

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
the following port terminals in South Australia**

- Port Lincoln
- Port Adelaide Outer Harbor
- Port Adelaide Inner Harbour
- Wallaroo
- Port Giles
- Thevenard

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Executive Summary

Viterra Operations Pty Ltd (**Viterra**) requests that the Australian Competition and Consumer Commission (**ACCC**) makes a determination under clause 5(2) of the *Port Terminal Access (Bulk Wheat) Code of Conduct (Code)* to exempt Viterra from the application of Parts 3 to 6 of the Code in respect of the bulk wheat port terminal facilities it owns and operates in South Australia at Port Lincoln, Port Adelaide Outer Harbor (**OHB**), Port Adelaide Inner Harbour (**IHB**), Wallaroo, Port Giles and Thevenard.

Any ability for Viterra to exercise market power as a result of its vertical integration is limited

Viterra is an associated entity of an exporter, Glencore Agriculture Pty Ltd (**Glencore Agriculture**). However, vertical integration in and of itself is not anti-competitive and a corporation should not be subject to regulation only because of its vertical integration. Any ability of Viterra to exercise market power is limited because:

- Traditional “catchment zones” for grain grown in South Australia are fluid and increasingly outdated constructs. Traders purchase grain from, and traders and growers move grain to, the locations where it is most profitable having regard to the price of grain that can be obtained in domestic and export markets, the cost of freight to port terminals (or to domestic customers), the cost of sea freight, and the cost of using a particular port terminal. If Viterra is inefficient or its terms of access—including its fees—are unreasonable, grain traders will source grain from regions outside of South Australia or use alternative and competing terminals in South Australia or neighbouring states to export South Australian produced grain, or will sell grain in Australia, including directly from on-farm storage.
- Grain production in South Australia is highly variable year on year and, therefore, Viterra’s port terminals have been built to handle grain throughput in higher production years. This means that there is excess or unused capacity at Viterra’s port terminals in both peak and non-peak periods. With the commencement of Lucky Bay and other upcoming developments, this excess capacity and alternatives for exporters are likely to increase.
- Shipping capacity in South Australia has increased with the recent entry of Semaphore and LINX at Port Adelaide, and T-Ports Pty Ltd (**T-Ports**) on the Eyre Peninsula. With further developments proposed on the Eyre Peninsula and at Wallaroo, shipping capacity in South Australia is set to increase even further.
- There are low barriers to the development and expansion of port terminal services, as evidenced by the significant entry that has occurred, and is continuing to occur, in Australia.

After its detailed review of the South Australian bulk grain export supply chain in December 2018, the Essential Services Commission of South Australia (**ESCOSA**) found that there is no evidence of Viterra using any market power to disadvantage competition, and that Viterra is an efficient and well-managed firm that is receptive to customer needs and pursuing innovation.

Exemption is in Viterra’s legitimate business interests

Viterra is the only bulk grain export operator in Australia that is subject to Parts 3 to 6 of the Code in respect of all the port terminals it operates.

An exemption from Parts 3 to 6 of the Code for Viterra’s port terminals would result in its regulatory costs decreasing significantly. The resources reallocated to, and the costs of responding to, requests

for information by the ACCC and other regulators since the Code was introduced are extensive. These regulatory requirements have also impeded the availability of key personnel during crucial operational times.

Due to the unequal application of the Code, the burden and costs of associated regulatory processes have not been borne equally by the Australian bulk wheat export industry, but are largely shifted onto the South Australian wheat industry.

An exemption from the requirements of Parts 3 to 6 of the Code would place Viterra on a level playing field with competing port terminal operators right around the country who do not operate under the same level of regulation. In particular, an exemption would enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports and support lower supply chain costs and increased investment by allowing Viterra to operate its port terminals with more flexibility and greater efficiency.

At present, the additional costs and inefficiencies associated with Parts 3 to 6 of the Code result in costs not only for Viterra but also in the form of missed opportunities for South Australian growers in export markets.

Exemption is in the interests of exporters who use Viterra's facilities

Viterra has been providing open access to its port terminals since well before the introduction of access regulation. It has demonstrated over a long period of time that it is committed to providing fair and open access to exporters, and to responding to exporter needs.

