



# Final position

T-Ports Pty Ltd, Lucky Bay

Exemption assessment of a bulk wheat port terminal facility under the Port Terminal Access (Bulk Wheat) Code of Conduct

23 August 2019

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# 1. Introduction

The ACCC intends to determine T-Ports Pty Ltd (T-Ports) to be an exempt service provider under the Port Terminal Access (Bulk Wheat) Code of Conduct (Code), once the port terminal facility that it is currently developing at Lucky Bay on the Eyre Peninsula of South Australia is capable of handling bulk wheat. The purpose of this final position paper is to outline the ACCC's assessment underlying this view.

The proposed exemption means that T-Ports will not be required to comply with Parts 3 to 6 of the Code in the course of providing port terminal services via its facility at Lucky Bay.

The proposed exemption would apply specifically to T-Ports' facility at Lucky Bay and not to T-Ports as a port terminal service provider (PTSP) generally. In the event that T-Ports develops other port terminal facilities in the future, these facilities will be subject to the Code's full coverage unless also specifically exempted by the ACCC.

The ACCC is not able to grant T-Ports an exemption until its Lucky Bay facility is covered by the Code, that is, when it has a facility capable of handling bulk wheat. Once T-Ports' Lucky Bay facility is capable of handling bulk wheat, the ACCC proposes to formally grant an exemption and publically note the decision through the release of an ACCC final determination. T-Ports advises that its facility is expected to be capable of handling bulk wheat in November or December 2019, with bulk grain export services expected to be offered from 1 January 2020.

The ACCC's intention to grant an exemption has been formed on the basis of the information it currently possesses. If there is a material change in circumstances between the time that this final position is released and the time that T-Ports is capable of being granted an exemption at Lucky Bay, the ACCC will consider these changed circumstances before granting the exemption.

The Code was made under section 51AE of the *Competition and Consumer Act 2010* (Cth) (CCA). The Code commenced on 30 September 2014 and regulates the conduct of PTSPs to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.

## 1.1. Exempt service providers

The Code provides that the ACCC or the Minister for Agriculture may exempt a PTSP from the application of Parts 3 to 6 of the Code in relation to port terminal services provided by means of a specified port terminal facility. In deciding whether or not to determinate that a PTSP is an exempt service provider, the ACCC must have regard to the matters listed at subclause 5(3) of the Code:

- (a) the legitimate business interests of the port terminal service provider;
- (b) the public interest, including the public interest in having competition in markets;
- (c) the interests of exporters who may require access to port terminal services;
- (d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services;
- (e) the promotion of the economically efficient operation and use of the port terminal facility;

- (f) the promotion of efficient investment in port terminal facilities;
- (g) the promotion of competition in upstream and downstream markets;
- (h) whether the port terminal service provider is an exporter or an associated entity of an exporter;
- (i) whether there is already an exempt service provider within the grain catchment area for the port concerned;
- (j) any other matters the ACCC considers relevant.

The ACCC's assessment of T-Ports' application regarding its Lucky Bay facility is set out in section 2 of this document.<sup>1</sup>

Exempt PTSPs face a lower level of regulation as they remain subject to only Parts 1 and 2 of the Code. PTSPs that are determined by the ACCC or the Minister to be exempt service providers are:

- only required to comply with Parts 1 and 2 of the Code; and
- **not** required to comply with Parts 3 to 6 of the Code.

Part 1 of the Code contains general provisions about the Code.

Part 2 of the Code requires all PTSPs to:

- deal with exporters in good faith;
- publish and make available a port loading statement;
- publish policies and procedures for managing demand for their services; and
- make current standard terms and reference prices for each port terminal facility that it owns and operates publically available on their website.

Part 3 of the Code requires a PTSP:

- not to discriminate in favour of itself or its trading business, or hinder third party exporters' access to port terminal services;
- to enter into an access agreement or negotiate the terms of an access agreement with an exporter to provide services if an exporter has applied to enter into an access agreement and certain criteria are satisfied; and
- to deal with disputes during negotiation via specified dispute resolution processes including mediation and arbitration.

Part 4 of the Code requires a PTSP to have, publish and comply with a port loading protocol which includes an ACCC approved capacity allocation system.

Part 5 of the Code requires a PTSP to regularly publish its expected capacity, stock at port information and key performance indicators.

