

Viterra Operations Ltd

Revised Auction System proposal

1 Introduction

This document sets out a summary of the proposed changes to Viterra's Auction System proposal. The changes have been made specifically to address the issues raised in the ACCC's Auction Objection Notice dated 11 April 2012. In addressing those issues, changes have also been made to avoid potentially adverse impacts of the Auction System on the operation of Viterra's Port Terminals and to address certain issues raised during the industry consultation meetings held on 20 June and 27 June 2012.

This document provides only a summary of Viterra's changes to the Auction System since the Auction Variation Notice issued on 17 February 2012. Complete details of the proposed Auction System (together with marked up changes since the initial proposal on 17 February 2012) are set out in the attached copy of the Port Loading Protocols.

2 Treatment of Auction Premium

	Proposed changes	Reason for changes
1	<p>Rebates will be calculated by reference to a full season (i.e. October to September, except in the first year where it will apply from the first Slots auctioned until September 2013)</p> <p>Auction Premiums paid in respect of all Auctions for the relevant season will be included in the rebate pool (i.e. Viterra will continue to hold separate Auctions for the Harvest Shipping Period and Non-Harvest Shipping Period, but the proceeds of each of the Auctions will be included in the same rebate pool)</p>	<ul style="list-style-type: none">Calculating rebates by reference to a full season is intended to provide further comfort that a situation will not arise where demand exceeds supply in all Slots (which the ACCC identified in its Auction Objection Notice as potentially creating a situation where an Auction would not end). Viterra's historical data also provides strong evidence (and its experience supports) that demand for Capacity will not exceed supply in all Slots available at any Port Terminal during a seasonThe timing of Auctions as set out in the February 2012 Auction System proposal will remain the same. The timing of Auctions, and the Slots to which they relate, is a separate issue from the payment of

	Proposed changes	Reason for changes
		<p>rebates and is strongly informed by operational considerations</p> <ul style="list-style-type: none"> Spreading the rebate across multiple Auctions (and Auction Periods) is also likely to create less certainty in relation to the likely amount of any Auction Rebates and therefore provide a greater incentive for “truthful bidding” (see Item 2(3) below). This is particularly the case in the earlier auctions. While this is a desirable outcome, to ameliorate any adverse impact from this uncertainty, Viterra proposes to publish during the Auction a snapshot of the indicative Rebate per Tonne as at the last round (see Item 9 below)
2	The rebate will only be payable in respect of tonnes that are (a) acquired at Auction; and (b) are actually shipped	<ul style="list-style-type: none"> The requirement that the rebate is only payable in respect of tonnes actually shipped is intended to satisfy the requirement in the Access Undertaking that the Auction System features rules to create disincentives which apply equally to all clients on booking in excess of reasonably anticipated requirements. In practical terms, it means that if an exporter does not actually ship grain using a Slot acquired at Auction, it will reduce the extent of any entitlement it has in respect of the relevant Auction rebate pool Paying the rebate only in respect of tonnes acquired at Auction (i.e. excluding any Capacity acquired through the FIFS system) is likely to reduce any incentive that may otherwise exist to use the FIFS system in preference to acquiring Capacity at Auction. This is a potential issue that has been identified by the ACCC in its Auction Objection Notice
3	<p>The rebate pools will be distributed to exporters in accordance with the formula set out in Schedule 2 of the Port Loading Protocols</p> <p>The formula ensures that the rebate is paid (to a greater extent) to Clients that buy and execute Capacity using Slots that have the greatest proportion of Spare Capacity (relative to other Slots at the same Port Terminal), across all Rounds of each Auction for the relevant year</p>	<ul style="list-style-type: none"> One of the issues identified by the ACCC in relation to the February 2012 Auction proposal was that, in certain circumstances, the “nominal” Auction price may rise at a similar rate to the exporter’s rebate entitlement (with the result that there is only a small increase, if any, in the “effective price” payable by exporters) The formula set out in Schedule 2 (together with spreading the rebate across both Auction Periods) breaks any clear link between the Auction price paid by an exporter in respect of particular Slots and the

