

Background

In April 2011, the BCMB Board (Board) re-established the Handling Commission Review Task Force (HCRTF) for the purpose of examining six specific “current issues” associated with the BCMB’s Handling Commission Review (HCR) process and to prepare recommendations to the Board regarding how best to address these issues.¹ These recommendations are to be brought back to the Board in time to allow for consideration and implementation prior to the initiation of the 2013 HCR process (anticipated for Summer 2013).

The issues considered by the HCRTF are:

1. Treatment and reporting of not-for-profit and multi-business depots’ costs and revenues;
2. Process for determination of the Depot Return Margin;
3. Depot Manager Costs for vacation time and employment benefits;
4. Offsite Collection Policy refinement;
5. Phase II Allocation Methodology (non-core hours); and
6. Further streamlining of the Handling Commission Process.

Identification of these issues was based on input received from the Interested Parties (parties who participated in the last two HCR processes, namely: ABDA, ABCRC and ABCC), the Data Collection Agent (DCA), the BCMB Administration and BCMB Legal Counsel.

The DCA is an independent and arms-length entity in the HCR process that has direct access to the container volume and Depot cost data being collected through the Uniform Code of Accounts (UCAs). Further, the DCA has gained deep insight into these issues through its work for the 2007 and 2010 HCR processes. Due to these attributes, the HCRTF engaged the DCA to provide its analysis and recommendations on each of these issues in order to assist the HCRTF in developing its recommendations for the Board. The recommendations now proposed by the HCRTF to the Board are based largely upon that of the DCA.² The HCRTF would like to thank the DCA for its input – which has helped to significantly expedite the work of the HCRTF.

The following document identifies each of the six issues considered by the HCRTF and the recommended course of action to take with each item.

Recommendation:

Administration should be directed to include the *Handling Commission Review Task Force Final Report to the Board* as a reference for all future Handling Commission Review Processes.

Recommendation approved at the April 9, 2013 BCMB Board meeting

¹ Terms of reference for the HCRTF are attached.

² The DCA’s reports to the HCRTF are attached.

1) Treatment and reporting of not-for-profit and multi-business depots' costs and revenue

Assessment:

The DCA assesses each Depot UCA for prudent and proper allocation of costs and revenues. The wide diversity of the depots suggests that there is no particular rationale for excluding specific subsets of depots from Handling Commission (HC) determination (e.g. Non-Profit or multi-businesses). For larger depots, Canada Revenue Agency now requires Non-Profit Depots to separately track and report their depot operations revenues and costs. This same data tracking is appropriate for use with UCA reporting. For Multi-businesses, the BCMB has informally requested of larger depots that they track their Depot costs separately from the Depot's other business activities.

a) Not-for-profit Depots

The HCRTF supports the DCA's view that more of the larger Non-Profit Depots are reporting their Depot related costs and revenue separately and that the level of reporting is improving and is appropriate.

Recommendation:

- The DCA should be directed to continue to include reporting on Non-Profit Depots in its Phase I report.
- No other actions are recommended.

Recommendation 1 a) approved at the February 6, 2013 BCMB Board meeting

b) Multi-Business Depots

The DCA's audit of the 2011 UCAs submitted by larger Multi-Business Depots indicates that improvements over time have resulted in more of the larger Multi-Business Depots reporting their Depot related costs and revenue separately. However, there is no formal BCMB policy in place to require this. The HCRTF supports the DCA's view that the level of reporting is improving and is appropriate.

Recommendation:

- The Board should formally require that Depots that meet both of the following criteria:
 1. Annual Return Volumes from and over 10 million containers; and
 2. Non-depot business revenues of greater than \$400,000 a yearbe required to track and report their depot-related costs and revenues as supported by separate financial statements.
- The Data Collection Agent be directed to advise those multi-business depots that have a container volume from 7 million and less than 10 million that they may be required in the future to track and report their depot related costs separately.

Recommendation 1 b) approved at the April 9, 2013 BCMB Board meeting

2) Process for determination of the Depot Return Margin:

Assessment:

The determination of the Depot "Return Margin" is a process that involves the use of Return Margin Experts (Expert) competent in assessing and comparing the return margins realized by companies across a range of industries. The DCA engages its own Expert when developing and presenting its recommendations for Handling Commissions in the Phase I report.