Part 6 of the Code requires a PTSP to retain records such as access agreements and variations to those agreements.

Exempt service providers are still required to comply with general competition law.

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<sup>1</sup> For more information about the ACCC's process for making and revoking exemption determinations under the Code, see the ACCC's guidelines, available at: <http://www.accc.gov.au/regulated-infrastructure/wheat-export/accc-role-in-wheat-export>.

## 1.2. Why the ACCC has assessed T-Ports' application prior to construction of its facility being complete

The ACCC considers that there are a number of reasons why it was appropriate to assess T-Ports' application for exempt service provider status prior to it having a port terminal facility that is covered by the Code.

### **Consistency with the Code's objectives**

One of the Code's objectives is to 'reduce unnecessary regulatory burden on port terminal service providers'.<sup>2</sup> The ACCC considers that this includes not imposing unnecessary regulatory burden on PTSPs.

The ACCC considers that it can assess the appropriateness of imposing a lower level of regulation on a new entrant PTSP prior to that new entrant entering the market. The ACCC may not be able to assess the level of competitive constraint that the new entrant will have on its competitor or competitors prior to entry, however it can assess the level of competitive constraint that the new entrant will face from existing providers. Therefore, the ACCC can assess the new entrant's incentives to provide fair and transparent access in the absence of the Code's full application.

The ACCC previously adopted the approach of assessing a new entrant's application for exemption prior to them commencing operations in 2015, when it assessed Quattro Ports' application for exemption at Port Kembla.

### **Potentially preventing the unnecessary imposition of regulatory burden**

As noted above, non-exempt PTSPs are required to comply with a series of obligations in Parts 3 to 6 of the Code, many of which require the development of specific procedures and documents. For example, Part 3 requires non-exempt PTSPs to include a dispute resolution mechanism in its published standard terms and Part 4 requires that a non-exempt PTSPs' port loading protocol must include an ACCC-approved capacity allocation system.

The ACCC considers that assessing a new entrant's application prior to it providing services will result in the new entrant being subject to an appropriate level of regulation. This approach:

- (in the event that the ACCC considers that new entrant should be subject to Parts 3 to 6 of the Code) provides the new entrant with sufficient time to develop relevant documents and ensure that it will be compliant with the Code's obligations once its facility is covered, or
- (in the event that the new entrant will not be subject to Parts 3 to 6 of the Code) will ensure that the new entrant will not dedicate time and resources developing compliance procedures and documents that it will not be obliged to use.

### **Providing certainty for the applicant and access seekers about T-Ports' obligations**

Establishing the proposed level of regulation that T-Ports will be subject to prior to them commencing operations will provide some certainty to both T-Ports and industry regarding the obligations that the PTSP will have to comply with in providing access to its services. The ACCC considers that it is appropriate to provide this certainty.

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<sup>2</sup> Explanatory Statement, Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014.

## **The ACCC can revoke T-Ports' exemption if it is satisfied that the reasons for granting the exemption no longer apply**

The ACCC's decision to assess T-Ports' application prior to entry is also in part informed by the fact that, after granting an exemption, the ACCC has the ability to review and revoke the exemption if it 'is satisfied that the reasons for granting the exemption no longer apply.'<sup>3</sup>

When the ACCC grants an exemption it does so based on its assessment of the competitive environment in which the applicant will operate and the likely incentives it will have to provide fair and transparent access to exporters. If access seekers subsequently report concerns about the fairness and transparency of access at an exempt facility, the ACCC will consider these concerns and if appropriate, re-examine the appropriateness of the exemption.

In addition to inviting stakeholders to present the ACCC at any time with concerns about access to port terminal services (at both exempt and non-exempt facilities), the ACCC also conducts an annual consultation process in preparation for drafting its *Bulk Grain Ports monitoring report*. During this process the ACCC seeks stakeholder views on a range of issues including whether exporters are experiencing access issues at exempt ports.

### **1.3. T-Ports Pty Ltd's exemption application**

On 28 March 2019 T-Ports provided the ACCC with a written application seeking to be determined an exempt service provider of port terminal services provided by means of its under-construction facility at Lucky Bay on South Australia's Eyre Peninsula.

T-Ports' application is available on the ACCC's website at:

<https://www.accc.gov.au/regulated-infrastructure/wheat-export/t-ports-lucky-bay-wheat-port-exemption-assessment/exemption-application>.

