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## Response to the Draft Decision in relation to Viterra's proposed Port Terminal Services Access Undertaking

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JK International Pty Ltd (JKI) broadly supports the submission being made by the AGEA, however we are pleased to have the opportunity to provide further independent commentary on the Draft Decision in relation to Viterra's proposed Port Terminal Services Access Undertaking. Comment is provided in relation to key issues and in order of importance:

- Shipping stem fees and payment thereof
- Allocation of capacity
- Transferability of slots

### Shipping stem fees and payment thereof

JKI has been singularly consistent in its views that whether the allocation of stem is done on a first come, first served basis or via an auction system, the underlying issue of payment of stem fees or auction premiums needs to be competitively neutral. We agree with the AGEA's view that there should be a requirement for all parties to incur "real cost." The key disincentive for overt speculation on the stem is the payment of a fee or auction premium that all companies must book as an expense to the corporation in aggregate, rather than Divisional or Inter Company funds transfers.

JKI would support the AGEA proposal that slot fees for all participants across all BHC ports should be paid into an independently managed trust account or third party administered structure. The fees resulting from non-performance by an exporter result in forfeiture to the incumbent BHC, while fees resulting from non-performance by a BHC result in forfeiture to the fund. The fund would be redistributed to those parties who shipped grain in the designated period.

This issue of shipping stem fee/auction premium payment is one of the key areas not addressed sufficiently in the ACCC's draft decision, and critically this is the main issue which if not addressed will detract from any movement towards an auction system which subsequently allows for tradability/transferability. The ACCC seems to place too much stock in Clause 9.5, B, (d), (vi); which states "*the Auction System should feature rules to create disincentives which apply equally to all clients on booking in excess of reasonably anticipated requirements. For the avoidance of doubt, the Auction System will satisfy this requirement if it involves a mechanism to*

*rebate any auction premiums paid by clients as part of the auction process to users of the Port Terminals on a pro rata basis; and"*

The above assumes good will from all parties; and that there is sufficient incentive for the BHC's, in this case Viterra, to record stem purchase as a Corporation expense which has a direct impact on the Company's cash flow. JKI does not believe Viterra will happily negotiate this power or benefit away.

### **Allocation of Capacity**

JKI supports the ACCC finding that an auction system is the most efficient mechanism for allocating and pricing shipping capacity.

JKI understands that the process for establishment of the auction system and business rules will involve consultation with exporters and other stakeholders. JKI wishes to be involved the process for development of the rules as these are critical to ensuring that the auction system operates effectively and efficiently and does not have any unintended consequences.

It is important that as these systems are developed they are done on a minimalist basis so as not to increase overtly cost and complexity. Ideally and ultimately a national, independent system of stem auctions/access structure and fee/premium payments are likely to deliver lower administrative costs, reduced complexity along with increased transparency and liquidity.

### **Transferability/tradability of Slots**

JKI supports the introduction of flexibility through the transferability and tradability of slots. It is critical that there be a transparent and open basis for the transfer of purchased slots. It is acknowledged that there will need to be rules that ensure that any secondary or tertiary purchaser of slots meets the BHC's requirements as laid down by their Service Level Agreements. Transfers of slots are not to be difficult or costly.

Tradability and or transferability will assist the market to ensure the right commodities, in the right volumes, are shipped at the most commercially advantageous times. This will benefit not only the trade but all components of the supply chain.

### **Summary**

JKI believes significant steps have been taken to improve shipping stem price discovery and subsequent tradability of same. However, JKI is not satisfied there exists enough strength in the language surrounding the payment of shipping stem fees or auction premiums and their need to be a "real cost" to Viterra. Unless this is sufficiently addressed, the progress made in the areas of stem price discovery, tradability and transferability will have been significantly devalued.