



Australian
Competition &
Consumer
Commission

Consultation Paper

Viterra Operations Limited

**Proposed auction system for
allocating port terminal capacity**

Revised auction proposal

20 July 2012



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Glossary

ACCC	Australian Competition and Consumer Commission
Auction Objection Notice	As described in clause 9.6(a) of the 2011 Undertaking (as varied)
Auction Features	Clauses 9.5(d)(i) to (vii) of the 2011 Undertaking (as varied)
Auction Variation Notice	As described in clause 9.5(b)(i) of the 2011 Undertaking (as varied) submitted to the ACCC on 17 February 2012 – containing Viterra’s initial auction proposal
CBH	Cooperative Bulk Handling Limited
CCA	<i>Competition and Consumer Act 2010</i> (Cth) (formerly known as the <i>Trade Practices Act 1974</i> (Cth))
Draft Revised Proposal	Revised auction system proposal subject of industry consultation, dated 7 June 2012, revised on 13 June 2012
PLPs	Port Loading Protocols – Schedule 2 to the 2011 Undertaking
Revised Proposal	A series of variations to Viterra’s auction system as prescribed in Viterra’s Auction Variation Notice, detailed in the documents submitted to the ACCC on 12 July 2012
Standard Terms	Port Terminal Services Agreement for Standard Port Terminal Services
Viterra	Viterra Operations Limited (ABN: 88 007 556 256) – Operator of the Port Terminals in South Australia
Viterra’s trading arm	Viterra Limited (ABN: 59 084 962 130) – accredited exporter of bulk wheat
WEMA	<i>Wheat Export Marketing Act 2008</i> (Cth)
2011 Undertaking	Port Terminal Services Access Undertaking accepted by the ACCC from Viterra pursuant to Division 6 of Part IIIA of the CCA on 28 September 2011(as varied)

1 Introduction

The ACCC is conducting public consultation as part of its informal assessment of Viterra's revised proposed auction system (Revised Proposal). This paper seeks stakeholder views on Viterra's Revised Proposal by 5:00pm Friday, 3 August 2012.

On 28 September 2011 the ACCC accepted, pursuant to Division 6 of Part IIIA of the CCA, the 2011 Undertaking provided by Viterra Operations Limited (Viterra). Viterra applied to vary this undertaking on 20 April 2012 and on 9 May 2012 the ACCC consented to Viterra's application to vary its 2011 Undertaking. The variations provide:

- additional time for Viterra to introduce an auction system
- delay the operation of the prohibition on Viterra providing port terminal services to its own trading arm
- to allow the shipping stem to be opened on a first in, first served (FIFS) basis on 16 August 2012, for bookings during the period 1 October 2012 to 31 January 2013 in the event that the auction system has not been introduced.

The 2011 Undertaking relates to the provision of access to services for bulk wheat export at six grain terminals operated by Viterra in South Australia. These terminals are:

- Port Adelaide, Inner Harbour
- Port Adelaide, Outer Harbour
- Port Giles
- Wallaroo
- Port Lincoln
- Thevenard.

The 2011 Undertaking was submitted in accordance with legislative requirements of the *Wheat Export Marketing Act 2008* (Cth) (WEMA).

The 2011 Undertaking requires Viterra to introduce an auction system to allocate port terminal capacity. The 2011 Undertaking provides that the auction system is to be introduced by varying the Port Loading Protocols (PLPs) and/or the Standard Terms pursuant to which it provides port terminal services to exporters. The process to be followed in order to introduce an auction system is detailed at clauses 9.5 and 9.6 of the 2011 Undertaking. Pursuant to this process, Viterra submitted its Auction Variation Notice on 17 February 2012.

The ACCC is required to assess the proposed auction system and decide whether or not to issue an objection notice (Auction Objection Notice) having regard to the matters set out in clause 9.6(c) of the 2011 Undertaking, discussed below.

The ACCC assessed the auction system outlined in the Auction Variation Notice and after having regard to the matters set out in clause 9.6(c) of the 2011 Undertaking, issued an Auction Objection Notice on 11 April 2012 in relation to some of the proposed variations. Further details regarding the ACCC's Auction Objection Notice are set out in section 1.4 of this Consultation paper. Viterra's Revised Proposal is intended to address the ACCC's concerns as specified in the Auction Objection Notice.

