



Draft Determination

ADM Trading Australia Pty Ltd

Exemption assessment of port terminal services
provided at the Port Pirie port terminal facility

14 July 2021

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Executive Summary

Under subclause 5(2) of the *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Code), the Australian Competition and Consumer Commission (ACCC) has made a Draft Determination that ADM Trading Australia Pty Ltd (ADM) should be an exempt service provider of port terminal services provided by means of its port terminal facility at Port Pirie, South Australia.

If the ACCC makes a Final Determination consistent with this Draft Determination, ADM's Port Pirie facility will be subject to a lower level of regulation, as Parts 3 to 6 of the Code will not apply to ADM in relation to this port terminal facility.

In making its Draft Determination the ACCC has:

- considered the characteristics of ADM's facility, alongside the broader SA grain export industry, and
- carefully considered the matters listed at subclause 5(3) of the Code.

A summary of the ACCC's draft views in relation to the ADM facility is set out below.

The ACCC notes that its assessment has been based on information available to the ACCC at the time of making this Draft Determination. This includes information obtained through its assessment of applications for exemption relating to port terminal services provided at Viterra's 6 South Australian port terminal facilities (and extensive consultation regarding these applications).¹

Summary of views

The ACCC draft view is that:

- Determining ADM to be an exempt service provider in relation to its Port Pirie facility will not be detrimental to competition in bulk grain port terminal services markets, and is unlikely to be detrimental to competition in upcountry grain storage and handling markets.
- Determining ADM to be an exempt service provider in relation to its Port Pirie facility will allow ADM to provide more flexible services for its customers, reduce regulatory burden and promote the efficient operation of this facility.
- Although ADM is an exporter, the Port Pirie facility faces a level of competitive constraint that provides ADM with an incentive to provide fair and transparent access to third party exporters which will remain if ADM is granted an exemption.

These views are based on the ACCC's analysis of the extent to which ADM's facility competes with other port terminal facilities. The ACCC has also considered the extent of any competitive constraint imposed by container exports and domestic demand for grain. The ACCC's draft views on levels of competition in relevant markets is set out in chapter 3 of this document and its draft assessment of the matters listed at subclause 5(3) of the Code is set out in chapter 4.

¹ On 21 April 2021 the ACCC released Final Determinations granting Viterra exemptions in relation to its Inner Harbour and Outer Harbor Port Adelaide facilities and not granting exemptions in relation to its Port Giles and Wallaroo facilities. The Final Determinations noted that decisions regarding Viterra's Port Lincoln and Thevenard facilities would be made after the ACCC has had the opportunity to consider shipping data for the peak period of the 2020-21 shipping year. Viterra's applications for exemption and relevant documents (including stakeholder submissions) provide useful information in relation to markets and regions that are also of relevance to this Draft Determination. These documents (along with the April 2021 Final Determinations) are available at: <https://www.accc.gov.au/regulated-infrastructure/wheat-export/wheat-export-projects/viterra-wheat-port-exemption-assessment>.

Stakeholder submissions assist the ACCC to undertake its assessment of exemption applications. The ACCC encourages stakeholders to make submissions in response to this Draft Determination. The process for making a submission is set out in section 1.3 of this document. Submissions must be received before **5:00pm (AEST), 11 August 2021**.

1. Introduction

The Code was prescribed by the *Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014* under section 51AE of the *Competition and Consumer Act 2010* (Cth) (the Act). The Code commenced on 30 September 2014 and regulates the conduct of port terminal service providers (PTSPs) to ensure that exporters of bulk wheat have fair and transparent access to port terminal services.

The Code provides that the ACCC or the Minister for Agriculture (the Minister)² 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. Exempt service providers face a lower level of regulation as they remain subject to only Parts 1 and 2 of the Code.

1.1. Exempt service providers

PTSPs that are not exempt are required to comply with Parts 1 to 6 of the Code (that is, the entire 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 a PTSP to:

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

Part 3 of the Code requires a PTSP:

- not to discriminate in favour of itself or an associated entity or hinder an exporter's 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;
- to deal with disputes during negotiation via specified dispute resolution processes including mediation and arbitration; and
- to include a dispute resolution mechanism in its standard terms and to vary standard terms in accordance with a prescribed procedure.

Part 4 of the Code requires a PTSP to have, publish and comply with a port loading protocol (PLP), which includes a capacity allocation system (and provides for the circumstances in which the capacity allocation system must be approved by the ACCC).

² The Code specifically refers to '...The Minister administering section 1 of the *Farm Household Support Act 2014*...'.

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 the general competition law provisions in Part IV of the Act.

1.2. ADM's exemption application

Currently, Parts 1 to 6 of the Code apply to ADM's provision of port terminal services at Port Pirie. Following pre-lodgement discussions in 2020, on 14 January 2021 ADM submitted an application to the ACCC seeking to be an exempt service provider of port terminal services in relation to its Port Pirie facility.

On 21 June 2021 ADM provided a written response to an ACCC request for further information. ADM's response to this request and its application for exemption are available on the [ACCC website](#).

Further details of ADM's exemption application are set out as relevant throughout this document.

1.3. Consultation on this Draft Determination

The ACCC invites public submissions on ADM's exemption application and the ACCC's draft views set out in this Draft Determination.

The ACCC prefers that submissions be sent via email in Microsoft Word format (although other text readable document formats will be accepted). Submissions should be sent to both of the following email addresses:

transport@acc.gov.au

katie.young@acc.gov.au

Please address submissions to:

General Manager
Infrastructure & Transport - Access & Pricing Branch
ACCC
GPO Box 520
MELBOURNE VIC 3001

Due date for submissions

Submissions must be received before **5:00pm (AEST), 11 August 2021**.

Confidentiality of information provided to the ACCC

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to

withdraw the submission in whole or in part. The ACCC will then assess the exemption application in the absence of that information. For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication *ACCC & AER Information Policy: collection and disclosure of information*, available on the ACCC website.

Further information

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

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1.4. Outline of this document

The Draft Determination document is set out as below:

- Chapter 2 identifies the grain catchment areas and port terminal facilities relevant to this assessment.
- Chapter 3 considers the level of competition in the bulk grain export supply chain and the degree of competitive constraint imposed by container exports and domestic demand.
 - The analysis of these issues informs the ACCC of whether a port terminal facility faces a sufficient degree of competitive constraint to promote fair and transparent access to port terminal services should Parts 3 to 6 of the Code not apply in respect of that facility.
- Chapter 4 uses the analysis and draft findings from chapters 2 and 3 to set out the ACCC's draft assessment of the matters listed at subclause 5(3) of the Code in relation to ADM's port terminal facility.

1.5. Terminology used in the Draft Determinations

For the readers' convenience a glossary of key terms used in the Draft Determination has been included at section 1.6.

As noted, the Code's purpose is to regulate the conduct of PTSPs to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. The ACCC notes that the terminology used by the bulk grain industry does not typically distinguish between bulk wheat and other bulk grains. For example, available capacity at a port terminal facility is not typically recorded or referred to with respect to a particular type of grain and a bulk grain port terminal facility (or a bulk grain loader) is rarely, if ever, exclusively used in relation to bulk wheat (though is almost always capable of handling bulk wheat).

The ACCC notes that, in making submissions to exemption application assessments, stakeholders have therefore typically taken the approach of referring to 'grain' rather than

'wheat'. Consistent with this, and for readability, the ACCC has also used the term 'grain'. Where this has occurred in the context of the ACCC's draft assessment of the matters referred to in clause 5 of the Code, it should be taken to relate to 'bulk wheat' for the purposes of the Code.³

1.6. Glossary/Definitions

ACCC	Australian Competition and Consumer Commission
ACF	Australian Crop Forecasters
ADM	ADM Trading Australia Pty Ltd
AEGIC	Australian Export Grains Innovation Centre
Berth	A location at a port or harbour used for mooring vessels
Bulk grain exports	Grain loaded onto a ship for export. Does not include grain to be exported in a bag or container that is not capable of holding more than 50 tonnes of grain
Bulk shipments	Grain loaded onto a ship for either export or coastal shipment
Cargill	Cargill Australia Limited (a subsidiary of multinational agribusiness Cargill Inc.)
CBH	Co-operative Bulk Handling Ltd
Capacity	The amount of grain in tonnes that can be loaded onto a ship during a shipping window, as determined by the port terminal service provider that owns or operates the port terminal facility ⁴
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
Coastal shipments	Shipments of bulk grain made between Australian ports
Department	Department of Agriculture, Water and the Environment
East coast	NSW, Queensland and/or Victoria
Eastern SA	The portion of South Australia to the east of the Spencer Gulf
ESCOSA	Essential Services Commission of South Australia

³ The ACCC notes that 66 per cent of all bulk grain exported from SA between the 2011-12 and 2018-19 seasons was wheat.

⁴ The definitions of specific types of capacity and allocation process terminology used by Viterra and referred to in this document are defined in Viterra's protocols (see: <http://viterra.com.au/wp-content/uploads/Viterra-Port-Loading-Protocols-Effective-24-December-2015.pdf> for further information).

Exporter	An entity seeking access to, or using, port terminal services for the purpose of exporting bulk grain
GPSA	Grain Producers South Australia
GTA	Grain Trade Australia Ltd
IHB	Viterra's Inner Harbour Port terminal facility located at Port Adelaide
Just-In-Time	A process for managing inventory where a commodity (such as wheat) is loaded onto a vessel as it is delivered to the port terminal facility
LINX	LINX Cargo Care Group
Mobile ship loader	A ship loader which is able to be transported between port terminals and can be used on general purpose wharves to load bulk grain (or other commodities)
OHB	Viterra's Outer Harbor port terminal facility located at Port Adelaide
Panamax	A class of large (high-capacity) vessel that is typically unable to load grain at shallow (i.e. non-deep water) port terminal facilities
Peak period	The period where demand for bulk grain shipment port terminal services is highest. In SA this is typically from 1 December until 31 May the following year
PIRSA	Department of Primary Industries and Regions in South Australia
PLP	A Port Loading Protocol is a statement of a port terminal service provider that sets out the port terminal service provider's policies and procedures for managing demand for its port terminal services
Port terminal facility	A ship loader that is at a port and capable of handling bulk wheat, including an intake/receival facility, a grain storage facility, a weighing facility and a shipping belt
PTSP	Port terminal service provider – the owner or operator of a port terminal facility that is used, or is to be used, to provide a port terminal service

SA	South Australia
Semaphore	Semaphore Container Services Pty Ltd
Shipping year	The period from 1 October to 30 September the following year
Supply chain	A network between companies and their suppliers to produce and distribute grain. This includes upcountry grain storage and handling services, transportation of grain and port terminal services
The Code	The <i>Port Terminal Access (Bulk Wheat) Code of Conduct</i>
T-Ports	T-Ports Pty Ltd
Transshipment vessel	A shallow draft vessel used to move grain from a port terminal facility to an ocean going vessel stationed offshore
Vertically integrated	A company that operates at more than one stage of the supply chain
Viterra	Viterra Operations Pty Ltd (associated entity to Viterra Australia Pty Ltd)
Viterra's export business	Viterra Australia Pty Ltd (associated entity to Viterra Operations Pty Ltd), formerly Glencore Agriculture Pty Ltd

2. Bulk grain export port terminal services

This chapter provides the ACCC's draft views regarding the port terminal facilities it considers relevant to the assessment of ADM's application for exemption.

The chapter begins with an overall assessment of which catchment areas and therefore port terminal facilities are relevant to this exemption assessment.

The chapter then considers the particular characteristics of each of the relevant facilities, specifically:

- section 2.2.1 considers the ability to receive grain at port
- section 2.2.2 considers the ability to store grain at port
- section 2.2.3 considers the port terminal capacity (i.e. ship loading capacity) of each facility
- section 2.2.4 discusses the various approaches to estimating port terminal capacity
- section 2.2.5 discusses the ACCC's estimates of the port terminal capacity available at ADM's facility and alternate facilities.

The ACCC considers that the identification of relevant catchment areas and an assessment of the characteristics of the port terminal facilities that operate in these catchment areas are relevant to the ACCC's consideration of the matters the ACCC is required to consider under subclause 5(3) of the Code. The ACCC's draft views in relation to these matters are set out in chapter 4.

2.1. Relevant catchment areas

The ACCC considers that the concept of grain catchment areas provides the ACCC with a method of assessing the level of competition that a PTSP applying for exemption is subject to. The ACCC notes that the grains industry generally refers to geographic areas where it is typically economically viable for grain to move to a particular port for export as a 'catchment area' (or 'catchment zone').

The ACCC recognises that there is a level of fluidity to the catchment areas for different port terminal facilities. However, the ACCC considers that the extent to which it is economically viable to move grain to different ports is relevant to the assessment of the extent to which different port terminals may (or may not) effectively constrain each other. Therefore the ACCC considers catchment areas remain relevant to exemption assessments.

2.1.1. Catchment areas relevant to this assessment

As outlined in the ACCC's April 2021 Viterra Final Determinations regarding Viterra's Inner Harbour, Outer Harbor, Wallaroo and Port Giles facilities (the April 2021 Viterra Final Determinations), the ACCC considers the Eyre Peninsula and eastern SA predominantly operate as 2 separate and distinct markets, with each comprising numerous catchment areas.⁵

⁵ ACCC, *Final Determinations – Viterra Operations Pty Ltd – Exemption assessments of port terminal services provided at the following port terminal facilities: Port Adelaide Inner Harbour, Port Adelaide Outer Harbor, Wallaroo, Port Giles*, 27 April 2021, p. 10.

In relation to the Port Pirie catchment area, the ACCC noted in the April 2021 Viterro Final Determinations that it is reasonable to expect that ADM's Port Pirie facility will compete for grain grown in the Upper North region.⁶

Consistent with these views, the ACCC considers that the following catchment areas are relevant to this assessment:

- **Adelaide:** The Adelaide catchment area appears to encompass a large area that extends from the Mid and Upper North regions of SA down to the Victorian-SA border. It seems unlikely that grain from the Yorke Peninsula moves in large quantities to Adelaide for export.
- **Port Pirie:** It appears that the Port Pirie facility will source the majority of its grain from the Upper North region.
- **Wallaroo:** Wallaroo's catchment area appears to extend from the Yorke Peninsula to the Upper and (to a lesser extent) Mid North regions.⁷

This means the Port Pirie catchment area overlaps in the Upper North region with the catchment areas of the Port Adelaide and Wallaroo facilities.

This Draft Determination therefore only considers port terminal facilities that the ACCC considers compete for grain in the Upper North region (i.e. Port Pirie, Port Adelaide and Wallaroo). The ACCC's draft views regarding the extent to which ADM competes for grain with alternate PTSPs is set out at section 3.1.3.

