



CBH GRAIN PTY LTD

ABN: 39 089 394 883

ACN: 089 394 883

Australian Financial

Licence No. 269743

Gayfer House
30 Delhi Street, West Perth
Western Australia 6005

GPO Box L886

Perth WA 6842

Freecall: 1800 199 083

Tel: (+61) 8 9216 6000

Fax: (+61) 8 9481 3553

Email: info@cbh.com.au

www.cbh.com.au

OUR REF: LM2001-0041

YOUR REF:

ENC: Brian Mumme

DIRECT LINE: 08 9216 6089

31 August 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

By email: transport@acc.gov.au

Dear Sir / Madam

Viterra Port Terminal Services Access Undertaking – ACCC Draft Decision

I refer to my recent telephone discussion with Kerry-Lee Taylor on 25 September 2011 and write in response to the release of the ACCC's Draft Decision on Viterra's Port Terminal Services Access Undertaking. In particular, I wish to comment on the draft revision of the proposed 2011 Undertaking (**Revised Draft**) and the transitional arrangements put forward by Viterra. This letter may be placed on the public register.

1. Capacity allocation process

1.1 Transitional arrangements

(a) CBH Grain was pleased to see that the ACCC has decided not to accept a straight rollover of the current Viterra Access Undertaking based on the inefficient process for allocation of capacity. CBH Grain was also encouraged by the ACCC's consideration and adoption of a number of the submissions in the letter to ACCC dated 4 March 2011. However, the Revised Draft does not propose the introduction of an auction system until May 2012 and therefore, does nothing to assist in promoting a fair and efficient market for CBH Grain to obtain capacity for the peak shipping period of January to April 2012.

(b) CBH Grain does not support the proposed transitional arrangements for the January to April 2012 period. These arrangements are unfair, inequitable and not beneficial to Australian grain producers in that it essentially retrospectively ratifies large shipping allocations to two exporters.

(c) Viterra has submitted that it is required to accept nominations already received for bookings for execution after 30 September 2011 in accordance with the existing Port Loading Protocols (PLPs) (i.e. on a first come, first serviced basis). In addition, the transitional proposal involves Viterra removing bookings from Port Lincoln and Port Adelaide Outer Harbour to align its capacity with the proportion of bookings it held at these two ports for the shipping period January to April 2011. The overall effect of this proposed interim arrangement will be that virtually all the available capacity at Viterra's two main ports from January to April 2012 will still effectively reside with two exporters.

(d) CBH Grain considers it highly unusual for exporters to be permitted to make bookings more than a year in advance of shipment. At the time the relevant nominations were made, Viterra had an access undertaking in place that was accepted by ACCC in 2009. However, CBH Grain could not implement a booking process and plan export programs until such time as it knew there was certainty regarding the terms of an accepted undertaking and the conditions of supply. Accordingly, CBH Grain submits that all bookings made for the peak period of January to April 2012 were based upon a highly speculative premise and as such, the ratification of these bookings by ACCC for the upcoming peak period can be seen to facilitate an arbitrage on the ownership of shipping capacity, rather than promoting access to shipping slots based on rewarding the most efficient exporters in the market. In essence, the ACCC appears to have ratified a 'baseload system' with none of the protections and efficiencies provided for in CBH Grain's proposed system.

(e) Despite the proposed mechanism to allow for capacity and shipping slots to be traded and bookings moved between ports, the cascading of bookings (whereby Viterra would forfeit nominated capacity down to other shippers) may not release enough capacity for all the remaining bookers to support sufficient liquidity in the market. Based on the level of capacity held by Viterra in 2011, the proposed process essentially has the effect to authorise the bookings made by Glencore and Viterra for January to April 2012 which will result in insufficient capacity to meet the demand of all the other exporters in the market, thus reducing and lowering prices for Australian grain producers.

(f) The retrospective ratification of an inefficient and flawed process is evidenced by the fact that ACCC itself is of the view that the process is "inappropriate going forward" and that it will result in "growers having considerably fewer exporters competing to purchase their wheat".