1.1 Viterra's 2011 Undertaking

On 23 December 2010, Viterra submitted a proposed undertaking for assessment under Part IIIA of the CCA by the ACCC. On 11 August 2011, the ACCC issued a draft decision to the effect that the proposed undertaking required amendment in a number of areas, including capacity allocation, in order to be accepted by the ACCC. The proposed undertaking included a continuation of the first come, first served capacity allocation system that was in operation pursuant to the 2009 Undertaking. The ACCC determined that the first come, first served capacity allocation system was not appropriate in the South Australian wheat export market having regard to the circumstances likely to be faced by Viterra over the term of its 2011 Undertaking of expected capacity constraint and limited competitive constraints to neutralise the incentives for self preferential treatment by Viterra.

Viterra submitted during the assessment of the 2011 Undertaking process that it was unable to amend the proposed Undertaking to include a detailed auction system before the expiration of the 2009 Undertaking on 30 September 2011. Instead, Viterra submitted a revised undertaking that included an obligation to introduce an auction system by 14 May 2012. An auction system is to be introduced by a variation of the PLPs and Standard Terms.

In order to vary the PLPs and/or the Standard Terms to introduce an auction system, Viterra is required, pursuant to the 2011 Undertaking, to first conduct industry consultation for a period of at least 15 business days followed by the publication of an Auction Variation Notice. Viterra carried out this industry consultation in January and February 2012. Viterra published its Auction Variation Notice on 17 February 2012.

1.2 Viterra's Auction Variation Notice

The auction system set out in Viterra's Auction Variation Notice sought to change its PLPs and Standard Terms to implement an auction system based substantively on the auction system in operation by Cooperative Bulk Handling (CBH) in Western Australia. Elements of the auction system set out in the Auction Variation Notice (which have been changed in the Revised Proposal) are:

- three auctions held: the first auction for port terminal capacity for the period 1 October to 31 January (Harvest Period); two sequential auctions for port terminal capacity for the period 1 February to 30 September (Non-harvest Period). Capacity not acquired during the first Non-harvest period auction would be made available during the second Non-harvest Period auction.
- capacity not acquired at either the first Harvest Period auction or the second Non-harvest Period auction would be made available to clients on a FIFS basis. Viterra

was required to publish details of available capacity within specified timeframes following the auction and would only accept nominations following the passing of a specified time period after these details were published.

- auction premiums were to be rebated back to exporters at a flat rate per tonnes shipped; auction premiums accumulated during the Harvest Period auction were rebated back to exporters who shipped bulk wheat during the Harvest Period; auction premiums accumulated during the Non-harvest Period auction would be rebated to exporters who shipped during the Non-harvest Period. (Exporters who failed to ship against capacity acquired at auction do not receive a rebate in relation to that capacity.)

The Auction Variation Notice, including the Auction Rules and associated documents are available on the ACCC's website at:

<http://www.accc.gov.au/viterra>

1.3 ACCC assessment of Viterra's Auction Variation Notice

In determining whether to issue an Auction Objection Notice, the ACCC was required to, pursuant to clause 9.6(c), have regard to the following matters:

- whether the proposed variations outlined in the Auction Variation Notice incorporate the features set out in clause 9.5(d) of the Undertaking (the Auction Features), which are:
 - an auction should be the primary means of allocating port loading capacity at each Port Terminal
 - capacity should be defined on a consistent basis in terms of metric tonnes per month available at each Port Terminal and should reflect the total Available Capacity volumes that appear in the capacity table published by Viterra
 - subject to satisfying the Prudential Requirements and complying with the auction rules, all bona fide clients should have an equal opportunity to participate in the auction process
 - the auction should be conducted in a transparent and non-discriminatory manner
 - slots should be allocated to those clients that value them most
 - 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 premiums paid by clients as part of the auction process to users of the Port Terminals on a pro-rata basis
 - rights purchased in the auction should be tradeable and transferable between bona fide clients, subject to reasonable rules relating to the period of notice

required to be given to the Port Operator and the tonnage and commodity involved

- whether the proposed auction system would amount to a breach of the anti-discrimination provision in clause 5.5 or the no hindering access provision in clause 9.7 of the Undertaking
- the desirability of having a degree of consistency with other auction systems in Australia for the exporting of bulk wheat, balanced with the need to apply the system having regard to any different characteristics of Viterra's operations and the South Australian industry
- the matters set out in section 44ZZA(3) of the CCA which include *inter alia*:
 - the objects of Part IIIA of the CCA, which are to: promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry
 - the pricing principles specified in section 44ZZCA
 - the legitimate business interests of the provider of the service
 - the public interest, including the public interest in having competition in markets (whether or not in Australia)
 - the interests of the persons who might want access to the service
 - any other matter that the ACCC considers relevant; and
- any submissions by Viterra and/or other interested persons.

