

Viterra Operations Pty Ltd

**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
Viterra's port terminals in South Australia**

Supplementary Submission

Public Version

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Viterra Operations Pty Ltd – Supplementary submission

This supplementary submission responds to questions raised by the ACCC in a meeting with Viterra on 20 February 2020.

1 What are the indirect costs of regulation?

The main indirect costs to Viterra, exporters and growers of continued regulation under Parts 3 to 6 of the Code relate to the inflexibility imposed by the Code, and the missed opportunities and loss of supply chain efficiencies that result from this inflexibility.

Parts 3 to 6 of the Code significantly reduce the contractual and operational flexibility with which Viterra can provide services to exporters and growers. The Code—and, in particular, the strict requirements to comply with highly prescriptive port loading protocols (**PLPs**)—prevent Viterra from being able to meet changing market conditions and to quickly adopt efficient and flexible practices that would help it, growers and exporters make longer term investments and customer commitments.

Viterra's PLPs set out detailed and prescriptive rules for allocating capacity, and any change to these rules must be approved by the ACCC. Viterra is required to comply with these rules, even if this means that it is unable to meet an exporters' request for last minute changes or movements to a booking or for increased capacity in a particular Slot. The result is often inefficient from an operational perspective and dissatisfying for both Viterra and its customers.

Simply amending the PLPs to respond to each and every new operational situation is not a long-term solution. This is because it is not possible to predict every situation that may require operational flexibility that is not provided for in the PLPs (e.g. vessel issues as a result of the coronavirus).

In a commercial environment that is not hindered by inflexible and prescriptive rules, Viterra would be able to assist its clients in an expeditious and efficient manner. At present this is not the case, and the feedback that Viterra receives from its customers reflects this.

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In addition, the introduction of increased flexibility through changes to the PLPs is not a simple or quick process, as illustrated by the variations to Viterra's PLPs in 2015. Following many months of consultation with its customers and the ACCC, Viterra submitted its formal application to vary the capacity allocation system in its Port Loading Protocols to the ACCC on 12 March 2015. Notwithstanding the significant level of prior consultation, it then took a further nine months of consideration and review by the ACCC for Viterra to obtain approval for the variations.

This process would have to be undertaken each time Viterra identified a need for variation – such need not always being apparent until newly varied protocols are implemented.

2 What would the Port Loading Protocols look like in the absence of regulation?

If Viterra is not regulated under Parts 3 to 6 of the Code, it would introduce significantly more flexibility into the PLPs so that Viterra can be more responsive to its customers' needs and increase operational flexibility. Viterra is committed to consulting with its customers

before making any material changes to its PLPs. This consultation will assist Viterra in identifying the elements of the PLPs for which further flexibility is needed.

At a high level, Viterra would seek to increase flexibility under the PLPs to facilitate last minute changes to bookings, slot trades and to re-order the priority with which vessels will be berthed and loaded. The ACCC has previously recognised that such flexibility can make a port terminal operator “*more responsive to the needs of their customers*”.¹

3 How has Viterra responded to competition?

The competition faced by Viterra—both globally and within Australia—imposes significant competitive pressure on Viterra to ensure that its supply chain is operating efficiently. This competition is continually increasing: for example, we understand that there are 3 vessels loading at Lucky Bay in March, and 3 vessels loading at Port Pirie this season. We also understand that another bulk grain supply chain has recently been utilised at Portland.

In the past few years, Viterra has invested in its port terminals to ensure that it is a highly efficient international competitor. Details of Viterra’s investments to improve operational efficiency at its port terminals are set out in its application for exemption dated 2 July 2019.

Viterra has also made significant investments to ensure that the grain it exports is of high quality, consistent and reliable. These investments also better enable Viterra’s export customers to meet the exacting standards of individual end-customers. Investment in quality is important for Viterra and South Australia to remain competitive in the international market, as grain terminal operators in the Black Sea region are increasingly focused on improving quality to make grain exported from this region more attractive on export markets.

To retain South Australia’s reputation for, and competitive advantage in relation to, exporting high quality, consistent and reliable grain, Viterra invested approximately \$3 million in a new state of the art laboratory in South Australia capable of managing variable crop volume, commodities and quality (which was opened in 2018).² The laboratory is fitted with the latest grain analysis equipment which is tested in adherence to the Australian Government National Measurement Institute’s standards. The laboratory is also ISO 22000 accredited by the National Association of Testing Authorities.³

To support Viterra’s focus on food safety and quality management, Viterra also recently created a new quality program, “Verified Viterra”, to reflect the high standards and systems needed to deliver quality grain. In addition, since opening the laboratory, Viterra introduced a new grain management system, SIMS, allowing for better reporting and easier access to information for its customers.

