



Australian Grain Exporters Association

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

AGEA welcomes the opportunity to provide comment on the Draft Decision in relation to Viterra's proposed Port Terminal Services Access Undertaking. Comment is provided in relation to key issues of:

- Allocation of capacity
- Transferability of slots
- Transition arrangements for the shipping stem
- Shipping stem fees

Allocation of Capacity

AGEA supports the ACCC finding that an auction system is the most efficient mechanism for allocating capacity.

AGEA understands that the process for establishment of the auction system and business rules will involve consultation with exporters and other stakeholders. AGEA 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. There has been considerable experience gained through the operation of the CBH auction system which will assist in developing the business rules governing the proposed auction system by Viterra.

AGEA has previously advocated for consistency in key principles across all the BHC access undertakings. AGEA believes that the greatest efficiency will be gained if the auction systems operated by CBH and Viterra can be aligned.

In regard to auction premiums, AGEA supports that these are collected and rebated to exporters on a basis to be determined. AGEA believes that the rebates should be provided to those who participated in the auction and executed their booking.

Transferability of Slots

AGEA supports the introduction of flexibility through the transferability of slots. It is noted that the proposed rules for the transferability of slots are interim rules and that these will be reviewed in conjunction with the development of the auction system. AGEA believes that the proposed interim system could be enhanced to provide greater flexibility and requests that there is opportunity to make comment on the system during the consultation in relation to the auction system.

Transition arrangements for the shipping stem

AGEA recognises that the proposed transition arrangements for bookings currently on the stem and in the period until the auction system is in place will impact individual exporters differently, depending on their own circumstances in relation to stem bookings. AGEA encourages individual members to provide comment on the transition arrangements if they have any issues.

However, AGEA believes that the transition arrangements should be transparent and the stem updated in a timely manner to reflect any changes. Any new capacity that becomes available should be offered in a transparent and fair way to all exporters.

Shipping stem fees

An issue that was raised in the AGEA submission during the consultation process in regard to the proposed undertakings for Viterra, GrainCorp and CBH related to treatment of stem fees to ensure that exporters have certainty to acquire and execute slots without having to speculate. To achieve this, all parties should incur a 'real cost' for capacity booked and not utilised.

It was proposed that slot fees for all participants across all BHC ports should be paid into a trust account. 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 all parties who shipped grain in the designated period. The mechanisms are slightly different for the various BHCs, for example under current arrangements:

- in the case of Viterra and Graincorp, this would be the down payment (prepayment) of a part of the fobbing charge which is forfeited if capacity is not used; and
- in the case of CBH's auction premium it is the prepayment of a premium to secure capacity at CBH auction, accompanied with the commitment to pay all/part of the fobbing charge(s) if the slot is not used (or lost capacity charge).

The significant difference is that in the case of CBH the auction premium gets redistributed to those who ship, whereas the prepayment in case of Viterra and GraiCorp and the lost capacity charge in CBH gets paid to the BHC.

The ACCC draft decision has not addressed this issue and AGEA would encourage the ACCC to consider the establishment of an independent management to ensure that capacity allocation and management occurs in a competitively neutral way.