

12 September 2011

By email: Lyn.Camilleri@accc.gov.au
Ms Lyn Camilleri
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Commission
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Dear Ms Camilleri

Draft Decision - CBH's Port Terminal Services Undertaking

Reference is made to the *Co-operative Bulk Handling Limited, Port Terminal Services Access Undertaking, Draft Decision* dated 23 August 2011 (**Draft Decision**).

CBH has reviewed the Draft Decision and it generally accords with the discussions between CBH and the ACCC.

CBH supports the proposed amendments suggested in the Draft Decision and would be willing to resubmit its proposed access undertaking with the amendments suggested by the Draft Decision (together with the minor amendment noted in the email from Richard Codling on 1 September 2011).

CBH makes the following brief comments in respect of the Draft Decision.

Base load capacity allocation system

CBH accepts that it could not persuade the ACCC within the time available that the proposed base load capacity allocation system was consistent with section 44ZZA(3) of the *Competition and Consumer Act 2010 (Act)* and would have benefitted *all* exporters by increased efficiency at the port and the provision of greater capacity at a lower throughput cost for all users. However, CBH notes the ACCC's findings that the proposed base load capacity allocation system did have merits and welcomes the ACCC's willingness to consider a revision to the undertaking which would provide for a base load capacity allocation system.

CBH is currently considering the ACCC's and industry's comments and will make a decision whether to submit a revision to the undertaking to propose a "base load" capacity allocation system in the near future.

Auction system

CBH notes the ACCC's explicit call for submissions on the proposed auction system (which is unchanged from the existing auction system).

CBH re-iterates its submissions regarding the auction process and the operation of the undertaking generally. Namely, that the undertaking has worked well and users were able to obtain access to CBH's Port Terminal Services on acceptable terms for the 2009/2010 and 2010/2011 seasons without formal disputes or substantial complaints of breaches of the undertaking.

CBH's concern with the auction process was to make it *better* and in that vein it proposed the base load capacity allocation system to fit alongside the auction system. In the absence of a base load capacity allocation system, CBH is of the view that the existing auction system, refined through a number of successful years of operation, is the most appropriate system.

CBH has scheduled an auction for 27 September 2011 for shipping slots on and from 1 November 2011. CBH notes a number of parties have planned, or are in the process of planning, for the auction based on the existing rules (on the assumption that they are carried forward post 30 September). Any further amendment to the auction system or the rules underpinning it can only lead to uncertainty and inefficiency. To the extent that an individual has an issue with particular aspects of the system (and CBH is not aware of any) then CBH is always open to accepting reasonable amendments to the standard terms and conditions (without, of course, affecting another party's rights under the system).

Finally, CBH has consulted with CBH Grain Pty Ltd, who exports approximately 50% of Western Australia's grain crop, and while CBH Grain supported the base load capacity allocation system, in the absence of such a system, CBH Grain considers that the auction system provides the most efficient and fair system for allocating capacity.

Therefore, CBH considers that the auction system, as proposed in CBH's undertaking in response to the Draft Decision, is appropriate and satisfies the criteria in section 44ZZA(3) of the Act.

Ring fencing

CBH supports the ACCC's findings that ring fencing is not appropriate. CBH has made a number of submissions on this issue and re-iterates them in support of the ACCC's findings. CBH does not consider that any party is at an information disadvantage as a result of CBH Grain being a related body corporate of CBH. However, to the extent that parties consider it an issue, CBH considers that the obligation to publish stocks at port as mandated in the Draft Decision should remove any argument that there is an information asymmetry between CBH Grain and other marketers.

Price regulation

CBH supports the ACCC's findings that price regulation is not necessary. CBH has made a number of submissions on this issue and re-iterates them in support of the ACCC's findings. CBH welcomes the ACCC's findings that its port terminal charges are "not high relative to charges of other port terminal operators in Australia" (in fact, CBH research has

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indicated that they are the cheapest in Australia) and there is no evidence that CBH has cross subsidised its up country services.

CBH considers that the lack of negotiation on CBH's fees and by-pass of CBH's upcountry system demonstrates these facts. CBH considers that its pricing is very competitive and reflects the efficient operation of CBH's port terminals. CBH has no objection to providing further details about CBH's charges and supports the insertion of the proposed clause 12.5.

Next steps

As previously discussed, CBH is willing to submit an access undertaking in the form of the undertaking lodged with the ACCC just prior to the Draft Decision with the minor amendment noted in the email from Richard Codling on 1 September 2011.

CBH considers that the issues arising from CBH's proposed undertaking lodged on 31 March 2011 have been well ventilated and CBH looks forward to the finalisation of the access undertaking in order to provide the industry with the certainty it requires as it prepares for the 2011/2012 harvest.

Yours faithfully

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Matthew Knox

Partner

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