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Dear Mr Schroder,

**Grain Producers Australia response to the Viterra submission requesting an exemption from Parts 3 to 6 of the Port Terminal Access (Bulk Wheat) Code of Conduct.**

Grain Producers Australia thanks the ACCC for the opportunity to provide a submission regarding the Viterra application under clause 5(2) of the Port Terminal Access (Bulk Wheat) Code of Conduct for exemption from Parts 3 to 6 of the Code in respect of the following port terminals in South Australia:

- Port Lincoln
- Port Adelaide Outer Harbor
- Port Adelaide Inner Harbour
- Wallaroo
- Port Giles
- Thevenard

Grain Producers Australia (GPA) represents Australia's broadacre, grain, pulse and oilseed producers at the national level. GPA was created to foster a strong, innovative, profitable, globally competitive and environmentally sustainable grains industry in Australia.

The objectives of GPA are:

- To establish a strong independent national advocate for grain producers based on a rigorous and transparent policy development process,
- Engage all sectors of the Australian grains industry to ensure operation of the most efficient and profitable grain supply chain, and
- Facilitate a strategic approach to Research, Development and Extension intended to deliver sound commercial outcomes from industry research.

GPA has an industry leading policy council which is supported by State Farm Organisation (SFO) members including: VFF Grains Group, NSW Farmers Association, Agforce Grains, Grain Producers SA, TFGA, WAFarmers, WAGG along with 3 elected growers from the North, South & Western GRDC regions of Australia. As such, GPA has comprehensive national representation across the Australian grain production sectors.

**Grain Producers Australia does not support the granting of any exemptions to the Port Terminal Access (Bulk Wheat) Code of Conduct.**

Growers are the ones who ultimately pay the storage and handling, freight and port costs as a direct deduction from their returns and supply chain costs. Should the exemptions lead to greater costs, a lack of transparency and anti-competitive behaviour growers will be the ones who pay. GPA is concerned that the ACCC review of the Port Terminal Access (Bulk Wheat) Code of Conduct (Port Code) established a strong case for additional oversight of the grain

supply chain through a number of measures. Therefore, there is a strong case that exemptions should not be granted.

The Viterra submission goes into considerable detail regarding their concerns that there is a perceived lack of fairness in being the only ‘bulk handler’ still subject to the full Port Code at all their port facilities. GPA would therefore propose that all current exemptions be reviewed in light of the findings of the Port Code review 2018.

Although persuasively written Viterra does not provide substantive evidence in support of how the requirement to meet the non-discrimination requirements, dispute resolution for negotiations with access seekers and ACCC approval of capacity allocation systems is having an impact on their legitimate business interests. The example they provide regarding the length of time taken to allow them to vary allocation systems is years old and it would be safe to assume that exemptions cannot be granted because things in the past, now dealt with and operationally adjusted, at one point proved inconvenient.

Whilst in some areas growers have access to alternative up-country facilities the ability of these facilities to offer comparable rates and competitive pricing is in most instances also linked to their capacity to negotiate access to export facilities on equal terms to those offered by Viterra to their own marketing arm.

Viterra has not provided publicly available evidence or substantive argument to support how exemption from those clauses of the code would improve operations. This includes how competition or the likelihood that exporters would have fairer and more transparent access to port terminal services. The submissions provided by Viterra does not include substantive argument for how an exemption would promote more economically efficient operations and use of their port terminals.

Questions should be asked of Viterra regarding how an exemption would lead to those actions. GPA is concerned that if everything was running as smoothly as Viterra claim, why would anyone invest in infrastructure that duplicates existing under-utilised infrastructure. Regardless of the perceived or claimed low barriers to entry, there are potentially significant issues in the supply chain, if duplication of monopoly infrastructure is seen as the only solution.

Ultimately growers, as price takers, pay for this over-investment as companies strive to make a commercial return.

#### Subclause 5(3) of the Code

In making a determination under subclause (2), the ACCC must have regard to the following matters, GPA has a number of additional questions regarding these matters that they feel should be asked as part of the process of assessing the exemption submission:

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

*i.e. Will Viterra be able to make more money and put more grain through their system if an exemption is granted?*

- (b) the public interest, including the public interest in having competition in markets;

*GPA argue once again that the public interest in this case should be purely whether or not granting an exemption will encourage innovation and reduce prices to growers thereby facilitating trade of grain.*

*The prices charged at port do not materially affect the Australian consumer, except as a consequence of supply chain costs charged to growers which impact on their returns and facilitation of trade. In the case of Port access in truth the public who should be under consideration are the customers of the services ie the growers who benefit when there is fair and transparent access or pay if the system is not appropriately regulated.*

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

*Given there has been no substantive evidence presented which clearly outlines any significant costs imposed on Viterra from meeting the 3 Port Code conditions, it is hard to argue that removing the transparency, non-discrimination and capacity allocation requirements would be of benefit to other exporters who require access to the ports. For example: If as Viterra claim they have not had to utilise the arbitration requirement why would it be costing them any money in which case if is not having an impact and therefore may as well remain in place to ensure continued good behaviour.*

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

*One of the reasons there has been investment in port facilities by other companies is due to the lack of transparency and difficulties regarding access to the original facilities, or concerns that the out turn of the grain they purchased through the system is not meeting customer requirements and therefore putting their businesses at risk. No evidence has been presented to clearly outline how the concerns of the past have been addressed.*

- (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;

*Given both Viterra has already pointed out there has been over-investment in facilities, this condition becomes problematic. The ACCC need to better explain their reasoning behind this condition. What do they believe is the appropriate outcome? GPA do not believe investment in multiple duplicative facilities is efficient investment.*

- (g) the promotion of competition in upstream and downstream markets;

*Having all exporters be able to negotiate port access on a fair and transparent basis, reinforced by the Port Code actually allows smaller players to compete for export opportunities and therefore offer competitive prices up country. How would granting an exemption that puts this at risk actually achieve this consideration?*

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

*Viterra is in this case with both up-country receival facilities and a grain export program. Analysis of their profit from their export program in comparison to other entities utilising the same system through the Port Code should be undertaken to establish whether preferential treatment is occurring. The evidence does not need to be made publicly available but GPA firmly believes it should be provided to the ACCC.*

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

*This condition seems to operate as a two wrongs make a right clause, regardless of evidence presented if someone else is exempt this helps gain exemption for all.*

(j) any other matters the ACCC considers relevant

**Questions that must be asked by the ACCC as part of the process.**

Transparent access to information remains a key problem. How will providing an exemption increase information flow?

Application of the non-discrimination test. How will providing an exemption help farmers and smaller companies negotiate better port access arrangements?

How does granting exemptions reduce costs to growers from utilising the facilities?

How does an exemption help reduce supply chain costs?

What actions have been taken to improve transparency and information flow ie foster competition through free and open transfer of information?

Have we got examples of costs being imposed on the companies from competitive behaviour i.e reduced access, restricted access to port slots for their own grain, costs of providing transparent information, costs relating to how many times the dispute resolution process has been used?

Up-country competition is used to illustrate competition but even if access to a port is no longer predicated on use of a particular supply chain then why is on farm storage increasing and duplicative port facilities being seen as a viable investment when it is actually an inefficient way of managing supply chain issues.

GPA thank you for the opportunity to provide a submission on behalf of our grain producer and State Farming Organisation members.

Regards,



Andrew Weidemann  
Chairman  
Grain Producers Australia Ltd