In its exemption application ADM submitted that 'grain delivered to Port Pirie traditionally was exported through Port Adelaide.'⁸ Specifically, ADM provided figure 2.1 below which indicates ADM's expected catchment area for grain delivered to its Port Pirie site. Figure 2.1 indicates that ADM expects to draw grain from SA's Upper North region.⁹

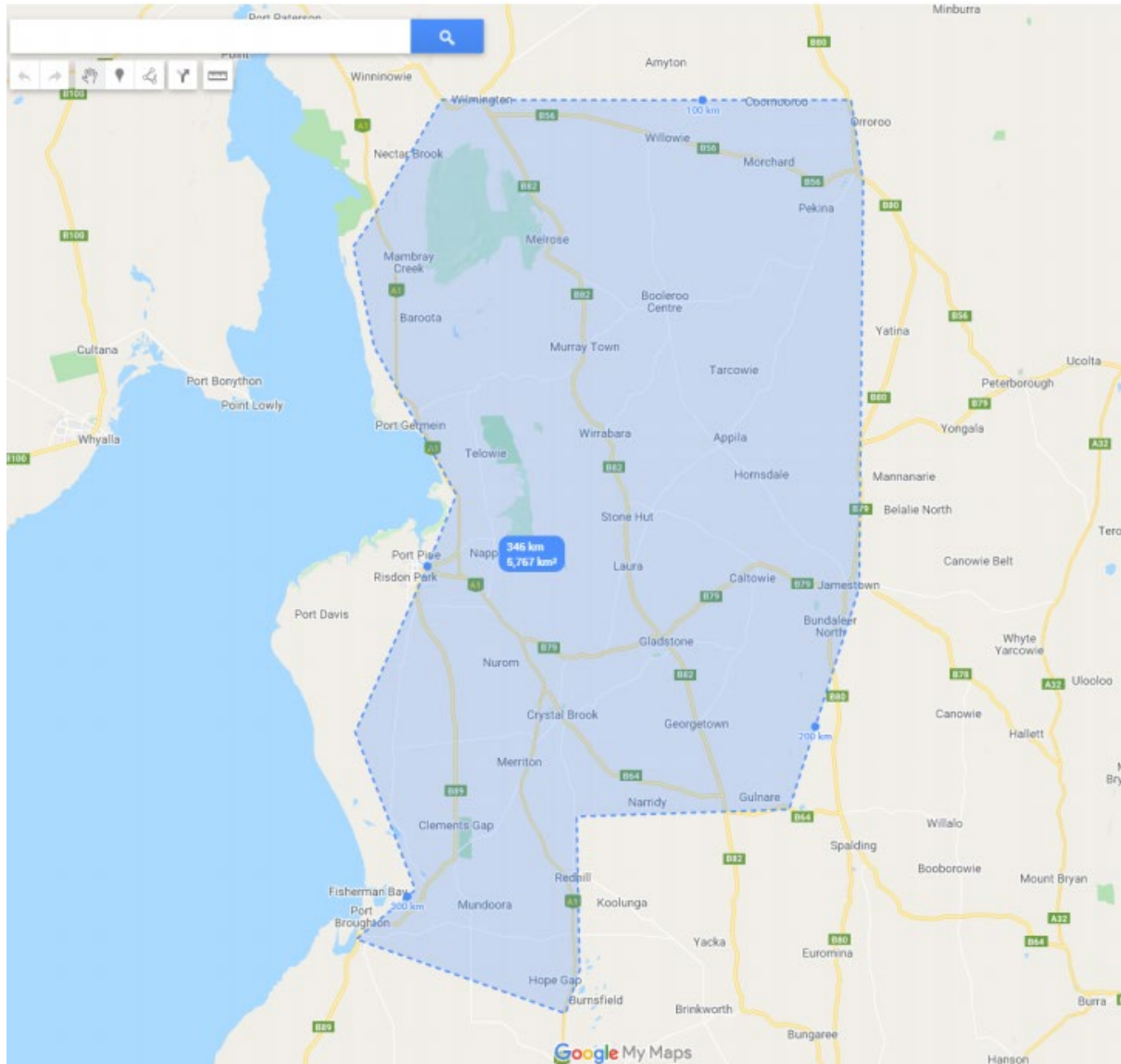
⁶ ACCC, *Final Determinations – Viterro Operations Pty Ltd – April 2021*, p. 143

⁷ ACCC, *Final Determinations – Viterro Operations Pty Ltd – April 2021*, p. 144.

⁸ ADM, *Application for exemption port terminal (bulk wheat) code of conduct*, 14 January 2021, p. 6.

⁹ The area ADM has submitted as their expected catchment zone stretches from north of Melrose, to Jamestown and down to Hope Gap.

Figure 2.1: ADM's expected catchment area for Port Pirie



Source: ADM, *Application for exemption port terminal (bulk wheat) code of conduct*, 14 January 2021, p. 4.

ACCC's draft view on relevant catchment areas

Consistent with the view expressed in the April 2021 Viteria Final Determinations, the ACCC's draft view is that it is reasonable to expect that ADM's Port Pirie facility will compete for grain grown in the Upper North region, which the ACCC considers falls within the catchment areas of Port Pirie, Port Adelaide and Wallaroo facilities.

2.2. Characteristics and capacity of relevant port terminal facilities

The ACCC considers the availability and nature of port terminal services provided at ADM's Port Pirie facility and alternate facilities is relevant to the ACCC's consideration of the matters specified in subclause 5(3) of the Code.

Noting the ACCC's draft view set out in section 2.1 that the catchment areas relevant to this assessment are Port Pirie, Port Adelaide and Wallaroo, the ACCC considers the following port terminal facilities are relevant to this assessment:

- **Port Pirie** – ADM
- **Port Adelaide** – Viterra Inner Harbour, Viterra Outer Harbor, Cargill, Semaphore
- **Wallaroo** – Viterra.

A map showing the locations of SA port terminal facilities is presented below in figure 2.2.

Figure 2.2: Map of SA port terminal facilities



Source: Map sourced from PIRSA and updated by ACCC to include SA's port terminals. See: https://www.pirsa.gov.au/primary_industry/crops_and_pastures/crop_and_pasture_reports.

Table 2.1 below provides an overview of the features of the port terminal facilities that the ACCC considers are relevant to this assessment. The ACCC is also aware of T-Ports' proposal to build an additional port terminal facility at Wallaroo which if constructed would impose an additional level of competitive constraint on ADM at Port Pirie. The level of competitive constraint imposed by this proposed development and the threat of future new entry is discussed further in section 3.1.4.

Table 2.1: Overview of port terminal facilities at Port Pirie, Port Adelaide and Wallaroo

Port terminal facility	Rail receival	Road receival	Storage capacity (tonnes)*	Ship loader (tonnes per hour)	Port of anchorage declared depth
Port Pirie (ADM)	N/A	500 t/hr 2 hoppers	80,000 tonnes	250 t/hr	8.2m
Port Adelaide – Inner Harbour (Viterra)	Standard gauge 1,600 t/hr 1 hopper	800 t/hr 2 hoppers	366,500 tonnes	1,000 t/hr	10.9m
Port Adelaide – Outer Harbor (Viterra)	Standard gauge 2,400 t/hr 1 hopper	800 t/hr 1 hopper	65,000 tonnes	2,200 t/hr	16.2m
Port Adelaide – Inner Harbour (Cargill)	N/A	1,000 t/hr 2 hoppers	None	1,000 t/hr**	10m
Port Adelaide - Osborne (Semaphore)	N/A	375 t/hr 3 hoppers	16,500 tonnes	300 t/hr	10m
Wallaroo (Viterra)	N/A	2,150 t/hr 6 hoppers	757,500 tonnes	800 t/hr	9.5m

Source: Flinders Ports website (<https://www.flindersports.com.au/ports-facilities/port-adelaide/>); Viterra, *Attachment 1 – Response to 14/11/19 information request 2020, Questions 1 and 2 – Viterra port terminal facility features*, 13 February 2020 (available at <https://www.accc.gov.au/regulated-infrastructure/wheat-export/wheat-export-projects/viterra-wheat-port-exemption-assessment/exemption-application-issues-papers>); Viterra website (<http://viterra.com.au/index.php/ports-and-terminals/>); Cargill, *Application for exemption under the Port Terminal Access (Bulk Wheat) Code of Conduct*, 30 October 2019; ADM, *Application for exemption*, ADM, Cargill and Semaphore responses to ACCC information requests.

Note: * This includes storage which is directly connected to ship loading facilities at port, as well as nearby storage which is not located directly at port and therefore may require grain to be transported a short distance by road freight services to the shipping bins for loading onto conveyors. Storage located directly at port is as follows: Viterra IHB at least 60,000 tonnes; OHB 65,000 tonnes; Wallaroo 192,000 tonnes; Semaphore 16,500 tonnes; Cargill zero tonnes; ADM zero tonnes.

** Cargill has submitted that while its loading rate is designed to intake at 1,000 tonnes per hour, due to operational reasons (truck availability and the absence of at-port storage) it expects to load grain to vessels at 400 tonnes per hour.

2.2.1. Receipts

Table 2.1 (above) shows the road and rail receipt facilities for the port terminal facilities relevant to this assessment. Viterra's Port Adelaide IHB and OHB facilities are the only facilities in SA currently able to receive grain via both road and rail transport (all other facilities are only able to receive grain via road transport).

Table 2.1 shows that there is significant variation across the receipt rates of road and rail infrastructure at the relevant port terminal facilities, with Outer Harbor having the most efficient grain intake (2,400 tonnes per hour via rail and 800 tonnes per hour via road), and Semaphore's Port Adelaide facility having the least efficient grain intake (375 tonnes per hour via road).

The ACCC notes that the rate at which ADM, Cargill and Semaphore state that their facilities are able to receive grain from road transport is at 500, 1,000 and 375 tonnes per hour respectively. Viterra's Port Adelaide IHB and OHB port terminal facilities have road intake rates of 800 tonnes per hour and as noted above, are also able to receive grain via rail (at rates of 1,600 and 2,400 tonnes per hour respectively). Viterra's IHB and OHB port terminal facilities are therefore likely able to facilitate the receipt of grain more efficiently than ADM's Port Pirie facility (particularly as this facility does not have rail receipt capabilities).

2.2.2. Storage

The storage capacity figures for each relevant port terminal facility in table 2.1 includes storage that is located at port and storage that is near port (i.e. storage which is connected to the relevant facility and storage which only requires grain to be transported a short distance to the relevant facility).

The ACCC considers that storage located directly at port likely provides a PTSP with a higher level of operational flexibility (as the PTSP is not reliant on transport services to be able to load grain onto a vessel). Off-site storage facilities located relatively close to port likely provide a higher level of operational flexibility than more distant sites (to the extent that shorter transport distances enable greater flexibility in grain movements). Consequently, the ACCC considers both on and off site at-port storage facilities located relatively close to port relevant to its assessment.

ADM has submitted that its Port Pirie facility has 80,000 tonnes of storage on the outskirts of Port Pirie.¹⁰ This storage is located relatively close to port (9km from port).

As shown in table 2.1, Viterra's Inner Harbour and Wallaroo port terminal facilities are able to store significant amounts of grain at (or near) port. The ACCC also notes there appears to be potential for IHB to be used as a storage and accumulation facility for OHB given their close proximity.¹¹

Cargill's and Semaphore's port terminal facilities, both largely operate on a Just-In-Time basis and, as a result, have little-to-no storage available at their facilities (as per table 2.1 Cargill's facility does not have any at-port storage and Semaphore's has only 16,500 tonnes).¹²

¹⁰ ADM, *Application for exemption*, 14 January 2021, p. 3.

¹¹ See section 3.1.2 of the ACCC's Final Determinations regarding Viterra Operations Pty Ltd's Port Adelaide Inner Harbour, Port Adelaide Outer Harbor, Wallaroo and Port Giles port terminal facilities.

¹² Cargill's closest upcountry storage site to port is Mallala (approximately 53km from Inner Harbour).

2.2.3. Ship loading capacity

ADM's Port Pirie facility has the lowest ship loading capacity (at 250 tonnes per hour) of all of the port terminal facilities it competes with. The ship loading capacity of these alternate facilities ranges from 300 to 2,200 tonnes per hour.

Overall ADM's ship loading capacity is constrained due to the use of a mobile loader, in conjunction with limited supporting infrastructure at the berth, especially when compared with a fixed loader operation. Loading is also constrained by the size of vessels Port Pirie can accommodate. In addition, discharging vessels can be delayed due to the port's tidal fluctuations and overall depth limitations.

As such, ADM is not able to accommodate the needs of exporters who wish to fully load larger vessels at its Port Pirie facility (i.e. those that exceed certain tonnages). Viterra's Port Adelaide OHB facility is the only relevant port in eastern SA capable of fully loading Panamax class vessels.

The ACCC notes that several of the shipments that ADM has loaded at Port Pirie appear to have been subsequently 'topped up' (i.e. loaded with additional grain) at T-Ports' Lucky Bay facility.¹³

2.2.4. Approach to capacity estimates of relevant port terminal facilities

The level of capacity available and utilised at each port terminal facility is relevant to assessing the relationship between the supply of and demand for port terminal services (utilisation levels of relevant facilities is discussed in section 3.1). It is also relevant to the identification of capacity constraints (i.e. circumstances in which demand for capacity exceeds supply). In the absence of viable competitive alternatives, capacity constraints could lead to a PTSP exercising market power in the provision of port terminal services.

A variety of 'at port characteristics' are relevant to the amount of grain a port terminal facility is able to load in a given year (i.e. a facility's capacity), in particular:

- **road and/or rail receipt facilities:** road/rail receipt facilities determine how quickly grain received at port can be processed into storage or onto a vessel;
- **at-port storage:** at-port storage provides a PTSP with greater flexibility to coordinate the receipt and loading of grain; and
- **ship loading rate:** how quickly a PTSP can load grain onto a vessel is a significant factor in how much grain can be loaded via a port terminal facility in a given period.

For the purposes of this assessment and noting future uncertainty, the ACCC acknowledges that a facility's capacity could change in future seasons due to infrastructure works and changes in operational practices.

The ACCC also considers that it is reasonable to expect that a PTSP will seek to increase the amount of the capacity it provides in response to actual or anticipated increased demand and opportunities presented by the market (e.g. by increasing staffing levels or extending work hours).

¹³ ADM and T-Ports loading statements.

Table 2.2 below shows capacity estimates for each relevant eastern SA port terminal facility, and compares the various approaches to measuring capacity estimates.

Determining the best approach to estimating capacity for ADM's facility requires the ACCC to consider the different approaches available and what information is required for each approach. The sections below describe the various approaches available to estimate capacity that have been accepted by the ACCC to date.¹⁴

¹⁴ The ACCC considered the capacity estimates of the relevant facilities in the April 2021 Viterro Final Determinations. Further information on the particular methodology used to estimate the capacity of each facility is set out in those determinations.

Table 2.2: Port terminal capacity of port terminal facilities in the Port Pirie, Port Adelaide and Wallaroo grain catchment areas (mt)

Port terminal facility	Highest published available capacity in a single shipping year ¹⁵	Highest amount of capacity provided in a single shipping year*	Highest amount of capacity provided in a single month, annualised**	ACCC capacity estimate
Port Pirie – ADM*	0.15	n/a	0.70 ¹⁶	0.53
Port Adelaide – Inner Harbour (Viterra)	1.01	0.87	1.83	1.01
Port Adelaide – Outer Harbor (Viterra)	2.23	1.82	3.13	2.54
Port Adelaide – Inner Harbour (Cargill)	0.30	n/a	0.54	0.54
Port Adelaide – Osborne (Semaphore)	0.40	0.39***	1.13	0.62
Wallaroo - Viterra	0.84	0.90	1.53	0.84

Source: Viterra, *Response to Draft Determination*, Public version, 8 February 2021, p. 7; PTSP loading statements; Cargill, *Application for exemption*; ADM, *Application for exemption*; Semaphore response to ACCC information request.

Notes: Capacity data for the 'Highest amount of capacity provided in a single shipping year' and 'Highest amount of capacity provided in a single month, annualised' columns uses shipping data since the beginning of the 2011-12 season, except for Port Adelaide IHB and OHB which use data since the beginning of the 2014-15 season (prior to 2014-15 the ACCC received the combined shipments of IHB and OHB as a single Port Adelaide facility). Viterra's 'Highest published available capacity in a single shipping year' was provided between the beginning of the 2013-14 season and up until 30 May 2021.

* ADM's Port Pirie and Cargill's Port Adelaide facilities are new providers of port terminal services that have yet to operate for a full shipping year. As such the maximum amount of grain loaded in a single shipping year is not yet available for these facilities.

** Cargill's 'highest amount of capacity provided in a single month, annualised' capacity estimate represents Cargill's own estimate of the maximum capacity of its facility (which annualised 60,000 tonnes over 9 months), provided in its application for exemption on 30 October 2019. Estimates for ADM's Port Pirie facility and Semaphore's Port Adelaide facility is estimated by using the annualized maximum historical monthly throughput (over 9 months), as done for Viterra's port terminal facilities.

*** Semaphore has loaded 387,000 tonnes of grain in the 2020-21 season as of 31 May 2021, which is their highest season to date. The ACCC notes Semaphore was scheduled to load 35,000 tonnes of grain in June.

¹⁵ The ACCC does not have data on the amount of published capacity for ADM, Cargill and Semaphore. The first column of table 2.2 instead uses the relevant PTSP's estimate of the maximum annual capacity of its facility provided in their application for exemption (in the case of ADM and Cargill) or provided in response to an information request from the ACCC (in the case of Semaphore).

¹⁶ ADM has only been providing bulk grain export port terminal services from December 2020 and the highest amount of capacity it has provided in a single month since that time is 58,544 tonnes (April 2021).

Highest published available capacity in a single shipping year

The ACCC considers that the maximum amount of capacity released by a PTSP is likely to provide a reasonable indication of how much capacity is available at a relevant port terminal facility. This is because this figure reflects the amount of capacity that the PTSP, as the operator of the facility, has been willing to commit to providing in a single season.

The ACCC also considers that the use of maximum released capacity as an estimate for a facility's capacity likely adequately accounts for the need for shutdown/maintenance periods (during which a PTSP is unable to release capacity), which typically occur during off-peak periods. Therefore, where such data is available, this approach to estimating capacity is preferred over the other two methodologies described below.

