



# Introduction of Auction System

## Proposed variations to Viterra's Port Loading Protocols, Standard Terms and Storage & Handling Agreement

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### **1 Introduction**

#### **1.1 Purpose of document**

Viterra wishes to thank Clients for participating in the consultation process in relation to the proposed variations to its Port Loading Protocols, Standard Terms and S&H Agreements.

This document sets out a summary of the key issues raised in written submissions, together with Viterra's response after consideration of each of those issues (see Attachment 1).

Viterra has also responded individually to each Client that has made a written submission during the consultation process.

#### **1.2 Proposed variations**

Each of Viterra's proposed changes to the Port Loading Protocols, Standard Terms and S&H Agreements are set out in the Variation Notice dated 17 February 2012, which Viterra has issued in accordance with its ACCC access undertaking.

Viterra proposes to adopt a number of additional changes to its Port Loading Protocols in response to the feedback that Clients have provided during the consultation process.

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### **2 The consultation process and feedback from Clients**

#### **2.1 Auction System design**

Viterra has engaged extensively with clients, industry organisations, government bodies and grower groups over the past few months in relation to the design of, and industry requirements for, the auction system. Viterra has designed the proposed system to reflect the feedback provided.

Viterra's key objective has also been to implement an auction system that it meets the requirements set out in our access undertaking to the ACCC. These requirements are that:

- the auction is the primary means of allocating capacity for grains;
- capacity is defined on a consistent basis in tonnes;
- clients have an equal opportunity to participate in the auctions;
- auctions are conducted in a transparent and non-discriminatory manner;
- slots are allocated to clients that value them the most;

- the auction includes disincentive to over-booking which apply equally; and
- bookings are tradeable between clients.

Viterra considers that the proposed Auction System satisfies these requirements.

## **2.2 Feedback provided during the consultation process**

Viterra has received feedback from a number of clients during the current consultation process. Based on the submissions received to date, there are some common themes that have been raised. However, there is also no common view in relation to various issues.

A number of different (and sometimes conflicting) changes have been proposed. Some feedback is also contrary to the feedback that clients provided earlier during our informal consultation process, or would appear to be inconsistent with the key auction principles set out in the ACCC access undertaking (in particular the requirement that slots are allocated to clients that value them the most).

Accordingly, while Viterra has considered all submissions from Clients, it is not possible to adopt each of the different suggestions.

Viterra also notes that each of the changes proposed in the various submissions would be likely to have a consequence for the way that the auction operates. However, it is not always clear that the consequence would be desirable, more efficient, or in some cases address the concerns that have been raised in the context of previous auctions. In this regard, auctions are a market-based mechanism and the outcome of any auction will necessarily be affected by the different strategies adopted by participants in that auction within whatever rules apply.

## **2.3 Current reviews by AGEA and CBH**

Viterra notes that AGEA held a meeting on 16 February 2012 with a view to formulating its views in relation to issues concerning the auction systems in South Australia and Western Australia.

A number of clients have also noted that CBH is currently reviewing its auction system in Western Australia. However, Viterra understands that CBH has not yet determined what changes it may ultimately make to its auction system (if any), or the timeframe for considering and implementing any such changes.

Naturally, Viterra is working to the timeline established in the access undertaking and the auction principles set out in the access undertaking (see above).

In any event, we note in response to issues raised by Clients in relation to the CBH auction processes, that the auction system proposed by Viterra differs from that implemented by CBH last season in a number of key respects. In particular:

- Viterra provides a significant level of transparency and earlier information on its shipping stem. This information provides substantial assistance to clients seeking to understand future capacity availability or to trade or move slots;
- Viterra provides very significant flexibility to clients once they have made a booking. There are no limits to the number of times clients can trade or move bookings. Clients can also surrender (and obtain a partial refund for) bookings and split their bookings. Again this supports the efficient allocation of capacity;
- based on industry feedback, Viterra has designed the timing of auctions to balance clients' requirements for certainty, forward planning and visibility of crop quality and volumes;

- Viterra has provided very substantial transparency and explanation in relation to its proposed processes. Clients have more information than ever before in relation to the booking processes and operational requirements; and
- the first-in-first-served system (which applies on and from a published time after the relevant auction or auctions have taken place) is an online and clearly auditable booking system with each client limited to five log-ins and each booking restricted to one port terminal and one slot. This places increased structural disciplines on bookings for capacity not acquired at auction and prevents one booking application from securing significant volumes of the available capacity.