	Proposed changes	Reason for changes
		<p>expected rebate due if it were to ship grain using those Slots</p> <ul style="list-style-type: none"> Economic modelling performed by external economists suggests that, based on reasonable demand and capacity assumptions, this rebate mechanism will involve an Auction ending after 21 Rounds and allocating 94.7% of Capacity In practice, exporters are also likely to respond to price increases for particular Slots by re-allocating their demand to lesser demanded Slots or withdrawing bids (with the result that the Auction will end earlier)
4	There will be a separate “rebate pool” in respect of each of Viterra’s Port Terminals, except for Outer Harbor and Inner Harbour which are part of the same supply chain	<ul style="list-style-type: none"> This change is intended to remove the potential for distortions in the supply chain and physical execution of grain that may otherwise occur if the Auction Premium were to produce significant financial incentives for exporters to transport grain over greater distances to alternate ports (or to less efficient port terminals) These financial incentives would create a significant risk of distorting investment in both port and transport (rail) assets, and the inefficient use of supply chains and resources in transporting grain over greater distances than necessary. Increased (and inefficient) road transporting is also likely to create substantial adverse social impacts This proposal is consistent with Confidential Submission B made to the Commission as part of its consultation process in relation to the Auction System
5	Auction costs will be spread across each of the five rebate pools as set out in Schedule 2 of the Port Loading Protocols. In summary, costs will be allocated to the rebate pools on a <i>pro rata</i> basis based on tonnes executed through each relevant Port Terminal. If the share of costs allocated to one rebate pool cannot be recovered fully from that rebate pool, the outstanding costs will be carried across to other rebate pools (again on	<ul style="list-style-type: none"> This mechanism is consistent with the creation of separate rebate pools for different Port Terminals and the legitimate interests of Viterra in recovering its costs

	Proposed changes	Reason for changes
	a <i>pro rata</i> basis)	
6	<p>The Port Loading Protocols will be amended to make it clear that, if Vitterra cannot for any reason provide the Port Terminal Services in respect of Capacity acquired at Auction (e.g. force majeure events at port), any Auction Premium paid by an exporter for the relevant Slot(s) will be excluded from the Auction Premium Rebate calculation (i.e. which determines the amount payable to all exporters) and will be refunded from the gross rebate pool to the individual exporter. Similarly, this Capacity, and demand for this Capacity, will be excluded from the Auction Premium Rebate calculation</p> <p>If Vitterra requests an exporter to move a Booking for operational reasons (and the exporter agrees), the exporter will retain its entitlement to the Auction Premium Rebate arising in connection with the original Slot (assuming it actually ships through the new Slot)</p>	<ul style="list-style-type: none"> • This change is intended to clarify the treatment of the Auction Premium in the event that the Capacity acquired at Auction cannot, for any reason, be supplied • The change is also intended to preserve the existing operational flexibility for Vitterra to reach agreement with a client to move a Booking in circumstances where there is an operational benefit. This essential flexibility might otherwise be undermined by the operation of rules relating to calculation of the Auction Premium Rebate for other exporters <ul style="list-style-type: none"> • If, for operational reasons, an exporter moves from a highly demanded Slot to a lesser demanded Slot, it would not receive an increased entitlement to the rebate payable • If an exporter was amenable to moving, for operational reasons, from a lesser demanded Slot to a higher demanded Slot (based on the calculations set out in Schedule 2 of the Port Loading Protocols), the rebate calculation would not operate as a disincentive

3 Limits on withdrawing bids

	Proposed changes	Reason for changes
1	The Auction Rules will specify that Bidders will only be able to reduce the aggregate amount of their Bids for Capacity (across all Port Terminals) by 110,000 tonnes per round	<ul style="list-style-type: none"> • Given the strong feedback from industry that limits of any type were not desired and that market forces would prevail, Vitterra did not include prescriptive limits in its February 2012 Auction System proposal. However, Vitterra now considers that this proposal (in combination with the other measures set out in this document) will

