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Via electronic submission – transport@accc.gov.au; michael.eady@accc.gov.au

Dear Sir / Madam

**RE: Viterra Operations exemption under the Port Terminal Access (Bulk Wheat) Code of Conduct**

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to provide a submission on Viterra's application for exempt provider status in relation to six ports under the Port Terminal Access (Bulk Wheat) Code of Conduct (the Code).

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

While SAFC understands that the ACCC will be assessing each port application individually, many of the issues are common across all six ports.

**Overarching Considerations**

One of SAFC's prime concerns with the Code is it's uneven application around Australia. We understand that six of the nine ports that are required to comply with the full code are South Australian, which is distinctly disproportionate given the size of our state and provides a competitive disadvantage to grain port operations in SA. While the Code is intended to ensure there is no localised anti-competitive behaviour in port operations; it is perversely affecting SA's national and international competitive position by regulating SA grain ports in disproportionate numbers, increasing compliance costs and lowering flexibility.

As an organisation established to ensure a level competitive playing field between businesses across Australia, the ACCC should take into account the effect this has on grain exports from SA versus other jurisdictions. An equitable and competitive national grain transport system dictates that the disadvantage placed upon SA is removed.

**Legitimate interests of the Service Provider**

SAFC supports Viterra's statements in regards to its legitimate interests, noting that in many cases these are also customer interests – i.e. flexibility in Port Loading Protocols to maximise vessel loading opportunities and overall loading capacity. We note that all six ports are multi-grain and/or multi-commodity facilities, and that the code's requirements for wheat impact on the loading of other commodities which is an unintended consequence.

**Access to/Competition in bulk grain port terminal services**

It is important to note that in most years (and in some regions, even in bumper harvest years) South Australia has considerable grain port over-capacity – and that port capacity continues to grow despite this. Containerised grain exports also offer an alternative export channel, with only location, not capacity restrictions (i.e. available via Pt Adelaide only).

SAFC notes that competition in the grain ports sector has considerably increased in SA since the establishment of the Code. There are now two players providing competition within the Port of Adelaide (LINX and Semaphore), one major new player on the Eyre Peninsula about to begin operations this harvest (T-Ports) and a host of new grain port proposals under development, including (but not limited to) Cape Hardy, Port Spencer and Myponie Point.

Viterra's share of the grain bulk export market in SA, while still significant, is declining (from 97% on average over the last 7 years, to 91% in 2017/18); and this trend is expected to continue with the entry of new, large players into the market (in particular T-Ports this year). Glencore Grain, a related entity and grain marketer, has also lost market share down from 45% in 12/13 to 35% in 17/18.

As such, the competitive position is such that:
1. Viterra is losing market share, which is indicative of growing competition
2. Any failure by Viterra to negotiate reasonable commercial terms on access to its ports will provide impetus to the many grain port proposals that are currently under development in SA, resulting in further competition.
3. This would result in less grain exported across Viterra wharves, which is against its own interests.

As such, Viterra has a strong incentive to negotiate attractive commercial terms that do not spur further entry into this market. It is worth noting that several of these proposals are for 'barging' operations, which are low capex, high(er) opex and thus have low barriers to entry. It is not just current competition, but also the advanced nature of future competitive service provider proposals that will deter anti-competitive conduct.

South Australia's most recent bumper harvest year was in 2016/17. There was no issue in exporting the full crop via current terminals, and the entry of T-ports into the Eyre Peninsula region has significantly further increased overall capacity. SAFC does not believe there is any reasonable prospect of capacity reducing, or their being no excess capacity in the system – rather the opposite with capacity likely to expand and competition for the available grain likely to increase. Climate change (with particular reference to rainfall patterns) may also restrict future yields/yield growth.

**Grain catchment areas**

SAFC notes that T-Ports facility at Lucky Bay is likely to significantly change/restrict the catchment area for Viterra's Port Lincoln facility. There will be significant new competition for EP grain, particularly on the eastern side of the peninsula.

The cessation of grain transport by rail on the Eyre Peninsula will also change catchment areas. Where previously rail lines funnelled grain towards Pt Lincoln, increasing its catchment area, now trucking distance (and cost) will be a greater factor.

There are already two exempt providers in the Port of Adelaide catchment region (Semaphore and LINX). These providers exported over half a million tonnes in 17/18, compared to 2.35m from Viterra's Pt Adelaide facilities and a total state crop of 6.94m tonnes – a significant proportion.

**Competition Upstream, Downstream and in Related Markets**

While previously grain was transported by rail on the Eyre Peninsula to Pt Lincoln, Viterra has announced that this will cease from the upcoming harvest (19/20). Several other regional grain rail lines have closed over the past decade. As such, the only remaining rail transport of bulk grain to SA ports is from Tailem Bend (a Viterra strategic site) to Pt Adelaide. Rail can still be used to transport grain interstate, but this would generally only occur for domestic consumption (i.e. not for international export).

Competition within the road transport industry is fierce, with many providers and low profit margins. Viterra is not integrated with any road or rail companies – they access services from the market like any other player.

Containerised and bulk grain draw from the same pool therefore they are in competition for supply. The customers are however likely to be different.

It is difficult to determine how current drought related interstate grain transfers should be considered. Droughts are reasonably frequent occurrences in Australia, and may be more prevalent in the future due to climate change. They are also not uniform – while large parts of SA have not been unreasonably affected this time, that is unlikely to always be the case.

As such, *some* interstate transfers will occur in *some* years, but predicting their long term competitive impacts are virtually impossible other than to say there will be *some* effect.

SAFC agrees with Viterra's sentiments on page 20 of the issues paper that SA is a price taker on international markets, and that *'an exemption for any of Viterra's terminals will not, therefore, have any material impact on the global grain acquisition and trading market'*. If regulatory cost reductions are passed on, it may provide some increase in profitability to local farmers.

**T-Ports, Lucky Bay**

SAFC was not aware of the application for exempt status by T-Ports for its Lucky Bay facility until we viewed this issues paper, and thus did not make a submission. We understand that while submissions have closed, the exemption is still under consideration by the ACCC. Given the competitive position between Viterra's Pt Lincoln terminal and T-Ports Lucky Bay terminal, we believe that the determinations for these two terminals should be linked. Given that strong competition is likely to ensue, in our opinion they each justify an exemption from the Code for the other.

Should either terminal be made exempt without the other, it is likely to provide a regulatory competitive advantage to the exempt terminal, which is against the founding principles of both the ACCC and the Code.

Again, I thank you for the opportunity to provide a submission on this important topic. Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email knapp.evan@safreightcouncil.com.au.

Yours Sincerely,


**Evan Knapp**
Executive Officer, SA Freight Council.