



6 September 2019

Mr Michael Eady
Director
Infrastructure & Transport – Access & Pricing Branch
Australian Competition & Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

By email: michael.eady@acc.gov.au

Dear Mr Eady

Cargill submission – Viterra exemption application under the Wheat Port Code of Conduct

We refer to Viterra's application under clause 5(2) of the Port Terminal Access (Bulk Wheat) Code of Conduct (**Code**) for exemption from Parts 3 to 6 of the Code in respect of certain port terminals in South Australia: Port Lincoln, Port Adelaide Outer Harbour, Port Adelaide Inner Harbour, Wallaroo, Port Giles, and Thevenard.

For the reasons set out below, Cargill opposes Viterra's exemption application in relation to each of these ports.

1 Viterra's dominance as port terminal service provider

As an overarching comment, Cargill is pleased to confirm that, as far as Cargill is concerned, Viterra's port terminal customer service levels have improved in the last 12 to 18 months.

However, the purpose of the Code is to regulate the conduct of port terminal service providers to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. To that end, Viterra is neither a new entrant to the market, nor a small player. Indeed, Viterra is the dominant port terminal service provider in South Australia, many times over.¹ Cargill is concerned that an absence of adequate regulation may incentivise discriminatory behaviour.

For perspective, we note that in 2017-18, Viterra's total share of port throughput in South Australia was 91% of the entire bulk grain export market.² Calculated over the last seven years, Viterra's share was 97%.³

2 Glencore's dominance as exporter

Viterra is a subsidiary of Glencore. Glencore has also been the largest exporter of bulk grains from South Australia for the last seven years. Glencore's exports account for an annual market share of between 30% to 45% over this time.⁴

¹ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 61

² ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 3

³ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 3

⁴ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 64

Additionally, and importantly, in every port but one that is the subject of Viterra's exemption application, Glencore is already the largest exporter through each of Viterra's port terminal service facilities, and that is despite the Code's current, non-exempt, application to Viterra.⁵ That one exception is Thevenard, which relevantly accounted for just 130k tonnes of bulk grain export in 2017-18, and in relation to which Glencore remains the second highest exporter after ADM.⁶

Removal of regulation under the full Code would create strong incentives for Viterra to exploit its market power to discriminate in favour of certain exporters, particularly Glencore, and such would hinder fair and transparent access to necessary facility services for other exporters.

3 Limited competitive constraints on Viterra

In 2017-18, 40% of the grain exported in bulk by Viterra went through Viterra's Port Adelaide facilities,⁷ yet even at this port, Viterra receives limited competitive constraint from other facilities. In Port Adelaide, Viterra's only competition are service providers LINX and Semaphore, which each accounted for just 240k and 270k tonnes of bulk export in 2017-18 respectively, as against Viterra's 2.35 million tonnes.⁸

Additionally, the new T-Ports export facility at Lucky Bay is not anticipated to be capable of handling bulk wheat until November or December 2019, with bulk grain export services expected to be offered only from 1 January 2020.⁹ A second proposed T-Ports export facility at Wallaroo is still in planning and development stages. Construction of this facility is not anticipated to commence until 2020, and the first opportunity for operations will not occur until 2021.¹⁰

Furthermore, Viterra's current monopoly extends to all of the deep water ports in the state, i.e. Port Adelaide, Port Giles, and Port Lincoln. The principal effect of this monopoly is that exporters have no other options for loading of vessels exceeding certain tonnages. Fair and transparent access to these ports is crucial in order to ensure the commercial viability of larger vessels and loads.

Viterra therefore continues to operate in all of the ports that are the subject of its application relatively unrestrained by competition. The available level of competitive constraint is not sufficient to ensure that Viterra does not have the potential to exert its considerable market power. In these markets, Viterra is effectively a monopoly bulk export service provider.¹¹ This is particularly so given Viterra's export capacity remains well utilised. For example, despite industry downturns, Viterra's Port Adelaide terminals had a utilisation rate of 82% in 2017-18,¹² and bulk exports through Viterra's Port Adelaide facilities only declined by 12% (0.5% below the seven year average) compared to 2016-17.¹³

4 Viterra's current flexibility in providing services

As the dominant service provider, and even though non-exempt, Viterra is currently afforded adequate flexibility and opportunity in how it provides services under the Code. For example, it is able to:

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

⁵ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 60

⁶ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 60

⁷ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 61

⁸ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 60

⁹ ACCC, *Final position paper regarding T-Ports Lucky Bay exemption assessment*, August 2019, p.3

¹⁰ *The Advertiser*, *New grain port, silos planned at Wallaroo*, Paula Thompson, 24 April 2019

¹¹ ACCC, *Final position paper regarding T-Ports Lucky Bay exemption assessment*, August 2019, p.5

¹² ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 66

¹³ ACCC, *Bulk grain ports monitoring report 2017-18*, December 2018, p. 66

(c) vary its capacity allocations system (with ACCC approval).

The continuing application of the full Code may create incentives for Viterra to make efficient investments in its port terminal facilities, in order to compete with other service providers (to the extent that they provide any competitive tension), at the ports, or in related markets.

Were Viterra to receive an exemption in relation to any of its port terminal services in South Australia, the efficacy of the Code in this state would be thrown into question.

5 Next steps

We are grateful for the opportunity to provide this submission. Cargill looks forward to a fair and just determination of the application in question.

Yours faithfully



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