Highest amount of capacity provided in a single shipping year

The ACCC considers the highest amount of capacity provided (i.e. the highest amount of grain loaded via a facility) in a single shipping year can provide an indication of a facility's capacity as it demonstrates the highest amount of capacity a PTSP has actually been able to provide over the course of a year. However, while highest amount of capacity provided can potentially serve as a useful indicator, it does not necessarily represent the maximum amount of grain that can be loaded via a port terminal facility. As such the highest amount of capacity offered by a PTSP over the course of a single year likely provides a better indication of the capacity of the facility, as this reflects the amount a PTSP has committed to being able to provide.

Highest amount of capacity provided in a single shipping month, annualised

The ACCC notes that estimating a facility's capacity by using the highest amount of capacity a PTSP has provided in a single month will typically result in an estimate that is substantially higher than the highest amount of capacity that the PTSP has committed to providing over the course of an entire shipping year.

The ACCC considers that it is most likely not practical for a PTSP to provide the highest amount of capacity it has ever provided in a single month over the course of an entire shipping year due to practical limitations. For example, while regular maintenance activities and unavoidable closures or delays due to externally-driven circumstances (e.g. vessels failing survey) may not have impacted the PTSP during the maximum throughput month, they could reasonably be expected to affect some months of a given year. Accordingly, this approach likely overestimates a facility's capacity.

The ACCC notes that the majority (62% on average¹⁷) of SA grain is loaded within the December to May timeframe to take advantage of various international conditions. Notably, Australia's grain is traditionally competitively advantaged both on price and supply compared to other grain exporting countries and regions in this 'peak' period. Conversely it is generally not as economically desirable to export grain from Australia in the off-peak period. This dynamic consequently reduces demand for port terminal services in the off-peak period and the likelihood that the maximum amount of capacity provided in a single shipping month will be provided in these months.

¹⁷ Over the 2011-12 to the 2019-20 seasons.

The ACCC notes that it has previously used a 9 month period (as opposed to a 12 month period) to calculate annualised capacity estimates for PTSPs.¹⁸

This approach is not intended to suggest a facility only operates 9 months in a season. Rather, the ACCC considers this methodology is more likely to account for factors such as reduced throughput during the off-peak period and shutdowns for maintenance or infrastructure upgrades, compared to the method of annualising over 12 months.

However, the ACCC considers that using the maximum historic throughput month to estimate capacity may not be a reasonable method to determine a facility's maximum practical capacity, even when adjusted on a 9 month basis. Absent data which supports the assumption that the maximum month can reasonably be expected to be achieved on a regular, continued and long-term basis, the use of the highest throughput month is unlikely to provide a representative estimate of a facility's capacity on a long-term basis (such as over the course of a season entire shipping year or multiple shipping years). While the use of a 9 month period is likely a reasonable approach to account for the off-peak period, it is unlikely to sufficiently account for the variations from a facility's maximum historic monthly throughput to provide a reasonable capacity estimate over a prolonged period. However, absent other robust available data (including published available capacity), this approach offers a practical alternative to estimate capacity.

2.2.5. Capacity of ADM's Port Pirie facility and relevant alternate port terminal facilities

The amount of port terminal capacity available at port terminal facilities that ADM's Port Pirie facility competes with provides an indication of the extent to which other facilities offer a viable competitive alternative. The ACCC's capacity estimates for ADM's Port Pirie facility and relevant alternate facilities are discussed in detail below.

Port terminal facility capacity information has been provided to the ACCC on different methodological bases by different PTSPs. As such, the ACCC considers it appropriate to select the methodology which it considers best suited to the differing sets of information available. The ACCC sets out its position regarding the best available methods of measuring PTSPs' capacity below.

ADM – Port Pirie

Given the fact that ADM has only provided bulk grain export port terminal services via its Port Pirie port terminal facility since December 2020, the capacity of ADM's facility is uncertain.

ADM has submitted that it 'estimate[s] the total shipping capacity through Port Pirie to be maximum 150,000mt per annum.'¹⁹ The ACCC notes that ADM has loaded 181,435 tonnes since this time, and has indicated that it does not envisage any further tonnages to be exported through its Port Pirie facility for the remainder of the 2020-21 season.²⁰

Given that ADM exceeded its 150,000 tonnes per annum estimate by the end of April 2021, the ACCC considers that ADM's submitted estimate (of 150,000 tonnes per annum) understates the actual capacity of ADM's facility. The ACCC therefore does not consider

¹⁸ As per section 3.1.4 of the Viterro April 2021 Final Determinations, the ACCC annualised monthly maximum exports over 9 months in order to estimate the capacity of ADM's Port Pirie facility and Semaphore's Port Adelaide Osborne facility.

¹⁹ ADM, *Application for Exemption*, p. 2.

²⁰ ADM, *Response to ACCC information request*, 21 June 2021, p. 1.

ADM's submitted estimate to be an appropriate estimate for its facility for the purpose of the ACCC's assessment.

Given ADM's Port Pirie facility has not been operational for a complete shipping season, the ACCC is also unable to use the highest amount of capacity provided (i.e. the highest amount of grain loaded via a facility) to estimate Port Pirie's capacity.

As set out in section 2.2.4, the ACCC does not generally consider it appropriate to annualise historical monthly maximum shipping figures (other 9 or 12 months) to estimate a facility's annual capacity (absent data which suggests that the historical maximum monthly shipping figures can be achieved on an ongoing basis). However, noting that ADM has exceeded its own estimate and has not yet offered or provided capacity over an entire year, the ACCC considers that estimating the capacity of ADM's Port Pirie facility using the 'annualised monthly maximum' method (over 9 months) to be the best available method at this time.

The highest export month from ADM's Port Pirie facility to date is 58,524 tonnes (April 2021). Multiplying this figure over 9 months results in a capacity estimate for ADM's Port Pirie facility of 526,716 tonnes.

In its use of the maximum month (April 2021) the ACCC notes 58,524 tonnes may not accurately reflect the amount of monthly capacity ADM would be expected to provide at Port Pirie on an ongoing basis. As per section 2.2.4 there are a range of operational constraints which are likely to occur over the course of a given season, which may not have occurred in April 2021. Specifically, the ACCC notes that since ADM only recently commenced export operations at Port Pirie 58,524 tonnes may overstate the level of ongoing achievable capacity.

Conversely, the ACCC notes that it is possible ADM has not operated their facility at its ongoing achievable maximum capacity to date, and therefore may be able to achieve greater throughput than 58,524 tonnes in a given month. The ACCC notes that the 2020-21 season was a high production year in eastern SA (31% above average), particularly in the Upper North region where ADM expects to source its grain (42% above average).^{21 22} As such the 526,716 tonne estimate is based on a shipping month achieved in the peak period of a high demand shipping year, which is more likely to represent maximum demand than typical growing seasons.

Further, the ACCC considers that there are a range of practical considerations which may impact the amount of capacity that ADM can or will offer in a given shipping year. For example, ADM's operation involves the use of a mobile ship loader owned by a third party and it is not clear to what extent ADM will have access to or will want to use the ship loader over the course of a typical shipping year. As noted above while ADM loaded 181,435 tonnes between 2 December 2020 and 30 April 2021²³, the ADM has indicated that it does not anticipate loading any additional grain for the remainder of the 20-21 season (i.e. until 30 September 2021).²⁴ The ACCC also notes that given ADM has only been operating its facility since December 2020, the extent to which it will need to engage in maintenance in relation to its overall operation (including its storage site) and the impact that this will have on its ability to provide capacity, remains unclear.

However, the ACCC does generally expect that exports following high production seasons are more likely to reflect a facility's actual capacity. Noting the ACCC's above comments on

²¹ PIRSA, Crop and pasture reports South Australia 2021 Harvest Report, January 2021.

²² ADM, *Application for Exemption*, p. 4.

²³ ADM loading statements.

²⁴ ADM, *Response to information request*, p. 1.

its typical approach to estimating capacity, the ACCC considers that on balance, estimating the capacity of ADM's Port Pirie facility based on its highest shipping month to date currently represents a practical alternative at this time. As such, the ACCC has decided that the Draft Determination include a capacity estimate based on the highest amount of capacity that ADM has provided in a single month, multiplied by 9 months – resulting in an annual capacity estimate of 526,716 tonnes.

The ACCC acknowledges that different methodologies have been used in other determinations. Port terminal facility capacity information has been provided to the ACCC on different methodological bases by different PTSPs. As such, the ACCC considers it appropriate to select the methodology which it considers is best suited to the differing sets of information available.

Viterra – Port Adelaide (IHB and OHB) and Wallaroo

Table 2.2 indicates that (using maximum published available capacity) Viterra has a total of 3.55 million tonnes of capacity at Port Adelaide (via IHB and OHB) and 0.84 million tonnes of capacity at Wallaroo. As set out in the ACCC's April 2021 Final Determinations, Viterra's capacity figures represent the total amount of long-term, short-term and additional short-term capacity that has been released by Viterra in each respective season (inclusive of tolerance).²⁵

The ACCC considers, on balance, Viterra's maximum published available capacity figures to be the best capacity estimate of Viterra's facilities.

Cargill and Semaphore – Port Adelaide

In its exemption application Cargill stated that its estimated capacity is 300,000 tonnes per annum.²⁶ Though Cargill also stated that:

*...the highest practical capacity that the proposed facility could possibly reach is 60,000 tonnes a month over a period of 9 months in a year, being 540,000 tonnes annually.*²⁷

In addition, the ACCC notes that Cargill publicly indicated that '...our first year we are looking to export 300,000 tonnes, the following years we have capacity of 540,000 tonnes.'²⁸

Consequently, the ACCC considers 540,000 tonnes per annum to be an appropriate capacity estimate for Cargill's facility at Port Adelaide Inner Harbour.

Semaphore has submitted regarding the capacity of its Port Adelaide facility:

Semaphore's estimated maximum capacity would be approximately 33,000mt per month or 2 x turns of the operational storage. This annualised capacity would be 396,000mt, however Australia is generally competitive for approximately 8 – 9 months per annum or which would then equate to 264,000mt – 297,000mt of bulk operational capacity per annum. In season 2016/2017 Australian

²⁵ Viterra, *Response to Draft Determination*, p. 7.

²⁶ Cargill, *Application for exemption*, p. 3.

²⁷ Cargill, *Application for exemption*, p. 3.

²⁸ See video at: <https://www.cargill.com.au/en/2021/cargill-welcomes-arrival-of-export-mobile-ship-loader> (accessed 31 May 2021).

*grain on a record crop was competitive for a longer period of the season to drawdown old crop carry out and accordingly saw a more seasonalised volume target.*²⁹

The ACCC notes that Semaphore's exports have exceeded both its 9 month (297,000 tonnes) estimate and may exceed its 12 month (396,000 tonnes) in the current shipping year. Semaphore's facility loaded 370,000 tonnes of grain in the 2016-17 shipping year, and as of 31 May 2021, has loaded 386,000 tonnes in the 2020-21 shipping year.³⁰ The ACCC notes that the highest amount of grain Semaphore has loaded via its facility in a single month is 68,336 tonnes (April 2017).³¹ The ACCC considers that a 9 month annualised figure provides the most appropriate estimate of the capacity of Semaphore's facility and that by using this approach, the ACCC considers that Semaphore's facility has a capacity of 615,000 tonnes per annum at this time.

Further detailed explanation and consideration of Cargill's and Semaphore's capacity data is set out in the April 2021 Viterra Final Determinations.³²

²⁹ Semaphore response to ACCC information request.

³⁰ The ACCC notes Semaphore is scheduled to perform 35,000 tonnes of throughput in June.

³¹ Semaphore loading statements.

³² See pages 46-47 of the ACCC's April 2021 Viterra Final Determinations, available at <https://www.accc.gov.au/regulated-infrastructure/wheat-export/wheat-export-projects/viterra-wheat-port-exemption-assessment/final-determinations-inner-harbour-outer-harbor-wallaroo-and-port-giles>.

3. Competition across the bulk grain supply chain, container exports and domestic demand

This chapter sets out the ACCC's draft views on the level of competition in the market for bulk grain export port terminal services. The chapter also considers the extent to which the market for bulk grain export port terminal services and also related markets place a competitive constraint on ADM at Port Pirie. The ACCC considers that the total level of competitive constraint ADM is subject to is relevant to its assessment of the matters listed at subclause 5(3) of the Code. The ACCC's draft views in relation to these matters are set out in chapter 4.

In particular, the ACCC has considered:

- the level of capacity utilisation of ADM's facility to assess ADM's incentives to provide fair and transparent access, and levels of utilisation at alternate facilities to assess the level of competitive constraint alternate facilities will impose on ADM
- the availability and ownership of upcountry storage in the relevant catchment areas to assess whether an exemption is likely to impact competition at port or upcountry and the extent to which storage is relevant to the level of competitive constraint that ADM faces at port
- the ability of competing PTSPs to secure transport services, and the role of bundled storage and handling services as sources of competitive constraint on ADM
- the extent to which markets for containerised exports and domestic consumption impose competitive constraint on ADM.

3.1. Competition in the market for bulk grain export port terminal services

This section considers competition in the market for bulk grain export port terminal services, and begins with assessing the capacity utilisation at ADM's facility and relevant alternate facilities. The ACCC considers that analysing capacity utilisation:

- at ADM's facility is relevant to the assessment of ADM's incentives to provide preferential treatment to itself as an exporter, and
- at alternate facilities is relevant to the assessment of the level of competitive constraint that ADM is subject to (and therefore the extent to which ADM's incentives to provide preferential treatment to itself are constrained).

As outlined in section 2.1.1, the ACCC considers that it is reasonable to expect that ADM's Port Pirie facility will compete for grain grown in the Upper North region, which the ACCC considers falls within the catchment areas of Port Pirie, Port Adelaide and Wallaroo facilities.

The level of capacity constraint is a key factor in the ACCC's assessment of the level of competition for port terminal services. As a general proposition, the ACCC considers that where demand for port terminal services exceeds supply (i.e. capacity is constrained), a vertically integrated PTSP such as ADM will have a stronger incentive to favour itself or its associated entities (i.e. its exporting business).

3.1.1. Annual capacity utilisation

As set out in a number of the ACCC's previous exemption determinations, the ACCC considers that when there is spare export capacity at a port terminal facility, a vertically integrated PTSP likely has an incentive to provide access to third party exporters to increase throughput at its facility. However, in circumstances where capacity is constrained relative to demand, the ACCC considers that a vertically integrated PTSP may have an incentive to provide preferential treatment to itself, or its associated entity exporter compared to third party exporters.

The ACCC also considers that levels of capacity utilisation at alternate port terminal facilities is relevant to the assessment of the level of competitive constraint that a PTSP is subject to (i.e. the extent to which potential users of a PTSPs facility are likely to be able to secure services at these alternate facilities).

Annual capacity utilisation at ADM's Port Pirie facility

The ACCC considers that the level of capacity utilisation at a port terminal facility provides an indication of whether a PTSP has an incentive to discriminate in favour of itself in a manner that does not reflect the costs of providing the same services to another exporter (in the absence of regulation).³³ The ACCC notes that ADM's Port Pirie facility has only been in operation for the purposes of exporting grain since December 2020 and that available shipping data is therefore limited. The ACCC also notes that ADM commenced exports (had previously only facilitated coastal shipments) in a high production year and that its utilisation rates to date may therefore not be indicative of utilisation rates in a typical shipping year.

However as table 3.1 below illustrates, using the ACCC's estimate of ADM's facility's capacity (526,716 tonnes per annum, or 43,893 tonnes per month) the facility has seen various of levels of monthly capacity utilisation across its first year of operation in the peak period months of December through April. As noted above, ADM has indicated that it (as an exporter) does not intend to export grain from Port Pirie for the remainder of the 2020-21 shipping year.

Table 3.1: Monthly throughput and capacity utilisation at Port Pirie, October 2020 to May 2021

	Oct	Nov	Dec	Jan	Feb*	Mar	Apr	May	Total
Exports	0	0	35,494	3,289	35,497	48,650	58,524	0	181,455
Capacity utilisation	0%	0%	61%	6%	61%	83%	100%	0%	39%

Notes: (1) Capacity utilisation is based off ADM's monthly maximum exports from April 2021.

* The ACCC notes that 3 shipments are listed during February 2021 on ADM's shipping stem. However, parts of the loading of 2 of these shipments occurred across months (MV Daily and MV Alpha Bulker). For these shipments the ACCC has assumed uniform loading between loading commencement dates and loading completion dates. All other shipments were loaded within the same month. See ADM's 5 May 2021 loading statement for further details: <https://www.admgrain.com.au/wp-content/uploads/2021/05/ADM-Shipping-Stem-05052021.pdf>.

³³ The ACCC notes that Viterra's (ACCC-approved) PLP provides for a range factors that are relevant to differentiating the allocation of available Initial Long Term Capacity, including the size of the nomination, and the responsiveness and demonstrated ability of the client seeking the nomination.