The ACCC considered the operation of the auction system in Western Australia as a matter relevant in assessing the Viterra proposed auction system, only in so far as it is relevant to Viterra's auction proposal.

1.4 ACCC's Auction Objection Notice

On 11 April 2012, the ACCC issued a notice pursuant to clause 9.6(a) of the Undertaking (the Auction Objection Notice) based on the information before the ACCC at the time, and having regard to each of the matters set out in clause 9.6(c) of the 2011 Undertaking. Reasons for the decision are set out fully in the ACCC's Auction Objection Notice. In brief, reasons for the ACCC's objections are that:

- The auction system proposed in Viterra's Auction Variation Notice does not incorporate the following features as required by clause 9.5(d):
 - (i) *an auction should be the primary means of allocating port-loading capacity at each Port Terminal. For the avoidance of doubt, 'port-loading capacity' means the capacity that is made available by the Port*

Operator to exporters to enable the export of Bulk Wheat, barley and other grain commodities through the Port terminals

and

(v) *Slots should be allocated to those clients that value them most.*

- It is the ACCC's view that the auction system set out in Viterra's Auction Variation Notice may not promote the economically efficient use of Viterra's port terminal infrastructure.
- Having regard to the outcomes experienced in WA this season, and the submissions from stakeholders, it is the ACCC's current view that the system adopted in SA should, so far as practicable, be modified to avoid or minimise the undesirable features of the CBH auction model prior to the introduction of the auction system in SA.

The ACCC formed this view after identifying a number of concerns with the operation of the system proposed in the Auction Variation Notice.

The first concern was that it appeared to the ACCC that the auction mechanism contained in the Auction Variation Notice may not have come to an outcome at all. In other circumstances, the auction may reach a conclusion, but the outcome of the auction may not reflect an efficient allocation of scarce port capacity. That is, port capacity that exporters are willing to pay a positive amount for may not be allocated at the auction.

This effect arises as a consequence of the impact of rebating the proceeds of the auction to exporters. In the presence of the proposed rebate, exporters can be expected to base their demands for capacity at auction on the basis of an 'effective price', which is the difference between the auction price and the expected rebate for that slot.

In order for the proposed auction to achieve an efficient allocation, the effective price paid should increase until supply and demand are in balance. However, while the proposed auction mechanism ensures that the auction price increases when demand exceeds supply, the effective price may not increase at all when demand exceeds supply, or may continue to increase after demand falls short of supply. As a consequence, although the auction may terminate at an efficient allocation, there is no guarantee that the auction will terminate or will terminate at an efficient allocation.

The second concern was that it appeared to the ACCC that exporters may be able to choose not to participate in the auction process, but nevertheless secure scarce capacity through the FIFS allocation mechanism, even in circumstances of high demand. The possibility of securing capacity through the FIFS mechanism alters the incentives on exporters to participate in the auction process, particularly for slots with a high (effective) price and particularly for an exporter which can be reasonably sure of obtaining the allocation that it desires in the FIFS mechanism.

It appeared to the ACCC that it may be possible in the proposed auction design for an exporter, at the point in an auction where the excess demand on high-priced slots is relatively small, to bring the auction to a close by withdrawing demand in the high-priced slots. This exporter may then be able to secure its demand through the

FIFS system, at no premium. Such an exporter will have secured high-priced capacity at no premium, placing it at a competitive advantage over its rival exporters (who have paid a high effective price for the same capacity). At the same time, the exporter may retain its auction allocation of low-priced capacity for which it expects to receive a rebate.

The ACCC's Auction Objection Notice, and accompanying economic analysis is available on the ACCC's website at www.accc.gov.au/Viterra.

