

Commissioner Mick Keogh
Commissioner Anna Brakey
Mr Matthew Schroder
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

By Email

7 May 2021

Viterra's applications for exemption from Parts 3-6 of the Bulk Wheat Code

Dear Commissioner Keogh, Commissioner Brakey and Mr Schroder

Thank you for meeting with Damian Fitzgerald and myself on 30 April 2021. We greatly appreciated the opportunity to discuss the ACCC's recent final determination with you, and to provide further information that supports our significant ongoing concerns about the likely long term impacts of the ACCC's decision on South Australian growers and the grain industry.

While Viterra acknowledges the ACCC's decision to exempt the Port Adelaide port terminals, the ACCC's decision not to exempt Wallaroo and Port Giles and to defer its decisions on Thevenard and Port Lincoln has significantly added to the uncertainty, complexity—and therefore likely cost of regulation—at Viterra's port terminals in South Australia.

We are already seeing a lack of demand for capacity at our port terminals for the 2021/22 shipping year. This is symptomatic of the complexity and uncertainty created by the Code and also illustrates that there is no restriction on capacity at our ports.

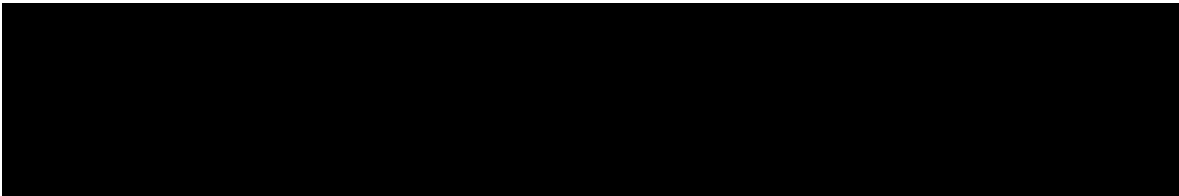
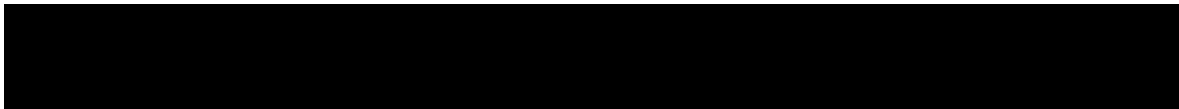
It also reflects the significant choices that are available for exporters. Even though the export task is not growing, there has been a significant increase in overall port terminal capacity in South Australia, both through Viterra's productivity gains which have been shared with growers, and new entry by competing port terminals. New domestic supply chains for South Australian grain have also developed.



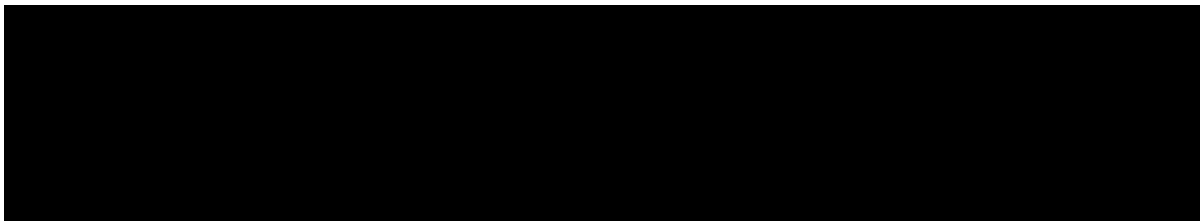
Recent release of 2020/21 capacity

As we explained at our meeting, there has been very limited up-take by exporters of the capacity available at Viterra’s port terminals.

- Only 27% of the 8.6 million tonnes of capacity released by Viterra on 20 April 2021 has been booked;
- at Port Lincoln, less than 40% of the available capacity of 2.2 million tonnes released by Viterra has been booked, with exporters only taking up 874,000 tonnes. There are no bookings beyond the first half of April in 2022;
- Thevenard has no bookings;
- Wallaroo—the largest receival site in South Australia—has less than 3% of the available capacity booked, representing only 25,000 tonnes out of 920,000 tonnes of capacity available. This is clear evidence that the ACCC’s decision not to exempt Wallaroo “because it would likely be detrimental to the likelihood that exporters are able to gain fair and transparent access to the facility” is not well-founded; and
- Port Giles has no bookings beyond the first half of March 2022, which once again demonstrates that there is plenty of capacity that is accessible for exporters.



