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Via e-mail: *transport@accc.gov.au; luke.sheehan@accc.gov.au*

Re: Comments in response to the ACCC's Supplementary issues paper dated 25 May 2020 on Viterra Australia Pty Ltd application for exemption from the Competition and Consumer (Industry Code - Port Terminal Access (Bulk Wheat)) Regulation 2014

I am pleased to submit T-Ports comments on Viterra Australia Pty Ltd (Viterra)'s application for exemption from parts 3-6 of the Competition and Consumer (Industry Code - Port Terminal Access (Bulk Wheat)) Regulation 2014 (The Code)) explaining why we believe the application should be REJECTED.

Further information request or questions can be addressed to:

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Yours sincerely

T-Ports

Kieran Carvill
CEO & Director

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Comments on ACCC key questions and issues

Characteristics of port terminal facilities and capacity (Q1-Q5)

Q1. The presence (or absence) of spare capacity does not change our views on Viterra's incentive to provide fair and transparent access. The issue is not overall capacity, but more what happens if/when multiple customers wish to utilise a facility at the same time.

Q2. We accept that Viterra does not have an incentive to completely deny access to its port terminal services for third party exporters, but again, the important issue is how they provide access if/when multiple customers seek access at the same time. Without any oversight, Viterra would be commercially incentivised to give its' related trading entity (Glencore) preferential access to capacity, minimising their idle time and optimising their despatch/demurrage at the expense of others.

Q3. As above, Viterra's decision not to raise port terminal fees is not an indicator of providing fair access or not. It all comes down to what happens when multiple customers seek access of the one facility at the same time.

Q4. If Viterra were to deny or limit access to it port terminal services, it is T-Ports view there is not sufficient alternate third party port terminal capacity economically available to third parties. The T-Ports facility could handle a large portion of the Eyre Peninsula (EP) region, but grain grown in the lower EP would be economically disadvantaged if it had to be transported to Luck Bay. The only current option for Yorke Peninsula (YP) grain would be to incur additional costs to truck it to Wallaroo or over to Port Adelaide. The Lower North, mid north and eastern parts of South Australia typically produce more grain that could be efficiently handled by the other operators at Port Adelaide.

Q5. T-Ports has not reviewed the economic modelling in any detail because as stated earlier, the issue is not the overall access, economics or pricing of the PTSP, but more about the behaviour of a vertically integrated PTSP if/when multiple customers seek access to a facility at the same time.

Access by exporters to port terminal services (Q6)

Q6. Refer above (Q5). The same issue here. Whilst the PTSP (Viterra) is part of a vertically integrated commercial entity, there will always be motives for it to favour its related entities if/when an allocation of services needs to be made.

Competition between port terminal facilities (Q7-Q11)

Q7. Refer T-Ports original submission. There are some terminals where catchment zones overlap and fluctuate with market conditions, but in general terms, road distances and associated freight costs between competing terminals is a limiting factor in the flexibility to move outside catchment zones.

No additional comments.

Q8. Rail has historically provided operational efficiencies (at higher Capital expense) to handle larger tonnages, usually with dedicated equipment (receival sheds, pits, conveyors etc.). However, for a long time now, the "all-up" per tonne rate for rail transfers compared to road transfers have been very evenly matched. It is hard to argue rail provides any advantage in drawing grain from different regions.

Q9. Drawing on responses to Q7 and Q8, we see that Port Lincoln only draws its grain from the Eyre Peninsula. T-ports does not consider the use of or discontinuation of rail on the EP affecting the ability to source grain from other growing regions.

Q10. GTA Location differentials are a suitable proxy for the cost of transport. No doubt, there are occasions when spot freight may be able to be negotiated at lower rates, but the GTA LD's are a good proxy.

Q11. The new entrants reflect some choice in the market, but in limited geographical regions. Viterra is still the dominant provider of PTSP in each region, and across all regions in South Australia, and as a vertically integrated PTSP will maintain significant ability to influence the grain export market.

T-Ports asserts that the influence of a vertically integrated PTSP is substantial, and can be applied at varying stages through the supply chain. Upon entering the export market in the 2019/20 season, T-Ports expected a competitive response from Viterra to protect it's market share as best it could. T-Ports was pleased (and surprised) to see very little changes to Viterra's publicly available 19/20 fees for both upcountry and export loading services for the 19/20 season. However, what T-Ports saw as a competitive response, was that Glencore offered site prices at Viterra sites in and around the T-Ports catchment area, that were higher than the market "norm" of their Port Lincoln price less GTA Location differential. This is still the case today for forward pricing for the 20/21 season. Whilst there was no apparent Viterra fee response to competition at the PTSP level, it appears that Glencore influenced the delivery of growers grain, and subsequent export services, by subsiding freight deductions. To T-Ports point in the original submission, you can only monitor competitive behaviour of a vertically integrated PTSP by assessing the entire supply chain, not just individual sectors.

Competition across the bulk grain supply chain/competition in upstream (Q12-Q14)

Q12. The existing competitive upcountry alternatives to Viterra's upcountry storage and handling network/system are located in strategic sites across the state, providing alternatives in those immediate areas, but still not providing alternatives to all areas across the state. T-Ports considers the biggest barrier to entry for more upcountry storage is the absolute reliance on interaction with all the other parts of the supply chain to make the investment work. T-Ports internal analysis, and anecdotal industry "belief" is that upcountry storage investment is difficult to justify without a rock solid path to export.

The closure of some Viterra upcountry sites has little affect on a third party exporter ability to access and export grain. The impact is more at a local level where the growers have to cart their grain further at harvest time to get it into the supply chain.

Q13. T-Ports does not believe the increase in domestic grain flows, and any resulting new supply chains, reflects a longer term trend in the market. 2018/19 was a response to a severe drought and production losses in Queensland and NSW.

Q14. T-Ports believes the domestic market / grain flows from South Australia are a relatively fixed volume, and do not provide a competitive constraint on South Australia's bulk export market to date nor in the longer term.

Port loading protocols and capacity allocation systems (Q15-Q16)

Q15. T-Ports has not reviewed the capacity allocation system, and can't offer any comment at this stage.

Q16. As above

Effect and scope of the Code (Q17-Q18)

Q17. The application of the Code should be applied differentially between vertically integrated PTSPs, and stand-alone PTSPs, but equally within those categories.

Q18. The regulation should be applied to all grains exported from SA.

Summary

Viterra is clearly the dominant provider of Port Terminal services in South Australia, and operates as a vertically integrated PTSP via its ownership by Glencore. It is economically prudent for them to maximise returns and they would be incentivised to provide better service to their related party. Significant opportunities exist for them to provide and/or influence service access, prices and levels across the entire supply chain, both directly and indirectly through a network of supply chain services providers.

The reporting and disclosure requirements of Parts 3 to 6 of the Code are the only mechanisms currently in place to provide transparency in a small part of that network. Any reduction in that transparency will open up opportunities for un-disclosed and un-documentable differences in service levels, access and prices to customers who have little opportunity to utilise other PTSPs in the SA catchment zones.

T-Ports believes that Viterra Australia Pty Ltd (Viterra)’s application for exemption from parts 3-6 of the Competition and Consumer (Industry Code - Port Terminal Access (Bulk Wheat)) Regulation 2014 (The Code)) should be REJECTED.