

31 August 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight
ACCC
GPO Box 520
Melbourne Vic 3001

Dear Sir,

Re: Viterra Operations Limited – Port Terminal Services Access Undertaking – Draft Decision

In relation to the report issued by the ACCC, 11 August 2011, Flinders Ports would like to raise a number of issues and provide comment as follows.

Flinders Ports is a private port operator which owns and operates the following ports in South Australia, Port Adelaide, Port Lincoln, Wallaroo, Port Giles, Thevenard, Port Pirie and Klein Point.

Flinders Ports notes that of these ports, Port Adelaide, Port Lincoln, Thevenard, Wallaroo and Port Giles are noted with the Viterra proposal outlined in the ACCC paper.

Flinders Ports has responsibility for all shipping movements within these ports and provides a number of the key services required to facilitate the entry and exit of a vessel from the ports, in addition to co-ordinating the provision of other essential services required for vessel operations within the port boundary.

Flinders Ports' services are largely conducted within the scope of the Maritime Services (Access) Act 2000 (SA) (MSA Act) as outlined on page 45 of the ACCC paper. It should be noted that this regulatory regime was certified in late 2010.

You will note that a key essential service is that of "providing, or allowing for, access of vessels to the port".

Flinders Ports through its port management system accepts bookings for berths within ports on a "first come first served" basis. This process enables Flinders Ports as port operator to ensure that other related and required services are made available to service the requirements of a vessel entering/ exiting the port.

In addition many of the ports where Viterra conducts its grain loading operations are effectively utilised by other trades other than grain.

With this background in mind the following comments and observations are made in relation to the Viterra proposal:

1. Given section 44ZZA(3AA) of the CCA and the certification of the SA Ports Access Regime ("SAPAR") under the Maritime Services (Access) Act 2000 ("MSA Act"), Flinders Ports would question the proposed Access Undertaking in its current form in relation to how it would operate under or beside the MSA Act requirements.

An amendment to the Access Undertaking should be considered to clarify that it only relates to services which are not subject to the MSA Act.

Those services to which the Access Undertaking applies (i.e. not covered by the MSA Act) should be clearly identified to avoid uncertainty for access seekers as to which regulator has jurisdiction over the Access Undertaking or ambiguity in their interpretation of Access Undertaking.

2. "Port Operator": This definition should be changed to "Terminal Operator" as Flinders Ports is the owner and operator of the ports within which the Port Terminals are located.

Defining Viterra as the "port operator" is not correct and may mislead or confuse persons seeking access to or services provided by Flinders Ports at those ports. Further, persons seeking to ship grain via containers or other cargoes may mistakenly think that they have to deal with Viterra or use Viterra's facilities for the same.

3. "Port Terminal": This definition in the Port Loading Protocol at Section 2 should be the same as the definition in the Access Undertaking. Further, both definitions should be amended to refer to the "Grain terminals" (not "ports") operated by the "Terminal" Operator.

4. Flinders Ports' Port MIS and Viterra's Port Loading Protocol: The process involved in a vessel booking incorporates a shipping agent (on behalf of the vessel operator) applying for use of the grain berths via the Flinders Ports port management system (Port MIS) and the allocation of berths is undertaken by Flinders Ports on a first come first served basis.

Flinders Ports' would therefore question how the auction system proposed in Viterra's draft 2011 Access Undertaking would in effect be undertaken. For example, Flinders Ports may have allocated a berth to a vessel in Port MIS which will have precedence over a vessel that Viterra may have auctioned to another vessel at a premium.

5. Ardrossan: It is noted that Ardrossan is not within the SAPAR or Access Undertaking. Flinders Ports would query why it is not within the existing or proposed Access Undertaking.

As outlined above Flinders Ports owns and operates the ports where Viterra conducts its grain loading operations, excluding Ardrossan. Flinders Ports undertakes shipping services only at Ardrossan. The relationship between Flinders Ports and Viterra is managed through commercial agreements in place at each of the ports where Viterra conducts grain terminal operations. Access to the port facilities and the berths where Viterra undertakes these operations falls within the regulatory framework as outlined in the MSA Act.

Flinders Ports would therefore request the ACCC to further consider the proposed Undertaking in the light of the role and responsibility that Flinders Ports has in managing and operating its ports and ensuring compliance with its own obligations under the MSA Act.

If any additional information is required in relation to this matter please contact us.

Yours sincerely



Mark Travers
Company Secretary