



2 September 2014

Ms Lyn Camilleri
Acting Deputy General Manager
Infrastructure & Transport – Access & Pricing
Infrastructure regulation Division
Email: transport@acc.gov.au

Dear Ms Lyn Camilleri

**Co-operative Bulk Handling Limited's proposed 2014-17 Port Terminal Services
Access Undertaking**

Cargill Australia supports Co-operative Bulk Handling Limited's proposed 2014-17 Port Terminal Services Access Undertaking.

Cargill Australia is of the opinion that CBH's proposal to incorporate both Longer Term Agreements (LTAs) for 'long term' capacity and an auction system to allocate 'near term' capacity (and any capacity not booked under LTAs or via the auction will be allocated on a first-come, first-served basis) will cater for all port customers, both large and small, to secure port access.

The previous auction system reduced competition, tied up significant amounts of capital, resulted in costly and unrealistic auction premiums, distorted interior markets and FOB markets, required additional resources to participate and manage the risks associated with the auction system and prohibited long term wheat contracts with key international customers – all of which we believe was detrimental to the wider industry and WA grain growers. We hold a very strong view that the auction system is not beneficial to anyone in the industry and believe this view is held by most in the industry.

Cargill Australia supports the Co-operative Bulk Handling Limited's proposed 2014-17 Port Terminal Services Access Undertaking for the following reasons:

- LTAs reduce the amount of capital at risk compared to the previous auction system. The use of capital in the auction system provided no economic value whatsoever.
- Cargill Australia is of the firm opinion that the LTAs will actually result in more realistic premiums for shipping slots in the reduced auction system, given significant capacity has already been allocated under LTAs. This will reduce the distortion we

have seen in the marketplace (that was due to large auction premiums being at risk). A non distorted marketplace is beneficial to growers in the longer term because it ensure price signals from the international customer reach the grower in the most efficient manner and without interference from an irrational marketplace.

- LTAs will increase competition in the market (as has been evidenced) while the previous auction system reduced competition in the market over time (as was evidenced). The increased competition (generated by the LTAs) is a good outcome from an economic productivity perspective and we believe will increase the dynamic efficiency within the grain marketplace. We see this through innovation of both new grower products (risk/financing/profit share) and new customer products (risk/financing/profit share/contracts providing certainty of supply) in order for companies to compete in the marketplace.
- LTAs provides three year long term access which is beneficial to the marketers, growers and international customers as it provides certainty. This issue should not be underestimated as LTAs enable exporters to enter long term supply agreements with international customers which cannot occur under the previous auction system.
- The LTAs system, with a reduced auction system, provides existing and new entrants two avenues to secure port access.
- LTAs have widespread industry support as evidenced by 80 per cent of companies accepting their offers. This equates to over 90% of exporters who participated in the market throughout the last three years – which is an overwhelming majority vote in our view.
- LTAs provide commercial certainty for the WA wheat export task and we believe will promote efficiency in the marketplace. LTAs will reduce costs (to the entire marketplace) as ultimately unrealistic premiums and financing costs paid for shipping slots in the previous auction system resulted in inefficient markets and reduced dynamic efficiency.
- Cargill Australia understands that while all exporters did not get their fully capacity requested under the LTAs, historical exporters were more flexible regarding both port zones and allocated months than the new entrants and smaller players. As an example, Cargill was willing to accept tonnage in all port zones (versus the preferred port zone of Kwinana) and was willing to accept tonnage in a total of 11 months (versus the preferred six month window). In essence, the companies that have been using the system during the last three years, offered more to the service provider (in terms of flexibility) and it is not unreasonable that the more flexible requests were able to be accommodated, to a greater degree. This flexibility is essential for the efficient operation of the WA ports throughout the year.
- Cargill Australia believes that the LTAs system will provide CBH with increased certainty in investing in its export wheat terminals and expansions. This will be to the benefit of the industry and Western Australian growers.
- Any unallocated capacity returns to the auction system which is fair and reasonable and gives all exporters, both small and large, the ability to secure further access through the auction system.
- In 2011 many exporters suffered significant financial losses after securing significant tonnage through the auction system and struggled to secure grain to fill shipping slots purchased at very high premiums. This resulted in several companies withdrawing

from the market and the reduced competition should be seen as evidence of the failed auction system.

1. Does the proposed clause provide sufficient certainty and transparency about the method by which CBH will allocate LTA capacity should it be oversubscribed?
 - Yes. The proposed clause is clear and provides certainty and transparency about the method of allocation.
 - Given the oversubscription of the LTAs, it is simply impossible for any allocation method to please 100% of industry participants. It is therefore reasonable to accept that an allocation method that satisfies the majority of participants (e.g. 75%) is acceptable. This hurdle is appropriately higher than the standard hurdle rate of 50% given the nature of the industry.

2. Is the proposed allocation method (i.e. having regard to historical exports of customers) appropriate, and does it appropriately balance the interests of different industry participants and the efficient operation of the facility?
 - Yes – we believe it does. The wording and explanation of this allocation methodology could be better phrased but the essence of the allocation method is valid and appropriate for the industry and does not lessen competition. The response to the LTAs itself showed that the LTAs increased competition.
 - The wording suggests historical exports are the only (and somewhat simplistic) measure for determining future allocation of LTAs. New entrants no doubt see this as an impediment to entry and would argue that this is not fair.