Attachment 1 sets out a summary of the outcome of the recent capacity release.



Pending decision on exemption for Port Lincoln and Thevenard

The recent release of capacity provides strong evidence that, if there was ever any need for regulation to enable access to capacity at Port Lincoln or Thevenard, that need no longer exists.

As discussed at our meeting, and in reference to the statistics above, it is critical that the ACCC, in its assessment of the Port Lincoln and Thevenard applications, does not overstate the level of demand in the vast majority of shipping years. It is also critical that the ACCC does not, at the same time, understate either the amount of capacity that is available for exporters or the range of competitive choices that they have. This availability is not confined to drought or low production years.

As stated above, no capacity has been taken up at Thevenard and less than 40% of capacity has been taken up at Port Lincoln, leaving 1.326 million tonnes of capacity available to be taken up at any time.

In addition to the substantial amount of capacity available at Viterra's port terminals, there is significant further capacity available at T-Ports' port terminal at Lucky Bay. [REDACTED]

Viterra understands that the ACCC is awaiting the end of the current shipping year at Lucky Bay to assist it in making its determination in respect of Port Lincoln and Thevenard.

However, with most exports out of South Australia completed, all necessary shipping information is already available to the ACCC. In addition, the evidence clearly demonstrates that there is significant competing capacity available to exporters each year irrespective of the tonnes actually shipped from Lucky Bay in 2020/21.

Viterra encourages the ACCC to consider these matters fully—and the resulting wider impacts on the South Australian industry—in its assessment of the exemption applications for Port Lincoln and Thevenard.

Impacts on Viterra's ability to support and invest in the South Australian grain industry

Viterra is dedicated to connecting South Australian grain growers from the farm gate to end use consumers, domestically and overseas. Our focus is on maintaining and investing in long term sustainable infrastructure that benefits South Australian growers.

In this regard, Viterra provides a valuable service to growers and the grain industry, and our



business contributes significantly to South Australia’s economic success and wellbeing.

It is therefore imperative that the ACCC also ascribes significantly greater weight in its decision making to the broader public and industry interests in facilitating efficiency within, and continued investment in, the South Australian grain supply chain.

Viterra has made significant investments in the Port Lincoln and Thevenard port terminals, and in Eyre Peninsula infrastructure more generally. Between 2015-2019 on Eyre Peninsula, Viterra has spent approximately \$80 million on capital expenditure and infrastructure and has annually employed 182 full time equivalent positions. Between 2011-2019, through its economic activity, Viterra has contributed \$370 million to the Port Lincoln, Lower Eyre Peninsula and Ceduna council areas alone.

The current underutilisation of Viterra’s assets, and the increasing over-capacity created by new port terminals (including T-Ports’ Lucky Bay facility), makes it increasingly difficult to sustain this level of investment particularly if, as a result of the Code, Viterra does not have the operational flexibility to optimise the efficient operation of its supply chain and infrastructure investments.

It is also important that the ACCC gives appropriate weight to the legitimate business interests of Viterra. The ACCC should take into account the long-term investment that Viterra has made in the South Australian grain industry and the importance of an effective and efficient supply chain connecting growers with international customers. It is critical for the industry that Viterra continues to invest in South Australia and that this investment is sustainable for Viterra. The legitimate business interests of Viterra and the success of growers are intrinsically linked.

In this regard, it is a significant concern for Viterra that—based on the ACCC’s decision concerning Outer Harbor, Inner Harbour, Port Giles and Wallaroo—the ACCC appears to view Viterra’s substantial investments in infrastructure, transportation assets, efficiency and other improvements as potential sources of concern or as evidence of a lack of competition, rather than as evidence of the significant competitive and public benefits that Viterra brings to the South Australian industry. Viterra submits that, in its decision concerning Port Lincoln and Thevenard, the ACCC should give significantly greater weight to these public benefits that will be further increased if those port terminals are exempted from the operation of Parts 3-6 of the Code.