Annual capacity utilisation at alternate facilities

The ACCC notes that the combined estimated capacity of the Port Adelaide facilities is 4.71 million tonnes (with 3.55 million tonnes of this capacity offered by Viterra and 1.16 million tonnes combined offered by Cargill and Semaphore). The ACCC considers that Port Pirie does compete for grain with Wallaroo and the 840,000 tonnes of capacity Viterra can provide via its Wallaroo facility. ADM's capacity therefore represents a small proportion of total capacity across the relevant ports and that exporters who may seek access to ADM's Port Pirie facility have access to a high number of alternate facilities (5) and total capacity (5.5 million tonnes) in the region.

The ACCC considers that utilisation rates of alternate facilities are relevant to the assessment of the level of competitive constraint that a PTSP faces.

Table 3.2 below shows annual capacity utilisation rates since 2013-14 at each of the facilities that compete with ADM's port terminal facilities.³⁴ When considered on an annual basis, Viterra's and Semaphore's facilities appear to have a level of spare capacity in most shipping years (although this differs between facilities and years).³⁵

Table 3.2: Annual capacity utilisation for relevant port terminal facilities, 2013-14 to 2019-20

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	Average
IHB*	-	77%	50%	86%	72%	7%	27%	53%
OHB*	-	56%	43%	72%	64%	7%	21%	44%
Semaphore	-	-	-	60%	43%	5%	15%	31%
Wallaroo	78%	76%	66%	95%	67%	14%	28%	61%

Source: Viterra, Attachment 2 - published available capacity estimates; PTSP loading statements; and ACF Shipping stem and market share report.

Notes: * Viterra started reporting IHB and OHB as separate facilities in the 2014-15 season. Prior to that time they were jointly reported as 'Port Adelaide' and had a capacity utilisation rate of 70% in 2013-14.

In relation to Cargill's Port Adelaide facility, the ACCC notes that since it commenced providing services in January 2021 Cargill has loaded 217,000 tonnes (as of 31 May 2021).

3.1.2. Capacity utilisation in peak periods

The ACCC notes that demand for access to port terminal services can be expected to be highest in the 'peak period' of the Australian shipping year. Therefore, the ACCC considers it is also appropriate to specifically consider levels of utilisation and PTSP incentives during the period when third party exporters are most likely to be seeking access. The ACCC also notes that the utilisation rates of competing PTSPs during the peak period are particularly relevant to the consideration of the level of competitive constraint that a PTSP faces.

³⁴ Table 3.6 uses the amount of capacity released via long, short, and additional short-term capacity releases in each season for each port.

³⁵ Capacity utilisation is determined using the capacity figures listed for each port in table 2.2. The ACCC notes the capacity utilisation is higher when using the amount of capacity (including tolerance) used in that specific season (as opposed to the maximum capacity released over the 2013-14 to 2019-20 seasons).

The ACCC considers that the peak period in the shipping year occurs when exporters can receive the best prices internationally. During this period there is more demand from exporters for shipping capacity at port terminal facilities. In its annual bulk grain monitoring reports, the ACCC has generally regarded the peak period to occur, on a national level, between the months of February and May (inclusive).

However, as noted below by the Essential Services Commission of South Australia (ESCOSA), the SA peak export period generally spans a 6 month period between December and May (inclusive):

Another advantage (for the other Australian states too) is that South Australian grain production is counter-cyclical relative to the northern hemisphere. South Australian grain producers thus have a window of opportunity (December to May) to sell to international markets when there is less global supply. To maximise the value that can be obtained during that window, participants in the South Australian bulk grain export market need to move bulk tonnages quickly before northern hemisphere grain is available. The task of the supply chain is to maintain quality and facilitate efficient grain movement, which is why it is important to South Australia.³⁶

Consequently, this section will consider December to May as the peak period in SA. In total, 62% of SA grain is shipped during the December to May peak period.³⁷

ADM commenced exports in December 2020 and its last listed shipment loaded at Port Pirie was 5 May 2021.³⁸ Accordingly, all shipments from Port Pirie have been loaded in SA's peak period and therefore all shipping data regarding ADM's facility reflects SA peak period shipping months. As illustrated by table 3.1 above, ADM's Port Pirie facility has seen various levels of monthly utilisation across the SA peak period shipping months (December to May), with a low level of utilisation in January (6%) and no level of utilisation in May.

Figures 3.1 to 3.4 below illustrate that there has typically been a level of spare capacity available at the relevant alternate facilities in recent years. As shown in figures 3.1 and 3.4, exports at Viterra's IHB and Wallaroo port terminal facilities have exceeded maximum released capacity over the peak shipping period at least once since the 2013-14 shipping season.³⁹ This suggests that significant capacity constraints have been present at the relevant Viterra's port terminal facilities at least once during the peak period since the 2013-14 season.

Figure 3.2 shows that exports at OHB have not exceeded peak period capacity since at least the 2014-15 season.⁴⁰ OHB came closest to exceeding its peak period capacity during the (bumper) 2016-17 season, where 1.11 million tonnes of grain was exported, compared to 1.19 million tonnes of capacity released.

Figures 3.1, 3.2 and 3.4 also indicate that Viterra's IHB, OHB and Wallaroo facilities had significant spare capacity available during the 2018-19 and 2019-20 seasons. The ACCC considers that this reflects lower SA production and, more significantly, the large quantities of grain moving via rail to the east coast for domestic consumption in response to drought conditions.⁴¹

³⁶ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 17.

³⁷ PTSP loading statements; and Australian Crop Forecasters (ACF) Shipping stem and market share reports.

³⁸ ADM loading statement, accessed on 31 May 2021.

³⁹ The ACCC notes it does not have Viterra's 2011-12 and 2012-13 capacity figures (capacity figures from 2011-12 and 2012-13 are therefore assumed to be the same as those submitted by Viterra for 2013-14).

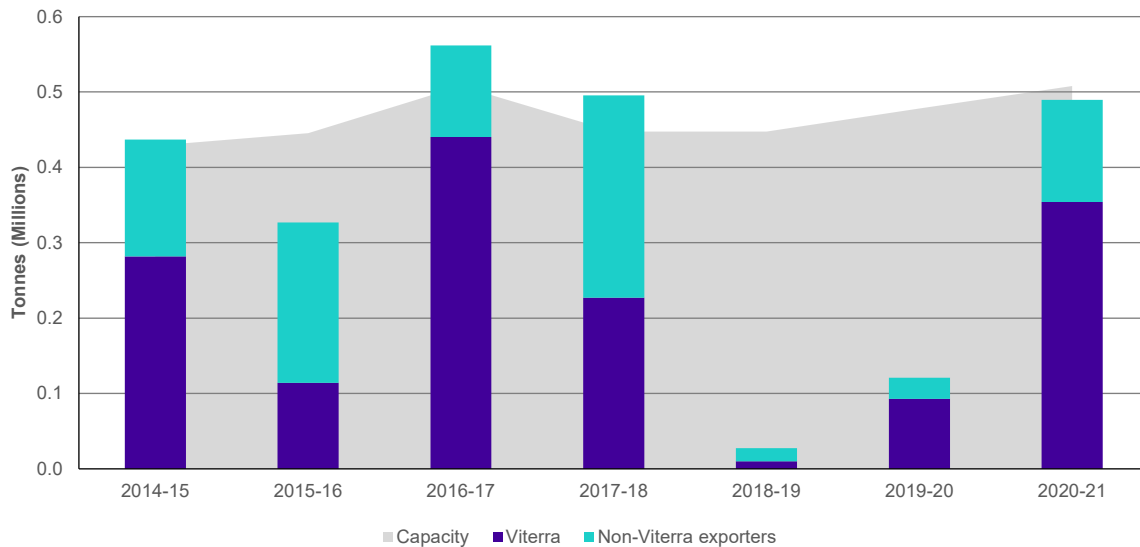
⁴⁰ Prior to the 2014-15 season the ACCC received IHB and OHB shipment data in a combined form (as 'Port Adelaide'). As such, the ACCC does not have data specific to OHB prior to 2014-15.

⁴¹ As stated previously, the ACCC does not receive data relating to interstate grain movements that have occurred via road and rail services. The ACCC is therefore not aware of the exact extent of interstate grain movements. In contrast, the ACCC does receive data on coastal shipments, and notes that SA sent 440,000 tonnes of grain to the east coast via coastal shipment in the 2018-19 season.

Figures 2.5 indicates that Semaphore’s Port Adelaide facility has had a level of spare capacity available in each of its years of operation.

As noted in section 3.1, since Cargill commenced providing bulk grain export port terminal services in January 2021 Cargill has loaded 217,000 tonnes via its Port Adelaide facility (all of which was in the SA peak shipping period).

Figure 3.1: Capacity utilisation across the peak period by exporter at Port Adelaide Inner Harbour, 2014-15 to 2019-21



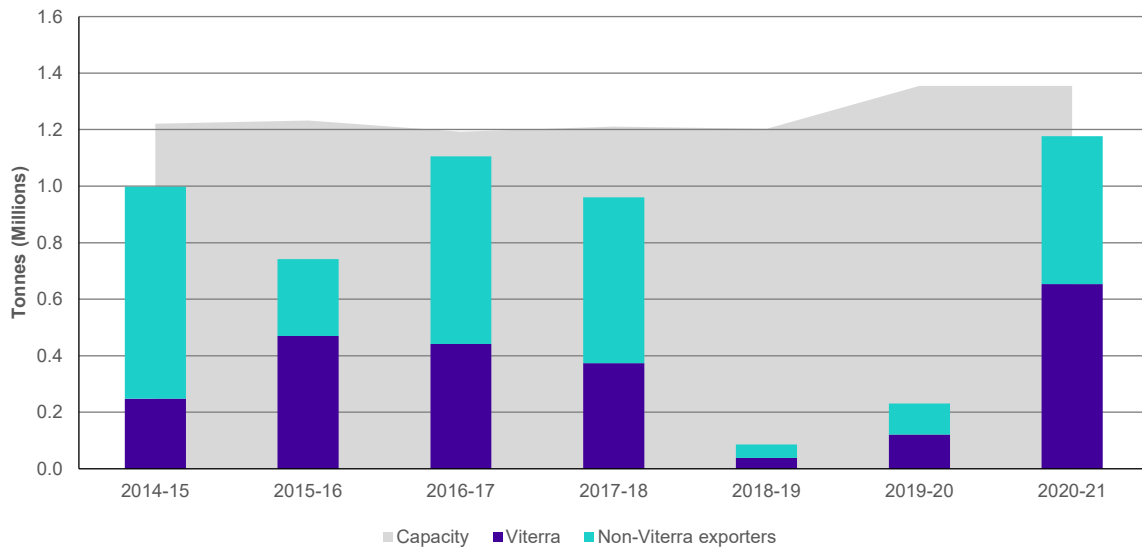
Source: PTSP loading statements; ACF Shipping stem and market share report; and Viterra, *Attachment 2 (Updated) Response to 14/11/19 information request - Question 3 - Viterra published available capacity estimates*.

Notes: (1) Shipments can exceed capacity in any given year due to a variety of factors, including: PTSPs operating facilities for extended hours due to favourable economic conditions; port delays; and the mix of commodities loaded. These factors (and others) may have been factored into PTSPs’ capacity estimates to a greater or lesser degree (or not at all).

(2) The ACCC notes Viterra began reporting shipment figures for IHB and OHB separately in 2014-15. Prior to that Viterra reported IHB and OHB as a combined Port Adelaide facility.

(3) 2020-21 capacity is assumed to be the maximum capacity released by Viterra over the 2014-15 to 2019-20 period.

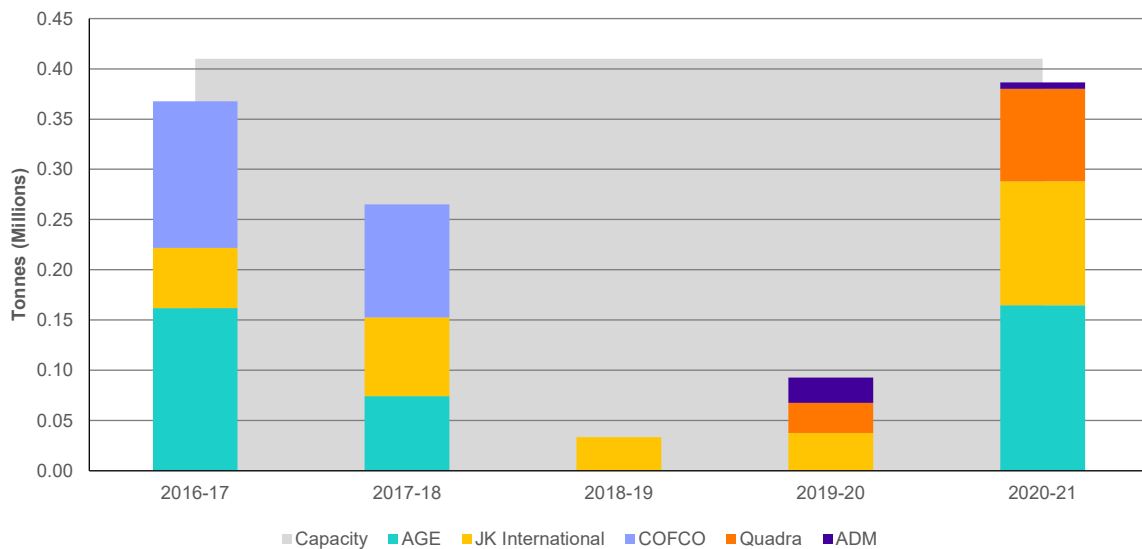
Figure 3.2: Capacity utilisation across the peak period by exporter at Port Adelaide Outer Harbor, 2014-15 to 2019-21



Source: PTSP loading statements; ACF Shipping stem and market share report; and Viterra, *Attachment 2 (Updated) Response to 14/11/19 information request - Question 3 - Viterra published available capacity estimates*.

- Notes: (1) Refer to note (1) from figure 3.1.
 (2) Refer to note (2) from figure 3.1.
 (3) Refer to note (3) from figure 3.1.

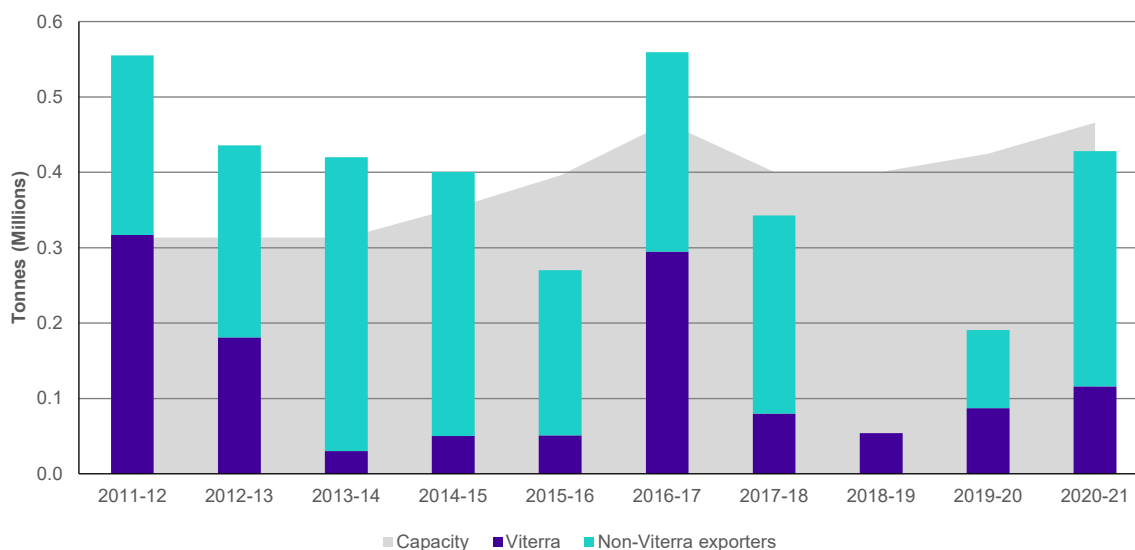
Figure 3.3: Capacity utilisation across the peak period by exporter at Port Adelaide Semaphore, 2016-21



Source: PTSP loading statements; ACF Shipping stem and market share report; and Viterra, *Attachment 2 (Updated) Response to 14/11/19 information request - Question 3 - Viterra published available capacity estimates*.

- Notes: (1) Refer to note (1) from figure 3.1.
 (2) Peak period capacity at Semaphore was calculated using the monthly maximum capacity from the Viterra April 2021 Final Determinations (see pages 46-47) and annualising over 6 months (i.e. for the duration of the peak period).