These are all important factors which support the efficiency of the auction system proposed by Viterra and are likely to ameliorate and address the issues experienced by some exporters in previous auctions in Western Australia.

That said, in response to the current reviews by AGEA and CBH (and mindful of both the timing requirements set out in the ACCC access undertaking and the fact that no auction have to date been run in South Australia), Viterra proposes to introduce a further change to its Port Loading Protocols, committing to undertake a review of its auction system and to seek feedback from industry participants after the 2012 auctions.

This is intended to ensure that industry participants have an opportunity to provide feedback after experiencing the first season of auctions.

The timing of that review is also likely to align better with feedback from the current CBH and AGEA processes and, with the experience of Viterra's first auctions, enable industry participants to provide feedback on an informed basis.

### **3.3 Next steps**

Viterra is encouraged by the positive engagement that it has had with clients over the past few months, and looks forward to continuing this open dialogue as the auction system evolves over coming seasons.

The process for the ACCC's consideration of the proposed variations as set out in the Variation Notice is set out in the access undertaking.

If you have any questions in relation to this process, please contact Adam Chilcott, General Manager Commercial & Compliance, on (08) 8238 5217.

**17 February 2012**



## Attachment 1 – Response to issues raised in submissions

Submission	Comment / Suggestion	Viterra's response
<p>1) <b>Confidential</b> 7 February 2012</p>	<p><b>Caps on available capacity</b> Introduce a percentage cap on available capacity so that no one bidder has the ability to corner the market. For example, a cap that a bidder cannot acquire more than 30% of available capacity at any one port during an auction.</p>	<p>As discussed at the consultation meetings in Adelaide and Melbourne, Viterra considers that this form of capping mechanism would not be consistent with the requirement in the access undertaking that the auction system allocates slots to those who value them the most.</p> <p>Viterra would also be reluctant to introduce a system which had the potential effect of capping its clients' growth. As noted at the consultation meetings, clients' share of exports can move around significantly across different years based on market considerations. The auction system should not include rules which may impinge on these market requirements in the initial allocation of capacity.</p>
	<p><b>Staggering the release of auction capacity</b> Stagger auction capacity to inhibit speculative behaviour, or otherwise, auction only 50-60% of available capacity and the remainder throughout the season.</p>	<p>Viterra is willing to explore the frequency and coverage of auctions as part of the review that it is proposing for early 2013. However, it is not apparent that the proposal to stagger the release of capacity would lead to a more efficient outcome than Viterra's current proposal for 3 auctions over two periods, or address any perceived concerns in relation to "gaming". It is also different from the feedback we received in designing the system and have received from other clients during the consultation process.</p> <p>The greater flexibility around trading (and transparency on our shipping stem) is also intended to assist market participants in matching requirements if that differs from any initial allocation.</p> <p>For completeness we note that, even if there were to be staggered auctions, this would not obviate the need to a FIFS system to assist in maximising capacity utilisation.</p>
	<p><b>Auction frequency</b> If these options are not feasible, at least hold more frequent auctions to more closely match prevailing conditions as well as reduce speculative behaviour. As a suggestion, operate quarterly auctions.</p>	<p>Please see the comments directly above.</p>
	<p><b>A greater role for the Auction Review Committee</b> The ARC should have a greater role in relation to the substantive auction results (e.g. an ability to disallow or remove bids)</p>	<p>As discussed at the consultation meetings, Viterra considers that there are likely to be number of real issues in providing the ARC with an ability to allow or disallow bids based on an assessment of bidder's requirements. The difficulties in making subjective judgments about a client's ability to execute capacity were highlighted in discussions with the ACCC concerning the current access undertaking, and resulted in the removal of the anti-hoarding provisions from the Protocols. For these very practical reasons, Viterra is extremely reluctant to take on (or delegate to the ARC) a responsibility to "second-guess" the functioning of the auction which is designed to allocate capacity to clients who value it the most (a requirement of the access undertaking).</p>