As set out above, the ACCC’s decision not to exempt Wallaroo and Port Giles is likely to add further uncertainty and complexity for Viterra and its exporter customers. [REDACTED]

[REDACTED] Viterra considers that it is critical that



the ACCC takes into account the additional costs likely to arise from this increased complexity when making its decisions concerning Port Lincoln and Thevenard. The legitimate interests of all stakeholders—Viterra, exporters and growers—are best served if Viterra is able to reduce complexity and uncertainty, and undertake further investment in the operational efficiency of the South Australian export supply chain.

Yours sincerely



Tim Krause

Chief Executive Officer Australia & New Zealand



Attachment 1 – Summary of 2021/22 capacity release

List	Shipper			Port2			Booked LIN	Booked WAL	Booked THE	Spare ADE	Spare OHB	Spare GIL	Spare LIN	Spare WAL	Spare THE	Grand Total	% Booked	% Spare
	Booked	Booked	Booked	Booked	Booked	Booked												
73 FH OCT										35,000	98,000	45,000	107,000	40,000	40,000	330,000	0.0	100.0
74 LH OCT									35,000	98,000	45,000	107,000	40,000	40,000	40,000	325,000	0.0	100.0
75 FH NOV									35,000	98,000	45,000	107,000	40,000	40,000	40,000	365,000	0.0	100.0
76 LH NOV									40,000	100,000	50,000	107,000	40,000	40,000	40,000	377,000	0.0	100.0
77 FH DEC						60,000			45,000	40,000	50,000	60,000	40,000	40,000	395,000	30.4	69.6	
78 LH DEC	45,000					30,000									40,000	395,000	79.7	20.3
79 FH JAN	35,000					120,000		25,000							15,000	40,000	85.7	14.3
80 LH JAN	32,000					107,000			3,000						40,000	365,000	77.3	22.7
81 FH FEB	30,000					100,000			5,000						40,000	357,000	76.2	23.8
82 LH FEB	30,000					100,000			5,000						40,000	317,000	85.8	14.2
83 FH MAR	35,000					100,000									40,000	356,000	77.5	22.5
84 LH MAR						107,000			35,000			45,000	36,000	40,000	40,000	365,000	56.2	43.8
85 FH APR						60,000			35,000			45,000	36,000	40,000	40,000	354,000	33.9	66.1
86 LH APR									35,000			45,000	98,000	40,000	40,000	348,000	17.2	82.8
87 FH MAY									35,000			45,000	107,000	40,000	40,000	365,000	0.0	100.0
88 LH MAY									35,000			45,000	107,000	40,000	40,000	325,000	0.0	100.0
89 FH JUN									35,000			45,000	107,000	40,000	40,000	365,000	0.0	100.0
90 LH JUN									35,000			45,000	107,000	40,000	40,000	365,000	0.0	100.0
91 FH JUL									35,000			45,000	107,000	40,000	40,000	365,000	0.0	100.0
92 LH JUL									35,000			45,000	107,000	40,000	40,000	365,000	0.0	100.0
93 FH AUG									35,000			45,000	107,000	40,000	40,000	286,000	0.0	100.0
94 LH AUG									35,000			45,000	107,000	40,000	40,000	258,000	0.0	100.0
95 FH SEP									35,000			45,000	107,000	40,000	40,000	267,000	0.0	100.0
96 LH SEP									35,000			45,000	107,000	40,000	40,000	267,000	0.0	100.0
Grand Total	207,000	866,000	280,000	874,000	25,000	0	874,000	25,000	623,000	1,382,000	775,000	1,587,000	1,587,000	895,000	800,000	8,314,000	27.1	72.9
					TOTAL BOOKED		2,252,000								TOTAL SPARE	6,062,000		
					Spare %		75.1		61.5		73.5		64.5		97.3			
					Booked %		24.9		38.5		26.5		35.5		2.7			



Attachment 2 – 