As the timetable of the HCR process is quite tight, and the lead times for engaging an Expert can be long (such individuals are in high demand), the Interested Parties face the challenge of deciding whether or not to retain their own Expert (usually for a not inconsiderable sum) *prior* to receiving the Phase I report and the recommendations of the DCA's Expert.

The HCRTF is of the view that there is a potential opportunity to reduce overall HCR process costs if the parties participating in the HCR process have an opportunity to provide input directly to the DCA on the terms of reference for the DCA's Expert and to assist with identification of potential experts who would be asked to respond to a Request For Proposal.

As the determination of Interested Parties for a given HCR process occurs in parallel with the DCA preparing its Phase I and II reports, it is never certain which Interested Parties will formally be participating in a given HCR process and thus should participate in providing input to the DCA regarding the DCA's Return Margin Expert. For this reason, the HCRTF recommends that the Return Margin Methodology Policy be amended to reference either the participation of the Interested Parties directly or the HCRTF itself (which consists of a membership that includes all Interested Parties who have participated in previous HCR processes). Further, the HCRTF should be reconstituted as a standing committee of the BCMB for the purpose of acting as the vehicle by which these parties can provide advice to the DCA on the TOR for and the List of Return Margin Experts.

Recommendations:

- Clause #8 of the Return Margin Methodology Policy be amended to the following:
 - a. Prior to retaining this expert, the DCA shall prepare a Return Margin Expert Terms of Reference that ~~would~~ outlines the services the DCA requires of the Return Margin Expert. The DCA shall also prepare a listing of potential experts who ~~would~~ will be asked to respond to a Request for Proposal.
 - b. If the Interested Parties to the Handling Commission Review have been identified by the time that the DCA is ready to retain the Return Margin Expert, the DCA shall meet with the Interested Parties or their representatives ~~BCMB's Handling Commission Review Task Force~~ to review the Return Margin Expert Terms of Reference and the listing of potential experts. The Interested Parties or their representatives ~~Members of the Handling Commission Review Task Force~~ shall have the opportunity to recommend additions, deletions or amendments to both the Return Margin Expert Terms of Reference and the listing of potential experts. The role of the Interested Parties or their representatives ~~Handling Commission Review Task Force~~ shall at all times be advisory, with the DCA to have the sole prerogative to make the final determination on the Return

Margin Expert Terms of Reference and the listing of potential experts. The DCA will provide the Interested Parties or their representatives ~~Handling Commission Review Task Force~~ with a copy of the final Return Margin Expert Terms of Reference prior to conducting the Request for Proposal. The DCA shall inform the Interested Parties or their representatives ~~Handling Commission Review Task Force~~ as to the successful respondent to the Request for Proposal. Any Interested Party ~~who participates in the work of the Handling Commission Review Task Force shall retain~~ has the right to engage their own Return Margin Expert in the Handling Commission Review process if they should so choose.

- c. If the Interested Parties to the Handling Commission Review have not been identified at the time that the DCA is ready to retain the Return Margin Expert, the previous paragraph applies, but with “the BCMB Handling Commission Review Task Force” substituted in place of “the Interested Parties or their representatives” wherever that phrase occurs.

Recommendations 2 a) to c) to clause 8 of the Return Margin Methodology Policy approved at the April 9, 2013 BCMB Board meeting

- The Handling Commissions Review Task Force be established as a standing committee of the BCMB and renamed as the “Handling Commission Review Standing Committee”.

Handling Commission Review Task Force approved to remain as an ad hoc committee at the February 6, 2013 BCMB Board meeting.

3) Depot Manager Costs for vacation time and employment benefits;

Assessment:

Some concerns were raised as to whether the DCA’s application of the existing BCMB Bottle Depot Manager Cost Determination Policy accurately represented costs associated with Depot Manager benefits (EI, CPP, etc.) and vacation costs (i.e. costs to backfill Manager responsibilities while the Manager is on vacation). Upon further discussion with the DCA, it was determined that this existing policy is sufficiently clear, is appropriate and that no further modifications to the policy are required. Any questions that may arise in the future regarding the specific mechanics of the application of the policy by the DCA in a particular HCR process should be dealt with within that HCR process itself (e.g. through Information Requests and the negotiation process, etc.).