	Proposed changes	Reason for changes
		<p>have the following positive impacts:</p> <ul style="list-style-type: none"> • more Capacity will be allocated at Auction – Bidders will not be able to withdraw large amounts of tonnage with the result that Slots move from significant over-demand to significant under-demand. This has been identified as one of the factors contributing to the “over-shoot” issue in Western Australia¹; • there will be an increased incentive for exporters to bid “truthfully” during the initial rounds of an Auction (with the first round setting the upper limit of an exporter’s aggregate bids) – If an exporter initially bids for significantly more Capacity than required, there is a risk that it will not be able to withdraw tonnes and will be required to acquire them at Auction; and • the 110,000 tonne withdrawal limit in each round will reduce the volatility that might otherwise occur with large changes in demand on a round-by-round basis • The move from a limit of 50,000 tonnes to 110,000 tonne reflects feedback provided during industry consultation

4 Proxy bids at Auction

	Proposed changes	Reason for changes
1	The Port Loading Protocols and Auction Rules will be amended to remove the ability to bid at Auction via proxy	<ul style="list-style-type: none"> • One of the consequences of introducing limits on withdrawing bids

¹ Viterro notes that there will frequently be some Capacity that is not allocated at Auction. This is simply because, although exporters bid in tonnes, they are in practice bidding for enough Capacity to load entire vessels. Accordingly, the profile of tonnes withdrawn in a particular round will be inherently “lumpy”. It will rarely move to a position of perfect balance between supply and demand.

	Proposed changes	Reason for changes
	bids	<p>(which limits have been included specifically to address issues raised in the ACCC's Auction Objection Notice) is that it becomes impractical to include proxy bids as a feature of the Auction System. Viterra has explored this issue in detail with its Auction Provider, Tradeslot</p> <ul style="list-style-type: none"> • Viterra appreciates that proxy bidding can be a convenient (rather than essential) feature of an Auction System. However, a proxy bid (which would typically authorise the acquisition of particular amount of Capacity up to a particular price) is inconsistent with a "rule" which specifies that Bids can only be reduced by an aggregate amount of 110,000 tonnes per round (i.e. if an exporter wished to acquire 300,000 tonnes of Capacity at a price of up to \$6.50, the proxy would not specify what should occur in the round in which the price moved to \$7.00 or which bids should be withdrawn leading up to the \$7.00 round). Given the large number of alternative scenarios, these can only be managed properly by the exporter itself • Viterra considers that any impact arising from the removal of proxy bids are likely to be ameliorated by the shorter Auctions which are a further anticipated result of the proposed Auction System

5 The FIFS system

	Proposed changes	Reason for changes
1	Viterra will amend the Port Loading Protocols to specify that each Client will have only one log-on to Viterra's online booking system (i.e. one user at any one time)	<ul style="list-style-type: none"> • Viterra considers that, under its February 2012 proposal, exporters would have limited certainty of obtaining bookings through the FIFS system if they do not acquire Capacity at Auction. However, Viterra's proposal involves documenting those arrangements (and the further measures set out in the "Proposal" column) more clearly in the Port Loading Protocols • This will not prevent some exporters from "taking their chances" in

