



## **Australian Grain Exporters Association**

### **Response to the Draft Decision in relation to CBH's proposed Port Terminal Services Access Undertaking**

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AGEA welcomes the opportunity to provide comment on the Draft Decision in relation to CBH's proposed Port Terminal Services Access Undertaking.

In general AGEA is in agreement with the ACCC's findings. Comment is provided in relation to key issues of transferability of slots; implications of the removal of the Grain Express notification; and shipping stem fees.

#### **Transferability of Slots**

AGEA supports the transferability of slots as previously communicated and believes this should be conducted in a manner that maximises flexibility and minimises cost. AGEA does not believe that CBH needs to be involved in or manage a secondary market for transfer of slots. AGEA believes a more efficient approach is to establish a set of rules around the transferability of slots and then allow the industry to manage this.

#### **Grain Express**

The recent decision by ACCC to revoke the notification allowing Grain Express to operate is likely to have an impact on operational efficiencies if this decision is upheld by the Australian Competition Tribunal. While recognising that Grain Express is outside of the undertaking, it could be expected that the removal of Grain Express will have impact on operational efficiency and therefore, impact on reference prices. AGEA would expect that this may require some variation to reference prices and expects that this and other relevant issues would be reviewed once the Grain Express decision is clarified. AGEA would like to see provision for such a review.

#### **Shipping stem fees**

An issue that was raised in the AGEA submission during the consultation process in regard to the proposed undertakings for Viterra, GrainCorp and CBH related to treatment of stem fees to ensure that exporters have certainty to acquire and execute slots without having to speculate. To achieve this, all parties should incur a 'real cost' for capacity booked and not utilised.

It was proposed that slot fees for all participants across all BHC ports should be paid into a trust account. The fees resulting from non-performance by an exporter result in forfeiture to the incumbent BHC, while fees resulting from non-performance by a BHC result in forfeiture to the fund. The fund would be redistributed to all parties who shipped grain in the designated period. The mechanisms are slightly different for the various BHCs, for example under current arrangements:

- in the case of Viterra and Graincorp, this would be the down payment (prepayment) of a part of the fobbing charge which is forfeited if capacity is not used; and
- in the case of CBH's auction premium it is the prepayment of a premium to secure capacity at CBH auction, accompanied with the commitment to pay all/part of the fobbing charge(s) if the slot is not used (or lost capacity charge).

The significant difference is that in the case of CBH the auction premium gets redistributed to those who ship, whereas the prepayment in case of Viterra and GrainCorp and the lost capacity charge in CBH gets paid to the BHC.

The ACCC draft decision has not addressed this issue and AGEA would encourage the ACCC to consider the establishment of an independent management to ensure that capacity allocation and management occurs in a competitively neutral way.