	<p><b>Publication of acquired capacity</b> Acquired capacity should be published at the conclusion of the auction.</p>	<p>This is an issue on which we have received conflicting views. However, Viterra is committed to providing transparency to its clients, and considers that this is a key feature which supports the efficiency of its proposed auction system.</p>
	<p><b>Secondary market</b> Consideration should be given to a platform being created that will facilitate transfer of capacity in the secondary market.</p>	<p>Viterra has received a number of requests to transfer slots. Accordingly, the current system is working as intended. We would be prepared to discuss the issue of a transfer platform further with industry as the system evolves. However, we note that this proposal falls outside the scope of the current proposal to introduce an auction system.</p>
<p>2) <b>Australian Grain Exporters Association (“AGEA”)</b> 7 February 2012</p>	<p>AGEA does not currently have a formal position or any specific feedback in relation to the proposed changes by Viterra. AGEA will be formalising its position at a general meeting on 16 February 2012 and will communicate the outcomes of the meeting to all port terminal operators after this.</p>	<p>Given that AGEA does not currently have a formal position, and given the timing requirements set out in the ACCC access undertaking, Viterra proposes to introduce a further change to its Port Loading Protocols, committing to undertake a review of the auction system and to seek feedback from industry participants after the 2012 auctions.</p> <p>This is intended to ensure that industry participants have an opportunity to provide feedback after experiencing the first season of auctions. The timing of that review is also likely to align better with feedback from the current AGEA and CBH processes and, with the experience of Viterra’s first auctions, enable industry participants to provide feedback on an informed basis.</p>
<p>3) <b>Bunge Limited (“Bunge”)</b> 8 February 2012</p>	<p>Bunge does not have an absolute final solution at this point in time, but continues to debate internally the value of different opinions. It intends to offer suggestions for improvements at a later point in time.</p>	<p>Please see the response set out above (AGEA).</p>
<p>4) <b>Emerald Group Australia Pty Ltd (“Emerald”)</b> 8 February 2012</p>	<p><b>Premium re-adjustment</b> The Tradeslot software could relatively easily be adjusted to incorporate the business rule: <i>“If the demand of a concluded auction withdrawn in the concluding round of an auction exceeds 500K tonnes the premium will be re-adjusted to the premium that would have applied when supply met adjusted demand assuming the amount of withdrawn demand had not been bid at all.”</i></p>	<p>We appreciate the thought that has gone into this proposal. However, our initial concern is that it is unlikely to sit easily with an auction system that is designed to allocate slots at the value attributed to them by the market, and the requirement in the access undertaking that slots should be allocated to clients that value them the most.</p> <p>If five clients valued a slot at, say, \$15.00, and then three clients withdrew a total of 500K tonnes in the next round, Emerald’s proposal would see the slot close at a price potentially significantly lower than \$15.00 (being the amount that all five parties were prepared to pay). There are some difficulties in reconciling this with the auction principle set out above, which is a requirement of our access undertaking.</p>
	<p><b>Re-auctioning</b> If the amount of the overshoot exceeds more than (say) 200K tonnes of capacity it should be re-auctioned rather than allocated through the FIFS system. The industry is prepared to have weekly auctions if this means that the allocation system is fairer.</p>	<p>Viterra notes that this proposal would involve: (1) auctioning the relevant capacity; (2) if the capacity is “passed in”, making it available as part of the FIFS system, (3) declining to accept FIFS bookings if more than 200K tonnes of bookings are received, (4) organising and publicising a new auction for that “over-shoot” capacity, and (5) potentially repeating the process if a similar situation arises.</p> <p>This would appear to introduce significant complexity and uncertainty into the allocation process. In this regard, Viterra is very mindful that certainty of bookings is important for all clients in the lead up to the harvest and peak shipping periods. There is also not a significant period of “spare time” between the current auctions and the execution of bookings.</p>