Figure 3.4: Capacity utilisation across the peak period by exporter at Wallaroo, 2011-12 to 2019-21



Source: PTSP loading statements; ACF Shipping stem and market share report; and Viterra, *Attachment 2 (Updated) Response to 14/11/19 information request - Question 3 - Viterra published available capacity estimates*.

Notes: (1) Refer to note (1) from figure 3.1.

(2) 2020-21 capacity is assumed to be the maximum capacity released by Viterra over the 2011-12 to 2019-20 period.

(3) The ACCC notes Viterra released 528,000 tonnes of peak period capacity at Wallaroo for the upcoming 2021-22 season.

ACCC draft view on ADM's capacity utilisation at Port Pirie

In relation to capacity utilisation of ADM's Port Pirie facility the ACCC notes that:

- ADM's exports to date (181,435 tonnes) have exceeded the 150,000 tonne capacity estimate ADM provided in its application for exemption (though ADM has indicated that it does not intend to export via Port Pirie for the remainder of the 2020-21 shipping year).
- To date ADM has only provided capacity (i.e. provided port terminal services) to itself as an exporter.
- ADM's facility has several clear limitations (including vessel draft restrictions) when compared with other PTSPs operating, particularly at Port Adelaide.

As noted above, the ACCC generally considers that where a vertically integrated PTSP's facility experiences capacity constraints the PTSP will have an incentive to provide preferential treatment to itself, or an associated entity exporter over third party exporters. The ACCC notes that to date ADM has only provided services to itself and that the capacity of the Port Pirie facility appears to have been highly utilised in some months since exports commenced in December 2020.

However, given that ADM has only exported from Port Pirie since December 2020 it is not clear that the volume of exports to date and the provision of export services to only one exporter are indicative of what will occur in the future. For example, ADM commenced providing exports in the peak period following a high production year, which means exports and therefore capacity constraints may not be as high in the off-peak period and in future years.

Third party exporters may be waiting for ADM to further demonstrate the facility's capability prior to seeking access, noting that exporters already have several alternate providers in the eastern SA region, each with greater on-paper efficiency and with a demonstrated track record.

3.1.3. Competitive constraint from alternate PTSPs

Given their total combined estimated capacity, the ACCC generally accepts that Port Pirie competes most significantly with alternate facilities at Port Adelaide. As noted above, the ACCC considers that Port Pirie does also compete for grain with Wallaroo owing to their overlapping catchment areas.

The ACCC notes that ADM has suggested that it will compete with alternate PTSPs at Port Adelaide for:

... grain delivered to Port Pirie [that] traditionally was exported through Port Adelaide.⁴²

The ACCC estimates the combined capacity of the Port Adelaide facilities to be 4.71 million tonnes (with 3.55 million tonnes of this capacity offered by Viterra and 1.16 million tonnes combined offered by Cargill and Semaphore). Wallaroo has a further estimated 840,000 tonnes of capacity.

In relation to the level of competitive constraint that the Cargill and Semaphore Port Adelaide facilities impose, the ACCC notes that facilities that make use of mobile ship loader arrangements are more temporary in nature than fixed loader operations. A range of factors, including the potential to relocate the loader, as well as the lower capital investment and fixed costs, mean that the level of competition provided by a mobile ship loader is likely to be less consistent and may fluctuate significantly in response to market conditions.

The ACCC considers that the high level of capacity at alternate facilities (particularly Viterra's IHB and OHB facilities) can reasonably be expected to impose a high level of competitive constraint on ADM at Port Pirie. For example, since 2016-17 Viterra's IHB and OHB facilities have accounted for 79% of all bulk grain exports out of Port Adelaide.⁴³

3.1.4. Competitive constraint from proposed port terminal facilities

In addition to those port terminal facilities currently in operation, the ACCC notes that T-Ports plans to provide port terminal services via a proposed facility at Wallaroo.⁴⁴ Noting the ACCC's draft view that ADM's Port Pirie facility will compete for grain with Viterra's Wallaroo facility, in the event that T-Ports does enter the market at Wallaroo, this would be expected to provide an additional level of competitive constraint on ADM.

While the ACCC does not generally consider the threat of competition to impose a constraint that is as effective as actual competition, the ACCC acknowledges that the threat of entry of additional facilities will impose a level of competitive constraint on ADM. The ACCC notes that the credibility of the threat of entry by T-Ports at Wallaroo has increased following the commencement of operations at T-Ports' Lucky Bay facility (particularly given the proposed use of the same transshipment vessel by both operations⁴⁵).

⁴² ADM, *Application for exemption*, p. 6.

⁴³ LINX began bulk export operations out of Port Adelaide in the 2015-16 season, while Semaphore began operations in the 2016-17 season.

⁴⁴ See: <https://tports.com/wallaroo/>. Accessed 13 June 2021.

⁴⁵ See: <https://tports.com/wallaroo/>. Accessed 13 June 2021.

The threat of entry has further increased following the release of public plans of the facility which outline it will be a \$70 million grain export facility which could handle up to 500,000 tonnes of grain each year.⁴⁶ T-Ports has also publicly stated that construction works could start in September this year and be ready for grain receivals in the 2022-23 season, subject to approvals.⁴⁷

The ACCC will continue to closely monitor developments in the SA market, including T-Ports' proposed Wallaroo facility.

ACCC's draft view on competitive constraint from relevant alternate PTSPs

The ACCC's draft view is that capacity utilisation rates at the competing facilities at Port Adelaide and Wallaroo indicate that ADM will be subject to a level of competitive constraint from competing PTSPs. These competing PTSPs typically have spare capacity available, including on an annual and peak period basis. The ACCC's draft view therefore is that in combination ADM is subject to a high level of competitive constraint from Viterra, Cargill and Semaphore.

3.2. Containerised exports and domestic demand

The ACCC considers the domestic and container markets are relevant to its consideration of the level of competition faced by bulk grain export port terminal facilities.

3.2.1. Containerised exports

The ACCC notes that SA has the smallest domestic and container markets out of all states in Australia.

Grain can be exported either in bulk or via containers. The ACCC understands that:

- container export markets allow growers and exporters to access international customers who demand high quality and niche grain products in relatively small volumes (compared to the bulk market);
- some international customers are unable to receive grain via bulk services due to limitations in port infrastructure or lack of finances, and so receive grain via container services; and
- exporters may also respond to price signals in the global container trade and bulk vessel markets.

As such, the ACCC does not consider containerised grain exports to be a perfect substitute for bulk grain exports. However, containerised exports may provide a viable alternative export path for some growing regions, niche and high quality products, or for particular destinations.⁴⁸

As shown below in table 3.3 the vast majority (95%) of containerised grain in SA is exported from Port Adelaide.

⁴⁶ Michelle Etheridge, T-Ports' \$70m Wallaroo grain export facility to create 260 jobs, The Advertiser, 9 July 2021 accessed 13 July 2021.

⁴⁷ Michelle Etheridge, T-Ports' \$70m Wallaroo grain export facility to create 260 jobs, The Advertiser, 9 July 2021 accessed 13 July 2021.

⁴⁸ For further discussion of container activity see section 6.5 (titled '*Containerised exports also increased slightly*') in ACCC Bulk grain ports monitoring report 2019-20, pp. 37-39. (<https://www.accc.gov.au/publications/serial-publications/bulk-grain-ports-monitoring-reports/bulk-grain-ports-monitoring-report-2019-20>).

Table 3.3: Location of containerised grain exports out of SA, 2016-17 to 2019-20 (mt)

	2016-17	2017-18	2018-19	2019-20	Total
Port Adelaide	0.37	0.35	0.45	0.49	1.65
Port Giles	0	0	0	<0.01	<0.01
Port Lincoln	<0.01	<0.01	0.02	0.03	0.05
Thevenard	0	0	0	0	0
Wallaroo	0	0	0.01	0.01	0.02
Other SA ports	0	0	0	0.02	0.02
Grand total	0.37	0.35	0.48	0.54	1.74

Source: ACF, Export report.

Noting the ACCC’s draft view that ADM competes with PTSPs operating at Port Adelaide, the ACCC considers that containerised exports (particularly from Port Adelaide) will impose a level of competitive constraint on ADM at Port Pirie.

3.2.2. Domestic demand

The ACCC notes that domestic demand has the potential to affect the amount of grain that is available for export. The ACCC understands that Australia’s domestic markets are generally considered within the industry to have ‘first call’ on grain, with the amount of grain remaining after demand in domestic markets has been satisfied often referred to as the ‘exportable surplus’.

The ACCC notes that the movement of grain to satisfy domestic demand is not regulated under the Code and that the domestic market likely offers a reliable and stable source of demand for grain. The ACCC notes that the stability of domestic demand indicates that domestic consumption is less sensitive to changes in market conditions (notably price) than export markets.

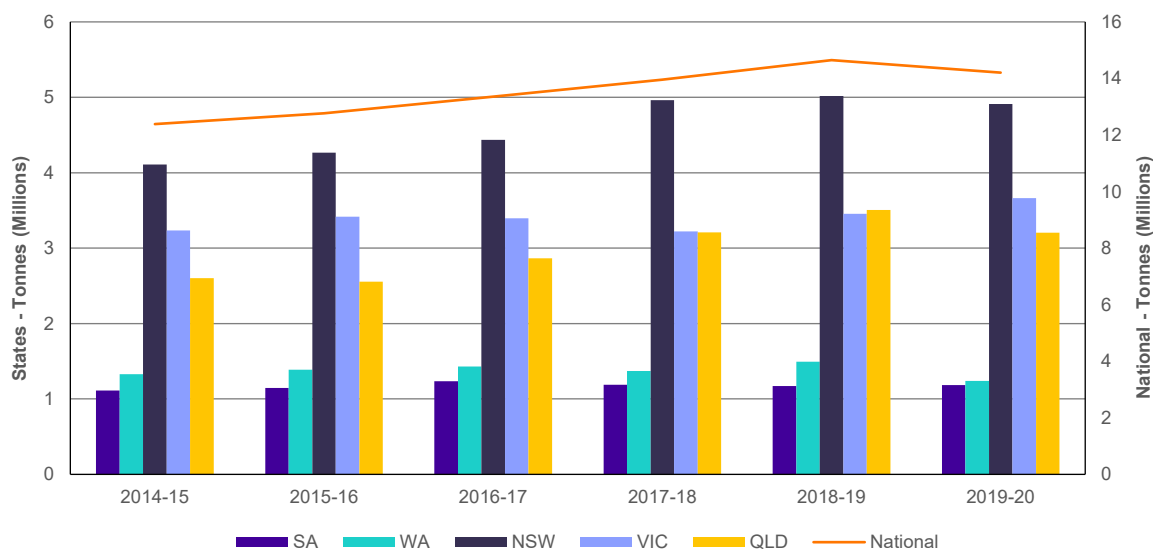
The supply of grain to the domestic market is also likely to involve lower supply chain costs (relative to export markets) making it a relatively attractive (but limited) option that generally leaves a surplus of grain to move to export markets. However, supply side conditions such as the growing conditions on the east coast (or elsewhere) can have a significant effect on the stability of domestic demand.

SA has the lowest domestic demand for grain of any mainland Australian state (see figure 3.5 below).⁴⁹ On average SA consumes 1.2 million tonnes of grain per season domestically.⁵⁰ This represents 16% of SA’s total production. In comparison, at the national level Australia consumes 32% of the grain it produces.

⁴⁹ ACF, Supply and Demand reports.

⁵⁰ ACCC, *Bulk grain ports monitoring report 2019-20*, March 2021, Appendix 1 – supplementary spreadsheet – tables and charts.

Figure 3.5: Domestic grain consumption across Australia



Source: ACF, Supply and Demand report.

The ACCC considers SA domestic consumption, which has varied between 1.11 million tonnes and 1.24 million tonnes per annum since 2014-15, to be relatively stable (see figure 3.5).

The ACCC does not have data on the specific regions in SA where grain is processed or consumed. However as set out in the ACCC’s April 2021 Viterra Final Determinations, Grain Producers South Australia (GPSA) submits that growers on the Eyre Peninsula have limited access to the domestic market:

...on the Eyre Peninsula, where Viterra is the sole port terminal operator servicing the region and growers have limited access to the domestic market.⁵¹

In addition, ESCOSA in its 2018 inquiry noted that:

eastern South Australia has limited access to the domestic bulk grain market whereas the Eyre Peninsula, given its location and an unconnected rail system, is largely confined to the export market.⁵²

Furthermore, the ACCC notes that most of the grain grown on the Eyre Peninsula is exported (on average, 2.13 million tonnes of the 2.42 million tonnes grown⁵³). This suggests only a small amount of grain grown on the Eyre Peninsula is supplied to the SA domestic market. Consequently, the ACCC considers that the majority of domestic consumption in SA occurs within the east of the state.

ACCC’s draft view on containerised export market and domestic market constraint

The ACCC’s draft view is that the containerised export market and the SA domestic market impose a level of competitive constraint on ADM. However, the ACCC considers this constraint is likely to be limited.

⁵¹ GPSA, *Submission on regulation at Viterra’s bulk grain facilities*, 27 September 2019, p. 3.

⁵² ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 43, fn. 136.

⁵³ PTSP loading statements; ACF Shipping stem and market share report; PIRSA, *Crop and pasture reports – final summary and estimates, 2012-13 to 2019-20*.

3.3. Upcountry storage and grain transport services

3.3.1. Upcountry storage and handling

The ACCC considers the state of competition in upcountry storage and handling facilities to be relevant to the assessment of an exemption application.

Without sufficient competition in upcountry storage there is potential for a vertically integrated PTSP to use its position upcountry to limit the ability of third party exporters to access port terminal services on fair and transparent terms.

Also, if a PTSP does not own a storage facility or a network of facilities it may be placed at a competitive disadvantage when compared to other PTSPs with storage and handling assets.

Noting that the ACCC considers that ADM's Port Pirie facility will compete for grain in the Upper North region of SA, the ACCC considers the state of competition for upcountry storage and handling services in the Upper North region to be relevant to this assessment. The ACCC considers it relevant to note that the extent of available storage is influenced by the size of harvest, which varies from season to season. Figure 3.6 below illustrates current upcountry storage sites in SA.

Figure 3.6: SA Upcountry storage sites



Source: Viferra 2020-21 upcountry sites, see: http://viferra.com.au/wp-content/uploads/Storage-and-Handling-Map_website-.pdf (accessed 5 April 2021). The ACCC has amended the figure to indicate the location of third party storage sites; these locations were obtained from Viferra's exemption applications, Viferra's response to the Draft Determinations and Grain Trade Australia's (GTA) 2019-20 Location Differential sites.

Notes: Third party Victorian storage sites are not shown in the above figure.

ADM does not own any upcountry storage facilities and therefore does not have the ability to use its ownership of upcountry storage to limit exporters' access at port

ADM has submitted that it has 80,000 tonnes of storage on the outskirts of Port Pirie.⁵⁴ Given the proximity of this storage to ADM's port terminal facility, for the purpose of this assessment the ACCC considers this storage to be 'at-port storage'.

The ACCC understands however that ADM has exclusive access to 40,000 tonnes of storage at Dublin through a partnership with Dublin Clear Grain and therefore has guaranteed access to a level of upcountry storage.⁵⁵

ADM's competitors own storage in the Upper North region

The ACCC understands that there are currently 6 upcountry storage and handling facilities operating in the Upper North region of SA. The location and ownership of these storage facilities are as follows:

- Booleroo Centre (Viterra)
- Crystal Brook (Viterra)
- Crystal Brook (Cargill)
- Gladstone (Viterra)
- Jamestown (Viterra)
- Port Pirie (Viterra).

The ACCC notes the total capacity of the relevant Viterra storage facilities is **[confidential]**. The Viterra facilities are also attractive to growers and exporters alike due to their location and the overall capacity of the extensive Viterra upcountry storage network. In addition, Viterra's storage facilities offer exporters a range of services to support their shipping plans.⁵⁶

Cargill's Crystal Brook facility is also part of a broader storage network and while Cargill's network is smaller than Viterra's⁵⁷, it also provides a range of benefits to exporters and growers compared with a standalone storage facility.

ADM's facility could potentially be supplied by on-farm storage

The ACCC considers that on-farm storage may also serve as an alternative source of storage for grain being delivered to ADM's facility. The Department of Primary Industries and Regions South Australia (PIRSA) estimates that there was approximately 1 million tonnes of on-farm storage in SA in 2017.⁵⁸

The ACCC notes that PIRSA and ESCOSA state that on-farm storage is generally used as short-term storage to manage the logistics of harvest by buffering for cartage to silos.⁵⁹ As

⁵⁴ ADM, *Application for exemption*, p. 3.

⁵⁵ See: <https://www.admgrain.com.au/latest-news/new-harvest-options-at-dublin>.

