

Viterra Operations Pty Ltd

Application under clause 5(2) of the Port Terminal Access (Bulk Wheat) Code of Conduct for exemption from Parts 3 to 6 of the Code in respect of Viterra's port terminals in South Australia

Submission in response to the ACCC's Supplementary Issues Paper and third party responses

Public version

26 June 2020

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1 Introduction

Viterra welcomes the opportunity to respond to the ACCC's supplementary issues paper published on 25 May 2020 (**Supplementary Issues Paper**) and to comment on certain other submissions provided to the ACCC in response to the Supplementary Issues Paper.

This submission supplements the significant amount of information that Viterra has previously provided to the ACCC in support of its application.

Throughout the duration of the ACCC's inquiry, Viterra understands that there has been only limited public engagement on, or opposition to, the granting of exemptions for its port terminals. To the extent there has been opposition, Viterra understands that much of this has been from T-Ports Pty Ltd (**T-Ports**) and Cargill Australia Limited (**Cargill**). As each of T-Ports and Cargill has established and operates a competing export supply chain and port terminal operations in South Australia, Viterra submits that the submissions by these competitors should be approached with significant level of caution.

The limited opposition to Viterra's application is reinforced by the fact that Viterra is only aware of one public submission in response to the Supplementary Issues Paper that does not support granting of the exemptions. This submission is by T-Ports, a competitor that has introduced a substantial amount of competing grain storage and export capacity in South Australia. T-Ports itself has publicly spoken about its significant storage¹ and export² capacity, and its ability to provide exporters with very competitive offerings in South Australia.³

Despite seeking to oppose the granting of exemptions to Viterra's port terminals, these submissions are largely based on assertions, and are not supported by any level of evidence or analysis. This contrasts strongly with the large amount of information and evidence provided by Viterra (much of which is, itself, based on information made publicly available by other companies like T-Ports), and the detailed economic evidence provided in [c-i-c] reports by Charles River Associates (**CRA**).

Viterra considers that any decision by the ACCC should be based on evidence and a clear application of economic principles, rather than simply accepting assertions by other companies that compete against Viterra and, by their own actions, clearly demonstrate the availability of alternative export paths in South Australia.

2 Increased competition in South Australia

As set out in our previous submissions, Viterra is subject to significant competition globally, nationally and in South Australia itself.⁴ Competition from port terminal operators in South Australia is further increasing with the recent entry of T-Ports at Lucky Bay, ADM at Port

¹ In T-Ports Application for Exemption, T-Ports states that "T-Ports operations will be supported by the development and operation of grain receipt and storage facilities at Lock (132km from Lucky Bay) and bunker facilities at Lucky Bay (2km from berth). Lock facilities include sampling, weighbridge and 150,000mt of bunker storage. Lucky Bay facilities include sampling, weighbridges and 360,000mt of bunker storage". See <https://www.accc.gov.au/system/files/T-Ports%20exemption%20application%20submitted%2028%20March.pdf>

² In T-Ports Application for Exemption, 28 March 2019, T-Ports states that "it is anticipated that a mean operational rate of 10,800 tonnes per day, equating to 5.1 days loading time, is achievable. Extrapolating this across 7 day operations for a full year equates to a loading capacity of 3.6Mill tonnes, however T-Ports commercial estimates are based on securing up to 600,000mt per annum".

³ See T-Ports Application for Exemption in which T-Ports states that it will provide a lower cost opportunity for many growers.

⁴ Viterra revised Application for Exemption dated 13 February 2020, Public Version, pp 13-17.

Pirie and, more recently, through Cargill’s expansion at Berth 20 at Inner Harbour, Port Adelaide.⁵ In addition, although LINX has indicated it will cease using Inner Harbour for a period, it will remain a potential competitor (having shown its ability to successfully export grain from Inner Harbour) and its facility will be available to other potential new entrants.

To date, we understand that Cargill has used Berth 29 to export its own grain. Based on public reports, Viterra understands that Cargill has recently sourced a mobile ship-loader due to arrive at its new facility at Berth 20 in the third quarter of 2020. Based on the capacity of this ship-loader, Cargill estimates that the new Berth 20 facility will be able to load up to 540,000 tonnes of grain annually including 300,000 tonnes of its own grain based on 60,000 tonnes being exported per month over 9 months. This would leave approximately 240,000 tonnes for other exporters.⁶

It is important that the ACCC takes these statements about competing capacity into account. [c-i-c].

3 Response to issues raised in other submissions

3.1 Viterra does not have an incentive to deny access to third parties or discriminate in favour of its related body corporate in the absence of regulation

Viterra has provided the ACCC with [c-i-c] expert economic reports by CRA, each of which provides data about the availability of competitive port terminal capacity in South Australia, and assesses the extent to which Viterra might have an incentive to deny access to its port terminals for third party exporters.