		<p>We note that Viterra has not received feedback from other clients that they would be prepared to have weekly auctions. We also note that one of CBH's responses to feedback following its auctions last year was to reduce the frequency of auctions (rather than increase the frequency).</p>
	<p><b>Transparency and credibility</b> If Emerald's other suggestions are not incorporated, then where the overshoot is greater than (say) 200K tonnes:</p> <ul style="list-style-type: none"> <li>• have clear priority rules to deal with situations where demand exceeds supply. e.g. does a booking lodged before opening take priority or is it invalidated?</li> <li>• results of the FIFS system should be published shortly after allocation; and</li> <li>• an independent party should certify that the priority rules have been observed for each overshoot allocation event.</li> </ul>	<p>Viterra considers that each of the principles outlined by Emerald should apply to all bookings, not just in circumstances where the "overshoot" is 200K tonnes or more. In this regard:</p> <ul style="list-style-type: none"> <li>• there are already clear priority rules for FIFS bookings set out in the Protocols. Viterra will not accept bookings prior to the official opening of the stem for those bookings. The online booking system is automated and date and time stamped which ensures full auditability</li> <li>• in accordance with the access undertaking and Wheat Export Marketing Act, Viterra updates the shipping stem each business day. It updates the shipping stem after bookings have been made, regardless of whether or not the vessel has been named; and</li> <li>• both the ACCC and WEA have oversight of Viterra's booking processes as set out in the Protocols. Viterra has been the subject of a number of audits.</li> </ul>
<p>5) <b>PentAG Nidera Pty Ltd ("PentAG")</b> 8 February 2012</p>	<p><b>Closing of under-subscribed Lots</b> The "trigger" mechanism for closing the auction should be changed from an "all slots under-demanded" scenario to one which allows the closing off of individual slots once they are "under-demanded" after a set number of rounds. After those rounds, only over-subscribed Lots would remain open.</p>	<p>Viterra's initial view is that this suggestion is likely to raise a number of difficulties and is unlikely to be consistent with the requirements in the access undertaking. In our view, it would provide a less efficient outcome and less flexibility for clients if under-subscribed slots were to be closed after a set number of rounds.</p> <p>First, the value that any client attributes to a particular slot is likely to be determined (at least in part) by the other alternatives that are available to it. For example, a client may value a slot at Port Lincoln at \$8.50, but rather than move to the next round at \$9.00 prefer to move the booking to Wallaroo (or to a different slot at Port Lincoln). This ability to shuffle demand is key to the efficient valuing and allocation of the slots. In addition, any increased demand at Wallaroo (because clients shift a bid to from Port Lincoln) may result in the premium increasing at Wallaroo. This is entirely consistent with the auction principle of allocating slots to those who value them the most.</p> <p>Second, this suggestion seems likely to exacerbate the issues raised as concerns by some participants. If clients cannot move a bid to the Wallaroo slot (because it has closed), its only alternative is to keep bidding up the price at Port Lincoln, or to withdraw its bid and submit a FIFS booking if possible.</p> <p>As an infrastructure operator, it would also be inefficient for Viterra to close slots which are under-subscribed, and therefore potentially forgo bookings which would increase the use of the infrastructure.</p> <p>We note PentAG's comment that capacity that is "passed in" be re-auctioned. This is precisely the mechanism that Viterra has proposed for the Non-Harvest Shipping Period Auctions.</p>
	<p><b>Auction frequency</b> The frequency of auctions should be increased (with the window of available slots in each</p>	<p>Viterra is willing to explore this as part of the review that it is proposing for early 2013. We note that CBH's response to issues in the previous auctions has been to reduce (rather than increase) the frequency of</p>