### **1.4. Public consultation process**

On 17 April 2019 the ACCC released an issues paper to commence a public consultation process regarding T-Ports' application for exemption.

The ACCC invited comments in response to the issues paper by 17 May 2019. No submissions were received.

The ACCC's issues paper regarding T-Ports' application is available on the ACCC website:

<https://www.accc.gov.au/regulated-infrastructure/wheat-export/t-ports-lucky-bay-wheat-port-exemption-assessment/exemption-application>.

### **1.5. Further information**

If you have any queries about any matters raised in this document, please contact:

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<sup>3</sup> Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014, Schedule 1—Port Terminal Access (Bulk Wheat) Code of Conduct, subclause 5(6).

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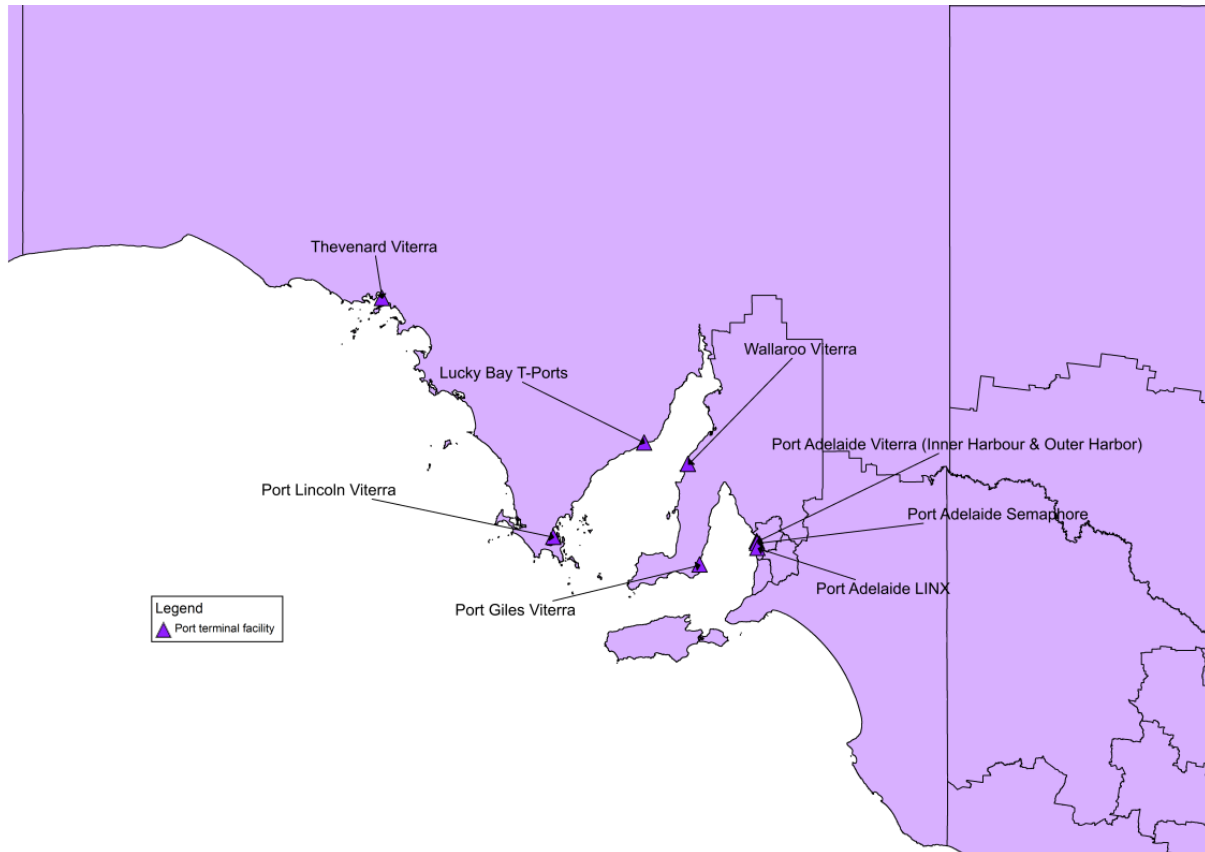
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## 2. T-Ports' Lucky Bay facility

T-Ports is constructing a port terminal facility at Lucky Bay, on South Australia's Eyre Peninsula.

