

Building 5, Level 1, 658 Church St

Richmond, VIC, 3121

2<sup>nd</sup> September 2014

**Attn: Ms Lyn Camilleri**  
**Acting Deputy General Manager**  
**Infrastructure & Transport – Access & Pricing**  
**Infrastructure Regulation Division**

**Dear Ms Camilleri,**

**RE: CBH GROUP LONG TERM AGREEMENT PROPOSED UNDERTAKING WITH ACCC**

**Noble Resources Australia Pty Ltd has examined CBH's proposed 2014-17 undertaking, published on 26 June 2014 and CBH's Status of consultations pre and post lodgement of proposed undertaking with ACCC dated 22 August 2014. We have the following concerns:**

- *Proposed variations based on historical records creates a competitive advantage for incumbent users of the Port Terminals. Such mechanism fails to recognise the extent of intense industry consolidation and mechanism allocating capacity that would distort historical records.*
- *New entrants are being restricted and forced to secondary market allocators such as auction that have potential to be manipulated by LTA capacity holders.*
- *The negotiation process has failed whereby customers have been allocated capacity via 'opt in' or 'opt out' timeframes without any transparency in the process nor certainty mid-term.*
- *Acceptance triggers based on 75% of customers and not be rejected by aggregate representing more than 25% of historical exports has the potential to favour mid to top tier and discrimination of smaller participants.*



It is of our view that the change in rules has resulted in unfair and anticompetitive advantages to larger exporters who have used CBH's ports terminals. Historical records would be largely skewed to those with the deepest pockets and risk appetite acquiring capacity through the auction system, not based on market forces.

As a result of the failed negotiation process under the LTA, as currently stands Noble Resources would only be awarded \_\_\_\_\_ of the initial intent advised under the LTA process. From reviewing the overall offers, we assume that at least 60% on aggregate of the initial nominations would now be awarded. Accordingly it is clear that a transparent and uniform approach has not been applied on allocation of capacity.

Being a new entrant into the Western Australia market and only receiving \_\_\_\_\_ of our initial intent, we would now be forced to enter into the secondary allocation mechanism being auction to build a market presence. Since season 2010/11, upwards of four (4) new entrants have entered the Western Australia market in varying forms which highlights the evolving market place. The presence of new entrants provides diversity into destination markets which ultimately provides for additional competition for grain at the farm gate. Forcing new entrants to build a presence through auction, may lead to further industry inadequacies where the premise is for LTA capacity holders to manipulate the auction process to prohibit additional competition within the market. Furthermore this has the potential to create a tiered risk exposure where new entrants are forced to hold/tie-up additional capital in the auction system to originate export business.

We are of the belief that the negotiation process throughout the LTA process failed where marketers were allocated capacity via 'opt in' or 'opt out' within a deadline. Failure to accept the offered \_\_\_\_\_ through the 'opt in' process, based on (if) ACCC acceptance of the proposed variations would have resulted in no capacity award under LTA and sole reliance on the auction mechanism.

The proposed subclause 3.3(e) (iii) (B) states, *'not be rejected by Customers who in aggregate represent more than 25% of exports in the both current year and over the 3 years prior to the current year'*. Noble Resources believe that such inference in the current form could incentivise CBH to favor the mid to top tier participants to ensure such threshold is achieved. We note that in addition 75% of customers must also accept, however without transparency of the process this could be easily be achieved in conjunction with the aggregate requirement. This would create entry restrictions for smaller and new participants.

Noble Resources do support the concept of LTA's that provide certainty to all sized participants within the market. The first round of nominations clearly identified the market is in favor of such mechanisms that allocate capacity on a cost neutral basis and provide a platform to conduct business. However given the level of demand, we are of the opinion that it is important the process is now not pressured into a hastily resolve that ultimately doesn't result in a fair playing field for all and restricts growth/new entrants from entering the market. In its current





form the LTA variations rewards historical conduct which largely was allocated to those with the deepest pockets through the auction system. It is important as an industry we find a uniform approach that limits discrimination, reduces capital risk exposure being tied up in shipping capacity and ultimately rewards the grower at the farm gate.

In our opinion any variations must be carefully considered in light of the longevity of the process to ensure an auditable and transparent framework is in place. We believe the proposed variations in their current form do not meet such requirement.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Chris Coore', with a horizontal line underneath.

Chris Coore

Noble Resources Australia Pty Ltd



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