T-PORTS

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Via e-mail: *transport@accc.gov.au; michael.eady@accc.gov.au*

Re: Comments in response to the ACCC's issues paper dated 9 August 2019 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

Comments on ACCC key questions and issues

2.1 Legitimate business interests of the service provider (Q1 – Q2)

It is accepted that compliance with Parts 3 to 6 of the code would incur costs for the service provider. However, it must be recognised that Viterra is a related entity to Glencore Agriculture Pty Ltd (Glencore), the largest grain exporter from SA in 2017-18[1]. The interests of all other exporters in getting fair and reasonable access depends upon the provisions of Part 3 to 6 to provide information to other exporters and regulate Viterra's ability to make changes and variations without due notice. Whilst there may be occasions where increased flexibility may be utilised to deliver benefit to Viterra's customers, there would be an increased and un-regulated opportunity for Viterra to manage shipping stems and loading to favour selected customers (including Glencore).

T-Ports notes the ACCC Bulk grain ports monitoring report 2017-18[2] which comments that the main area of concern with regulation raised by Port Terminal Services Providers (PTSPs) was the reduced flexibility. That report also notes "Most exempt PTSPs noted that the Code had little impact on their day to day business. Most said that the reporting obligations were not difficult or costly to comply with, particularly in a low throughput year like 2017–18, and where they were automated".

T-Ports submits that the granting of greater flexibility could be used to better the interests of related parties (and selected customers) more than the legitimate business interests of the service provider itself.

These comments apply across all ports that have the potential for multiple exporters to operate through.

2.2 Access to port terminal services (Q3 to Q6)

As previously noted, Viterra is a related entity to Glencore Agriculture Pty Ltd (Glencore), and operates as a vertically integrated PTSP. The ability to compete in any part of the supply chain is dependent upon the ability to compete across the full supply chain. The commercial access to port terminal services is a combination of all the components of the supply chain, and also of price & service levels across all these components.

There is no regulation of the other parts of the supply chain other than the ports services. The provisions of Part 3 to 6, whilst only regulating a small part of the entire supply chain, are currently the only means to regulate Viterra's ability to make changes and variations that may benefit selected customers, and should not be reduced.

The dominance of Viterra/Glencore in both market share and as the established PTSP means that they are in an unfair position in regard to commercial negotiations of service prices and service levels. As an example, while establishing itself on the Eyre Peninsula, T-Ports has identified hurdles in customer access to port services. Some of our potential customers identified their desire for flexibility to utilise our up-country storage with Viterra port services, before they would engage with us. This Receival at Port Service is reasonably commercially available to Approved Third Party Stores ($4.08 per mt Malting Barley, $2.76 per mt Feed Barley & Wheat)[3], but the onerous conditions contained in the Viterra Approved Operator Conditions 2018/2019 practically prevent T-Ports gaining approval in readiness for the 2018-19 season. Hopefully, once operational, we can meet Viterra conditions which would provide that flexibility and access to customers in future seasons.

[1] ACCC Issues paper,9-Aug 2018, p9.
[2] ACCC Bulk grain ports monitoring report 2017-18, Dec 2018, p21
[3] Viterra Schedule A – Storage & Handling Charges 2018/2019, p4.

T-Ports has also noted anecdotal comments that some customers were reluctant to engage with T-Ports quoting the risk in upsetting their relationship with the dominant service provider (i.e. Viterra).

While these examples and anecdotes highlight behaviour that is not specifically regulated by the Code, it demonstrates the wider ability of a dominant provider to influence the supply chain, and a case for no reduction in regulation.

These comments apply across all the listed SA ports in the application. At this stage, all quoted service fees and terms & conditions are applied consistently across all ports.

Exporters have already noted that "although they are generally able to access some form of port capacity without issue, they have concerns about the fairness or quality of that access, and whether they are treated the same as vertically integrated exporters"[4] .These concerns would escalate if excess capacity was to reduce and/or transparency of allocation of capacity was reduced.

T-Ports submits that access to port terminal services is a complex network of supply chain components, prices and service levels across the entire supply chain and difficult to regulate effectively. While there is a dominant PTSP, and even more so a vertically integrated PTSP, the current levels of regulation must be at least maintained, and definitely not reduced.

2.3 Grain catchment area (Q7 to Q11)

T-Ports supports Viterra comments that catchment zones are fluid, however not to the extent implied. 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.