Over the past 10 years, each change to Viterra's capacity allocation system has been in response to customer feedback. However, Viterra has been limited in its ability to respond quickly to its customers' needs due to regulatory restrictions. A reduction in the level of regulation at its port terminals will enable Viterra to respond to its customers' needs more adeptly, innovate with its customers and open up competition within its network to provide an efficient export pathway for customers.

Exemption will promote efficiency

As recognised by ESCOSA, the supply chain for grain in South Australia is efficient.

If Viterra's supply chain is inefficient, or its terms and conditions are unreasonable, grain traders and exporters—who operate in a global market—will readily move their investment and shipping programs to other grain producing regions and port terminal service providers worldwide.

An exemption from Parts 3 to 6 of the Code, and consequent reduction in potential regulatory distortions, will assist Viterra to engage commercially and more flexibly with third-party exporters. For example, Viterra would be better able to facilitate shipping slot trades as well as additions and changes to its shipping stem at short notice. This greater flexibility would enable Viterra to meet the different needs of its customers and therefore drive higher utilisation. This would facilitate the efficient allocation and use of port terminal infrastructure and the competitiveness of South Australian grain in global markets.

The full application of the Code to Viterra limits Viterra's ability to manage the supply chain in a fully flexible and commercial manner.

Exemption will not be to the detriment of competition for port terminal services

Grain traders operate in a global export market and source grain from regions, and move grain through port terminals right around the world, that are to their economic advantage given grain prices, input costs and freight differentials. Therefore, Viterra and South Australian growers are subject to significant competition from other Australian and global grain producing regions, and Viterra competes with port terminal providers elsewhere in Australia and the world.

In addition, whether South Australian grown grain is transported to South Australian port terminals or to other port terminals across Australia (or sold to domestic customers) depends on a number of market factors, including the price of grain that can be achieved in export markets (compared to when sold to domestic customers), the level of port terminal fees and freight costs (both within Australia and sea freight to export). For example, since 2017-2018, grain from the Eyre Peninsula and the Yorke Peninsula has been moved in large quantities to domestic customers in NSW, because the price that traders could obtain from domestic customers, given the costs of freight, made it more profitable for them to sell domestically on the East Coast than to sell to international customers.

Even within South Australia, Viterra faces competition from a number of port terminals that have recently entered the market to provide port terminal services to exporters. These include:

- **T-Ports at Lucky Bay.** T-Ports is completing its new port terminal facility at Lucky Bay on the Eyre Peninsula. This new port terminal, to be operational for exports in the 2019-2020 season, will serve vessels the same size as at Port Lincoln, and features more than 360,000 tonnes of storage capacity at port and 150,000 tonnes of further storage capacity in sites at Lock. T-Ports has stated that its new facility could add a further 3.6 million tonnes of shipping capacity per year on the Eyre Peninsula, and anticipates shipping 600,000 tonnes of grain per year.¹ According to the 2018 Eyre Peninsula Freight Study commissioned by the SA Department of Planning, Transport and Infrastructure, the production outlook for Eyre Peninsula for the next 5 years is predicted to be 2.24 million tonnes per year. Therefore, with anticipated exports of 600,000 tonnes per annum, T-Ports is expecting to export more than 25% of the amount of grain to be produced on the Eyre Peninsula. If domestic and container sales of grain from the Eyre Peninsula are excluded, its proportion of bulk exports of grain grown on the Eyre Peninsula will be even higher. Furthermore, given that its nameplate capacity is 3.6 million tonnes, the amount that T-Ports could theoretically export is much higher.
- **Semaphore and LINX Cargo Port Adelaide.** LINX (majority owned by Brookfield) provides port terminal services at Berth 29 at Port Adelaide Inner Harbour. Berth 29 loaded approximately 420,000 tonnes of grain [c-i-c] in 2016/17 and approximately 240,000 tonnes of grain [c-i-c] in 2017/18. Semaphore operates the bulk grain loader at Osborne Berth 1 at Port Adelaide Inner Harbour. Semaphore loaded approximately 345,000 tonnes of grain in 2016-2017 and 260,000 tonnes in 2017/18. Together, Semaphore and LINX Cargo exported 20% of the grain exported from Port Adelaide over the past two seasons. The combined operations at Berth 29 and Osborne are of a similar magnitude to Viterra's IHB, with Semaphore and LINX exporting the equivalent of 77% of IHB's exports over the past two seasons.

¹ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 4.