To continue to attract customers, Viterra also introduced dynamic binning in 2018-19 which allows customers to deliver grain into Viterra’s systems that, at the time of receipt, does not meet the specific quality requirements of industry receipt standards. This has delivered \$10.7 million in value to growers over the past two years. Development of this sophisticated

1 ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 10.

2 <https://www.stockjournal.com.au/story/5877066/viterras-new-lab-ensures-grain-quality/>

3 Competing port terminal operators in South Australia undertake quality testing to meet customer specifications by outsourcing the testing to third party laboratories. There is also nothing to prevent these competing port terminal operators from investing in their own laboratory facilities.

software system enables Viterra to keep track of the average levels of certain grain parameters held within its system. Viterra then manages the quality of that grain within its system to enable the export of the grain according to the quality requirements of end-customers.

These investments and initiatives are very important to Viterra. Viterra distinguishes itself in the market by offering high quality and efficient services.

Viterra's pricing has also been constrained by increasing competition. Over the past four years, Viterra has kept its port terminal fees stable with no increases by more than CPI. In addition:

- Viterra reduced its booking fee from \$5.50 to \$5.00 in 2019.
- In response to what others were offering in the market—and to provide growers more time to sell their grain to marketers—since October 2019, Viterra provides growers a free full month of storage for deliveries. This is in addition to not charging growers for the remainder of the month in which delivery occurs (which itself can be a full month).
- Viterra reduced its freight rates on average by 3.7% (A\$0.58 per tonne) at 21 up-country sites. Together this represented 2.1 million tonnes (80%) of the grain delivered to Viterra upcountry sites in 2019.

The additional free storage overall reduced growers' costs by \$3.3 million for the 2019-20 harvest (equivalent to a \$0.83 reduction per tonne), and the reduction in freight charges overall reduced growers' freight costs by \$1.2 million in 2019 (a low harvest year). Growers have, therefore, greatly benefitted from these initiatives.

Viterra has also lowered its operating costs to ensure it is better able to compete with lower-cost new entrants. This has involved Viterra deciding not to renew a rail contract for the Eyre Peninsula and closing down 29 up-country storage sites over the past two years. Viterra's decision reflects the changed delivery patterns of growers, and the benefit to the majority of growers that flow from the closures.⁴

The impact of increased storage competition in South Australia has been reported publicly:⁵

“Harvest receivals into the Viterra system were extremely disappointing and appear to be a reflection of increased storage competition and the immediate movement of grain direct into domestic demand points in the eastern states.”

4 Why is there a price differential between receivals at port from approved third party storage and from non-approved third party storage?

4.1 Receival of grain at port terminals

Viterra receives grain at its port terminals from a number of sources. This includes:

⁴ See <http://viterra.com.au/index.php/2020/03/03/viterra-adapts-to-provide-more-efficient-supply-chain/>

⁵ See <https://www.graincentral.com/markets/wheat-export-pace-solid-barley-lags/>

- grain held in Viterra’s up-country storage and handling facilities;
- grain held in up-country storage facilities by professional storage and handling providers that have been accredited by Viterra as Approved Third Party Storage providers; and
- grain delivered to port by growers or otherwise from outside Viterra Operations’ storage and handling system.

There are different risks associated with receivals from each of these sources. Therefore, the number and type of services that have to be undertaken at port on receipt of grain will vary depending on the source of the grain. This results in Viterra incurring different costs at port dependent on the source of grain, which is reflected in the receipt fee for wheat from (a) Approved Third Party Storage providers (A\$2.76 per tonne); and (b) non-approved third party sources (A\$17.00 per tonne for all port terminals except Wallaroo; \$17.50 per tonne for Wallaroo).

4.2 Receipt of grain – costs and risks

Where possible, Viterra seeks to co-mingle all grains of like quality in its port receipt and storage facilities. This storage together or “co-mingling” of grains owned by multiple customers maximises the efficient operation of port terminals and reduces the costs of providing port terminal services.

However, parcels of grain received at port carry different levels of quality and contamination risks depending on how they have been managed prior to receipt. These risks directly impact on the ability of Viterra to co-mingle those grains with grains owned by other clients.