**Figure 1: Map of SA port terminal facilities**



T-Ports' facility will use Trans-Shipment Vessels (TSVs) to facilitate bulk grain exports. As described by T-Ports:

The T-Ports service offering utilises innovative shallow draft Trans-Shipment Vessels (TSV). The shallow draft vessel only requires four metres of depth in the harbour terminal and trans-ships grain from the harbour to deep water ocean going vessels anchored in the Spencer Gulf. The design of the TSV is based on Sea Transport's previously designed and built vessels such as the MV Wunma and MV Aburri. The MV Aburri has been used for the last 20 years for the transhipment of lead nitrate in North Queensland.<sup>4</sup>

T-Ports submits that its facility will likely have the following features and capabilities:

- Notional ship loading capacity of 3.6mt per annum, with an intention of loading up to 600,000 mt per annum
- 27,000mt of steel bins storage silos, 360,000mt of bunker storage at Lucky Bay (2km from berth) and a further 150,000mt of bunker storage at its grain receipt and storage facilities at Lock (132km from Lucky Bay).

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<sup>4</sup> T-Ports, *Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat))*, 28 March 2019, p. 2.



T-Ports submits that its facility, which will only be accessible by road (i.e. not rail), is strategically located to present a freight advantage for Eastern Eyre growers relative to Viterra's Port Lincoln facility.

The ACCC notes that the Code only applies to ship loading facilities located at a port and as such this exemption assessment only applies to T-Ports' port terminal facility at Lucky Bay. Ship loading facilities located on TSVs are not subject to the Code.

### 3. ACCC assessment having regard to the matters in subclause 5(3) of the Code

This section sets out the ACCC's assessment of T-Ports' application for exempt service provider status at Lucky Bay, having regard to the matters listed at subclause 5(3) of the Code.

T-Ports summarises why it is seeking exempt service provider status:

T-Ports is a start-up business entering as the smaller player in the monopolised grain export market on the EP [Eyre Peninsula] in South Australia. T-Ports will face significant challenges in entering this market place and it would be detrimental to the business to be burdened by onerous regulatory controls.<sup>5</sup>

#### 3.1. (a) Legitimate business interests of T-Ports

Subclause 5(3)(a) of the Code requires the ACCC to have regard to the PTSP's legitimate business interests in deciding whether to grant an exemption.

On its interests, T-Ports submits:

T-Ports is seeking exemption from parts 3-6 of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014 (The Code) on the basis that it is providing an alternative supply chain service to the region and the requirements are onerous and would add significant costs and restrict operational flexibility.<sup>6</sup>

The ACCC will consider the legitimate business interests of a PTSP against the other matters under subclause 5(3)(a) of the Code, including the interests of exporters.

The ACCC accepts that it is generally in a PTSP's interests to:

- maximise operational flexibility, and
- reduce (or not be subject to additional) regulatory compliance costs.

In relation to operational flexibility, the ACCC notes that all PTSPs (including non-exempt PTSPs) continue to have flexibility in how they provide services under the Code. For example, non-exempt PTSPs are able to:

- set prices, terms and conditions (the Code requires that these standard terms be published but does not stipulate what they should contain)
- negotiate prices, terms and conditions with individual access seekers that are different to published standard terms (as long as these negotiations are consistent with the good faith, non-discrimination and no hindering obligations)
- vary their capacity allocations system (with ACCC approval).

To the extent that the Code's obligations restrict flexibility, the ACCC considers that it does so to the extent necessary to ensure that the Code's purpose of ensuring that exporters of bulk wheat have fair and transparent access to port terminal services is achieved. The ACCC does however acknowledge that an exemption provides PTSPs with a higher level of operational flexibility.

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<sup>5</sup> T-Ports, *Application for exemption*, p. 6.

<sup>6</sup> T-Ports, *Application for exemption*, p. 1.

In relation to regulatory costs, the ACCC recognises that the Code does impose costs on the regulated business and that non-exempt PTSPs will likely have a higher level of compliance costs than exempt PTSPs.

The ACCC considers that whether an exemption (and the associated impacts on operational flexibility and regulatory costs) will be in a PTSP's legitimate business interests depends on whether there are reasons why the PTSP should be subject to Parts 3 to 6 of the Code. The ACCC considers that removal of unnecessary regulatory obligations is in a PTSP's legitimate business interests.

