookfield Rail is an independent, open access below rail provider with the ability to operate without the constraints of a vertically integrated business or as part of government enabling Brookfield Rail to actively promote and support freight on rail and achieve significant outcomes to Western Australian rail freight network users.

2. Brookfield Rail's commercial objectives and goals are aligned with local industry and simply require individual network users to pay a fair and reasonable price to access rail infrastructure assets that require significant annual and cyclical capital investments in order to maintain required safety and performance levels.

3. Whilst road freight continues to be effectively subsidised and not pay the true cost of its access, there continues to be a role for government to assist with rail infrastructure investment or subsidisation.

4. In certain circumstances, natural monopolies ensure the most efficient economic outcome for the transport economics of bulk grain chains.

[22] Economics and Industry Standing Committee Inquiry into the Management of WA's Freight Rail Network dated 18 June 2014.

5. Accountability and transparency in natural monopolies can be delivered through commercially negotiated service agreements.
6. Where service agreements cannot be established, effective regulatory regimes ensuring open access will deliver commercial outcomes inclusive of transparency and accountability.