	Proposed changes	Reason for changes
		acquiring Capacity through the FIFS system (or deciding that they do not value a Slot at the price available through the Auction). However, in response to the issues raised in the Auction Objection Notice, it ensures (particularly when combined with Item 3 above) that, if an exporter genuinely wishes to acquire highly-demanded Capacity, the only certainty it can obtain is by acquiring that Capacity at Auction
2	Viterra will amend the Port Loading Protocols to specify that, for 5 Business Days after the re-opening of the shipping stem post-Auction, a Client will not be able to make a Booking within 30 minutes of its previous Booking	<ul style="list-style-type: none"> See above. Booking applications received through Viterra's online booking system are date and time stamped. Accordingly, there will be a clear audit trail. If Slots are still under-subscribed at the expiration of the 5 Business Days, they cannot, on any measure, be viewed as highly demanded Slots Viterra considers that 30 minutes is a sufficient period to remove any certainty in relation to the FIFS system. It takes only 5 or so minutes to make a booking, and the shipping stem could potentially look very different from the beginning to the end of any half-hour period
3	Viterra will amend the Port Loading Protocols to specify that, for 5 Business Days after the re-opening of the shipping stem post-Auction, the maximum amount of any single Booking will be 60,000 tonnes	<ul style="list-style-type: none"> See above. This will prevent exporters from seeking large amounts of Capacity through a single first-in-first-served Booking after an Auction. 60,000 tonnes is typically the maximum size of any shipment from Viterra's larger port terminals
4	<p>Viterra will amend the Port Loading Protocols to so that exporter can specify in their booking application the minimum amount of Capacity they wish to acquire on a first-in-first-served basis if the full amount of Capacity set out in their booking application is not available. If the available Capacity is equal to or more than the minimum amount nominated by the exporter, that available Capacity will be allocated to the exporter</p> <p>If the exporter does not nominate a separate minimum amount, the amount set out in the booking form will be</p>	<ul style="list-style-type: none"> This change is intended to provide greater flexibility for both Viterra and exporters Currently, Viterra's process involves negotiation with Clients (in order of booking) if it cannot accept the relevant booking in full. However, under the new proposal, Viterra will not negotiate with Clients on bookings during the 5 Business Days immediately following an Auction. Instead, Clients can nominate a maximum and minimum amount of Capacity that they are willing to acquire through the first-in-first-served system

	Proposed changes	Reason for changes
	taken to be the minimum amount (such that the booking will be rejected if that Capacity is not available). Vitterra will not enter into negotiations with the exporter in relation to the booking form until after the expiration of 5 Business Days after the re-opening of the shipping stem post-Auction	<ul style="list-style-type: none"> At the end of the 5 Business Day period, Vitterra's usual approach to FIFS bookings will re-commence (i.e. Vitterra will negotiate with Clients in order of booking if it cannot accept the relevant booking in full). Clients will also retain the ability to nominate a maximum and minimum amount

6 Movement, transfer and surrendering bookings

	Proposed changes	Reason for changes
1	<p>Consistent with the February 2012 Auction System proposal, Bookings (whether acquired at Auction or through the FIFS system) will be fully transferable. There will be no limits on the number of transfers</p> <p>Vitterra will amend the Port Loading Protocols (clause 9(d)(ii)) to make it clear that any entitlement to participate in the distribution of the relevant rebate pool (see Item 2(3) above) will be transferred to the Transferee</p>	No material change to the February 2012 Auction proposal
2	The process for early surrender of Bookings will remain unchanged (other than as set out in Item 7(1) below)	<ul style="list-style-type: none"> No change to the February 2012 Auction proposal
3	Vitterra will amend the Port Loading Protocols (clause 7(a)) so it is clear that Bookings may only be moved to a Slot that occurs within the same Year (i.e. October to September), provided that the new Slot has already been offered at Auction	<ul style="list-style-type: none"> The February 2012 proposal limited to the movement of Bookings to Slots which occur during the same Harvest Shipping Period or Non-Harvest Shipping Period (as the case requires). This change is consistent with including both periods within the same rebate pool and provides greater flexibility to exporters

	Proposed changes	Reason for changes
4	<p>If a Client requests Vitterra to move a Booking from one Port Terminal to another Port Terminal, it will lose any entitlement to an Auction Premium Rebate in respect of the initial Slot</p> <p>However, if Vitterra requests an exporter to move a Booking for operational reasons (and the exporter agrees), the exporter will retain its entitlement to the Auction Premium Rebate arising in connection with the original Slot (assuming it actually ships through the new Slot)</p>	<ul style="list-style-type: none"> This is a consequence of the Auction Premium Rebate being calculated on a port-by-port basis. Exporters should not be able to “optimise” their entitlements to rebates by moving Bookings from high demand periods (acquired at Auction) to lower demand periods (which are likely to have higher rebate entitlements). This would effectively reduce the price paid at Auction for the high demand Slots The change also seeks to preserve the necessary operational flexibility to move Bookings with the consent of the relevant exporter (see Item 2(5) above)
5	<p>If a Client moves a Booking between Slots at the same Port Terminal, it will retain its entitlement to participate in the rebate attaching to the original Booking (i.e. not the new Booking) if it actually ships through the new Slot</p>	<ul style="list-style-type: none"> This proposal facilitates flexibility for exporters to move between Slots at the same Port Terminal, but without any net gain or loss in rebate entitlement