⁵⁶ For example the ACCC considered in the April 2021 Viterra Final Determinations Viterra's bundled storage and handling service Export Select, pp. 103-108.

⁵⁷ Cargill's 4 upcountry storage sites have a total storage capacity of 665,000 tonnes. These sites are located at Crystal Brook, Maitland, Mallala and Pinnaroo. See: Cargill, *Application for exemption under the Port Terminal Access (Bulk Wheat) Code of Conduct*, 30 October 2019, p. 9.

⁵⁸ PIRSA, *Submission to the Inquiry into the South Australian Bulk Grain Export Supply Chain Costs*, May 2017, p. 6.

⁵⁹ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 24; PIRSA, *Submission to the Inquiry into the South Australian Bulk Grain Export Supply Chain Costs*, May 2017, p. 6.

such the ACCC understands that on-farm storage, while offering a constraint is not completely analogous to commercial storage networks overall.

The ACCC also notes ESCOSA stated that the majority of on-farm storage is located in eastern SA.⁶⁰ Accordingly, the ACCC considers that on-farm storage in eastern SA could be used to supply ADM's Port Pirie facility.

ACCC's draft view

It is the ACCC's draft view that exporters in the Upper North region can access a number of pathways to a range of ports using a variety of upcountry storage sites, on-farm storage and direct to port options.

Noting that ADM does not own its upcountry storage, the ACCC's draft view is that ADM cannot use its position upcountry to limit third party exporter access to port terminal services.

Furthermore, although it has access to 40,000 tonnes of storage in Dublin via the Dublin Clear Grain site, ADM's facility is likely at a competitive disadvantage when compared to Viterra and Cargill which both have storage facilities in the Upper North region which form part of broader upcountry storage networks.

3.3.2. Grain transport services

The ACCC considers the use of rail and/or road networks to transport grain from storage facilities to port can be a relevant consideration when examining the level of competition between bulk grain port terminal facilities.

For example, the ACCC considers that the ability for a PTSP to receive grain by rail as well as by road may provide these PTSPs with a competitive advantage over facilities that can only receive grain via road. Further, the ability of competing PTSPs to secure transport services may be relevant to an assessment of the level of competitive constraint an individual PTSP faces.

Accessibility of ADM's port terminal facility and competing facilities

The ACCC considers that a PTSP could potentially be advantaged (over alternate PTSPs) if it is able to access transportation infrastructure (in particular rail services), which is unavailable to competing PTSPs.

ADM does not have any ownership interests in road or rail freight companies. ADM is also unable to receive grain via rail services at its Port Pirie facility.

The ACCC notes that Viterra's IHB and OHB facilities are the only port terminal facilities capable of receiving grain via rail in SA. As per the April 2021 Viterra Final Determinations, the ACCC considers this gives Viterra an advantage in sourcing grain over competing port terminal facilities.⁶¹ In particular, the ACCC notes that the rail line servicing IHB and OHB runs through the Mid and Upper North regions, which is the same geographic region ADM's Port Pirie facility is expected to source its grain from. The ACCC considers this likely presents Viterra with a competitive advantage over ADM when sourcing grain from these regions, however the ACCC notes that ADM's Port Pirie facility is located closer to a number of these growing regions which could mitigate or exceed any advantage obtained from rail services.

⁶⁰ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report, December 2018*, p. 25.

⁶¹ See section 4.1.2 of the April 2021 Viterra Final Determinations.

In regards to road freight services, the ACCC notes that, while only a small number of road freight companies provide services to Viterra, road transport is typically characterised by a large number of players.⁶²

In addition, both the Australian Export Grains Innovation Centre (AEGIC) and ESCOSA considered that the road freight transport market in SA was competitive.⁶³ ESCOSA also found that road freight transport had low barriers to entry.⁶⁴

Given the above, the ACCC's draft view is that there may be potential for PTSPs other than Viterra to encounter difficulties when attempting to engage with larger road freight service providers who are contracted to Viterra. This is particularly the case given the majority of SA grain is exported through Viterra port terminal facilities using Export Select, and that Export Select is used by nearing all of Viterra's export customers.⁶⁵

However, given the relatively low barriers to entry and large number of potential providers within the road freight market, PTSPs such as ADM are unlikely to experience prolonged issues when securing road freight services.

ACCC's draft view

The ACCC's draft view is that ADM's facility may be at a competitive disadvantage relative to Viterra's IHB and OHB facilities which can receive grain by rail.

The ACCC also notes the relatively small scale of ADM's Port Pirie operations and its ability to secure a level of road transport services necessary for it to secure the delivery of 181,435 tonnes to date. Accordingly, while the ACCC considers that its major competitor Viterra may have access to a larger range of road transport providers (particularly larger providers), the ACCC's draft view is that this is unlikely to result in ADM being unable to secure its necessary level of road services.

3.4. Total competitive constraint faced by ADM

ADM's Port Pirie facility faces competition from a range of different sources, including PTSPs operating at Port Adelaide and Wallaroo and also the SA markets for containerised exports and domestic consumption.

In summary, the ACCC's draft view is that:

- ADM is subject to an overall high level of competitive constraint from alternate PTSPs, primarily from Viterra, Cargill and Semaphore at Port Adelaide, but also to an extent from Viterra at Wallaroo
- ADM cannot use its position upcountry to limit third party exporter access to port terminal services and may be at a competitive disadvantage relative to Viterra's (rail accessible) IHB and OHB facilities
- noting that the majority of SA's containerised grain exports are facilitated at Port Adelaide and that ADM will compete for grain produced in the Port Adelaide grain catchment area, ADM is subject to a level of competitive constraint from the Port Adelaide market for containerised grain exports, but the level of this constraint is likely limited

⁶² The ACCC notes that it provided further specific views on the matter of Viterra's freight services and its related bundled storage and handling service in section 4.1.2 of the April 2021 Viterra Final Determinations.

⁶³ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 38; AEGIC, *Australia's grain supply chains – costs, risks and opportunities*, October 2018, p. 54.

⁶⁴ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 38.

⁶⁵ ESCOSA, *Inquiry into the South Australian bulk grain export supply chain costs – Final Report*, December 2018, p. 26.

- noting the ACCC's understanding that SA's domestic markets primarily source grain from the Port Adelaide grain catchment area and that ADM will compete for grain produced in the Port Adelaide grain catchment area, ADM is subject to a level of competitive constraint from the SA domestic market, but the level of this constraint is likely limited.

4. ACCC's exemption assessment of ADM's Port Pirie facility

This chapter sets out the ACCC's assessment of whether it should determine that ADM is an exempt service provider at Port Pirie under subclause 5(2) of the Code. This assessment draws on the findings in chapter 3 regarding the levels of competition in the market for bulk grain export port terminal services and related markets, and the extent to which these markets place competitive constraint on ADM at Port Pirie.

In making a determination under subclause 5(2), subclause 5(3) provides that the ACCC must have regard to the following matters:

- 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 below is set out against the matters which the ACCC must have regard to in subclauses 5(3)(a) to (j) of the Code.

Overlapping nature of subclause 5(3) matters

The ACCC notes that a number of the subclause 5(3) matters 'overlap' to some extent. For example, the ACCC considers that:

- the interests of exporters who may require access to port terminal services (subclause 5(3)(c)) includes an interest in having fair and transparent access to port terminal services (subclause 5(3)(d))
- exporters securing fair and transparent access to port terminal services (subclause 5(3)(d)) will likely promote efficient investment in port terminal facilities (subclause 5(3)(f)) and competition in relevant upstream and downstream markets (subclause 5(3)(g)).

The ACCC also considers that a PTSP's legitimate business interests need to be balanced against a number of other subclause 5(3) matters, including other specific interests that the ACCC is required to consider. Unlike the examples of overlap noted above (subclauses 5(3)(c) and 5(3)(d), 5(3)(d) and 5(3)(g)), the ACCC does not consider that these interests will always be aligned and the ACCC's assessment includes balancing these interests.

For example, the ACCC considers that the legitimate business interests of the PTSP (subclause 5(3)(a)) will not necessarily align with the public interest in having competition in

markets (subclause 5(3)(b)) and the interests of exporters who may require access to port terminal services (subclause 5(3)(d)), if the PTSP is not subject to sufficient competition in the provision of port terminal services.

Where the ACCC considers that a PTSP is not subject to sufficient competition, the ACCC must weigh the interests of the PTSP reducing its regulatory costs and increasing its operational flexibility against the public interest, including the public interest in having competition in markets, and the interests of exporters who may require access to port terminal services. In balancing these interests the ACCC considers it appropriate to provide views as to why, despite being in the specific PTSP's legitimate business interests, an exemption may not be appropriate.

(a) the legitimate business interests of the port terminal service provider

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.

The ACCC considers that an exemption will be in a PTSP's legitimate business interests when there are sound reasons why it is not necessary for the PTSP to be subject to all of the Code's obligations. For example, obligations in the Code intended to prevent a PTSP from exercising market power may not be necessary where competition already provides sufficient constraint on the PTSP's ability to exercise market power.

The ACCC considers when having regard to the legitimate business interests of the PTSP, the following issues may be relevant:

- the ongoing commercial viability of services provided from the relevant port terminal facility
- the likely impact that the application of Parts 3 to 6 of the Code may have on any investment decisions made by the PTSP
- the likely costs or impacts associated with the PTSP having to comply with Parts 3 to 6 of the Code and the broader impact of the PTSP incurring these costs
- the likely impact that the application of Parts 3 to 6 of the Code may have on the PTSP's ability to compete in the provision of port terminal services or other related markets.

The ACCC recognises that regulation imposes costs, both direct and indirect, on the regulated business. These costs also have the potential to affect the markets that the regulated business participates in, as well as in related markets.

To the extent that compliance with the obligations under Parts 3 to 6 of the Code results in such costs, the ACCC considers that this is appropriate to the extent necessary to ensure that the Code's purpose is achieved (i.e. ensuring that exporters of bulk wheat have fair and transparent access to port terminal services).

In circumstances where stricter regulation is unnecessary, such as where a PTSP is subject to sufficient competitive constraint, it is appropriate and efficient to reduce those costs and the related restrictions on operational flexibility.

ADM submits that the application of Parts 3 to 6 of the Code would be burdensome given the anticipated size of its Port Pirie operations:⁶⁶

*ADM estimate the total shipping capacity through Port Pirie to be maximum 150,000mt per annum. As such the obligations under Parts 3 to 6 of the Port Terminal Access (Bulk Wheat) Code of Conduct (The Code) will create an onerous administration burden on such a small export operation.*⁶⁷

ADM also submits that being subject to Parts 3 to 6 of the Code would be detrimental to its business:

*It would be detrimental to ADM's business if burdened with significant regulatory administration costs.*⁶⁸

In relation to the direct costs of regulation, the ACCC recognises that the Code imposes costs on PTSPs, and that non-exempt PTSPs likely face a higher level of compliance costs than exempt PTSPs.

The ACCC is not in a position to assess the direct (or indirect) costs Parts 3 to 6 the Code imposes upon ADM (or any other PTSP) and specific estimates were not submitted by ADM.

In relation to the direct costs of the Code, the ACCC accepts that the costs of compliance with the full Code are likely significant and that being granted an exemption from Parts 3 to 6 of the Code would substantially reduce a PTSP's direct costs of complying with the Code. The Department provided estimates on compliance costs prior to the commencement of the Code, as follows:

*The mandatory code at its introduction was estimated to impose a lower direct cost of \$360,000 per year for operators subject to the full provision of the Code and only \$20,000 per year for exempt operators.*⁶⁹

In addition to direct regulatory costs, the ACCC acknowledges that Parts 3 to 6 of the Code have the potential to reduce a PTSP's flexibility to respond to its customers, imposing indirect costs. The ACCC also considers that increased operational flexibility could also benefit other parties, particularly exporters, in circumstances where exporters are able to secure fair and transparent access to port terminal services.

The ACCC does note that non-exempt PTSPs can set the terms and conditions on which they will provide access to services and the flexibility to change their approach either at their discretion or with ACCC approval. For example, non-exempt PTSPs are able to:

- define their own standard terms of access and prices for its services (i.e. the Code requires non-exempt PTSPs to publish their 'standard terms' and 'reference prices' and that the standard terms must include a dispute resolution mechanism, but otherwise does not restrict how non-exempt PTSPs define their terms or set their prices)
- negotiate and agree to provide exporters with services on terms and conditions that are different to their published standard terms and reference prices (as long as these negotiations are consistent with the good faith, non-discrimination and no hindering obligations)

⁶⁶ The ACCC's notes its capacity estimate of ADM's Port Pirie operation is 526,716 tonnes (see section 2.2.5). While this is significantly higher than the quoted capacity estimate of 150,000 tonnes submitted by ADM, the ACCC acknowledges that ADM is a small export operation and is unlikely to facilitate large tonnages of grain.

⁶⁷ ADM, *Application for exemption*, p. 1.

⁶⁸ ADM, *Application for exemption*, p. 5.

⁶⁹ AEGIC, *Australia's grain supply chains – costs, risks and opportunities*, October 2018, p. 35.

- vary their capacity allocation system (with ACCC approval).

The ACCC therefore considers a non-exempt PTSP has a reasonable level of flexibility to set its prices, terms and conditions for access, and is also able to negotiate non-standard terms with different exporters.

As such, the ACCC considers that the indirect costs associated with compliance with Parts 3 to 6 of the Code primarily relate to the impacts on a PTSP's operational flexibility, and accepts that an exemption from Parts 3 to 6 of the Code can reasonably be expected to provide a PTSP with greater operational flexibility.

In considering the impact of Parts 3 to 6 of the Code on ADM's operational flexibility, the ACCC notes that clause 24 requires a PTSP to have a capacity allocation system and clause 27 of the Code requires non-exempt PTSPs to obtain ACCC approval to vary their capacity allocation arrangements.⁷⁰ The ACCC acknowledges such obligations mean that non-exempt PTSPs have less flexibility than exempt PTSPs.

As an exempt PTSP, the ACCC expects that ADM would face reduced direct and indirect costs, largely as a result of having greater flexibility to make changes to its capacity allocation arrangements and operations more broadly. ADM could also be expected to be able to engage more freely in direct commercial negotiations and tailor access agreements for certain customers.

The ACCC considers the removal of unnecessary regulatory obligations and costs to be in a PTSP's legitimate business interests. The ACCC also considers it is in a PTSP's legitimate business interests to promote the ongoing commercial viability of its business, and that this may involve efforts to reduce its regulatory compliance costs (or to not incur additional costs).

ACCC's draft view

The ACCC's draft view is that an exemption in respect of Port Pirie is in the legitimate business interests of ADM. However, the ACCC considers that ADM's legitimate business interests must be balanced against the level of competitive constraint faced by ADM and the other matters the ACCC must have regard to in subclause 5(3) of the Code. This includes the interests of exporters who may require access to port terminal services, as well as the public interest.

(b) the public interest, including the public interest in having competition in markets; and (g) the promotion of competition in upstream and downstream markets

The ACCC considers that subclauses 5(3)(b) and (g) relate to the promotion of competition in markets, including the market for bulk grain port terminal services as well as for upstream, downstream and related markets.

Upstream and downstream markets considered as relevant by the ACCC and discussed in chapter 3 include grain storage and handling services, and the transport of grain to port.

Related markets which the ACCC considered as relevant are also discussed in chapter 3, and include containerised grain exports and domestic demand for grain.

⁷⁰ Subclause 27(1) of the Code provides that a PTSP may vary its PLP. However, variations to an approved capacity allocation system must be approved by the ACCC (subclause 27(2)).

Consistent with its consideration of this matter in previous exemption determinations, the ACCC considers the following factors are relevant when having regard to subclauses 5(3)(b) and (g):

- Whether there is sufficient competition in the market for bulk grain export port terminal services, such that the full application of the Code may not be required to promote competition for those services or in upstream and downstream markets.
- Whether reducing regulation will allow the PTSP to better compete in upstream or downstream markets such that it would also promote competition. This consideration overlaps with the ACCC's consideration of legitimate business interests (subclause 5(3)(a), discussed above).
- Whether there is sufficient competition in upstream and downstream markets such that there is a constraint on the exercise of market power in the provision of port terminal services in the absence of Parts 3 to 6 of the Code applying.

Competition in the market for bulk grain export port terminal services

The ACCC's draft view is that ADM's Port Pirie facility will compete for grain with PTSPs operating at Port Adelaide and with Viterra at Wallaroo (see section 2.1.1).