As noted by the Code's Explanatory Statement, the need for continued regulatory oversight was a response to ongoing 'concern within industry over behaviours in the supply chain related to potential abuse of market power and monopolistic behaviour, particularly by port terminal operators with associated wheat export businesses.' The ACCC considers that where a PTSP is subject to a sufficient level of competitive constraint such that it does not have the potential to exercise market power, application of Parts 3 to 6 of the Code is likely to be unnecessary.

Where the PTSP is competitively constrained and does not have the potential to exercise market power, the ACCC considers that any increase in operational flexibility is likely to be consistently exercised to the benefit of exporters, as the PTSP will be operating with strong incentives to provide fair and transparent access. In these circumstances, it will be in the PTSP's legitimate business interests to have a higher level of operational flexibility and a likely lower level of Code compliance costs.

As noted below, the ACCC considers that T-Ports will be subject to a high level of competitive constraint at Lucky Bay and that the application of Parts 3 to 6 of the Code to T-Ports' Lucky Bay facility is unnecessary. Accordingly, the ACCC's final view is that an exemption would be in T-Ports' legitimate business interests.

### 3.2. (b) the public interest, including the public interest in having competition in markets; (g) the promotion of competition in upstream and downstream markets; and (i) whether there is already an exempt service provider within the grain catchment area for the port concerned

In deciding whether to grant an exemption, subclauses 5(3)(b) and (g) of the Code require the ACCC to have regard to the public interest, including the public interest in having competition in markets, and the promotion of competition in upstream and downstream markets. Subclause 5(3)(i) requires the ACCC to have regard to whether there is already an exempt service provider within the grain catchment area for the port concerned.

The ACCC considers these matters relate to the degree of competitive constraint faced by the PTSP in the provision of port terminal services, and the likely effect of an exemption on competition in bulk wheat port terminal services and related markets.

T-Ports submits that an exemption will be in the public interest:

Approximately 85% of all grain on the Eyre Peninsula is currently transported by truck. This presents limitations to efficiencies due to fixed tonne capacities (average load per truck is 31 mt) and load restrictions. By developing a port closer to the production of grain, there will be less need to transport grain longer distances, resulting in reduced traffic and carbon emissions. Reducing the total kilometres of heavy truck traffic will improve public safety and reduce road maintenance costs.<sup>7</sup>

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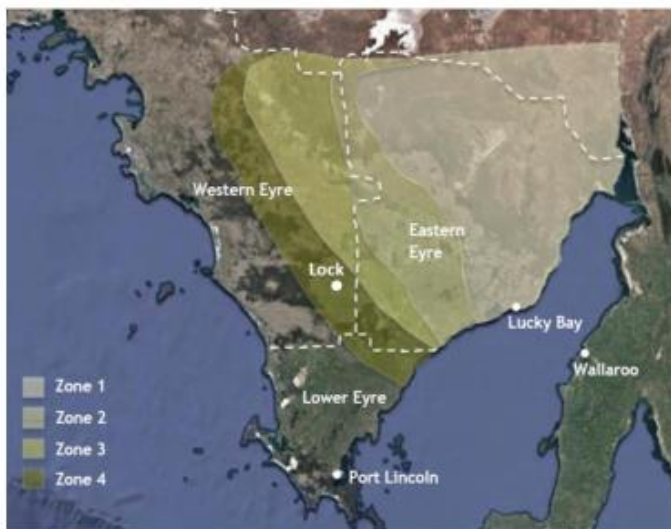
<sup>7</sup> T-Ports, *Application for exemption*, p. 5.

T-Ports also submits that its port terminal and upcountry storage facilities will increase competition along the bulk grain export supply chain, noting:

The development of an alternative supply chain from farm gate to ship loading provides competition in the upstream market. Growers will now have the choice between two bulk storage providers and two export ship loading providers. In addition to storage facilities at Lock and Lucky Bay, T-ports will also offer an off-farm accumulation service, direct to ship loading service, supporting the development of effective on-farm storage options. The proximity of the port to the growing areas enables such a service to be viable. This service completes the link of providing competition in provision of services in the entire length of the supply chain for a significant portion of eastern EP growers.<sup>8</sup>

T-Ports submits that Figure 2 represents the Lucky Bay catchment area and its freight advantage.