These risks arise because of differences in:

- the type and quality of storage infrastructure including the level of investment in that infrastructure and commitment to ongoing maintenance;
- the level of operator training and expertise in relation to grain storage;
- how those grains have been managed in storage, including the pest management techniques employed prior to delivery to port, and their exposure to contaminants and other lesser wheat grades. By way of example, contact insecticides are not allowed for certain overseas markets. Accordingly, and as contact insecticides from one parcel can contaminate all other parcels of wheat, Viterra does not use them in its system. However, contact insecticides remain a common form of insect treatment in other grower and third party storage systems; and
- the standard of traceability and record keeping in relation to grains held by different operators and in different storage systems.

The risks with, and the potential impact resulting from, the receipt of contaminated grain are significant. Potential consequences include:

- contamination of other grain stocks which may involve substantial costs for other clients, an inability to meet contractual obligations to customers and long-term

damage to the reputation of South Australian grain in export markets;

- rejection for export, and resulting delays in shipping and substantial demurrage costs;
- blocking of port capacity (e.g. if Viterra cannot receive, handle or load grain while it manages and remediates contamination issues);
- required remedial activities to manage issues (e.g. cleaning of facilities, moving grain to ensure appropriate segregation etc);
- quality claims (both against the owner of the contaminated grain, the affected grain and, potentially, Viterra); and
- potential reputation impacts to clients, Viterra, and the South Australian and national grain industries.

Viterra provides its clients with a minimum outturn quality guarantee (subject to shrinkage and other accepted risks), which provides clients with a high degree of confidence that the quality of grains that they market to end customers will be maintained. This is important in the export grain industry which is increasingly characterised by sophisticated buyers with specific quality requirements.

Given the different levels of risk associated with grains delivered from different storage systems, Viterra can only make this guarantee (and ensure the protection of all clients' grain and the efficient operation of its port terminals) by providing certain services when grain is received into its system.

4.3 Viterra's services and fees for managing these risks

Viterra provides a number of services for wheat received from growers and others into its up-country storage facilities, and while that wheat remains in its storage system. It has complete visibility and traceability of that wheat.

However, Viterra has much lower levels of visibility in relation to the services that have been provided in relation to wheat that is received directly at port from clients or from third party up-country storage sites (i.e. both at the time of receipt into those facilities and while the wheat remains in the third party or grower storage). It is therefore necessary for Viterra to provide additional services at port in relation to wheat that is received directly from a client or from other storage systems. The cost of providing these additional services are reflected in Viterra's Reference Prices.

The provision of these services at port does not involve discrimination in respect of receipts from growers and Approved Third Party Storages. Viterra provides the same or similar services in respect of all wheat that it receives into its up-country storage facilities. As those services have already been provided (with strict quality controls while the wheat remains in Viterra Operations' system), there is no need for them to be re-provided (and those costs to be incurred again) at the time the wheat is received at port.

In relation to receipts at port from outside of Viterra's up-country facilities, the level of risk—and the scope of the services that Viterra needs to provide at port—also varies based

on the quality of the storage systems from which wheat is received. Viterra is exposed to significantly less risk if wheat is received from Approved Third Party Storage than if received from non-approved sites. This is because Approved Third Party Storage providers are generally professional grain handlers that have in place facilities, systems and training that are specifically designed and actively managed to reduce these risks. In addition, Viterra has visibility in respect of Approved Third Party Storage providers' systems and services.

Accordingly, the scope of services that Viterra needs to provide at port for wheat received from Approved Third Party Storage is less than for wheat from non-approved sites. Viterra's standard receival fee for wheat received from Approved Third Party Storages is, therefore, also lower than the standard prices for receival of wheat from other sources.

The services that Viterra provides for receivals from non-approved third party sources are transparently set out in the Explanatory Notes to Viterra's Reference Prices, published on Viterra's [website](#). The Explanatory Notes sets out the services that are provided in relation to the:

- (a) Receival Fee (\$17 for all port terminals except Wallaroo; \$17.50 for Wallaroo). This applies to bulk wheat receivals at port directly from growers or from sources external to Viterra excluding receivals from an Approved Third Party Storage; and
- (b) Receival at Viterra Facility Fee (A\$2.76 / mt). This applies to bulk wheat receivals from Approved Third Party Storage facilities.

Services for receivals of bulk wheat from Approved Third Party Storage

The services that are provided in relation to receivals from Third Party Approved Storages are stated as services which are necessary to manage food quality risks in relation the bulk wheat delivered into Viterra's system and to protect both the integrity of the bulk wheat held on behalf of all clients and the efficient operation of Viterra facilities. In particular the Receival at Viterra Facility Fee includes the following services:

- review of bulk wheat treatment histories;
- sampling and testing on delivery;
- potential segregation and storage for risk mitigation,
- residue and fumigation periods;
- performance of Road "Chain of Responsibility" mass management procedures and requirements, including issuance of breach warnings and recording; and
- potential fumigation to prevent cross-infestation of insects (as a precautionary measure, not for bulk wheat detected with insects).