1.5 Viterra's Draft Revised Proposal

In response to the ACCC's concerns as described in the ACCC's Auction Objection Notice (and prior to its submission of its Revised Variation Notice pursuant to clause 9.6(f)(ii) of the 2011 Undertaking), Viterra revised its auction proposal and engaged in joint industry consultation with the ACCC. In summary Viterra's Draft Revised Proposal made the following changes:

- Treatment of the auction premium
 - Rebates will be calculated by reference to a full season and auction premiums paid in respect of all Auctions for the relevant season will be included in the rebate pool.
 - The rebate pool will be distributed to exporters in accordance with a specified formula that has the effect of ensuring that the rebate is paid to exporters that buy and execute capacity using slots that have the greatest proportion of spare capacity (relative to other slots at the same port terminal), across all rounds of each auction for the relevant year.
 - There will be a separate rebate pool in respect of each of Viterra's port terminals except for Adelaide Outer Harbor and Inner Harbour which are part of the same supply chain.
 - If Viterra is unable to provide the port terminal services in respect of capacity acquired at auction, the auction premium will be refunded to the exporter and deducted from the rebate pool; if Viterra requests an exporter to move a booking for operational reasons, the exporter will retain its entitlement to the rebate attached to the original slot;
- The auction rules will specify that exporters will only be able to reduce their aggregate amount of their bids for capacity across all port terminals by 50,000 tonnes per round.
- Changes to the FIFS system – Viterra will amend its PLPs to specify that
 - each exporter will only have one log-on to Viterra's on-line booking system
 - for 5 business days after the re-opening of the shipping stem following an auction, an exporter will not be able to make a booking within 30 minutes of its previous booking
 - the maximum amount of any single booking will be 60,000 tonnes

- for 5 business days after the re-opening of the shipping stem following an auction, if the booking is unable to be accepted in full due to shortage of capacity, the Viterra will reject the booking outright as opposed to entering into negotiations

Viterra also made a number of changes to the auction system set out in its Auction Variation Notice as a consequence of the above amendments. These changes relate to the entitlement to the rebate if a booking is transferred, moved or surrendered. Three minor additional changes have been made to the proposal to provide clarity regarding the refund provided on return of capacity, the restriction on sharing confidential information between Viterra and Tradeslot (the independent auction operator), and specifying a time frame in relation to the lodgement of a grievance following an auction.

1.6 Industry consultation and informal assessment of Viterra's Draft Revised Proposal

As noted above, the process Viterra is required to follow in introducing an auction system is outlined in clause 9.5 and 9.6 of the 2011 Undertaking. In accordance with this process, Viterra completed formal consultation as required by the 2011 Undertaking prior to the publication of the Auction Variation Notice. The 2011 Undertaking does not require Viterra to recommence public consultation in the event that the ACCC issued an Auction Objection Notice.

Notwithstanding that the process outlined in the 2011 Undertaking does not require further formal consultation, Viterra has voluntarily engaged in further joint industry consultation with the ACCC by way of forums held in Adelaide and Melbourne on 20 and 27 June 2012 respectively. The purpose of the forums was to: provide an explanation of the ACCC's concerns with the initial proposal; explain the proposed changes; and to seek any initial views from industry as to the Draft Revised Proposal.

Initial concerns raised by industry have resulted in Viterra refining the Draft Revised Proposal by:

- Amending clause 4 of the Auction Participation Deed to make it clear that Viterra may display during the auction an indicative estimated snapshot of the rebate per tonne for the relevant slot as at the end of the previous round. The estimated rebate per tonne will vary considerably from round to round and auction to auction and accordingly Viterra has qualified this mechanism. It was not previously provided for in the Draft Revised Proposal.
- an increase in the volume of capacity that can be removed by an exporter during each round of the auction to 110,000 tonnes. This was previously 50,000 tonnes.
- a variation to both the PLPs and the Auction Rules to remove the ability for exporters to bid at auction via proxy. This is as a consequence of limiting the volume of capacity that can be withdrawn in any one auction round. This was not previously included in the Draft Revised Proposal.

- allowing exporters to nominate through the FIFS system a minimum acceptable amount; the Revised Proposal previously stated that Viterra would reject nominations made during the first five business days following an auction

The ACCC is seeking views from industry on the Revised Proposal as amended following industry consultation.

Following this consultation period, Viterra may, after considering submissions and any preliminary views of the ACCC, make further amendments to its Revised Proposal before submitting a formal Revised Variation Notice. After assessing Viterra's Revised Variation Notice, the ACCC may, pursuant to clause 9.6(d) withdraw the Auction Objection Notice if it becomes aware that in all the circumstances the reasons specified in the relevant notice no longer exist, those reasons are addressed or for any other reason.