7 Further amendments

	Proposed changes	Reason for changes
1	<p>Vitterra will amend the Port Loading Protocols so it is clear that, if an exporter returns unwanted Capacity to the shipping stem and Vitterra decides to not re-offer that Capacity to the market, Vitterra will nonetheless pay the conditional (partial) refund of Booking Fee / Auction Fee calculated in accordance with the Port Loading Protocols</p>	<ul style="list-style-type: none"> This amendment addresses the issue identified in the ACCC's Auction Objection Notice
2	<p>Vitterra will amend the Port Loading Protocols to limit the type and nature of the information provided by Tradeslot to Vitterra to include only information that is necessary for Vitterra to carry out its obligations under the Access Undertaking</p>	<ul style="list-style-type: none"> This amendment addresses the issue identified in the ACCC's Auction Objection Notice

	Proposed changes	Reason for changes
3	Viterra will amend the Port Loading Protocols to clarify that written grievances must be lodged by 5.00pm on the first business day following the end of bidding	<ul style="list-style-type: none"> This amendment addresses the issue identified in the ACCC's Auction Objection Notice
4	Viterra will amend the Port Loading Protocols (clause 14) to make it clear that Viterra will undertake a review of the Auction System " <i>within 3 months following completion of the Harvest Shipping Period ending in 2013</i> " (i.e. by 30 April 2013).	<ul style="list-style-type: none"> This change reflects the changes made to the proposed timing of the Auctions as contemplated by the variation to Viterra's access undertaking. The proposed timeframe enables Viterra to implement the Auctions and review their operation (both from an Auction and operational perspective)

8 Transitional arrangements

	Proposed changes	Reason for changes
1	<p>Viterra will amend Schedule 3 of the Port Loading Protocols (previously Schedule 2) to specify the transitional arrangements in respect of the Auction System.</p> <p>Those transitional arrangements set out:</p> <ul style="list-style-type: none"> when the first Auctions will be held (and the period to which the relevant Capacity relates) the interaction between the existing first-in-first served system and the first Auctions how the Auction Premium Rebate calculation will operate in respect of the initial Auction period (given that it will be less than a full Year) <p>The transitional provisions also make it clear that the Auction arrangements set out in the Protocols do not apply in relation to an Auction in respect of Capacity that will be available for any period after the expiry of the</p>	<ul style="list-style-type: none"> The proposed changes are intended to provide clarity for exporters in relation to the process for implementing the first Auctions as part of the transition from the existing first-in-first-served system. Auctions in respect of any period after 30 September 2013 will be conducted in accordance with the Port Loading Protocols

	Proposed changes	Reason for changes
	existing access undertaking	

9 Changes to the Auction Participation Deed

	Proposed changes	Reason for changes
1	<p>Viterra proposes to amend clause 4 of the Auction Participation Deed to make it clear that Viterra may display on the Online Auction System an indicative estimated snapshot of the Rebate per Tonne for the relevant Slot as at the end of the previous round (“Indicative Current RpT”)</p> <p>The Indicative Current RpT will provide only an indicative estimated snapshot of the Rebate per Tonne for the relevant Slot based on bidding activity as at the end of the previous round (if any). It will be subject to significant change (i.e. the actual Rebate per Tonne will depend on a range of factors, including subsequent bidding activity in respect of all Slots in any subsequent rounds and in any subsequent Auctions in respect of the relevant Year). Accordingly, clause 4 also includes appropriate disclaimers and releases of liability in relation to use of the Indicative Current RpT</p>	<ul style="list-style-type: none"> During the industry consultation meetings certain participants suggested that information on the current Rebate per Tonne calculations may provide greater certainty. Publication of the Indicative Current RpT is intended to address this issue. However, given that the Indicative Current RpT is a snapshot only (and will be subject to significant change), it is necessary to include appropriate disclaimers and releases of liability

10 Further questions

If the Commission has any further questions, Viterra would be pleased to assist.

13 July 2012