

CBH response in relation to submissions on proposed variation to 2011 Port Terminal Services Undertaking (Undertaking)

CBH is pleased to respond to submissions received by the ACCC on CBH's proposed variation to the Undertaking.

Prior to formulating and submitting the amendments to the Undertaking, CBH made significant efforts upfront to consult with industry participants to design amendments to maintain an effective and efficient auction system. The response from industry demonstrates the success of this consultation.

The ACCC has only received three submissions. Two of the submissions are very supportive (one totally). The third does not address the proposed amendments (so CBH assumes it is supportive) but is more concerned with the price that marketers offer to growers at port.

It can readily be assumed that industry participants who have not made a submission have done so because any concerns have been fully ventilated, and taken into account, in the pre-submission process undertaken by CBH.

In CBH's view there are obviously many valid methods that can be adopted in terms of allocating shipping capacity to the market which are reflected throughout Australia. The changes CBH has proposed assist in the development of the current system of auctioning capacity but there are other methods that may work equally well that could be adopted in the future. No system will likely have unanimous support from all industry players but CBH considers the proposed changes have the support of the vast majority of wheat exporters from Western Australia.

CBH sets out specific comments in response to the submissions received below.

- **Cargill Australia Limited – submission dated 21 May 2013**

CBH is pleased that Cargill has no concerns and is supportive of the proposed variation to the Undertaking and to the revised auction system generally.

As set out above, this reflects the significant efforts that CBH has made in consulting with industry participants and in designing an effective and efficient auction system.

- **Gavilon - submission dated 20 May 2013**

CBH is pleased that Gavilon is supportive of most of the proposed variations to the Undertaking and to the revised auction system generally.

Gavilon raises issues with three aspects of CBH's proposed amendments. CBH sets out its views on each one below.

CBH acquiring allocated capacity

The decision by CBH to acquire allocated capacity would only be invoked if CBH could ensure that no customers would be adversely affected and that the non-discriminatory access clause of the Undertaking would not be breached.

CBH will ensure there is adequate transparency in relation to acquisition of allocated capacity and only make the decision for operations reasons, where CBH reasonably considers that it would:

- (i) not have the effect of customers incurring materially greater demurrage at the relevant Port Terminal than would have been the case if no allocated capacity was acquired from the customer; or
- (ii) be for the purpose of materially reducing forecast congestion at a Port Terminal Facility at a future date.

Whether CBH approaches all customers will depend on the particular purpose for which CBH is acquiring allocated capacity. For instance, if CBH was proposing to acquire back allocated capacity to enable maintenance to be conducted at the port, CBH would approach all customers who hold capacity in the slot. However, if the decision to acquire back allocated capacity was for the purpose of reducing congestion delay or demurrage at port, CBH may not approach all customers because this could raise issues with pro-rating.

That is, assume CBH wishes to remove 50,000 tonnes of capacity to decrease forecast demurrage at a port. If CBH is required to approach all customers and more than one customer wishes to accept the request CBH could be required to accept both and pro-rate how much it bought back. For CBH's purposes it would remove 50,000 tonnes, but each customer could still be left with 25,000 tonnes or less to ship, thus causing logistical issues.

Alternatively, if CBH foresaw that there could be issues with certain commodities being accumulated adversely affecting the terminal, CBH may wish to offer to buy-back capacity from those shippers who might ship those commodities but not from all others. If those customers agreed then the buy-back would occur. Alternatively, those customers could ship different commodities and there would be no adverse effect on the terminal.

It should be remembered that each customer is buying capacity on the grounds that they will be able to ship grain and if they are not able to ship, then they should sell that capacity to a customer who can. Therefore, the proposed acquisition for operation matters and the fact that customers are not compelled to accept an offer to acquire allocated capacity (i.e. it cannot be acquired back by CBH without the consent of the relevant customer) should mean that this proposed change is not generally a contentious one.

Single auction period

CBH notes that Gavilon does not agree with the rationale for combining the Harvest and Annual Shipping Period Auctions.

CBH has previously consulted with industry participants with a view to determining what changes may further improve the auction system. Other exporters, including those of similar size to Gavilon and smaller, do not appear to have the same view as Gavilon, as seen by the vast majority consensus received on this subject last year when CBH first intended to implement this change and other improvements to the auction system.

CBH is unable to combine the greater reposition flexibility (which Gavilon and many others appear to support) without opening up the auction to one single period and pool. CBH does not consider that having a single auction period favours any particular exporter over another. Having a single auction period with greater flexibility to reposition provides greater benefits to exporters than multiple smaller and more restrictive auction periods and more auctions. Sufficient grain is received in Western Australia to enable shipping in the Harvest Shipping months of November, December and first half January by any party not just those with carryover grain. CBH considers that with the current hard delineation between the Harvest Shipping Period and the Annual Period, customers who may wish to acquire capacity in December and January may be discouraged from doing so as a result of the inability to reposition that capacity to later in the year.