The ACCC has developed the following indicative timeline for the next steps:

- Receipt of submissions to the ACCC's Consultation Paper by 5:00pm, Friday, 3 August 2012
- Viterra submit a Revised Variation Notice pursuant to clause 9.6(f)(ii) of the 2011 Undertaking on or before 24 August 2012. The Revised Variation Notice will encompass the Revised Proposal including any further amendments if appropriate following this industry consultation.
- Within 30 business days of receiving the Revised Variation Notice - ACCC formal decision pursuant to clause 9.6(f)(iii) as to whether to withdraw the Auction Objection Notice. If the ACCC withdraws its Auction Objection Notice, Viterra proposes holding its first auction in early November for shipments relating to 1 February 2013 onwards.

1.7 Consultation and making a submission

The ACCC now invites submissions on the Revised Proposal as amended following joint Viterra / ACCC consultation.

Section 2 of this Consultation Paper sets out certain matters on which the ACCC is seeking views. Note that section 2 is not a comprehensive outline of all the matters able to be considered and you are not required to provide views on each of the matters listed in that section. You are invited to comment on any aspect of the proposed auction system that you consider relevant.

Note however that the 2011 Undertaking requires Viterra to implement an auction system. Pursuant to the 2011 Undertaking, Viterra is unable to introduce, and the ACCC is unable to consider, any form of capacity allocation system that is not an auction system.

Please include detailed reasons to support the views put forward in your submission.

1.7.1 Making a submission

Submissions should be addressed to:

Mr David Salisbury
Deputy General Manager
Fuel, Transport and Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

Email: transport@acc.gov.au

Taking into account the timeframes specified in the Undertaking and outlined above, the ACCC has allowed a two-week consultation period. Submissions must be received by **5.00pm, on Friday, 3 August 2012**. The ACCC may be unable to consider submissions received after this date.

1.7.2 Confidentiality of information provided to the ACCC

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part. The ACCC will then assess the proposed auction system in the absence of that information.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication *Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information*, available on the ACCC website.

1.8 Further information

If you have any queries about any matters raised in this document, please contact:

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Director
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2 Matters for comment

This section outlines matters on which the ACCC is seeking comment from stakeholders in order to informally assess whether the Revised Proposal is likely to address the ACCC's concerns as set out in the Auction Objection Notice.

Full details of Viterra's Revised Proposal, including marked up copies of the PLPs, the Standard Terms, the 'Auction Participation Deed', and the 'Tradeslot Registered Bidder Agreement for Online Auctions' are available on the ACCC website at www.accc.gov.au/viterra

2.1 Treatment of auction premium rebate

2.1.1 Single rebate pool

The effect of auction premium rebate formula at schedule 2 to the PLP's in the Revised Proposal is to ensure that:

Rebates will be calculated by reference to a full season (i.e. October to September, except in the first year where it will apply from the first Slots auctioned until September 2013).

Auction premiums paid in respect of all auctions for the relevant season will be included in the rebate pool (i.e. Viterra will continue to hold separate auctions for the Harvest Shipping Period¹ and Non-Harvest Shipping Period,² but the proceeds of each of the Auctions will be included in the same rebate pool)³.

The Revised Proposal retains the timing and scheduling of the auctions as appeared in the Auction Variation Notice. That is, Clause 2.3(c) of the PLPs specifies holding three auctions in the following format:

- (i) the Auction in respect of the Harvest Shipping Period will be held at around the start of the August immediately preceding the relevant Harvest Shipping Period;⁴
- (ii) the first Auction in respect of the relevant Non-Harvest Shipping Period will be held at around the start of the November immediately preceding the start of the relevant Non-Harvest Shipping Period and the second Auction (if any) in respect of the Non-Harvest Shipping Period will be held approximately four weeks later.⁵

The ACCC's concern regarding the possibility that an auction will not conclude is more likely to eventuate when all high demand or oversubscribed shipping slots fall into the same rebate pool. When all slots are oversubscribed, it is possible that the auction price will increase at the same rate as the rebate payable. As a result the effective price for slots (i.e the auction price less the rebate) would not increase and exporters have no reason to reduce capacity bids, which is necessary in order to reduce demand to the level of available capacity.