Recommendation:

No further action required by the BCMB at this time.

Recommendation 3) approved at the February 6, 2013 BCMB Board meeting

4) Offsite Collections Policy Refinement:

Assessment:

The HCRTF was asked to review the Offsite Collections Policy and determine whether any refinements were required.

Based on the DCA's audit of 2011 UCAs, about \$825,000 in third party collection costs were reported. This is less than the (unadjusted) cap of \$1.2 million as described by the Offsite Collections Policy. The audit also determined that the vast majority of these costs are incurred by only 5 depots and that these 5 depots' cost structure (i.e. cents per container) are below the overall system average which indicates that these depot operations play a role in reducing overall handling commission rates.

Recommendation:

No further action required by the BCMB at this time.

Recommendation 4) approved at the February 6, 2013 BCMB Board meeting

5) Phase II Allocation Methodology (non-core hours);

Assessment:

The Phase II report provided by the DCA takes the overall Phase I "Total System Revenue Requirement" (total quantum of Handling Commissions to be distributed in a given year) and allocates this cost across the approximately 28 container streams (aluminum, PET, glass, etc.) in order to set a specific Handling Commission to be levied against each container type.

One consideration in this Phase II process is the methodology used to allocate Depot costs for "non-core hours" (e.g. time associated with cleaning, organizing, waiting, personal fatigue and delay allowances, etc.). Two different methodologies have been proposed (the "fixed" and the "proportional"). Both of these methodologies are viewed by the DCA and its allocation expert (ProSolve) as having merit.

Recommendation:

- The DCA should be directed to continue to use the proportional allocation methodology for non-core hours when preparing the Phase II Report.

Recommendation 5) approved at the April 9, 2013 BCMB Board meeting

6) Further Streamlining of the Handling Commission Process

Assessment:

It is the intent of the existing HCR process to allow the parties to reach an agreement at anytime while also providing a formal, structured process to ensure the setting of Handling Commissions in the event the parties cannot reach an agreement. In order to ensure that the “structured” process proceeds on a timely basis, it is necessary to engage the Facilitator early on in the process – essentially at the same time that the Interested Parties have received the Phase I and II report. This means that the BCMB is undergoing a process to select, hire and brief the Facilitator prior to, or at the same time that, the parties are conducting their own analysis of the DCA recommendations and determining whether there is an opportunity to informally reach agreement on HCs. After reviewing the situation, the HCRTF has determined that there is no reasonable means to avoid this initial potential for overlap of effort if the objective of reaching a conclusion to the HCR process within the mandated 6-month limit is to be complied with.

Recommendations

- a) The HCRTF recommends that the Board approve insertion of the following to the *Handling Commissions Rules of Practice and Procedure*:

Renumber paragraph 4.1 to paragraph 4.1.1 and add a new paragraph 4.1.2 as follows:

4.1.2. Notwithstanding paragraphs 4.12 to 4.22, at any time after the preliminary meeting with the Facilitator as described in paragraph 4.1.1., the Interested Parties may reach a settlement agreement with respect to all of the Handling Commissions referred to in s.3 of the Administrative Bylaw or an agreement with respect to all of the Handling Commissions referred to in s.3 of the Administrative Bylaw and an agreement regarding the Mid-Term Adjustment Formulas in relation to the same. Either agreement constitutes a termination of the Facilitated Negotiations in accordance with paragraph 4.25.

Recommendation 6a) approved at the February 6, 2013 BCMB Board meeting

- b) The HCRTF recommends that the Board approve BCMB Administration arrange for a “without prejudice” presentation by the DCA of the DCA Report³ to the Interested Parties, the Board and the Facilitator (as an observer) prior to the initiation of the formal Facilitated Negotiations process. This meeting will allow participants to ask questions for clarification or points for consideration of the DCA. The DCA will have the discretion to answer questions, as it deems appropriate, either during the meeting or may respond at a later date.

Recommendation 6b) approved at the February 6, 2013 BCMB Board meeting

³ The “DCA Report” refers to the report or reports directed by the BCMB to be prepared by the DCA at the initiation of a HCR process in accordance with paragraph 3.3 (c) of the *Handling Commissions Rules of Practice and Procedure*.