The ACCC notes that there are currently 4 port terminal facilities located at Port Adelaide: Viterra's IHB and OHB facilities, Cargill's Berth 20 facility and Semaphore's Osborne facility. The ACCC notes that Viterra is the dominant provider of services at Port Adelaide, having facilitated 80% of throughput since 2016-17 (up until 31 May 2021). In combination, the 5 facilities that the ACCC considers ADM's facility will compete with have a combined estimated capacity of 5.5 million tonnes (compared to ADM's estimated 550,000 tonnes of capacity).

The ACCC notes ADM (as an exporter) has exported an average of 0.53 million tonnes (spread across all port terminal facilities except Cargill/LINX Port Adelaide) from SA, and historically ADM has exported from SA outside the peak period. The ACCC considers ADM's decision to enter the PTSP market will likely reduce its overall demand for other port terminal services in SA particularly in eastern SA. In turn this will provide other exporters greater opportunity to access capacity across the relevant facilities, particularly during the peak period.

As noted at section 2.1.1, the ACCC considers that ADM's Port Pirie facility will compete for grain grown in the Upper North region, which the ACCC considers also falls into the catchment areas of competing Port Adelaide and Wallaroo facilities.

The ACCC notes that all of the commercial storage in the Upper North region (where ADM will compete for grain) is owned by competing PTSPs (i.e. 5 are owned by Viterra and one by Cargill). However, given ADM has been able to load 181,435 tonnes since commencement (already exceeding its original capacity estimate) the ACCC considers that this will not preclude ADM from being able to offer a viable alternate export pathway for growers in the Upper North region.

Owing to their overlapping grain catchment areas (see section 2.1.1), the ACCC considers that ADM is subject to a high level of combined competitive constraint from PTSPs operating at Port Adelaide and Wallaroo and in particular, Viterra's IHB and OHB facilities.

Competition in upstream and downstream markets

The ACCC has considered the extent to which granting ADM an exemption might impact competition in upstream and downstream markets.

ADM does not have any ownership interests in road or rail freight companies. Further, ADM is unable to receive grain via rail services at its Port Pirie facility, and does not own its upcountry storage. Therefore, the ACCC's draft view is that ADM cannot use its position upcountry to limit third party exporter access to port terminal services.

In relation to the impact that granting ADM an exemption at Port Pirie will have on competition in upstream and downstream markets, the ACCC's draft view is that:

- ADM is subject to a high level of competitive constraint at port and does not currently own upcountry storage;
- ADM does not have any ownership interests in road or rail freight companies; and
- ADM entering the market should promote competition in the upcountry storage market and potentially the transport market by establishing a new export pathway, which gives potential storage and transport providers more options to deliver grain.

While the ACCC's draft view is that ADM entering the market for port terminal services should promote competition in the upcountry storage and handling market, the extent of this impact is not clear. Accordingly, the ACCC's draft view is that granting ADM an exemption at Port Pirie is will not be detrimental to competition in upstream and downstream markets.

Related markets

In addition to upstream and downstream markets, the ACCC also considered the potential for related markets, such as container exports and domestic demand for grain, to affect the promotion of competition in bulk grain export port terminal services.

The ACCC considers that PTSPs may be competitively constrained by the domestic market. While the ACCC does not have detailed data on where grain is processed or consumed within a state, the ACCC notes that SA as a whole has the smallest domestic market of any mainland state in Australia (at 1.2 million tonnes of grain per annum).⁷¹

The ACCC understands that SA's domestic consumption is largely located within the east of the state. The ACCC also understands that the majority of grain grown on the Yorke Peninsula is exported through either Port Giles or Wallaroo, therefore suggesting grain on the Yorke Peninsula typically does not move to domestic markets. The SA domestic market therefore will predominantly draw grain from a large geographic area stretching from the Upper North region down to the Victorian-SA border (within which lies the Port Adelaide and Port Pirie catchment zones).

The ACCC notes that SA's volume of domestic consumption has been fairly constant since the 2014-15 season.⁷² The domestic market generally offers a reliable and stable source of demand for grain, and typically involves lower supply chain costs (compared to export markets), making it a relatively attractive (but limited) market. As such grain typically moves to the export market once domestic market opportunities have been met. The ACCC considers that Port Pirie's catchment area lies within the region which SA's domestic market primarily draws grain from.

⁷¹ ACCC, *Bulk grain ports monitoring report 2019-20*, March 2021, Appendix 1 – supplementary spreadsheet – tables and charts.

⁷² SA domestic consumption has varied between 1.11 and 1.24 million tonnes per annum since the 2014-15 season.

The ACCC notes that the level of competitive constraint imposed on the export of bulk grain may depend on a range of factors at play in the domestic market, such as the level of demand for certain grain types and/or the substitutability of different grain types.⁷³

As SA's domestic market appears to be primarily located within the Port Adelaide catchment area, the ACCC expects the domestic market will place a level of competitive constraint on ADM's Port Pirie facility but the extent of this constraint will likely be limited.

The ACCC notes that almost all of SA's containerised grain exports are facilitated at Port Adelaide (95% over the 2016-17 to 2019-20 seasons).⁷⁴ However, over the 2016-17 to 2019-20 seasons only 1.35 million tonnes of grain have been exported in containers from Port Adelaide, which is significantly below the 7.51 million tonnes of grain exported in bulk from Port Adelaide over the same period.

The ACCC also notes that containerised grain exports may not provide a direct substitute for bulk grain exports. Containers are often provided for certain destinations or certain niche grain types. For example, the export of wheat in containers is more heavily weighted towards South-East Asia than bulk wheat exports.⁷⁵

However, noting that almost all (95% since the 2016-17 season) of SA's container exports are located at Port Adelaide, the ACCC considers that Port Adelaide container exports are likely to impose a limited level of constraint on ADM at Port Pirie.

ACCC's draft view

The ACCC's draft view is that exporters in the Upper North region can access a number of pathways to a range of ports using a variety of upcountry storage sites, on-farm storage and direct to port options. Furthermore, ADM's facility is likely at a competitive disadvantage due to its lack of an upcountry storage network when compared to Viterra and Cargill which both have storage facilities in the Upper North region.

The ACCC's draft view is that there is sufficient competitive constraint on ADM's Port Pirie facility, such that competition between PTSPs, and in upstream, downstream and related markets will likely be maintained if an exemption is granted to ADM. The ACCC considers this relevant to subclauses 5(3)(b) and (g) of the Code.

The ACCC's draft view is that exempting ADM from Parts 3 to 6 of the Code in relation to its Port Pirie facility is likely to be in the public interest, and unlikely to be detrimental to competition in upstream and downstream markets.

(c) the interests of exporters who may require access to port terminal services

In deciding whether to exempt a PTSP, subclause 5(3)(c) of the Code requires the ACCC to have regard to the interests of exporters who may require access to port terminal services.

The ACCC generally considers that granting an exemption will not be detrimental to the interests of exporters requiring access to port terminal services if exporters are likely to be able to access port terminal services on a fair and transparent basis and therefore compete on their relative merits.

The ACCC's exemption decisions are based on its consideration of market conditions as required by subclause 5(3) of the Code. The ACCC notes that there is a variety of market

⁷³ For example the domestic feed market typically demands lower protein wheat than the overseas milling market (which typically requires high protein wheat).

⁷⁴ See table 4.5 of the ACCC's April 2021 Viterra Final Determinations (p. 146).

⁷⁵ AEGIC, *Australia's grain supply chains – costs, risks and opportunities*, October 2018, p. 28.

conditions which can reduce a PTSP's incentive, or ability, to discriminate or favour certain exporters.

For example, where a vertically integrated PTSP is subject to sufficient competition, it may continue to have incentives to discriminate or favour itself as an exporter or an associated entity exporter, but it will be constrained in its ability to do so.

The ACCC notes that while ADM is an exporter and has incentives to provide itself favourable access, its operation faces a range of constraints from Viterra's larger and well established facilities (at Wallaroo and Port Adelaide), as well as mobile loading operations at Port Adelaide (Cargill and Semaphore).

Given the ACCC's draft view that ADM is subject to a high level of combined competitive constraint from 5 different facilities (Viterra at IHB, OHB, Wallaroo and Cargill and Semaphore at Port Adelaide), the ACCC considers that exporters that may consider seeking access to ADM's facility have several options in the region.

In relation to the impact that an exemption may have on the nature of the services ADM provides to exporters, as noted above the ACCC considers that the added operational flexibility available to an exempt PTSP (as well as the direct cost savings to a lesser extent) can reasonably be expected to allow ADM to better respond to the needs of exporters (including itself in its capacity as a grain exporter).

The ACCC notes that the added flexibility (and cost savings) resulting from an exemption must be balanced against the potential for access to be provided on favourable terms to itself as an exporter. As discussed further in relation to subclause 5(3)(d) the presence of sufficient competitive alternatives likely limits the ability of ADM to discriminate in favour of itself (and, given the range of alternatives, if discrimination were to occur any harm is likely to be limited). The presence of sufficient competitive alternatives also likely means that the added flexibility associated with an exemption can be expected to be exercised to the benefit of all exporters and therefore is appropriate.

ACCC's draft view

The ACCC's draft view is that:

- the level of competitive constraint that ADM is subject to means that the higher level of flexibility ADM will have as an exempt PTSP will likely be exercised to the benefit of all exporters
- any negative impacts of exporters being unable to secure access to ADM's facility are limited by their ability to seek access to 5 competing facilities (Port Adelaide and Wallaroo)
- ADM's ability to export via Port Pirie may result in ADM decreasing its utilisation at other facilities and create additional spare capacity for other exporters at these facilities
- ADM is subject to a high level of competitive constraint that provides it with incentives to provide fair and transparent access without Parts 3 to 6 of the Code applying to its Port Pirie facility.

Therefore, the ACCC considers that granting an exemption to ADM is likely to be in the interests of both ADM and other exporters in the market.

The continuation of another export pathway for SA grain is a positive development for exporters and growers. Further, the presence of an additional pathway (and exports through

ADM's Port Pirie facility by either ADM or third party exporters) may also alleviate potential constraints at alternate facilities.

(d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services

In deciding whether to exempt a PTSP, subclause 5(3)(d) requires the ACCC to consider the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services. As outlined in section 3.1, the ACCC considers that ADM as a vertically integrated exporter has incentives to favour itself over other exporters at Port Pirie in certain circumstances. The ACCC considers that ADM's incentives to favour itself will be strongest during periods when capacity is constrained. The ACCC also considers that the presence of alternate PTSPs (and other grain trading markets) can also be expected to provide a level of competitive constraint and promote third party access to a vertically integrated PTSP's services.

As outlined at section 3.1, the ACCC's draft view is that ADM is subject to a high level of competitive constraint from PTSPs operating at Port Adelaide and Wallaroo and an additional (but likely limited) level of competitive constraint from the Port Adelaide containerised export and SA domestic consumption markets.

Given alternate PTSPs represent the main source of competitive constraint, this section primarily assesses the levels of capacity utilisation at each of the competing facilities to determine the extent to which these facilities represent a viable alternative and provide ADM with incentive to provide fair and transparent access. This section also assesses the levels of capacity utilisation at ADM's facility.

ADM capacity utilisation

As outlined in section 3.1, ADM's Port Pirie facility has only been in operation as an export facility since December 2020 and therefore shipping data for this facility is limited. Using the ACCC's estimate of ADM's facility's capacity (526,716 tonnes per annum, or 43,893 tonnes per month) and the shipping data available, the facility appears to have been highly utilised in some months.

However, ADM commenced exports in a high production year and its utilisation rates to date may therefore not be indicative of utilisation rates in a typical shipping year. The ACCC also considers that ADM's facility is also unlikely to operate in all months of given season, and will instead focus on the peak period. The ACCC notes that despite commencing export operations in a high production year, it appears likely that ADM's exports from Port Pirie in its first year of operations will have taken place exclusively in the SA peak shipping months of December to May.⁷⁶

IHB capacity utilisation

Viterra's IHB facility has a stated annual capacity of 1.01 million tonnes⁷⁷, with an average annual and peak capacity utilisation rate of 71% and 90% respectively (excluding the drought-affected 2018-19 and 2019-20 seasons).⁷⁸

⁷⁶ In ADM's 21 June 2021 response to an ACCC request for information, ADM indicated that 'We do not envisage any further tonnage to be exported through our Port Pirie operations for the season 20/21.'

⁷⁷ Viterra, *Response to Draft Determination*, p. 7.

⁷⁸ Including the drought affected 2018-19 and 2019-20 seasons IHB has annual and peak period capacity utilisation of 53% and 65% respectively.

IHB appears to have had little spare capacity available during peak periods, and also a large amount of IHB's current capacity is used by Viterra's export business (59% during peak and 58% in off peak).

However, the ACCC anticipates that the ACCC's recent decision to exempt IHB may result in an increase in available capacity at IHB facility and its overall attractiveness to exporters. The ACCC's draft view is that this may increase the level of constraint IHB will impose on ADM's Port Pirie operations.

OHB capacity utilisation

Viterra's OHB facility is the largest bulk grain loading facility at Port Adelaide with a stated annual capacity of 2.54 million tonnes.⁷⁹

OHB's average annual and peak capacity utilisation (excluding the drought affected 2018-19 and 2019-20 seasons) is 59% and 70% respectively, suggesting that spare capacity is likely available for third party exporters on both a peak and annual basis.⁸⁰

There may however be some capacity constraints at OHB during the peak period in high grain production seasons: for example, Viterra performed 1.11 million tonnes of shipments at OHB in the peak period of the bumper 2016-17 season, which is just below the facility's peak period capacity of 1.35 million tonnes.⁸¹

The ACCC notes that a range of exporters appear to be able to secure access at OHB during peak periods, with Viterra's export business accounting for 41% of OHB's peak period shipments (which represents 29% of OHB's peak period capacity⁸²).

The ACCC considers there is the potential for a range of exporters to be able to access spare capacity at Viterra's OHB and this will impose a high level of competitive constraint on ADM at Port Pirie.⁸³ As per IHB, the effect of the ACCC's recent exemption of OHB should increase the level of constraint posed by OHB on ADM's Port Pirie facility.

Cargill Berth 20 capacity utilisation

As discussed in section 3.1.4 Cargill has publicly indicated that '...our first year we are looking to export 300,000 tonnes, the following years we have capacity of 540,000 tonnes.'⁸⁴

In its exemption application Cargill also stated that:

Cargill's exports through Port Adelaide over the four years up to 2017-18 averaged at 238k tonnes per year. In 2018-19, Cargill did not export through Port Adelaide at all due to drought conditions. Cargill therefore anticipates that it will likely have excess capacity in relation to its expected nominal annual tonnage of 300k tonnes through its new facility. That being the case, Cargill is

⁷⁹ Viterra, *Response to Draft Determination*, p. 7.

⁸⁰ Including the drought affected 2018-19 and 2019-20 seasons OHB has annual and peak period capacity utilisation of 44% and 51% respectively.

⁸¹ Viterra released 1.35 million tonnes of capacity in the peak period in the 2019-20 season. In the 2016-17 season Viterra released 1.19 million tonnes of capacity.

⁸² Viterra's export business shipments to determine the 29% were considered over the 2014-15 to 2017-18 time period.

⁸³ As discussed in section 3.1, OHB has more efficient infrastructure than IHB, and is therefore likely the more desirable facility to export from. However the ACCC understands that OHB is largely run on a Just-in-Time process, and it may be more efficient for exporters to store and load grain from Viterra's IHB facility. Furthermore, depending on contractual arrangements between the exporter and Viterra, the exporter may not always have choice of which port to use when using Export Select.

⁸⁴ See video available at <https://www.cargill.com.au/en/2021/cargill-welcomes-arrival-of-export-mobile-ship-loader>, Accessed 31 May 2021.

*committed to welcoming third parties to utilise any available capacity in its facility. All services would be offered and charged on a commercial basis.*⁸⁵

Using Cargill's estimates, the amount of spare capacity available at Cargill's facility will likely be 302,000 tonnes per year (assuming, as per above, Cargill performs 238,000 tonnes of exports). The ACCC considers that Cargill's Berth 20 facility provides another avenue by which exporters can access export markets and therefore imposes an additional level of constraint on ADM's Port Pirie facility.

Semaphore Osborne capacity utilisation

The ACCC notes that Semaphore is not vertically integrated with an exporter.⁸⁶ The ACCC considers the capacity of Semaphore's port terminal facility is likely to be 615,000 tonnes per season.⁸⁷ Since the 2016-17 season when Semaphore commenced operations, its Port Adelaide facility has had an average annual utilisation rate of 31% and a peak period utilisation rate of 41%.⁸⁸

As is the ACCC's view in relation to Cargill's Berth 20 facility, the ACCC considers that Semaphore's facility provides an alternative export path for third party exporters. As Semaphore is not vertically integrated with an exporter, it appears unlikely that Semaphore has strong incentives to favour, or unfairly discriminate against, certain exporters. Therefore, all of Semaphore's capacity (615,000 tonnes) will be available to third party exporters, providing an additional option for exporters in the region and an additional level of competitive constraint on ADM's Port Pirie facility.