¹ Harvest Shipping Period, as defined in Viterra's initial auction proposal, is 1 October to 31 January

² Non-Harvest Shipping Period, as defined in Viterra's initial auction proposal, is 1 February to 30 September

³ Viterra Operations, Revisions in submission in support of Viterra's revised proposal, 13 July 2012

⁴ Port Loading Protocols - Clause 2.3(c)(i) - Viterra's Revised Proposal

⁵ Port Loading Protocols - Clause 2.3(c)(ii) - Viterra's Revised Proposal

Viterra has submitted that by collecting all auction premiums paid into one rebate pool, it will reduce the possibility that the situation will arise where demand exceeds supply in all slots. Viterra also submits that its historical data provides strong evidence that demand for capacity will not exceed supply in all slots available at any port terminal during a season.⁶

Viterra further submits that spreading the rebate across multiple auctions (and auction periods) is likely to create less certainty in relation to the likely amount of any auction rebate and therefore provide incentive for ‘truthful bidding.’⁷

The ACCC notes that by pooling the auction premiums from all three auctions into one rebate pool, exporters will be unable to ascertain the dollar value of the rebate attached to each shipping slot until after the third auction concludes.

The ACCC understands, based on industry consultation, that during past auctions conducted by CBH, an estimated rebate is displayed to bidders on a round by round basis. A similar calculation is not possible under the Revised Proposal.

It was suggested during industry consultation that because of the uncertainty regarding the value of the rebate, exporters may impose a ‘risk premium’ which is likely to be passed onto wheat growers.

Viterra has sought to reduce the overall uncertainty regarding the calculation of the rebate, by introducing an indicative estimated snapshot of the Rebate per Tonne for the relevant Slot as at the end of the previous round (“Indicative Current RpT”)⁸.

The ACCC notes that the Indicative Current RpT is based on limited information, and that it is only possible to determine the pre-execution rebate⁹ attached to particular slots after the final auction has concluded.

The ACCC further notes that holding one auction for all capacity would provide increased certainty with respect to the pre-execution rebate.

⁶ Viterra: Revised Auction System Proposal, 13 July 2012

⁷ *ibid*

⁸ Clause 4.2 – Auction Participation Deed

⁹ The ACCC acknowledges that the final rebate is only able to be determined following the shipping period because if an exporter fails to execute against capacity acquired at auction, the rebate that would be payable against that capacity is forfeited and forms part of the rebate pool which is subsequently paid to exporters who do ship against capacity acquired at auction.

2.1.1 *Issues for comment:*

- (a) *Does the creation of a single rebate pool mean that it is less likely that an auction would not conclude?*
- (b) *What are the costs to exporters of any increased uncertainty in the likely rebate payable?*
- (c) *Is the extra uncertainty surrounding the rebate likely to encourage 'truthful bidding' by exporters?*
- (d) *Is the rebate mechanism too complicated to estimate the likely rebate available?*
- (e) *Is the publication of the indicative rebate per tonne likely to be useful?*
- (f) *Are the timings of the auctions appropriate with this rebate mechanism?*

2.1.2 **Adjustment to auction rebate mechanism**

The effect of auction premium rebate formula at schedule 2 to the PLP's in the Revised Proposal:

...ensures that the rebate is paid (to a greater extent) to clients that buy and execute capacity using slots that have the greatest proportion of spare capacity relative to other slots at the same port terminal), across all rounds of each auction for the relevant year¹⁰

Whilst the ACCC has not formed a conclusion on this matter it appears that the ACCC's concern that the rebate mechanism has the potential to cause the effective price to increase despite falling demand is less likely to eventuate under the Revised Proposal. The Revised Proposal aims to conclude an auction where in high demand slots, the auction price is likely to represent the effective price. It also aims to ensure that the effective price will increase to clear demand at high demand slots, and that the effective price will not increase in the face of falling demand.

Viterra submits that the modified rebate formula breaks any clear link between the auction price paid by an exporter in respect of particular slots and the expected rebate due if it were to ship grain using those slots. As a result, Viterra submits that this addresses the ACCC's concern that in certain circumstances (when all slots in an auction are oversubscribed) the auction price may rise at a similar rate to the exporters rebate, which would result in minimal, if any, increase in the effective price.¹¹

¹⁰ Viterra: Revised Auction System proposal, 13 July 2012

¹¹ Ibid

Viterra further submits, that based on reasonable demand and capacity assumptions, this rebate mechanism will involve an auction ending after 21 rounds and allocating 94.7 per cent of capacity.¹²

In practice, Viterra submits that exporters are likely to respond to price increases for higher demand slots by reallocating capacity bids to lower demand slots or withdrawing bids with the result that an auction will conclude sooner.

