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Location: Griffith
Contact: Brett Tucker
Our Ref:

Sara Stark
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3001

Dear Sara

RE: Recommended amendment to the rule 10(1) of the WMR

I refer to your email dated 10th March and our subsequent teleconference in relation to the above issue. We appreciate your efforts to work towards a solution but unfortunately there are still some issues with the ACCC's proposed approach.

Generally speaking , we are of the view that the Market Rules are too prescriptive and do not allow flexibility for Company's like MI to manage levels of service and pricing in accordance with our customers' expectations. MI has consistently held the view that Government's have no role mandating appropriate levels of security for commercial dealings. Indeed we can think of no other industry, least of all banking, where there are mandatory caps on security levels. As a direct consequence of public policy straying too far inside the day to day business dealings of commercial entities, we now find ourselves in a position where it is extremely difficult to find a solution that is practical for all circumstances.

The second general concern we have is the unrealistic pace of change. Whilst working though the issues, we have encountered a range of significant anomalies, some of which we detailed in our teleconference. The Market Rules constrain our ability to sensibly address these anomalies. During our teleconference you appeared somewhat concerned that our position had changed from the details provided in our public submission. Unfortunately this was inevitable. We are working through very complex issues to create greenfields property rights in a matter of months. Ironically, the platform from which these rights are being created is still poorly defined after 90 years of government regulation and market development.

Some specific issues we have encountered include:-

Unbundling, levels of service and security

Proposed paragraph (1B)(a) will cause MI some problems. This paragraph contains a condition which, if not satisfied, stops MI from requiring security under paragraph (1B)(b). The condition is that the water delivery right is issued as a specified number of units which is the same as the number of units to which the person is entitled under the irrigation right. This is a little ambiguous, however it is probably intended to require that, when delivery entitlements are issued, the same number of water entitlements are issued. If this 1:1 ratio does not apply to a person, MI is

prevented from requiring security under paragraph (1B)(b). This will have implications in at least the following situations:-

1. We currently have an anomaly whereby some landholders with fixed flow (drip) systems are receiving a higher level of service than they are currently paying for. This arises out of bundled water trade. After installation of a fixed flow system the flow rate (and therefore the "draw" on the system) does not change – the flow rates are locked into the design of the pumps and pipes on farm. What many landholders have done is to sell WE's to pay for their fixed flow systems. In so doing they have reduced their fixed charges bill (reduced their bundled DE's) without actually altering their level of service. This is a pricing anomaly which needs to be fixed but the method of fixing will be limited by your proposed rule.
2. In cases where customers subsequently apply for additional DE's to go with temporary water traded into their landholding.
3. In cases where water has already been sold to government, we have situations where the DE's will immediately be in excess of the WE's on day 1 of the unbundling.
4. Under subrule (1C), a restructure of delivery entitlements that alters "*the number of units*", prevents MI from requiring security under paragraph (1B)(b), even if the same alteration were made to "*the number of units*" of water entitlements. Also, if "*the number of units*" were construed to refer to the flow rate, this sub-rule prevents MI from requiring security under paragraph (1B)(b) if it ever changes the flow rate.

Tradable Delivery Entitlements

We have consistently held the view that we must hasten slowly in the development of separately tradable Delivery Entitlements but unfortunately we see the draft advice to the Minister containing recommendations to mandate such a regime. After numerous attempts at finalizing our Delivery Entitlements policy internally we have come to the conclusion that the nature of these supposed rights are fixed in time and space and not separately tradable without creating a legal and administrative nightmare. More recently we have been working internally to develop at least a temporary trading regime to see if we can achieve some level of compliance with the ACCC position. We will bring this matter before the Directors again in late-March but at this stage it is too soon to indicate the appropriateness of this approach.

In simple terms:-

- we are not sure that we can adequately codify these "rights" sufficient to allow separate permanent trade
- we are not confident the market will place any value on them if they can be codified
- we are being rushed into an approach which could have long lasting negative impacts for MI and its customers (existing and transformed)

Comments on the drafting

- The new drafting refers to "*a specified number of units under a water delivery right*". This probably refers to the number of delivery entitlements held but a court could construe it to refer to the design flow rate (6.6ML/day capacity constraint in MI or equivalent) of water that a person is entitled to under a delivery entitlement. This is especially a problem because

subparagraph (1B)(b)(ii) states that he number of units is calculated "*in respect of the current financial year (disregarding any constraints on delivery)*", which suggests that the number of units is the flow rate (which could be affected by delivery constraints), not the number of delivery entitlements (which cannot be affected by delivery constraints). It would be preferable to refer to "*the number of units into which a person's water delivery right is divided*" or similar language and to fix the drafting of subparagraph (1B)(b)(ii).

- We make the same comments with respect to "*the number of units to which the person is entitled under the irrigation right*" in paragraph (1B)(a). Note that, in subparagraph (1B)(b)(ii), the drafting to changes to "*the number of units that the person is entitled* ***to receive in respect of that year*** *under the irrigation right*", which again suggests that a reference to "*units*" is a reference to a volume of water. It also suggests that you must estimate annual allocation for the year. That could be a difficult exercise, but this defect also appears in the existing rule 10 of the *Water Market Rules 2009* (Cth).

Following the teleconference we (MI) discussed these matters further and considered the following options as alternative approaches :-

Unbundling and security

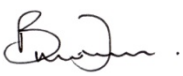
- Option 1 – Remove the limits on taking of security and allow the market to sort out which of the PIIO's are being unreasonable in this regard – we would argue that public pressure from customer-shareholders and withdrawal of investment from the region provide stronger drivers for good behaviour.
- Option 2 - set the trigger for security around the 5 to 1 ratio using the greater of the existing levels or the 1983 Volumetric Allocation Scheme for each landholding. If MI was to reissue DE's to a landholding, we would be limited to a security level determined by the landholding's entitlement at unbundling OR its 1983 entitlement. Beyond the 1983 VAS, security is capped (ie – becomes less as a proportion than 5 to 1). In the absence of detailed analysis this option appears to be attractive but more work is required to make sure potential anomalies can be addressed.

Trade

- Tradable Delivery Entitlements should not be mandatory, instead remaining optional where it is feasible and broadly supported.

If you have any queries in relation to these issues please do not hesitate to contact me on 0409164566 or tuckerb@mirrigation.com.au. Assuming the deadline for your advice to the Minister is imminent, I would be more than willing to come to Melbourne and work through the potential solutions in more detail.

Yours faithfully



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