Viterra Wallaroo capacity utilisation

Viterra's Wallaroo facility has a stated annual capacity of 0.84 million tonnes⁸⁹, and appears to have faced capacity constraints during peak periods with an average peak capacity utilisation rate of 86%, and an average annual rate of 76% (excluding the drought-affected 2018-19 and 2019-20 seasons).⁹⁰

Given the high utilisation rates outlined above, the ACCC considers that the impact of Wallaroo on the nature of access exporters receive at ADM's Port Pirie facility is likely to be low.

ACCC's draft view

The ACCC's draft view is that exempting ADM from Parts 3 to 6 of the Code in respect of its Port Pirie facility will not reduce the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services. The ACCC considers that the combination of competition from alternate PTSPs located at Port Adelaide and Wallaroo, the domestic market and the Port Adelaide containerised export market combined should impose sufficient competitive constraints on ADM.

⁸⁵ Cargill, *Application for exemption*, p. 10.

⁸⁶ Semaphore, *Exemption application*, p. 6.

⁸⁷ Viterra, *Response to Draft Determination*, p. 8.

⁸⁸ The ACCC notes Semaphore's annual capacity utilisation rate is considered over the 2016-17 to 2019-20 period, while peak capacity utilisation rates is considered over the 2016-17 to 2020-21 period. This is due to the peak period for the 2020-21 season being completed, but not the entire 2020-21 season. The ACCC also notes peak period capacity at Semaphore was calculated using the monthly maximum capacity from the April 2021 Viterra Final Determinations (see pages 46-47) and annualising over 6 months (i.e. for the duration of the peak period).

⁸⁹ Viterra, *Response to Draft Determination*, p. 77.

⁹⁰ These capacity figures use the maximum capacity released at Wallaroo (over 2011-12 to 2019-20). When capacity is considered on the basis of what is released in each season, Wallaroo has annual and peak period capacity utilisation of 87% and 103% respectively; The ACCC notes that the entry of ADM will likely draw a small amount of grain away from Viterra's Wallaroo facility (as well as IHB and OHB), therefore likely resulting in slightly lower capacity utilisation figures in both the peak and off-peak periods.

(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 the promotion of efficient investment in port terminal facilities.

The ACCC considers the following factors will likely be relevant when having regard to the matters listed at subclauses 5(3)(e) and (f) of the Code:

- whether competition among PTSPs will drive the efficient operation and use of the port terminal facility in the absence of full regulation under the Code;
- whether a requirement to comply with Parts 3 to 6 of the Code would result in reduced throughput at the port terminal facility than would otherwise be efficient; or
- whether the efficient investment in port terminal facilities will be influenced by a reduction in regulation.

Promotion of the efficient operation and use of ADM's Port Pirie facility

The ACCC generally considers that it is in ADM's interests to operate its facility efficiently (i.e. to keep costs as low as possible) in order to provide a return to investors regardless of whether an exemption is granted in respect of its Port Pirie facility.

The ACCC also recognises that unnecessary regulation has the potential to affect the operational efficiency and level of investment in port terminal facilities.

As such, the ACCC considers that the level of regulation applied under the Code should be reduced in circumstances where exporters are otherwise able to access capacity on fair and transparent terms (as a result of competition).

In forming its draft view in relation to ADM's facility at Port Pirie, the ACCC has considered whether greater flexibility would provide for the more economically efficient use of ADM's Port Pirie facility. The ACCC has also considered whether removing the requirement to comply with Parts 3 to 6 of the Code has the potential to drive stronger exporter demand for, and uptake of, port terminal services.

As discussed in relation to subclauses 5(3)(b) and (g) of the Code, the ACCC considers Port Pirie is subject to sufficient competitive constraint to provide ADM with an incentive to provide fair and transparent access to third party exporters. Consequently, the ACCC's draft view is that exempting ADM's Port Pirie facility from Parts 3 to 6 of the Code can be expected to result in more efficient use of the port terminal facility by ADM as an exporter and other exporters should they seek access.

Promotion of efficient investment in port terminal facilities

The ACCC considers it is in ADM's interests to make investment decisions that ensure ADM can maximise its return to its shareholders, irrespective of whether or not an exemption is granted in relation to its Port Pirie facility.

ADM has submitted that an exemption would encourage further efficient investments:

*ADM have developed the Port Pirie Export supply chain to provide growers access to an efficient export solution. Obtaining exemption will encourage ADM to continue to pursue more supply chain efficiency projects.*⁹¹

The ACCC acknowledges that unnecessary regulation has the potential to discourage a PTSP from making otherwise efficient investments in its port terminal facilities (or the supply chain more broadly).

However, the ACCC also considers that an inadequate level of regulation risks affecting efficient investment in port terminal services, this could result in either:

- **Under investment:** to the extent that the inadequate regulation reduces the incentives for current participants and/or new entrants to invest, due to their inability to gain access on fair and transparent terms; or
- **Over investment:** to the extent the inadequate regulation encourages current participants and/or new entrants to unnecessarily duplicate existing infrastructure.

The ACCC acknowledges that different parties will likely have different investment incentives and that these incentives will be influenced by a range of factors, including the level of regulation imposed on competing PTSPs.

The ACCC considers that efficient investment decisions can generally be expected to occur in circumstances where adequate competition is present, or where there is sufficient regulatory intervention to address the absence of competition.

Consequently, when considering the investment effects which may result from an exemption from Parts 3 to 6 of the Code, the ACCC has considered the investment incentives of current and potential future market participants.

Investment in port terminal facilities within the Port Pirie, Port Adelaide and Wallaroo catchment areas

In relation to Port Adelaide, the ACCC notes that there has been an increase in the level of investment in low-capex port terminal facilities, with LINX, Semaphore and Cargill all using mobile ship loaders in recent seasons.⁹² The ACCC notes that in April 2020 LINX announced that it had ceased providing bulk grain export services.⁹³ Subject to production, the ACCC considers that mobile ship loaders can provide additional capacity during periods of high demand without the significant capital investment associated with conventional port terminal infrastructure.⁹⁴ The ACCC also notes that investment in conventional infrastructure may be inefficient and/or financially unviable (i.e. given additional port terminal capacity may only be needed for high output seasons the demand for additional services may be 'temporary' in nature).

The ACCC also notes that T-Ports is proposing to build a port terminal facility at Wallaroo. T-Ports has indicated that the site will take 18 months to build⁹⁵, with initial site works having begun in late 2020. T-Ports has also publicly stated that construction works could start in September this year and be ready for grain receivals in the 2022-23 season, subject

⁹¹ ADM, *Application for exemption*, p. 5.

⁹² LINX commenced operations in the 2015-16 season and on 8 April 2020 informed the ACCC that it had ceased bulk grain loading operations. Semaphore commenced operations in the 2016-17 season, ADM commenced operations in December 2020 and Cargill commenced operations in January 2021.

⁹³ A letter confirming the suspension of LINX's operations at Port Adelaide, Inner Harbour is available at: <https://www.accc.gov.au/regulated-infrastructure/wheat-export/wheat-export-projects/linx-port-adelaide-exemption/linx-suspends-bulk-grain-export-services>.

⁹⁴ The ACCC also acknowledges there could be a number of factors that limit the flexibility with which a mobile ship loader may be operated.

⁹⁵ T-Ports website: <https://tports.com/wallaroo/>, accessed 31 May 2021.

to approvals.⁹⁶ Noting that the catchment areas for Wallaroo and Port Pirie overlap to an extent the operation may place an additional level of competitive constraint on ADM at Port Pirie.

ADM submits that its exemption from Parts 3 to 6 of the Code will encourage further investment:

ADM being able to operate its Port Pirie supply chain exempt from the additional administrative burden of the code will encourage further investment and investigation into alternative export supply chains. This will encourage more participants to find innovative supply chain solutions. This will promote economic benefit from increasing competition and creating higher returns to growers from supply chain efficiencies.⁹⁷

Although the ACCC has not undertaken a detailed quantitative analysis of the appropriate level of investment in port terminal facilities in SA, the ACCC notes that it is not necessarily appropriate to conclude that all additional investment in port terminal infrastructure in SA is inefficient (i.e. can be considered 'over-investment').

The ACCC notes that a broad range of factors may influence different parties' investment decisions including, for example, an interest in having increased access to capacity at peak times.

ADM's incentive to invest in its Port Pirie facility

The ACCC considers that ADM is incentivised to invest in its Port Pirie facility to maximise returns to its shareholders and increase the efficiency of the operation. It is the ACCC's draft view that irrespective of whether or not an exemption is granted ADM will invest in its facility. Noting the facility is new, it is likely ADM will pursue a range of measures to improve this facility and related operations.

ACCC's draft view

The ACCC considers that it is in ADM's interests to make investment and operational decisions that ensure the profitable operation of its port terminal facility, so that ADM can maximise return to its shareholders.

The ACCC considers that the competitive constraint provided by Viterra's, Cargill's and Semaphore's facilities (as well as from the container and domestic markets) is sufficient to encourage ADM to make efficient investments (and/or deter inefficient investment) in its operations. An exemption in respect of Port Pirie may also provide an incentive for the other PTSPs to make efficient investment decisions in relation to their port terminal facilities, in order to respond to the increased competition at port and/or in related markets.

The ACCC also considers that, given the high level of competitive constraint it faces, it is reasonable to expect that the removal of unnecessary regulation will drive greater operational efficiency at ADM's Port Pirie facility (in part because ADM will be able to operate more flexibly).

Given the above, the ACCC's draft view is that exempting ADM in relation to its Port Pirie facility will likely promote the economically efficient operation of and use of its facility, and efficient investment in port terminal facilities.

⁹⁶ Michelle Etheridge, T-Ports' \$70m Wallaroo grain export facility to create 260 jobs, The Advertiser, 9 July 2021 accessed 13 July 2021.

⁹⁷ ADM, *Application for exemption*, p. 6.

(h) whether the port terminal service provider is an exporter or an associated entity of an exporter

Under subclause 5(3)(h) of the Code the ACCC is required to consider whether the PTSP is an exporter or the associated entity of an exporter. Noting that ADM is an exporter, the ACCC has given consideration to ADM's vertical integration in the course of considering subclauses 5(3)(c) and (d) of the Code.

The extent to which a vertically integrated PTSP favours, or is likely to favour, itself or an associated entity will influence the ACCC's decision on whether an exemption from Parts 3 to 6 of the Code should be granted.

ADM has acknowledged it is vertically integrated across bulk grain export operations and port terminal services:

*ADM Trading Australia Pty Ltd is a grain exporter from Australia.*⁹⁸

As a vertically integrated PTSP, the ACCC considers that ADM has an incentive to provide discriminatory access to itself in its capacity as an exporter, particularly in circumstances where port terminal capacity is constrained. These actions are potentially to the detriment of competition and any third party exporters that seek access to port terminal services.

If there were insufficient competitive alternatives to ADM's Port Pirie facility, third party exporters would likely have difficulty obtaining fair and transparent access if the ACCC granted an exemption to ADM.

However, as noted above when considering subclauses 5(3)(b) and (g), the ACCC's draft view is that ADM is subject to a high level of competitive constraint at Port Pirie which likely limits the ability of ADM to favour certain exporters, including itself in its capacity as a grain exporter. The ACCC's also considers that if ADM were to discriminate in favour of itself in the course of providing access to its port terminal services, any harm to third party exporters is likely to be limited given the range of alternative PTSPs operating in the relevant catchment areas and market more broadly.

(i) whether there is already an exempt service provider within the grain catchment area for the port concerned

Subclause 5(3)(i) of the Code requires the ACCC to have regard to whether there is already an exempt service provider within the grain catchment area for the facility concerned. The ACCC generally considers that, in circumstances where there is already an exempt service provider within a grain catchment area, or where the Code does not otherwise apply to a service provider in a catchment area, this supports the case for an exemption. However, the ACCC also considers this matter on a case-by-case basis, taking into account the full extent of competitive constraint on each facility.

The ACCC notes that ADM is the only PTSP operating in the Port Pirie catchment area and therefore there are currently no exempt service providers within the grain catchment area for the facility concerned.

However, as noted above the ACCC considers that the catchment area for ADM's facility at Port Pirie overlaps with the catchment areas of Port Adelaide and Wallaroo.

As discussed in section 4.2 the ACCC acknowledges that catchment areas are not necessarily fixed and are likely influenced by a range of factors. However the ACCC

⁹⁸ ADM, *Application for exemption*, p. 6.

continues to consider that distance remains a significant factor when considering which port terminals facilities are available to exporters seeking to export grain from different growing areas. As such, the ACCC considers that catchment areas generally remain relevant to the assessment of exemption applications, including for the purposes of discussing the presence, or otherwise, of competing exempt service providers.

As discussed in section 2.1, the ACCC considers that while Port Pirie, Port Adelaide and Wallaroo operate in different grain catchment areas, they overlap in sourcing grain from the Upper North region. The ACCC therefore considers that ADM's Port Pirie facility faces competition from Viterra's, Cargill's and Semaphore's facilities at Port Adelaide and Viterra's facility at Wallaroo.

The ACCC notes that all alternate facilities at Port Adelaide have been exempted, specifically:

- Viterra was determined to be an exempt service provider in respect of its IHB and OHB facilities at Port Adelaide on 27 April 2021;
- Semaphore was determined to be an exempt service provider in respect of its facility at Osborne Berth 1, Inner Harbour, Port Adelaide on 28 July 2017;
- Cargill was determined to be an exempt service provider in respect of its facility at Inner Harbour, Port Adelaide on 2 July 2020.⁹⁹

On 21 April 2021 the ACCC released Final Determinations that did not grant Viterra an exemption in relation to its Wallaroo facility.

ACCC's draft view

The ACCC considers that having different regulatory arrangements for competing PTSPs when not required may lead to distortions in competition and efficiency. Where one PTSP has already been granted an exemption, this may support an exemption for a competing PTSP if the level of competitive constraint is sufficient.

The ACCC considers that all 4 of the exempt facilities at Port Adelaide compete for grain with ADM at Port Pirie, imposing a high level of competitive constraint on ADM's Port Pirie facility. If ADM is not granted an exemption under the Code, it would be subject to a higher level of regulation than two other mobile ship loading operations (i.e. Cargill and Semaphore) and two larger scale, higher efficiency operations (i.e. IHB and OHB). The ACCC also notes its draft view that ADM is also competitively constrained by Viterra at Wallaroo.

Accordingly, the ACCC's draft view is that it would be appropriate for ADM's Port Pirie facility to be subject to the same level of regulation as exempt competing facilities. This is supported by the ACCC's draft view that ADM is subject to a high level of competitive constraint such that it will have an incentive to provide fair and transparent access to third party exporters. The ACCC's draft view therefore is that the exempt status of Viterra's IHB and OHB facilities and Cargill's and Semaphore's Port Adelaide facilities support ADM being granted an exemption at Port Pirie.

(j) any other matters the ACCC considers relevant

The ACCC does not consider that there are any other matters relevant to its preliminary assessment of ADM's application.

⁹⁹ On 21 May 2020 the ACCC also published a letter from LINX Cargo Care confirming it has ceased grain loading operations at its mobile ship loader at Flinders Port Berth 29, Port Adelaide.

5. Draft Determination

The ACCC's draft determination is that ADM should be an exempt provider of port terminal services provided by means of its port terminal facility at Port Pirie.

ACCC future monitoring and assessments

If the ACCC makes a final determination resulting in ADM being an exempt port terminal service provider in relation to its Port Pirie facility, the ACCC will consider the exempted facility in its ongoing monitoring activities, which include:

- Industry analysis – examining the shipping activity at each of SA's port terminal facilities (all PTSPs publish and provide to the ACCC loading statements under Part 2 of the Code).
- Industry consultation – periodically approaching industry participants, such as exporters and grower groups, to gauge the effect of any exemptions. Industry participants are also encouraged to approach the ACCC directly with any concerns they may have about securing fair and transparent access to ADM's port terminal facilities.

If the ACCC's monitoring activities indicate that exporters of bulk wheat do not have fair and transparent access to port terminal services at an exempt port terminal facility, the ACCC will consider whether it should examine revocation of the exemption.

Under subclause 5(6) of the Code, the ACCC may revoke an exemption determination if, after having regard to matters (a) to (j) of subclause 5(3) of the Code, it is satisfied that the reasons for granting the exemption no longer apply. In those circumstances, the ACCC will follow the procedure in its *Guidelines on the ACCC's process for making and revoking exemption determinations*.