CRA’s vertical arithmetic—published by the ACCC on 14 November 2019,⁷ and supplemented in CRA’s further report which the ACCC published on 13 February 2020⁸ — clearly demonstrates that, even based on highly conservative assumptions, Viterra does not have an incentive to deny access to third party exporters.

As set out in CRA’s response to the ACCC questions dated 15 April 2020, CRA’s analysis applies both to any complete denial of access and any lesser form of potential discrimination. As set out in that response:

“[d]enial of access is merely the most extreme form of discrimination. The CRA denial of access example demonstrates that any discrimination strategy by Viterra/Glencore that is sufficient to induce competitors to shift significant volumes of grain to competitive ports would be unprofitable”.

T-Ports accepts that Viterra does not have an incentive to deny access to its port terminal services for other exporters.⁹ However, it asserts that, without regulatory oversight, Viterra

⁵ Viterra response to RFI Question 9, dated 13 January 2020, Public Version, pp 5-7.

⁶ Grain Central, ‘Cargill to enter grain export market in Port Adelaide’, 23 June 2020, see: https://www.graincentral.com/logistics/cargill-to-enter-grain-export-market-in-port-adelaide/?utm_medium=email&utm_campaign=Grain%20Central%20News%20Headlines%20June%2023%202020&utm_content=Grain%20Central%20News%20Headlines%20June%2023%202020+CID_8341cd378e41c812249b762d5d1e3510&utm_source=eGenerator&utm_term=Click%20here%20for%20full%20story

⁷ CRA Report dated 7 November 2019, Public Version, p 19

⁸ CRA Supplementary Report dated 9 January 2020, Public Version, pp 7–8.

⁹ T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 2: “We accept that Viterra does not have an incentive to completely deny access to its port terminal services for third party exporters”.

would have an incentive to provide preferential treatment to its related entity, Glencore Agriculture.¹⁰ However, this assertion is not based on any economic principle or analysis, and stands in direct contrast to the detailed analysis undertaken by CRA, which T-Ports admits it has not considered *“in any detail because ... the issue is not the overall access, economics or pricing of the PTSP, but more about the behaviour of a vertically integrated PTSP if/when multiple customers seek access to a facility at the same time”*.¹¹

T-Ports also states that *“whilst the PTSP (Viterra) is part of a vertically integrated commercial entity, there will always be motives for it to favour its related entities if/when an allocation of services needs to be made”*.¹² However, economic theory does not support the assertion that, merely by virtue of being vertically integrated, a company has a commercial incentive to deny access or provide preferential treatment to its related entity when allocating capacity. This incentive will only exist if it is more profitable for the company to deny access to other parties or provide preferential treatment.

The reports by CRA clearly demonstrate—based on a detailed factual and economic assessment—that this is not the case for Viterra. To the contrary, Viterra has a strong commercial incentive to continue to provide access to other exporters, as it has for many years, including before the introduction of the Code or the access undertakings that preceded the Code.¹³

Neither T-Ports, nor any other party, has provided any evidence to the contrary.

3.2 The competitive environment in which Viterra operates

In its submission, T-Ports states that is surprised that Viterra did not respond to the new competitive threat imposed by Lucky Bay port by lowering its public 2019/20 fees.¹⁴ However, this is an incorrect and overly narrow view of how companies respond—and how Viterra has responded—to existing competition and the threat of new competition.

As explained in our submission dated 20 March 2020,¹⁵ Viterra has responded in its pricing to the increasingly competitive environment. In particular, Viterra:

- has not increased its port terminal fees by more than CPI in the past four years;
- reduced its booking fee by A\$0.50 per tonne in 2019;
- has, since October 2019, provided growers with a free full month of storage for deliveries; and
- reduced its freight rates on average by 3.7% (A\$0.58 per tonne) at 21 upcountry sites in 2019.

In addition, price is not the only means of responding to existing or impending competition. Non-price competition on aspects such as product quality and reputation are also very

¹⁰ T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 2.

¹¹ T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 2.

¹² T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 2.

¹³ CRA Report dated 7 November 2019, pp 15-2; CRA Supplementary Report dated 9 January 2020.

¹⁴ T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 3.

¹⁵ Viterra Supplementary Submission dated 11 March 2020, Public Version, p 4.

important. Therefore—and as set out in submission of 20 March 2020¹⁶—Viterra has invested heavily in recent years in ensuring that grain that is exported from its port terminals is of high quality, consistent and reliable. Viterra has also introduced other innovations, including dynamic binning and automation.

