



09th March 2012

Mr David Salisbury
A/g General Manager
Transport and General Prices Oversight
ACCC
GPO Box 520
Melbourne Vic 3001
By Email: transport@accc.gov.au

Dear Mr Salisbury,

Submission on Viterra Operations Limited Proposed Auction System for Allocating Port Terminal Capacity

PentAG Nidera Pty Ltd (PentAG) is grateful for the opportunity to provide feedback to the ACCC's Consultation Paper regarding Viterra Operations Limited's (Viterra) proposed auction system.

PentAG will attempt to deal specifically with the ACCC's features set out in clause 9.5(d) of the Undertaking (the Auction Principles), which include whether:

An auction should be the primary means of allocating port loading capacity at each Port Terminal

PentAG does believe an auction system is currently the best method available to the industry for primary allocation of capacity. This is not to say that it is perfect, or that another method will not become clearer in the future. This belief is not reliant on the auction method proposed (ascending clock) being the most appropriate. We only suggest that determining the allocation through value is the fairest method available to us.

Significant concerns exist regarding the mechanism that triggers the 'closure' of the auction as has been demonstrated in the last three CBH auctions running identical rules. Allowing a "single half-month in a single port" slot to keep the entire auction open allows massive incentive to 'game' with very little effective sanction for an auction participant. If Viterra ran an auction tomorrow under their proposed system, there can be little expectation that a different outcome to the last three CBH auctions would occur.

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Without trying to completely alter the current 'ascending clock' auction method, steps can be taken to allow the awarding of slots to genuine bidders and reduce the ability of participants to 'game' the auction. These include:

- The awarding of capacity to a bidder at any time that the slot being bid is under-demanded. The remaining capacity in the slot remains open to the market and the slot only closes once demand equals supply (or within a reasonable tolerance). The awarding of capacity would take place after a number of rounds to allow fair access for other participants. This promotes genuine bidding as the risk of being booked on any bid is much greater as it can occur at any stage during an open auction.
- The identification of individual bidders by designated code to allow other participants to recognise and keep firm evidence of gaming behaviour.
- Re-auctioning all passed-in capacity – i.e. no default to first-in first-served. The first-in first-served in a situation of excess demand does not hold with tenets of transparency and competitive access and is impossible to police when administered by the BHC.

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

Definition of capacity in any sense creates issues. PentAG does not believe it is arguable that the restriction on export capacity out of Australia is due to the lack of capacity ex the spout. Capacity is restricted by the link in the chain at which grain flows the slowest and that is accumulation to port. Currently the ACCC allows Viterra to determine their export 'capacity' based on Viterra's own infrastructure systems and business desires. Under the current definition of capacity, if PentAG were to add to that infrastructure system via the placement of rail or road assets in South Australia, there is no system in place let alone any expectation that Viterra would increase their export 'capacity' to accommodate the increase in grain accumulation to port. It is inherently uncompetitive and costs the grower as Australia continues to carry-out grain. To suggest Viterra would not restrict capacity as it does not serve their interests ignores the fundamentals of Viterra 's dominance in their own accumulation to port space and unfettered ability to charge for service that cannot be effectively competed against.

Notwithstanding the above and while the current structure for determining capacity is in place, the publishing of total, booked and available capacity is necessary along with the publication of the stem. It is also necessary for Viterra to be liable for commercial non-performance sanctions if due to themselves, they cannot perform to their published capacity.

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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

PentAG believes this is the most significant reason why the government of the day recognised the need for Port Access Undertakings. Whilst the cost burden of an auction is notable, there are steps that could be taken to reduce the cash burden on exporters to allow all clients to compete equally. These include:

- Payment of auction premium in an instalment process so as not to tie up funds months in advance of shipment
- Payment of percentage of rebate in instalment post shipment to return funds as soon as possible post performance and well before the end of the entire season.

Slots should be allocated to those clients that value them most

Hence no capacity should revert to first-in first served.

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

Rebate is necessary. Adjustments to the timing of payment of rebate are required as mentioned above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Burt', written in a cursive style.

Steve Burt

Managing Director
PentAG Nidera Pty Ltd

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