Services for receivals of bulk wheat from non-approved third party sources

The services that are provided in relation to bulk wheat receivals at port directly from growers or from sources external to Viterra excluding receivals from an Approved Third Party Storage (and which are reflected in the Receival Fee) are stated as including:

- receival, ex-grower or from sources external to Viterra (not including receival at a port terminal from an Approved Third Party Store);
- initial truck marshalling;
- significant sampling, testing and classification on delivery;
- performance of Road “Chain of Responsibility” mass management and fatigue management procedures and requirements;
- running sample retention and storage;
- weighing via certified weighbridges (both inward and outward);
- marshalling of trucks for unloading of bulk wheat;
- unloading of bulk wheat (grower by grower and on a load by load basis);
- inward elevation to storage;
- segregation into storage according to bulk wheat classification on a load-by-load basis;
- clean down of inward bulk wheat path on a load by load basis (as required);
- recording and provision of delivery information on receival weighnotes;
- access to transactional information on the Ezigrain Website;
- centralised recording and storage of transactional data for statutory periods;
- chemical residue testing after receival (as required);
- hygiene practices to prevent insect infestation and maintain contact insecticide free status of bulk wheat;
- the provision of storage facilities to receive bulk wheat and store until the end of the calendar month of delivery;
- the ability of growers to warehouse bulk wheat;
- electronic transfer of bulk wheat to Clients through the Ezigrain Website;
- repositioning of bulk wheat into shipping storage as required for cargo accumulation; and
- short term shipping storage as required for cargo accumulation.

There are significantly more services provided in relation to bulk wheat receivals at port directly from growers or from non-approved sources external to Viterra as compared with receivals from Approved Third Party Storage.

The different service requirements are reflected in the differential between the Receival Fee and Receival at Viterra Facility Fee. In addition, and as set out in the Explanatory Notes to the Reference Prices, the difference in Receival Fee between the port terminals (generally) and the Wallaroo port terminal reflects the difference between efficiency between these categories of sites within Viterra’s storage and handling network.

4.4 The process for approving third party storage facilities

To the best of Viterra’s knowledge, it has accredited all up-country storage and handling facilities that applied to be Approved Third Party Storages. This includes T-Ports’ Lucky Bay and Lock sites, which were approved by Viterra in early December 2019.

The process for approving third party storage facilities is a transparent process, based on objective standards that set out in the Explanatory Notes to the Reference Prices. These standards include, but are not limited to:

- storage facility is operated as a commercial distinct registered entity and offers services with defined fees and receival, storage and outturn conditions and guarantees;
- the storage facility has multiple buyers buying and selling bulk wheat within its facility;
- minimum storage capacity of 10,000 metric tonnes;
- maintenance of clean and dry storage facilities;
- storage capable of applying air-tight phosphine fumigation;
- maintenance of minimum storage requirements;
- maintenance of current and appropriate hygiene policy and procedures for the maintenance and storage of bulk wheat;
- engagement of skilled grain classifiers; and
- maintenance of adequate insurance.

In order to determine whether or not a storage and handling facility meets these criteria, Viterra undertakes an inspection of the relevant site, a review of the experience and capability of the operator as a grain storage and handling provider, and a review of the relevant training, policies and procedures at the facility.

5 Are the recent supply chains for importing grain to Australia and moving grain to the East Coast permanent?

As set out in our previous submissions, in 2018-19 and 2019-20, grain moved to the east coast in large quantities due to drought conditions. In addition, new import channels were opened with the importation of Canadian grain to the East Coast. Viterra does not consider this to be a unique or “shock” market event. Droughts and climate-related events are

becoming increasingly regular in Australia and it is likely that the domestic market will continue to be affected by these in the coming years.

In addition, grain will more readily be able to be moved towards the East Coast from both South Australia and Canada than prior to 2018-19. This is because of the development of new logistics knowhow and relationships to move grain to the East Coast from these areas. This includes the fact that exporters have been able to meet the phytosanitary requirements for importing grain into Australia and will retain the knowhow and logistical requirements to do so.

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Accordingly, we consider that grain will easily be able to be redirected to the East Coast of Australia—from South Australia and overseas—in response to any changing climate or economic conditions in future.

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