In addition—and as set out in submission of 20 March 2020¹⁷—Viterra has reduced its operating costs to ensure it is better able to compete. This has involved Viterra deciding not to renew a rail contract for the Eyre Peninsula and closing down 29 up-country storage sites over the past two years (which reflects changed delivery patterns of growers).

3.3 Barriers to establishing or expanding grain storage in South Australia are not high

T-Ports' submission also states that barriers to establishing or expanding grain storage in South Australia are high due to an *"anecdotal industry 'belief' ... that upcountry storage investment is difficult to justify without a rock solid path to export"*.¹⁸

This is no basis on which the ACCC can or should make its decision. "Anecdotal industry belief" should not be accepted as a barrier to entry or expansion, particularly when actual evidence shows that the barriers to entering or expanding storage in South Australia are not high:

- Viterra is not aware of any barrier to delivering grain to port terminals (its own or its competitors) from upcountry storage facilities owned by either Viterra itself or any other supplier (noting that grain delivered to port must meet quality requirements).
- There are competitive up-country and at-port storage facilities in South Australia, including those owned by T-Ports itself. The impact of increased storage competition in South Australia has been reported publicly by Grain Brokers Australia which has stated that *"[h]arvest receivals into the Viterra system were extremely disappointing and appear to be a reflection of increased storage competition and the immediate movement of grain direct into domestic demand points in the eastern states."*¹⁹
- The cost of on-farm storage in South Australia (of which there is approximately 1 million tonnes) is low. The amount of storage can also easily be expanded in response to an increase in storage fees.

4 Conclusion

Viterra appreciates the opportunity to provide its further comments on the matters raised in response to the Supplementary Issues Paper.

It is important that the ACCC analyses all submissions made to it to determine whether they are supported by any substantive analysis or evidence. Viterra considers that the ACCC should give very limited weight to statements that are made with little or no analysis or evidence.

¹⁶ Viterra Supplementary Submission dated 11 March 2020, Public Version, p 3.

¹⁷ Viterra Supplementary Submission dated 11 March 2020, Public Version, p 4.

¹⁸ T-Ports Response to Supplementary Issues Paper dated 19 June 2020, page 3.

¹⁹ Grain Brokers Australia, 'Wheat export pace solid, barley lags', 21 May 2020, see: <https://www.graincentral.com/markets/wheat-export-pace-solid-barley-lags/>

It would also be contrary to the principles of procedural fairness if the ACCC was to give any weight to these matters in circumstances where it is not possible for Viterra to respond meaningfully due to the lack of detail provided, or if the ACCC's decision is based on any feedback that Viterra was not given the opportunity to properly consider. To the extent that the ACCC has received feedback opposing Viterra's application that has not been published or otherwise provided to Viterra, it is important that Viterra is provided with an opportunity to consider and respond to this feedback before the ACCC makes its decision.

Submissions that are not supported by analysis or evidence contrast strongly with the large amount of information and evidence provided to the ACCC by Viterra and the detailed economic evidence provided by CRA. These submissions show that:

- Viterra operates in a global environment and is constrained both by competition in global markets and the existence of other port terminals in Australia.
- Traditional "catchment zones" for grain grown in South Australia are fluid and increasingly outdated constructs. Buyers purchase grain from, and both buyers and growers move grain to, the locations where it is most profitable having regard to the price of grain that can be obtained in domestic and export markets, the cost of freight to port terminals or to domestic customers, the cost of sea freight, and the cost of using a particular port terminal. If Viterra is inefficient or its terms of access—including its fees—are unreasonable, grain traders will source grain from regions outside of South Australia or use alternative and competing terminals in South Australia or neighbouring states to export South Australian produced grain, or will sell grain in Australia, including directly from on-farm storage.
- Other port terminals in South Australia have sufficient capacity to load all exports undertaken by Glencore Agriculture's competitors in the past few years.
- There are low barriers to the development and expansion of port terminal services and grain storage facilities. There has also been significant new entry over the past few years, with further new port terminal developments underway.
- Viterra does not have any incentive to deny or provide less preferential access to its port terminals for Glencore Agriculture's competitors. To the contrary, any costs to Viterra associated with such conduct would materially exceed any benefits that might accrue to Glencore Agriculture.
- There are substantial costs associated with the continued application of the Code—and its unequal application to South Australia—and significant benefits for growers, exporters and Viterra if the ACCC were to grant the requested exemptions, which would provide Viterra with much needed operational flexibility.

If the ACCC has any questions in relation to this submission, please contact Damian Fitzgerald, General Counsel at Viterra.