**Figure 2: Potential catchment areas for T-Ports’ Lucky Bay port terminal facility**



	Domestic Haulage Advantage (\$/t)
<b>Zone 1</b>	15 – 20
<b>Zone 2</b>	10 – 15
<b>Zone 3</b>	5 – 10
<b>Zone 4</b>	0 – 5

*Figure 5: Estimated freight advantage Lucky Bay harbour*

Source: T-Ports, *Application for exemption*, p. 3.

T-Ports will be the third new entrant PTSP to commence operations in South Australia since the Code commenced in 2014 (LINX Cargo Care Group and Semaphore Container Services currently provide services at Port Adelaide).

T-Ports submits that its Lucky Bay facility will compete with Viterra’s Port Lincoln and Thevenard facilities:

The catchment zone area is estimated to include the entire Eastern Eyre region where the cost of transporting grain from farm to Lucky Bay would be notably less than transporting to Port Lincoln (Noting that the vast majority est. 95% of any deliveries to Viterra up-country sites will ultimately be moved to Port Lincoln (at grower cost)). The zone extends into Western Eyre region as far west as Cungienera / Poochera at which point the freight advantage to northern sites begins favouring the Thevenard port and southern sites begins favouring Port Lincoln. The Lower Eyre region freight advantage primarily favours Port Lincoln, however on the northern most parts of this region there will be farms that are physically closer to Lucky Bay and as such would be freight advantaged to deliver to Lucky Bay.<sup>9</sup>

T-Ports submits that its facility will likely compete most directly with Viterra’s Port Lincoln facility:

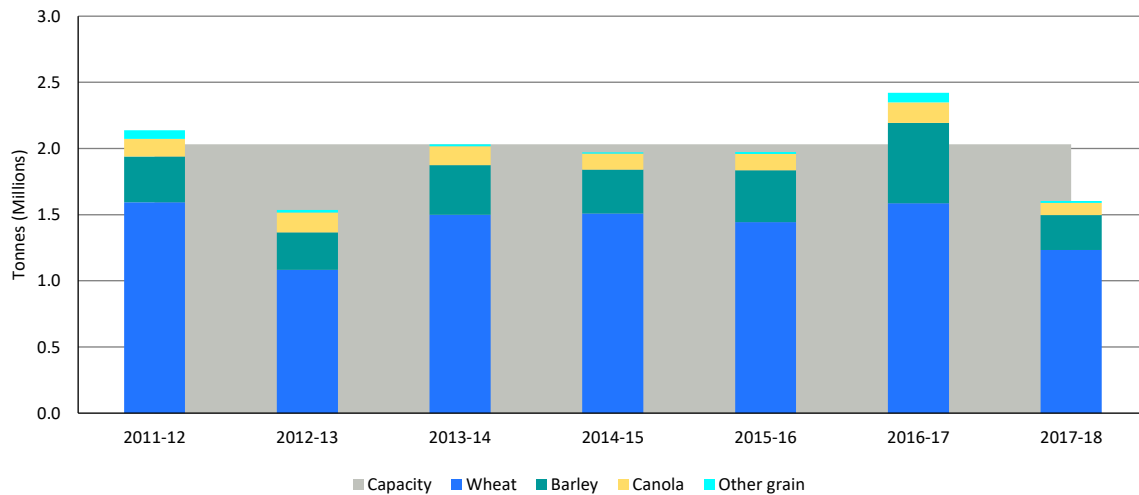
<sup>8</sup> T-Ports, *Application for exemption*, p. 6.

<sup>9</sup> T-Ports, *Application for exemption*, p. 3.

Currently exporters have only one bulk grain export service provider on the Eyre Peninsula, namely Viterra Ltd, operating grain terminals at Port Lincoln and Thevenard. The Lucky Bay port is expected to have an impact on the demand for services at Viterra Port Lincoln, but less so at Viterra Thevenard. It is estimate that 85% of grain exported from EP is exported from Port Lincoln and 15% from Thevenard.<sup>10</sup>