	<p>auction being reduced).</p>	<p>auctions.</p> <p>It is not apparent that this proposal would lead to a more efficient outcome than Viterra's current proposal for 3 auctions over two periods, or address any perceived concerns in relation to "gaming". However, it is something that we are prepared to consider as experience with the new auction system evolves.</p>
	<p><b>Auction premiums</b> The payment of the auction premium should be deferred until closer to the provision of the booked capacity.</p>	<p>Our initial reaction to this suggestion is that, although it would provide cashflow benefits to auction participants, it is likely to be less consistent with the principles set out in the access undertaking than Viterra's current proposal. The auction is designed to allocate capacity to those who value it the most. It would be contrary to this principle if a successful bidder could defer payment, and possibly resist payment if it subsequently decided not to use the slot.</p> <p>This change may also reduce the liquidity and usefulness of the secondary market as it is essential (for all participants) that any auction premiums are paid before Viterra consents to any transfers and that Viterra minimises the risk of non-payment of premiums. It should also be noted that the premium is incurred for service provided in the running of the auction and not for the shipping services which are provided and invoiced by Viterra at the time of shipping.</p>
	<p><b>Stem publication</b> The current practice of full stem publication be continued and embedded in the access undertaking.</p>	<p>This is an issue on which we have received conflicting views. However, Viterra is committed to providing transparency to its clients, and considers that this is a key feature which supports the efficiency of its proposed auction system. We also consider that this requirement is established in our access undertaking.</p>
<p>6) <b>Cargill</b> 8 February 2012</p>	<p><b>Split bookings</b> The time frame for splitting bookings should be changed from 60 days to 30 days.</p>	<p>Agreed. Viterra will make this change.</p>
	<p><b>Changes to ETA</b> The Protocols provide that terminal services priority may be varied if vessel ETA is varied by more than one day from the date specified 14 days prior to the ETA. Viterra should allow a 5 day variance from the 14 day ETA instead of a 1 day variance.</p>	<p>From an operational perspective, it is not possible for Viterra to reserve vessel priority for clients if they make significant changes to the booking / ETA very late in the process. A 10 day change (i.e. +/- 5 days) in the context of a 14-16 day slot is very large. This change would have a major effect on all clients (and would indeed adversely affect Cargill if other clients were to make significant changes to their bookings and vessel arrivals at this late stage in the operational process).</p> <p>The proposed change is specifically designed to prevent clients from nominating a vessel ETA in order to obtain terminal services priority ahead of other vessels, and then making material changes to their ETA.</p>
	<p><b>Notification of failure to comply with Table A requirements</b> Viterra should be required to remind clients of deadlines set out in Table A two business days before that date.</p>	<p>It is not practical or efficient for Viterra to provide each client with 2 business days' notice of each requirement under Table A in respect of each and every booking. Viterra has published clear requirements under the Protocols (including Table A) so that all clients know and understand Viterra's operational requirements.</p> <p>The statement in clause 6(a) of the Protocols that Viterra will notify the client within 1 day of becoming aware of the client's failure to comply with a Table A requirement is intended to ensure that Viterra gives notice as soon as it becomes aware of the issue, so that clients have an opportunity to rectify the failure.</p> <p>The only change from the current Protocols is that Viterra will provide notice within 1 business day of "identifying the failure", rather than within 1 business day of the failure. This is because Viterra cannot notify</p>