In reality, the measure should be considered as both capability and proven track record for efficiently competing in the West Australian grain marketplace. This includes competing effectively in the grower origination space (via products and services), marketing, exporting and management of market/counterparty and shipping risks associated with bulk grain exports. The capability consideration is critical when considering the need for an efficient operation of the terminal and should not be dismissed by the ACCC. (We believe this is no different than ensuring that “network exit capability” existed when allocating PWCS port terminal capacity for coal producers, where it was also critical that the export facility could operate efficiently). With this in mind, past export volume is a reasonable way of measuring wheat export “capability”. We can provide some good examples where new entrants or companies without sufficient capability have unfortunately eroded value for the entire marketplace and the grower. We are happy to share some of these examples with the ACCC, if requested.

- Cargill Australia understands that several players have requested a pro-rata method of allocation be used. We would argue strongly against this method given it will reward those who requested volumes in excess of their requirement (and/or capability) and penalise those who requested a fair amount, relative to their needs and/or capability. We understand some players expected a pro-rata approach and therefore nominated higher volumes accordingly, with the expectation to be pro-rated to the number they actually wanted. We believe this unrealistic expectation was a result of the process used for the Graincorp LTAs and participants assumed CBH would apply the same methodology. We believe CBH were clear in their request for exporters to submit realistic LTAs requests right from the very beginning and indeed they reiterated this request several times during the process. A pro-rata approach would not take into consideration any capability element and does not balance the interests of different industry participants.
 - The proposed Access Undertaking will provide sufficient volume available (4.7 Million MT) for new entrants to establish themselves in the marketplace and prove their capability. We believe port terminal access will not be the impediment to new entrants or smaller players competing in the marketplace.
 - It should be noted that the ACCC's role to protect the competitive process does not equate to the protection of individual competitors. Whilst we do not support the auction allocation methodology (for all the reasons stated above), we do believe it was a competitive process and the outcome of some companies not exporting significant volumes over the past three years reflected the normal outcome of the competitive process - companies offering better service/products/value to growers and customers ultimately did more volume than those companies offering poorer service/products/value to customers and consumers (e.g. the normal outcome of healthy and robust competition).
3. Will smaller or new exporters have sufficient opportunity to obtain capacity through the auction mechanism, if CBH submits an undertaking that includes the proposed clause?
- Yes, smaller or new exporters will benefit from the proposed 2014-17 Port Terminal Services Access Undertaking as they have had the ability to secure some long term access through the LTAs system. (We do note that new players will not be able to use the LTAs as the sole vehicle to increase their market share by 200-400+% but that is an unrealistic expectation by the new entrant or smaller exporters and should not be used to determine if the LTAs is acceptable. They have 4.7 Million MT available through the short-term capacity system.
 - Cargill Australia is also of the firm view that the industry will behave more rationally as a result of capacity being allocated under the LTAs and this is good for all industry participants. This will be especially the case early in the season, when the crop is unknown. Many players will have some volume (under the LTAs) – which will enable them to talk to customers and originate from growers – and we believe they will not be keen to take on additional risk, before knowing the size of the crop.

Players without LTAs will have fair access to take capacity at this point in time.

- It is worth noting that over the previous three years, we have seen some players bid up the auction (with clear intent to hurt their competition , only to pull out and not actually take auction volume). New entrants have suggested that players with LTAs would have a lower risk of entry (\$10/MT) than those in the auction and they would, as a result of the LTAs, bid up the auction. We would dispute this strongly and argue the players with LTAs volumes already have significant risk on the table and have no reason to want to operate in a distorted market, created by large auction premiums. In fact the players with the LTAs are more impacted by the distorted market (created by non-genuine auction bids) simply due to the volume at play than the players without LTAs volumes. Frankly, it is hard to imagine that the auction premiums could be any worse than they have been since inception and we would argue the opposite should happen.
 - Cargill Australia find it unreasonable that some players are not willing to accept reduced volumes for their own book (or indeed accept that they will be unable to use the LTA as the sole means to increase their market share) and continue with a system that we know reduces competition as opposed to supporting an LTAs. We also believe that several players, who are objecting to the allocation methodology will accept the allocated LTAs, should the LTAs go ahead.
4. Do the proposed acceptance thresholds provide sufficient protection from potential issues of discrimination or hindering?
- Yes - while CBH will have a greater level of control over the LTAs capacity allocations, they must meet the acceptance thresholds which are appropriate.
 - 75% acceptance rate (both by customers and also from a volume of exports perspective) provides sufficient protection. As mentioned earlier, we believe the ACCC is obligated to protect the competitive process whilst allowing the normal healthy and robust competition that drives economic efficiency to take place. The threshold of 75% provides the balance between these objectives.
5. Is the proposed drafting of the clause sufficiently clear?
- Yes, although we think the allocation methodology could be worded as capability and competitive success, as evidenced through historical export volumes may be more helpful.
 - CBH have also shown a willingness to be open and transparency when working through the LTAs process.

Please direct any questions to me on 03 9268 7362 or peter_mcbride@cargill.com

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Peter McBride
Director Corporate Affairs
Cargill Australia Limited