2.1.2 Issues for comment:

- (a) What effect will this rebate mechanism have on exporters' bidding behaviour during an auction? Will this change encourage more 'truthful' bidding and mitigate auction prices at high demand slots?*
- (b) Are there any potential negative consequences associated with allocating the rebate to lesser demanded slots?*

2.1.3 Port based rebate pools

The effect of auction premium rebate formula in schedule 2 to the PLP's in the Revised Proposal is to ensure that:

There will be a separate 'rebate pool' in respect of each of Viterra's port terminals, except for Adelaide Outer Harbour and Inner Harbour which are part of the same supply chain.¹³

In addition, the Rebate Pool Calculation in schedule 2 to the PLPs provides that:

The total Auction costs are spread across each of the five Port Terminals on a *pro-rata* basis (based on tonnes executed through each Port Terminal, including both tonnes bought through Auction and tonnes bought through the first-in-first-served system).¹⁴

Viterra submits that this change is intended to remove the potential for distortions in the supply chain and physical execution of grain that may otherwise occur if the auction premium were to produce significant financial incentives for exporters to transport grain over greater distances to alternative ports (or to less efficient port terminals).

Viterra submits further that the financial incentive to transport wheat from more efficient ports to less efficient ports will create a significant risk of distorting investment in both port and transport (rail) assets, and the inefficient use of supply chains and resources in transporting grain over greater distances than necessary. It is Viterra's view that increased and inefficient road transporting is also likely to create substantial adverse social impacts.

¹² Viterra: Revised Auction System proposal, 13 July 2012

¹³ Ibid

¹⁴ Clause 2.3, Schedule 2, PLPs

2.1.3 *Issues for comment:*

How will separate rebate pools for each port affect (a) bidding behaviour; and (b) incentives to transport wheat from each ports natural catchment area?

2.2 Ability to withdraw from the auction

2.2.1 Limitation on withdrawals

Clause 4(e)(ii) of schedule 2 to the PLP's in the Revised Proposal states that:

Bidders are only permitted to reduce the aggregate Capacity they bid across all Lots by a maximum of 110,000 tonnes per round.

Viterra considers that the introduction of withdrawal limits will have positive impacts including:

- more capacity will be allocated at auction as bidders will not be able to remove significant amounts of capacity creating the situation where slots move from significant over-demand to significant under-demand,
- increased incentive for exporters to bid truthfully during the initial rounds of the auction as there is an increased risk that an exporter will not be able to withdraw tonnes and will be required to acquire that capacity at auction, and
- the withdrawal limit in each round will reduce volatility that might cause large changes in demand on a round-by-round basis.

This change does not restrict the movement of bids between slots or across ports but from withdrawing overall capacity from the auction.

The ACCC notes that the proposed withdrawal limit reduces the ability for exporters to bid in but later withdraw from the auction and subsequently acquire that capacity through the FIFS system at a lower price. However as a result, it may also limit legitimate bidding behaviour.

2.2.1 *Issues for comment:*

- (a) Is the current proposed volume limit of 110,000 tonnes appropriate? Would the limit be more appropriate if the limit reflected an average slot or vessel size?*
- (b) Will the current withdrawal limit of 110,000 tonnes induce exporters to place bids at auction that closely reflect their actual demand for port terminal capacity?*
- (c) Is the withdrawal limit likely to impede any legitimate auction behaviour?*
- (d) Will the withdrawal limit have any other consequences, either negative or positive?*

2.2.2 Proxy bids

Revised Proposal:

Exporters are no longer able to participate in the Auction by way of a 'proxy bid'. The definition of 'Proxy' in the Port Loading Protocols and clause 8 of the Auction Rules has been removed.

Viterra has removed the ability for exporters to place proxy bids as it is inconsistent with the introduction of the rule that bids can only be reduced by an aggregate amount of 110,000 tonnes per round.

With this change exporters will be unable to place bids with set tonnages and price limits prior to the beginning on the auction.

Viterra considers that any impacts arising from the removal of proxy bids are likely to be ameliorated by the shorter auctions which are a further anticipated result of the proposed auction system

2.2.2 Issues for comment:

How will the loss of the ability to place proxy bids affect bidding behaviour?