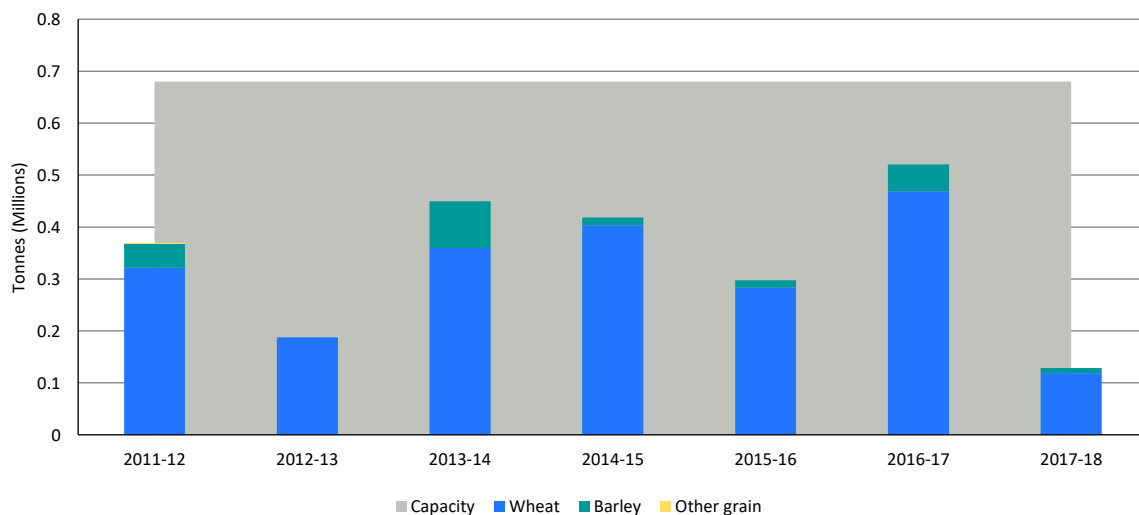
Between 2011-12 and 2017-18 Viterra’s Port Lincoln facility has been a high-volume, highly utilised facility, while Thevenard has been a lower-volume, lower utilised facility:

**Chart 1: Capacity utilisation by commodity at Port Lincoln, 2011-12 to 2017-18**



Source: PTSP loading statements; and PTSP provided/published capacity statements and capacity data

**Chart 2: Capacity utilisation by commodity at Thevenard, 2011-12 to 2017-18**



Source: PTSP loading statements; and PTSP provided/published capacity statements and capacity data

T-Ports submits that its commercial estimates are based on securing up to 600,000mt of capacity per annum. How quickly T-Ports can establish a market share and how substantial

<sup>10</sup> T-Ports, *Application for exemption*, p. 5.

and enduring that market share will be will depend on a range of factors including grain production, ability to source grain upcountry and ability to establish commercial relationships.

The ACCC's view is that granting T-Ports exempt service provider status at Lucky Bay is in the public interest, and may promote competition in markets because:

- Viterra is currently the sole provider of bulk wheat export port terminal services on the Eyre Peninsula (and is not an exempt service provider at any of its port terminal facilities, including Port Lincoln and Thevenard). T-Ports' facility should promote competition in a market (and related markets) which is currently serviced by a monopoly bulk export service provider.
- T-Ports will face a significant level of competitive constraint from Viterra's facilities, mainly from Viterra's Port Lincoln facility. T-Ports is therefore very unlikely to be able to exert market power in the provision of port terminal services and will likely have strong incentives to provide fair and transparent access at Lucky Bay without Parts 3 to 6 of the Code applying to its operations.
- There is currently little competition in upstream markets (T-Ports is adding to this by developing grain receipt and storage facilities at Lock). However granting an exemption to T-Ports may promote competition in both grain trading and grain storage in the future.

The ACCC's consideration of these matters supports granting T-Ports exempt service provider status at Lucky Bay.

### 3.3. (c) the interests of exporters who may require access to port terminal services; (d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services; and (h) whether the port terminal service provider is an exporter or an associated entity of an exporter

In deciding whether to exempt a PTSP, subclauses 5(3)(c) and (d) of the Code require the ACCC to have regard to the interests of exporters who may require access to port terminal services and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services. Subclause 5(3)(h) requires the ACCC to have regard to whether the PTSP also exports bulk wheat or is associated with an exporter of bulk wheat.

