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CBH proposed 2014-17 Port Terminal Services Access Undertaking

The purpose of this submission is to put forward our objection to the port access undertaking submitted by CBH on 22 August 2014. We specifically object to the introduction of subclause 3.3(e).

Although Plum Grove is in support of Long Term Agreements (LTA's), we believe the latest proposal by CBH is materially different to the original access undertaking published on 22 June 2014. Given we are well progressed on the 2014/15 season and are only 6 weeks away from the start of harvest, we believe it would be grossly unfair on exporters if this new proposal were to be approved at such a late stage in the season. As a major exporter from Western Australia, Plum Grove has already implemented a significant marketing program with both growers and customers based on the original access undertaking made by CBH. We have been in negotiations with CBH for a considerable period of time and at no stage have they given us the opportunity to discuss with them the introduction of a "take it or leave it" clause into their proposal. We were always told that in the event that the LTA's were oversubscribed then the allocation of port capacity would revert to an auction system. We believe that the material nature of the change that would occur through the introduction of subclause 3.3(e), combined with the timing of the change, is significant enough for the latest proposal put forward by CBH should be rejected.

In terms of subclause 3.3(e) itself we have a number of specific concerns that we would like to raise. These concerns also address a number of the questions asked of exporters by the ACCC.

Our first concern relates to tonnage being allocated based on a "three year average of a customer's historical shipments as well as the current year to date". The biggest issue we have with this methodology is the fact that this does not take into account a customer's growth over that period. As a result of the competitive environment that has been created by the ACCC over previous years, Plum Grove has been able to increase its market share of Western Australian exports substantially. Plum Grove's exports have grown exponentially from 2011 to 2013. If the ACCC were to allow CBH to allocate capacity on a simple three year average then it will provide them with a mechanism to not only stop the growth in competition that has occurred over the last 4 years, but in fact force those growing exporters to go backwards. As a result we believe the proposed allocation method is not appropriate and does not properly balance the interests of different industry participants and the efficient operation of the facility. It is our view that any allocation of capacity under an averaging system should also take into account a competitor's growth rate over the same time period.

The second concern we have is with the lack of transparency behind the allocation of capacity as it simply states it will “represent its best effort to balance out Long term Capacity requirements taking into account the historical exports of customers”. There is no specific detail of how capacity will be allocated across slots within a season. As has been highlighted over previous years by the auction system itself, certain slots are worth significantly more than others. Given the significant financial impact of this we believe subclause 3.3(e) needs to provide more detail on how the allocation process will work.

The final concern we have with subclause 3.3(e) relates to the number of exporters required to approve the allocation process in order for LTA’s to be accepted. Specifically we have major concerns with the acceptance methodology and believe this process should be one of “support of / objection to” the allocation, rather than a “take it or leave it” scenario. In the event that an exporter does not support the allocation, yet 75% of other exporters do, then those exporters who originally object to the allocation would be left with zero capacity under the current proposal. Due to the significant risk of being left with no export capacity, we believe the majority of exporters will be forced into accepting the LTA on offer. We believe this has already been highlighted by the latest offering that saw a number of exporters, including Plum Grove, accept their LTA offering from CBH even though they are now objecting to the ACCC. It is our view that if 75% of exporters support the LTA offering, then those exporters who originally objected should still be given the opportunity to accept their capacity under an LTA. By doing this we believe it would remove the “take it or leave it” aspect of the current proposal which is forcing exporters to accept their LTA’s based on fear of being left with nothing if they object.

In summary, we believe the introduction of subclause 3.3(e) is a material change to the original proposal that does not provide sufficient clarity to the allocation process. At no time was the possibility of a “take it or leave it” allocation process ever raised during discussions with CBH. Given these discussions have been occurring over a considerable period of time and we are now on the verge of harvest, it is our view that port capacity for the upcoming season should revert to the auction system while discussions on LTA’s continue. This would allow both exporters and CBH to discuss the introduction of subclause 3.3(e) over a more appropriate period of time.

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