GAVILON SM

19 May 2011

Anthony Wing
General Manager
Transport & General Prices Oversight Branch
Australian Competition & Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Mr Wing

Co-operative Bulk Handling Limited
Port Terminal Services Proposed Access Undertaking

1. Introduction

Gavilon Grain Australia Pty Ltd (***Gavilon***) welcomes the opportunity to comment on Co-operative Bulk Handling Limited's (***CBH***) proposed Port Terminal Services Access Undertaking (***Proposed Undertaking***).

Gavilon is keen to ensure that the Proposed Undertaking appropriately balances its legitimate business interests as an access seeker and those of CBH as the service provider. Gavilon does not believe the Proposed Undertaking achieves this balance and, therefore, opposes the Proposed Undertaking in its current form. However, Gavilon seeks to engage with CBH and other industry participants to resolve as expeditiously as possible the issues it has identified and offers some suggested solutions for industry consideration.

2. About Gavilon

Gavilon is part of the Gavilon Group, LLC, a United States based global company which provides essential commodities and related services in the physical distribution, trading, merchandising and risk management of raw materials and value-added products for the global supply chain of grain, feed ingredients, fertilizers and energy products.

Gavilon commenced operations in Western Australia approximately six months ago by establishing a commodity management office that expands Gavilon's origination, transportation and logistics, marketing and distribution and risk management services in the Asia-Pacific region. Gavilon's Perth office supports the origination of wheat and other commodities in Australia, as well as destination marketing activities in the Asia-Pacific region.

As a new entrant, Gavilon considers it has prospects of playing a role in creating increased competition in the export of grain from Western Australia.

3. The proposed two tier capacity allocation system is inappropriate

When regard to the matters listed in s44ZZA(3) of the *Competition and Consumer Act 2010* (Cth)(***CCA***), Gavilon considers that the proposed Base Load Capacity allocation system:

(a) does not promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided;

(b) does not provide an incentive for CBH to improve productivity;

(c) is not in the legitimate interests of CBH;

(d) is not in the public interest, including the public interest in having competition in markets (whether or not in Australia); and

(e) does not appropriately take into account the interests of persons who might want access to the service.

The Base Load Capacity allocation system does not promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided

Gavilon considers the proposed Base Load Capacity allocation system is contrary to this object of Part IIIA of the CCA, because customers with Base Load Capacity will be prevented from transferring that capacity. Absent any explanation from CBH as to what will happen to contracted capacity that eligible customers do not use, Gavilon considers there is a risk that capacity will go unused. In situations where there is demand for this capacity from other customers, the efficiency of the port and the overall supply chain will be reduced.

In addition, the Base Load Capacity allocation system is restricted to large customers who may not be as efficient as smaller customers. In this regard, there is a risk that up to 60% of port capacity may be allocated to less efficient customers.

The Base Load Capacity allocation system does not provide an incentive for CBH to improve productivity

As noted above, by preventing eligible customers from transferring Base Load Capacity there is a risk that capacity will go unused when there may be demand from other customers for it. As well as reducing port efficiency, there is a risk that overall throughput at CBH's ports will be reduced. In this regard, the Base Load Capacity allocation system does not provide an incentive for CBH to improve productivity. For example, there is a risk that by providing CBH with the certainty of a guaranteed return, the Base Load Capacity allocation system will not incentivise CBH to improve port throughput.