In relation to the interests of exporters who may require access to port terminal services, T-Ports submits that many exporters welcome new entry on the Eyre Peninsula:

T-Ports has been discussing service offerings and requirements with several grain exporters currently operating out of South Australian ports. Generally all exporters welcome the introduction of an alternate supply chain and are looking forward to greater flexibility and competition in the market place for bulk grain export services out of the Eyre Peninsula.<sup>11</sup>

Further, T-Ports commits to providing fair and transparent access to services:

Any exporter who wishes to utilise the services of T-ports will be welcomed. No preference in shipping slots/bookings will be given to those who have grain stored in T-Ports facilities, nor any discrimination against those bringing grain from 3rd party storages. All services are offered and charged on a commercial basis.<sup>12</sup>

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<sup>11</sup> T-Ports, *Application for exemption*, p. 5.

<sup>12</sup> T-Ports, *Application for exemption*, p. 5.

T-Ports also submits that it is not an exporter or an associated entity of an exporter:

T-Ports is not an exporter, nor is it an associated entity of an exporter. T-Ports owns and operates bulk handling facilities and the Trans-Shipment Vessel. Grain handling and loading services are offered to grain traders and exporters.<sup>13</sup>

Given that T-Ports is not vertically integrated, it is unlikely to have incentives to discriminate or hinder access in the course of providing port terminal services. Further, as noted in Section 2.2, T-Ports as a new entrant service provider entering an Eyre Peninsula market currently serviced by a monopoly service provider will likely have strong incentives to provide fair and transparent access in order to attract and maintain a customer base.

Noting these incentives, the ACCC considers that exporters will likely be able to secure fair and transparent access to T-Ports' Lucky Bay facility without Parts 3 to 6 of the Code applying. In these circumstances the ACCC considers that T-Ports being subject to the higher level of regulation would be of limited practical benefit to exporters.

Accordingly, the ACCC's view is that its consideration of subclauses 5(3)(c), 5(3)(d) and 5(3)(h) support granting T-Ports an exemption at Lucky Bay.

### 3.4. (e) the promotion of the economically efficient operation and use of the port terminal facility; and (f) the promotion of efficient investment in port terminal facilities

In deciding whether to exempt a PTSP, subclauses 5(3)(e) and (f) of the Code require the ACCC to have regard to the promotion of the economically efficient operation and use of the port terminal facility and efficient investment in port terminal facilities.

T-Ports submits that an exemption will promote the efficient use of and investment in its facility, which it needs to effectively compete against Viterra:

Given the long established operations of the current provider, T-Ports will only survive if it offers commercially favourable loading services. These can only be delivered through the combination of efficient investment, and flexible and efficient operating procedures.<sup>14</sup>

As noted in section 2.1, the ACCC considers that granting T-Ports an exemption will lower T-Ports' Code compliance costs and provide it with greater operational flexibility. This will likely promote the efficient operation of T-Ports facility at Lucky Bay.

The ACCC considers that the competitive discipline provided by Viterra will be sufficient to encourage T-Ports to make efficient investments, and deter inefficient investment, in its own facility.

Further, the ACCC considers that the removal of unnecessary regulation may demonstrate to potential new entrants that they will likely be provided with the flexibility to compete with dominant existing service providers. The ACCC considers that this may encourage potential new entrants to invest in facilities when they consider it economically efficient to do so.

Accordingly, the ACCC considers that granting T-Ports exempt service provider status at Lucky Bay will likely promote the economically efficient operation and use of its facility, and efficient investment in port terminal facilities.

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<sup>13</sup> T-Ports, *Application for exemption*, p. 5.

<sup>14</sup> T-Ports, *Application for exemption*, p. 5.

### 3.5. (j) any other matters the ACCC considers relevant

The ACCC does not consider that there are any other matters relevant to its assessment of whether T-Ports should be determined an exempt service provider of port terminal services provider by means of its port terminal facility at Lucky Bay.

## 4. ACCC final position

After having regard to the matters listed at subclause 5(3) of the Code, the ACCC's final position is that T-Ports should be an exempt service provider of port terminal services provider by means of its port terminal facility at Lucky Bay, from the date that its facility is covered by the Code.

The ACCC will continue to consult with T-Ports regarding the estimated completion date of its Lucky Bay facility. Provided there is not a material change in circumstances, once T-Ports' facility is capable of handling bulk wheat, and therefore capable of being granted an exemption, the ACCC will determine T-Ports to be an exempt service provider at Lucky Bay and publically note this decision through the release of an ACCC final determination.