Later auctions

Gavilon has proposed that Annual Shipping Period auctions be held later in the year (late September) rather than the August date in CBH's proposal. CBH notes that it has previously held auctions later in the year (October and November auctions) in relation to the Annual Shipping Period. This did not improve the position in relation to the auction premium or avoid an over acquisition of capacity. These matters are a function of the marketers' demand for certainty of capacity and a desire to ship from Western Australia. Each marketer is no doubt convinced that they will be able to acquire and ship grain when they acquire the capacity. In addition, market events post auction can also dampen demand and desire to ship grain.

CBH considers that if the reasoning of Gavilon is accepted, that certainty of crop size leads to a more orderly market with no potential over acquisition of capacity, and this was the sole criteria for determining allocation of capacity, then the solution is not a later auction but the development of a capacity market which follows ownership of grain. This would allow competition to take place at the accumulation level as exporting is not possible without wheat entitlement. However, this is not part of the proposal being considered by CBH. Ultimately, there are many criteria that need to be addressed for determining a successful system, and of necessity, the views of some customers on what may succeed may contradict with others. As discussed above, merely because a proposal does not have unanimous support does not mean that it is not beneficial to the industry generally.

Whilst CBH understands Gavilon's desire to avoid an acquisition of capacity in excess of harvest, an auction in late September is contrary to the intentions and proposed direction of a vast majority of exporters. Similar to the position in relation to the proposed single auction period, CBH's industry consultation has pointed to the fact that most exporters support the earlier auction of capacity. Gavilon's argument also ignores the increased certainty of access to export capacity that an early auction allows for exporters who wish to contract, or have contracted, with growers or customers prior to harvest.

Finally, CBH considers that growers have benefited as a result from the fierce competition to acquire grain from growers that takes place when exporters have acquired capacity, something which may be lost if a later auction date is required.

- W.A. Grain Group (Inc) (WAGG) – submission dated May 2013

As a general position, CBH considers that WAGG's comments do not touch upon CBH's proposed changes to the auction system. Accordingly, WAGG does not actually oppose CBH's proposed variations and its submission offers little assistance in forming a view against allowing CBH to advance these variations. As indicated previously, CBH has consulted with industry broadly over the last two years in relation to most of these changes and the vast majority of industry is not concerned with the changes.

WAGG has asked the ACCC to consider any negative effect that the variation may have on the growers of Western Australia. It does not point out any negative effect which the variations have because there are none. CBH's primary concern in designing its port access arrangements is the Western Australian growers. The growers are members of CBH and the reason why it exists. This concern drives CBH to ensure that its port arrangements (and in fact its entire supply chain arrangements) are the most efficient they can be. This is demonstrated by CBH's port costs (and supply chain costs) being the lowest in Australia. This benefits growers and marketers.

Whilst the WAGG submission is otherwise irrelevant, CBH considers that a couple of statements in it need to be corrected as regards the auction.

WAGG contends that high prices paid for shipping slots are resulting in marketers paying more in one Port Zone and less in another. CBH considers that this statement is misleading and CBH rejects the assertion that the auction is the sole cause of these price variations. Firstly, CBH notes that the Port Terminal Rules are agnostic as to Port Zones, and CBH is proposing a single auction pool and an auction specific rebate that applies to capacity acquired at *all* Ports. Secondly, auctions of the majority of capacity took place well before the price variations pointed at by WAGG and it should be expected that as the potential supply of grain decreases in a zone, prices may rise. Thirdly, it is not possible to tell how significant the demand for grain is merely by examining posted prices, as there is no data on the volume of grain being sought. Moreover, Port Capacity is not and never will be the only factor in influencing grower pricing and market fluctuation.

WAGG also claim that the auction premium is pushed up by CBH Grain and that the auction system is revenue neutral for CBH. This assertion should be rejected entirely. Whether a high auction premium is paid by an exporter is determined by whether there is a demand to ship grain from Western Australia. There is no certainty that an auction premium, let alone a high auction premium, will be paid. Factors which influence that include the exporter's personal view on Western Australian production, its expected share of that production and most significantly world production. Ultimately the outcome is vigorous competition for Western Australian growers' grain by exporters.

CBH Grain is, just like any other exporter and member of the grain industry, entitled to procure shipping slots to export grain and there are sufficient protections within the Undertaking to ensure there is no discrimination in favour of CBH Grain. These protections are not varied as part of the proposed variation. The level of premium paid by CBH Grain is certainly not revenue neutral to CBH. Further, directors and officers of CBH Grain have obligations to act in the best interests of CBH Grain and to trade solvently. The premium paid by CBH Grain is placed in the auction premium pool and makes up part of the auction premium rebate that is returned to all exporters that ship grain using acquired capacity and can result in significant outflows of funds from CBH Grain and the CBH Group.