11th September 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight
ACCC
By e-mail: transport@accc.gov.au

Dear Mr Wing,

Re: ACCC Draft decision on CBH's Port Terminal Services Access Undertaking 23rd August 2011

Thank you for the opportunity to comment on the CBH Revised Draft and ACCC's draft decision of 23rd August 2011 on the proposed 2011 Undertaking.

Emerald wishes to focus on only one aspect of the Revised Draft: the two tiered capacity allocation system. We were pleased to see that the Commission recognises that the proposed arrangements have in-principle merit.

The two major exporting states of Western Australia and South Australia are well served for port grain terminals. Emerald believes that a combination of base load capacity allocation and auction allocation is a better model for these states than an auction system alone.

Both CBH and Viterra are currently forced to set their port charges to take into account seasonal variability. If marketers were willing to share the risk of seasonal variability with the bulk handlers, as proposed by the based load capacity (BLC) allocation model, we would expect to see a much more efficient charging regime emerge. Appropriately, this would ultimately benefit the growers who have financed the port terminal facilities.

The Commission has also correctly identified that certainty of shipping capacity by customers acquiring BLC may promote greater competition in Western Australia. This is not confined to building up-country storage competing with CBH, it also extends to being able to separately negotiate rail movements with the rail providers.

South Australia serves as a relevant case study. For two decades rail was underwritten by the bulk handler and two major marketers, AWB and ABB. When both of the marketers lost their statutory monopoly rights they withdrew from the rail arrangement and the bulk handler was forced to negotiate take-or-pay arrangements with GWA on its own in order to secure rail capability. No other marketers or traders were willing to underwrite SA rail because they lacked certainty that they could accumulate and ship sufficient volumes to justify the risk of seasonal volatility. The result has been a lack of competition in the SA supply chain and a steady deterioration of investment in rail.

The auction system has some serious deficiencies:

- The Commission has observed that the proposed BLC contracts relate to one year only and in its view this does not provide a significant different ability for access seekers to respond to year-to-year demand variability than does an auction system. However Participants are unable to acquire certainty of capacity until the auctions are held, which inhibits harvest planning. Planning for harvest accumulation is a complicated exercise involving costly decisions on international markets, acquisition funding and human resourcing. Certainty goes a long way to assisting the business case to support these decisions. Harvest planning is based on an annual cycle and it is Emerald's view that the BLC system would greatly assist and encourage competition in WA despite the fact that planning is limited to a one year window.
- There is obviously going to be some concern from smaller traders who will not be eligible for BLC allocation that the auction system is fairer. However this fails to recognise that the rebating of auction premiums is not a perfect system, because it returns the average premium, not the actual premium paid. Again this adds to uncertainty and is likely to favour those exporters with the deepest pockets. It is Emerald's proposition that ultimately the small traders will benefit from the competition and investment in the supply chain that will result from a two tiered system.
- Under the auction system on its own, there remains the possibility that one player can "corner" the auction slot market and demand an excessive price to transfer capacity to genuine exporters. The BLC system provides stability to the auction market and cannot itself be abused because BLC capacity is both limited and non-transferable.

The Commission has considered the extent to which the incentive exists for CBH as a vertically integrated port operator to pursue self- preferential treatment. The Commission has concluded that such incentives exist under the BLC system for CBH to favour its upstream logistics and freight activities and its downstream export activities. It is of more concern in the case of CBH because it holds such a dominant position in freight and up-country storage. The only way to break down this dominant position is to encourage competitors to invest in or share the risk of the supply chain. Competitors will only invest or risk-share if they have certainty. That is what the BLC system brings. However Emerald recognises that the allocations of the BLC need to reflect a pro-competitive future rather than being heavily based on the historic volumes that CBH has shipped in the past under monopoly conditions.

In summary Emerald supports a two-tiered capacity allocation system. If the system is not to be introduced for this harvest we are pleased that the Commission remains open to a submission by CBH to vary the Undertaking in the future.

Yours faithfully

John Warda
Group General Manager
Operations & Supply Chain