

20th September 2013

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

Viterra Operations Limited – Application to extend and vary the 2011 Port Terminal Services Access Undertaking

Dear Mr Salisbury,

Toepfer International (Australia) does support the variation(s) to increase operational flexibility through discretionary tolerance in exceeding acquired lift and two Port loading that facilitates commercial utilisation of the Port infrastructure. Such flexibility should be executed without subsequent impact on the remainder of the shipping stem.

Toepfer are of the opinion as a user of the integrated infrastructure and participant within previous capacity auctions, Viterra should address the fundamental principles of the primary allocator of capacity to ensure a robust framework is in place that efficiently facilitates the primary method of allocation. If the intent is to remain with an auction system, discretionary closure within a defined aggregate of overall supply and scheduling annual capacity auctions at crop maturity as demonstrated within the Western Australian model has ensured a more transparent initial bid and reduced manipulation.

Although it may be considered temporary solutions to the secondary allocator of capacity may assist the functionality of acquirement. Ensuring the integrity of the primary method would result in such variations being largely redundant and a doorway to establishing the most efficient mechanism to allocate shipping capacity.



The extension of the Access Undertaking provides certainty to access seekers for the defined term in acquiring Port terminal capacity. Toepfer accept that legislation of any mandatory code if this was to occur would only coincide with change in season to provide access seekers with a clear transition period in defining the terms around capacity acquisition.

Under the proposed variation of Force Majeure, Toepfer would not oppose the unilaterally amendment of the Port Loading Protocols on the basis of operational efficiency. Such variation(s) should be transparent and notified to all of the industry, not only parties impacted.

Toepfer note the rigor proposed around the associated entity clause, however the dispute clause (12) of the Port Loading Protocols covers notices directly between the access seeker and operator in respect to the acceptance/non-acceptance of bookings. We assume the implied intent of the clause would be to restrict access seekers from establishing an associated entity with a perceived separate export function, however no legitimate market share. A subsequent provision shall also be incorporated which references/allows third parties that are not a directly related party to the notice(s) between access seeker and Port operator to raise a grievance, if any client disputes Viterra operations adherence to the relevant protocols.

Under the proposed variations, Viterra have proposed the inclusion of where acting reasonably they can cancel or reject a booking if it considers that the booking is not genuinely required for use by the exporter. If the primary method of allocating shipping capacity is effectively functioning, then the potential for participants to manipulate the secondary allocator will be non-existent. The discretionary application of the rejection where acting reasonable is a subjective assessment. Under the Port Loading Protocols the dispute mechanisms final ruling reverts to the General Manager Storage and Handling, this could ultimately result in a conflict of interest. Toepfer would propose the incorporation of an independent body within any such dispute to negate any concerns. Regardless all sized trade participants should not be prohibited from participating, if at the time of offering they value the capacity.



Toepfer are of the opinion that simultaneous movement of booking acquired at auction once the first in, first serve opens has led to increased manipulation of the auction system. The intent of the auction is to allocate shipping capacity to those whom value it the most as the primary allocator of capacity. The relocation of capacity within auction from higher to lower demand slots/Ports, with the intent to reposition with multiple logins under the first in, first serve is clear conduct of manipulation. This was demonstrated in the 2013/2014 capacity auction and subsequent opening of first in, first serve where 195,000mt of acquired auction capacity at Thevenard was repositioned to alternative Ports/slots of higher demand. Such conduct only further creates uncertainty in which capacity has been acquired under the first in, first serve and accordingly the movement of acquired capacity under auction should be governed by the same principles of the first in, first serve in the 48 hours after auction.

Toepfer do not oppose the flexibility in repositioning acquired capacity between Outer Harbour and Inner Harbour for operational efficiency. If capacity is repositioned from Outer Harbour to Inner Harbour for the efficient utilisation of Port infrastructure and to mitigate Port congestion, the shipper should not be penalised the additional costs incurred through the additional transfer premium and Port, Handling and Shipping Fees. Assume this would be facilitated through commercial negotiation at time of reposition.

As highlighted throughout the above submission, the underpinning principles of the primary allocation method must be addressed to ensure a robust and sustainable allocation system is in place moving forward. We would like to make ourselves available to discuss any of the above content further if required.

Best Regards



Tim Henry

General Manager

Alfred C. Toepfer International (Australia)