(g) Tradeable or transferable shipping slots

(h) Viterra have previously suggested to CBH Grain that its only option is to attempt to trade slots with exporters who nominated ahead of CBH Grain in order of priority. However, CBH Grain considers that shipping slots obtained by Viterra and Glencore for January to April 2012 have been acquired pursuant to a flawed process. Accordingly, the introduction of a trading and transfer mechanism will now permit these two exporters to trade these shipping slots, make a profit and impose additional costs on other exporters. This is predominantly due to the fact that

there was no certainty in place regarding the terms of an access undertaking and that ACCC did not have a position in place at the time of the relevant nominations.

(i) CBH Grain appreciates that the implementation of an auction system for the following season (2012/2013) will dictate that exporters pay a premium, however, at least under this system, the premium will be non-discriminatory and determined by the market.

(j) In all likelihood, given the flood of speculative nominations for capacity at Viterra's main ports, the bookings forfeited by Viterra will be consumed by the other exporters who are ahead of CBH Grain in accordance with priority allocation system, leaving CBH Grain without the opportunity to access any of its required shipping slots for the upcoming season.

1.2 Determination and publication of capacity

(a) CBH Grain considers that the manner in which Viterra determines and subsequently offers capacity is not efficient or clear. Viterra have indicated that, in determining capacity, a process is applied whereby nominations for Export Select can be made until all of the designated Export Select capacity is utilised. However, it is still not clear how the Export Select and Export Standard capacities will marry up and align.

(b) As per the submissions of CBH Grain in the letter to ACCC dated 4 March 2011, CBH Grain considers that, in circumstances where a fully integrated supply chain is not in operation (i.e. in the case of Export Standard), exporters should be put in a position where they can determine how the two systems integrate together.

(c) CBH Grain considers that the allocated capacity provided by Viterra needs to be a 'hard' or numerical figure which is independent of supply chain considerations. In this circumstance, if Viterra decided it was necessary to review that figure and offer additional capacity, then that additional capacity should be offered in a clear and transparent manner and be made available to all parties. If Viterra provided clear allocated capacity amounts (i.e. when offering Export Select), CBH Grain and other exporters would be in a better position to co-ordinate other resources to meet any additional capacity and plan export activities. Moreover, the assumptions which Viterra takes into account in determining capacity should be disclosed to exporters to provide additional certainty in this context.

(d) CBH Grain continues to support the idea of a phased approach to capacity allocation where Viterra provides a 'hard' and numeric allocation of capacity at given points in time. This would subsequently involve the release of additional capacity with a further 'hard' opening once the various general factors (associated with determining capacity in the South Australian Port Terminal network) can be assessed and exporters have collectively determined, in conjunction with Viterra, the additional transport capacity they are able to provide.

2. Substance of Indicative Access Agreement

CBH Grain notes that the ACCC regards the publication of key port terminal information as an alternative approach to imposing ring fencing mechanisms. Whilst CBH Grain agree that this approach would provide

more clarity and certainty for access seekers, an express obligation in the relevant Port Terminal Services Agreement that Viterro Operations will not pass any information concerning CBH Grain to Viterro Limited without CBH Grain's express consent would further reduce the opportunity for Viterro's trading arm to gain an improper advantage as a result of greater information access.

3. Conclusion

CBH submits that the effect of the interim arrangements proposed by Viterro is to fundamentally abrogate the idea of providing fair and equitable port terminal access through an undertaking. If implemented, the interim arrangements will prevent CBH Grain from having the opportunity to access any of its required shipping slots for January to April 2012, and punish CBH Grain for the fact that there was no certainty regarding the terms of an accepted undertaking at the time nominations for this period were initially made. To promote a fair and efficient market for CBH Grain to obtain capacity, all bookings for the peak period of the upcoming season should be cancelled and a new 'hard' opening date for nominations put forward.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Mumme', is positioned above the typed name.

Brian Mumme
General Manager – CBH Grain