		clients of a non-compliance unless it is aware of the issue.
	<b>Moving bookings</b> Clients should be able to move bookings (without approval) up to 30 days prior to the start of the slot.	Since allowing the movement of bookings in October 2011, our experience has been that there are a number of operational challenges that arise when only 30 days' notice is given. These challenges are likely to increase now that Vitterra is proposing no limits on the number of movements that clients may make. Vitterra will seek to accommodate movements within the 30 day period, as it currently does, where it is operationally possible (e.g. if Table A requirements are exactly the same for the original and moved bookings). However, it is not possible to guarantee this in all cases without significant operational impacts.
	<b>Transfer fee</b> Clients should be required to pay the transfer fee within 7 days of invoice, rather than within 2 days of submitting the Transfer Notice.	Agreed. We will change this to 7 days after submitting the Transfer Notice. Vitterra will issue a tax invoice as soon as possible after receiving the Transfer Notice.
	<b>Auction frequency</b> It would be better to hold smaller and more frequent auctions.	Please refer to the response above (Item 5).
	<b>Closing of under-subscribed Lots</b> Under-subscribed or balanced slots should be "locked away" after Round 6 of an auction so no more capacity can be booked in that slot.	Please refer to the response above (Item 5).
7) <b>Gavilon LLC ("Gavilon")</b> 8 February 2012	<b>Nomination of Export Select and Export Standard</b> It is important for marketers to understand if the port capacity they are acquiring will be executed using either Export Select or Export Standard at the time of acquiring port capacity as this may influence the price which marketers are willing to pay for a particular slot.	Vitterra is aware of the issue raised by Gavilon, and proposes to engage with industry regarding the available Export Select logistics capacity prior to auction. This will enable clients to factor that information into their respective bidding strategies.
	<b>Shipping stem visibility</b> The details of those marketers which have acquired port capacity throughout the year should only published at the time of submitting the nominations, as opposed to at the time of acquiring that capacity.	This is an issue on which we have received conflicting views. Vitterra is committed to providing transparency to its clients, and considers that this is a key feature which supports the efficiency of its proposed auction system. It is also a feature that is likely to address concerns which were raised in relation to the CBH auctions last year.
	<b>Auction cost visibility</b> Auction costs should be transparent and available to participating marketers.	Agreed. Vitterra's intention has always been that it will provide transparency in relation to auction costs and interest earned etc.
	<b>Auction frequency</b> Auctions should be held quarterly in advance for quarterly periods at a time to avoid the need to use the FIFS system.	Vitterra is willing to explore this as part of the review that it is proposing for early 2013. We note that CBH's response to issues in the previous auctions has been to reduce (rather than increase) the frequency of auctions.  It is not apparent that this proposal would lead to a more efficient outcome than Vitterra's current proposal for 3 auctions over two periods, or address any perceived concerns in relation to "gaming". However, it is



		<p>something that we are prepared to consider as experience with the new auction system evolves.</p> <p>We also note that, even if there were to be quarterly auctions, this would not obviate the need for a FIFS system to assist in maximising capacity utilisation.</p>
	<p><b>Cap on reduction of bid amounts</b> A cap should be placed on the amount by which marketers may reduce their bids by on a round-by-round basis.</p>	<p>We understand that this suggestion is intended to address a perceived issue with previous auctions. However, it is not clear to us that this would result in a more efficient allocation of capacity (which is the objective under the access undertaking).</p> <p>We are also concerned about negative or unintended consequences. In particular, it may result in clients being forced to pay more than they would otherwise be prepared to for a particular slot (i.e. if they are forced to continue bidding in successive rounds because they are prohibited from withdrawing their bids).</p>
	<p><b>Calculation of auction rebate</b> The auction rebate should be calculated and paid on each auction round independent of the other auctions.</p>	<p>Viterra's proposal to have two separate auction premium pools (one for each auction period) reflects the feedback provided during the consultation process. Our view is that calculating the rebate on a per auction basis is likely to increase the administrative burden and costs for industry without any clear or direct benefit towards the ultimate goal of creating a disincentive to overbooking. That clients may bid different amounts for different slots in different auctions is consistent with the fact that the auction is designed to allocate capacity to clients at the value they attribute to those individual slots.</p>
<p>8) <b>CBH Grain Pty Ltd ("CBH")</b> 8 February 2012</p>	<p><b>Export Select &amp; Export Standard</b> The new auction system should incorporate a transparent mechanism to allow clients to acquire a full understanding of the particular type of capacity that other clients are bidding for at the auction.</p>	<p>In accordance with the access undertaking, the auction system will relate only to port terminal capacity. It will not relate to upcountry logistics capacity, and accordingly, clients will not "bid" for that logistics capacity during auctions.</p> <p>That said, Viterra is aware of the issue raised by CBH, and proposes to engage with industry regarding the available Export Select capacity prior to auction. This will enable clients to factor that information into their respective bidding strategies.</p>
	<p><b>Calculation of auction premium</b> CBH has suggested that the auction rebate should take into account the particular client's port usage (i.e. which port terminals the client exported from).</p>	<p>In our view, this proposal would, if implemented, be likely to raise a number of complex issues given the significant flexibility that Viterra offers for clients to move bookings between different port terminals. If a client were to acquire a slot at one port terminal at auction and then subsequently move that slot to another port terminal, this could have a significant (and unintended) impact on the calculation of the auction premium.</p> <p>The transparency of pricing and available capacity at all ports during the auction, and the ability to transfer booked capacity between ports, are also important components of the auction system design. The impact of pricing at each port and the estimated rebate are factors that may be taken into account by clients when bidding. Given that all clients have an equal ability to bid during each auction, it is unclear how this could be viewed a favouring certain clients.</p> <p>We are also unaware of this previously being raised as an issue with respect to CBH's auction system, where capacity is auctioned at four different ports and the rebate is applied equally.</p>

