

Taylor, Kerry Leigh (TGPO)

From: Tim Krause [Tim.Krause@viterra.com]
Sent: Tuesday, 28 February 2012 5:56 PM
To: Taylor, Kerry Leigh (TGPO); Camilleri, Lyn
Cc: Damian Fitzgerald
Subject: Enquiries Arising from Meeting
Attachments: 11004004_1 Viterra - auction vs non auction changes.DOC

Confidential – Not for public register

Dear Kerry

Thank you for meeting with Damian and me last week. This email sets out the further information that you requested during the meeting. In particular:

- we attach a copy of the spread sheet which was included in the Consultation Notice to explain all the proposed changes. We have updated that spread sheet both to reflect the further changes made following feedback provided by clients during the consultation process and to clarify whether the relevant change is made under clause 9.3(b) of the access undertaking (non-auction changes) or clause 9.5(b) (auction changes); and
- we confirm that since 1 October 2011 there have been 17 transfers of bookings (representing 216,900 tonnes) and 9 movements of bookings (representing 198,000 tonnes).

Following our meeting, we also thought that it might be helpful to clarify a couple of the points that we discussed. In particular:

- There was some discussion around what the term “primary allocation” means. From our perspective, “primary” refers to the fact that (with the very limited exception of “Additional Capacity”) clients cannot make a FIFS booking unless the relevant Capacity has already been auctioned. Accordingly, the primary way that Capacity is allocated is via auction. We understand that, during consultation, certain participants have highlighted that, in the 2011/12 season, a large volume of CBH capacity was allocated through the FIFS system (with the suggestion that if the majority of capacity is allocated via FIFS, then FIFS is the “primary” method of allocation). However, in our view, this suggested interpretation is highly problematic and unrealistic. Viterra has no control over the amount of Capacity that is *actually* acquired at auction (or, indeed, the amount that is subsequently allocated at FIFS or via transfers). Viterra can only make Capacity available for purchase at auction, and clients can bid for that Capacity if they want it and value it at that time (clients will either acquire the Capacity at the \$5 Auction Fee or at the Auction Fee plus premium if they wish to). However, it is possible that clients may decide they do not wish to acquire Capacity at auction. In this situation, it is still in Viterra’s interests (as an infrastructure provider) to seek to fill that Capacity and recover the costs of providing the infrastructure. It is possible that in some years nearly all Capacity will be allocated at auction. In drought years, it is possible that clients may choose not to bid at auction. Provided that the first opportunity clients have to acquire their Capacity requirements (at the price they are willing to pay) is at auction, and bookings cannot be made under the FIFS system until they have had this opportunity, then it is clear that the auction represents the primary method of allocating Capacity.
- There was also some discussion in relation to what would happen to the “surrender rebate” if Viterra chose not to put the relevant Capacity back out to the market for booking by a third party (e.g. to alleviate operational capacity constraints / vessel queues etc). This is not expected to occur frequently. Except in time of significant over-supply, trading and movement of

bookings is far more likely. However, if it did occur, Viterra would provide the 50% rebate to the client, on the basis that the client should not be penalised for the unexpected capacity constraint or Viterra's decision not to put the capacity out to others. From our perspective, this is a very minor issue and we will make our intended approach clear in communications to clients.

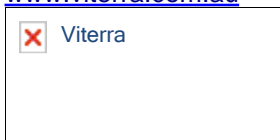
- There was some discussion in relation to the ARC's powers if a bidder were to break the Auction Rules. On reflection, it is not immediately apparent how a client could breach the Auction Rules. If a client does not satisfy the auction participation requirements, it will not be able to participate. If a client submits an invalid bid during the auction, the bid will not be accepted. However, it is unclear to us in what other circumstances there might be a breach that would require action from the ARC. Ultimately, if a client were acting in a way that undermined the efficacy of the auction, Viterra would probably refer the matter to the ACCC, rather than the ARC.
- At the meeting you also asked whether the obligation to pay the Auction Premium Rebate could be negotiated out of the Standard Terms. While technically it could be (as all provisions of the Standard terms – other than the Port Loading Protocols – are negotiable), this is highly unlikely. It is unclear why a client would request this, and if Viterra were to seek this amendment, it is very likely that it would result in the client insisting that it continues to receive the services on the Standard Terms.

If the Commission has any further questions, we would be pleased to assist.

Regards

Tim Krause
General Manager Strategy and Compliance

124-130 South Terrace Adelaide SA 5000
t: +61 8 8238 5227 / m: +61 419 797 107 / f: +61 8 8425 0214
tim.krause@viterra.com
www.viterra.com.au



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