If a PTSP is inefficient or its terms of access-including fees-are unreasonable, and in the absence of a competing PTSP in the same catchment zone, grain from that catchment zone is unlikely to move to other port terminals (as the Viterra application suggests). Without the existence of a competing PTSP serving the catchment zone, any unreasonable fees would simply be passed straight on to the growers in that catchment zone.

To a minor extent PTSPs compete for grain produced on the South Eastern border regions of SA. The 2018/19 harvest reflected an extreme market, where domestic demand in western areas of Qld and NSW could not be satisfied by local supply, and business conditions did support the transfer of grain from some SA locations, but this is not the norm. Even in this extreme case, the grain was freighted to in-land users and not to another PTSP.

Typically, exporters do not purchase grain and then subsequently choose which port to export it through. Exporters have little opportunity or ability to negotiate port terminal fees, so once published by the PTSP, the price the exporters offer to buy grain for at a site typically reflects market (global) prices less those costs and supply chain fees related to moving that grain through the supply chain to its Natural Terminal Port (NTP) as published by Grain Trade Australia. All fees/costs are just passed through to the grower. As stated earlier, should a PTSP charge unreasonable fees or access, prohibitive distance and road freight costs give little opportunity for movement out of catchment zones or to alternative ports.

2.4 Competition in bulk grain port terminal services (Q12 to Q18)

T-Ports does not support Viterra's submission that their ability to exercise market power is limited because they are subject to significant competition from other Australian and global grain producing regions. As discussed earlier, the level of terminal service fees or access limitations do not impact the

[4] ACCC Bulk grain ports monitoring report 2017-18, Dec 2018, p19

sale price into the global market, but rather, they impact the deduction taken off the grower when determining a purchase price. The grower in SA has limited opportunity to economically move their grain outside of the NTP catchment zone into an alternative port catchment zone.

The relevant factors in comparing services is total supply chain costs. The relevant factors extend beyond just port services prices, and include port loading rates, shipping co. costs, charter costs in accessing ports/berths, depth of channel & berth pockets, possibility of delays (stock on hand and accumulation capacity, weather, tides, tugs, pilots etc.), risk of contamination (particularly multi-commodity ports e.g. Thevenard), cost of moving grain from source to port.

Service currently offered by PTSPs at other facilities outside of South Australia have minimal competitive alternative to the services provided in SA by Viterra. As discussed earlier, there is small scope for competition of grain grown near the lower SA/Vic border, but other than that grain seldomly moves outside of traditional catchment zones. The only current competitive alternatives are the mobile loader operations offered at Port Adelaide. These services provide an alternative to Viterra Port Adelaide (Inner harbour and Outer Harbor) and potentially to Wallaroo.

Future service offering (i.e. T-Ports Lucky Bay) will represent a viable competitive alternative to a portion of the Eyre Peninsula (EP) catchment zone. As identified in T-Ports application for exemption[5], this area comprises mainly the North Eastern parts of the EP, with the western and southern zones retaining their freight advantage to Viterra facilities at Thevenard and Port Lincoln.

Capacity constraints impact access and pricing if they lead to delays in ships berthing, loading or departure – resulting is despatch/demurrage. The quicker vessels can be turned around the greater despatch earnings (or lower demurrage costs) will be earned by the exporters.

Future investment in port terminal facilities will depend upon the expectation of a fair and even playing field in the market. If there is a dominant provider in the market, with little or no regulation on pricing and access, the incentive to invest diminishes with the increased risk of retaliatory behaviour through differential service offerings to customers who may otherwise have supported the new investment. A customer supporting a new entrant faces the risk of differential service access and pricing, not only in the immediate catchment zone, but also at the other non-competing ports in SA. Whilst the current regulation requirements to do not in themselves guarantee a fair playing field, any reduction of existing regulation further facilitates this potential for differential level of service offering.

<u>2.5 Competition in upstream, downstream and related markets (Q19 to Q28)</u>

Viterra may not be vertically integrated with road/rail providers but as the dominant PTSP across the state of SA has the ability, either intentionally or non-intentionally, to exert influence on major suppliers of services. Due to their market dominance they find "allies" intent on serving the needs of Viterra, sometimes at the expense of any new entrant.

T-Ports has gathered anecdotal evidence of road transport providers un-willing to engage with us as they did not wish to risk their relationship with Viterra. Similarly, some grain traders/exporters have expressed reluctance to publicly show support to T-Ports with the risk of impacting their long standing relationship with Viterra, and dependence on Viterra for provision of services at ports outside of the EP.

[5] T-Ports Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 Mar 2019, p3.

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.