	<p><b>Compliance with Table A requirements</b> CBH has suggested that the proposed amendments to the Protocols may allow it to “adversely impact a Client’s vessel priority if it does not specifically and strictly comply with the requirements of Table A”.</p> <p>CBH has requested certain changes to make it clear that Viterra will not adversely impact or alter a client’s vessel priority where the client’s failure to specifically comply with Table A does not adversely affect operational efficiency at the port (or allow certain Table A requirements to be waived).</p>	<p>It is important to note that Viterra has always required clients to comply with the requirements set out in Table A. This is not a new feature of the proposed Protocols. If clients do not comply with the operational requirements set out in Table A, this may have a significant impact on other users and also necessarily have an impact on the priority given to the vessel. In some cases, it may result in cancellation of the booking.</p> <p>Viterra also considers that the focus on operational efficiency as a reason for requiring compliance with Table A is clear, both from the existing and proposed new Protocols. If a client fails to comply with a Table A requirement, Viterra will provide the client with notice within one business day of identifying the failure and will give the client a period of time to rectify the failure. (clause 6(a)). Clause 6(b) of the proposed Protocols sets out the matters that Viterra will consider in determining the length of time that the client has to rectify the non-compliance. In particular:</p> <ul style="list-style-type: none"> <li>• <i>“minor or “technical” issues which are unlikely to have any discernible impact on the efficient operation of the Port Terminal may attract greater flexibility”;</i></li> <li>• <i>“failure to comply with requirements which have the potential to affect other clients ... will attract shorter periods for rectification”;</i> and</li> <li>• Viterra will use its best endeavours to balance the desirability of providing flexibility to clients <i>“with the need to minimise the impact that such flexibility may have on other clients or bookings and the efficient operation of the shipping stem”.</i></li> </ul> <p>Accordingly, Viterra considers that the flexibility issue raised by CBH is already addressed (in the same way) in both the current and proposed Protocols.</p>
	<p><b>Reference to tonnage in clause 5.2(ix) of Protocols</b> The inclusion of tonnage in Clause 5.2(ix) of the Protocols should be altered to read “substantial” or “material” tonnage, to allow for minor tonnage charges associated with two-port loading, etc.</p>	<p>The issue that CBH has raised in relation to minor changes in tonnage to accommodate two-port loading is addressed in clause 5.7(c) of the new Protocols. That clause provides that:</p> <p><i>“Where the Client is loading a vessel at more than one of Viterra Operations’ Port Terminals, the Client may, with the consent of Viterra Operations, redistribute the tonnages in respect of those two Bookings across the two Port Terminals within a +/- 10% tolerance provided that the aggregate tonnages across the two Bookings is not exceeded”.</i></p> <p>Clients also have a general tolerance limit which is applied to all bookings. Any late increase (i.e. within 14 days of ETA) which is beyond this 10% allowance is likely to be material and have potential implications for port operations, other clients and therefore vessel loading priorities.</p>
	<p><b>Meaning of “authority to load”</b> CBH requests additional information regarding the “authority to load” referred to in Clause 4(vii) of the Protocols (i.e. what it consists of, how it is given, etc).</p>	<p>Viterra agrees that it is not now necessary to refer to an authority to load in the Protocols. Accordingly, this clause will be deleted.</p>