2.3 Changes to the First In First Served (FIFS) system

Capacity allocated pursuant to the FIFS system is now governed by clause 2.4 of the PLPs. In summary, the provisions have following effects:

- 2.4(a) Viterra will publish details of any capacity that remains following the Harvest or second Non-Harvest shipping period auctions, or that remains available following an auction for 'additional' capacity that becomes available, within 5 business days after the auction results are finalised
- 2.4(b) Viterra will publish details of any capacity that becomes available following surrender or movement of a booking and any other additional capacity that becomes available, within 2 business days of that capacity becoming available
- 2.4(c) Viterra may decide not to publish or offer all or any part of any capacity that becomes available following a surrender or movement of a booking or any other capacity that becomes available
- 2.4(d) the published capacity will become available for booking through the FIFS system 2 (or such other longer period notified by Viterra) business days after its availability has been published on the Viterra website

- 2.4(e) to acquire capacity through the FIFS system, an exporter must submit a booking form to Viterra
- 2.4(f) a booking form may specify a minimum acceptable amount of capacity if the full nominated amount is not available
- 2.4(g) each exporter will only have one log-on to the online system which enables exporters to submit booking forms
- 2.4(h) a booking form received during the first 5 days following an auction will be invalid if it: is received within 30 minutes of the exporter submitting any other booking form; the capacity applied for exceeds 60,000 tonnes or the amount of capacity applied for (including the minimum) exceeds the amount of capacity that is available
- 2.4(i) if an exporter nominates a minimum amount that it wishes to acquire if the total amount is not available, and the total amount of capacity applied for is not available, the exporter will be allocated the amount of capacity that is available provided that such amount equals or exceeds the minimum amount specified

Following the first 5 days after an auction, Viterra will accept nominations on a FIFS basis. If sufficient capacity is not available, Viterra will enter into negotiations with the exporter in relation to potential alternative arrangements.

Viterra submits that these changes are aimed to ensure that the only certainty by which an exporter can obtain capacity is by acquiring it through auction. Viterra however acknowledges that these changes will not prevent some exporters from ‘taking their chances’ through the FIFS rather than acquiring the capacity at auction.

The ACCC’s concern with respect to the proposal in Viterra’s Auction Variation Notice was that the auction design (including the rebate mechanism) in conjunction with the FIFS system, allowed the possibility of exporters choosing not to participate in the auction process, but nevertheless securing scarce or high demand capacity through the FIFS system. The possibility of securing capacity through the FIFS mechanism alters the incentives on exporters to participate in the auction process.

2.3 Issues for comment:

Are the proposed rules governing the FIFS system likely to avoid the scenario where high demand capacity is allocated through the FIFS mechanism?

2.4 Movement, transfer and surrendering of bookings

2.4.1 Rebate entitlement with movement of bookings

Proposed change:

If a client moves a booking to another Port Terminal in accordance with clause 7 of the Protocols, it loses its Rebate per Tonne entitlement (if any) in

respect of that Booking (i.e. it has the same effect as if the Client did not ship through the relevant Slot acquired at Auction).

However, if Viterra requests a Client to move a Booking for operational reasons, and the Client accepts and actually ships through the new Slot, it still earns a Rebate per Tonne determined by its original Booking (i.e. it continues to participate in the rebate pool and the Auction Premium Rebate calculation as if it had not agreed to move its booking).¹⁵

Viterra submits that this change has been made as a consequence of calculating the auction premium rebate on a port-by-port basis. It prevents exporters from ‘optimising’ their rebates by moving a booking away from higher demand terminals (with an accumulated rebate) to lesser demand terminals, effectively reducing the price they pay at those terminals.

2.4.1 Issues for comment:

Are there circumstances in which the loss of the rebate across port terminals would not be appropriate?

2.4.2 Retention of rebate entitlement between slots at same port terminal

Proposed change:

If a client moves a Booking to another Slot at the same Port Terminal, it retains its Rebate per Tonne entitlement (i.e. it continues to participate in the rebate pool and Auction Premium Rebate calculation as if it had not moved its Booking).¹⁶

Viterra submits that this change is intended to promote flexibility for exporters to move between slots at the same port terminal, but without any net gain or loss in rebate entitlement.

2.4.2 Issues for comment:

Are these rules likely to avoid the scenario where high demand for capacity remains following an auction?

2.5 Conclusion

The ACCC notes that the issues raised for comment in this consultation paper relate only to the revisions made to Viterra’s initial proposal contained in the Auction Variation Notice. If stakeholders are of the view that these changes will detrimentally affect the operation of any of the unchanged mechanisms or provisions in the Auction Variation Notice, please provide details in your submission.

Please provide your submission by **5:00pm on Friday 3 August 2012.**

¹⁵ PLPs Schedule 2 – Booking Adjustments

¹⁶ Ibid