Barriers to entry for the development and expansion of port terminals are low, as shown by the number of recent new entrants across Australia: LINX at Port Adelaide, Semaphore at Port Adelaide, Riordan Grain Services at Geelong, Portland and Albany, Queensland Bulk Terminals at Brisbane, Agri Terminal at Newcastle, WAPRES at Bunbury, Quattro at Port Kembla and T-Ports at Lucky Bay. In addition, three new multi-user port terminals have been proposed in South Australia:

- T-Ports is proposing a new development at Wallaroo which is anticipated to export 350,000 to 550,000 tonnes of grain per annum.
- Free Eyre is proposing to develop a new deep water port facility capable of loading Panamax sized vessels at Port Spencer on the southern end of the Eyre Peninsula. This development is expected to be operational in time for the 2020-21 harvest.²
- Emerald Grain and Eyre Peninsula Co-operative Bulk Handling have proposed a new deep sea multi-user port at Cape Hardy on the Eyre Peninsula.

In addition to being constrained by current and future competition, any ability of Viterra to exercise market power to the detriment of competition is limited because of the amount of excess capacity at each of its port terminals. Excess capacity at port terminals is increasing in South Australia with each of the new developments set out above. With excess capacity available in peak and non-peak periods at its port terminals, Viterra is incentivised to provide transparent, reasonable and non-discriminatory access to its port terminal services in order to encourage the use of its facilities (rather than competitors' facilities) to maximise throughput.

Exemption will not be to the detriment of competition in upstream or downstream markets

An exemption for any of Viterra's port terminals will not have an adverse impact on competition in any market for:

- *Grain acquisition or trading.* The acquisition and trading of grain is undertaken globally, and South Australia, which accounts for less than 3% of global volume, is a price taker. South Australia face vigorous competition from other Australian states, Canada, the United States of America, France, Germany, Russia, Ukraine and Argentina to supply grain.
- *Freight services in South Australia.* Viterra does not have any ownership interests in road or rail freight companies, and the supply of freight in South Australia is highly competitive with road competing with rail due to the short distances to port.
- *Grain storage and handling.* The provision of storage and handling services in South Australia is not currently subject to regulation, is characterised by a large number of service providers, increasing competition and low barriers to entry (in particular, in regard to on-farm storage), and, as reflected in the recent ESCOSA Report, is operating efficiently.

There is no failure of competition in any market that justifies the full application of the Code

For the reasons set out above, Viterra considers that there is no failure of competition in any market that justifies the significant restrictions that the full application of the Code places on Viterra's ability to respond to third party exporters in a flexible and commercial manner.

The Code was intended to be a transitional arrangement as the industry moved to full deregulation. The objective was to provide open, reasonable and transparent access to port terminal services, and

² *The Stock Journal*, 27 December 2018

to provide certainty to exporters. Many changes have occurred since the Code was introduced which now mean that the application of Parts 3 to 6 to Viterra is no longer necessary to achieve these objectives.

- Since 2014, when the Code was introduced, exporters have obtained increased certainty and entered the market in significant numbers. Many of these are large and significant traders with global operations—including port terminal operations in different locations—who have a substantial degree of bargaining power.
- Viterra’s contracting arrangements with exporters have become increasingly sophisticated, and traders are now entering into long-term agreements and other mechanisms to manage and share supply chain risks.
- There has been significant new entry of port terminal operators. This means that traders of Australian grown grain have more options, and this places further competitive pressure on Viterra. Access regimes are typically limited to situations where only one access provider is commercially feasible such that duplication is inefficient. Once access can be provided by a number of providers, the economic rationale for imposing restrictive requirements on a service provider diminishes and any existing regulatory instruments—such as the Code—should be applied in the most light-handed manner possible.
- In part because of the entry of new port terminals, there is excess capacity across the region as a whole, which reduces the need for regulatory oversight to ensure access by third-party traders to Viterra’s ports. As stated above, with excess capacity available in peak and non-peak periods at its port terminals, Viterra is naturally incentivised to provide transparent, reasonable and non-discriminatory access to its port terminal services in order to encourage the use of its facilities (rather than competitors’ facilities) to maximise throughput.
- Exemptions have been granted to the vast majority of port terminals in Australia, suggesting that the regulatory regime is moving—as it should—from a transitional arrangement to a reliance on general competition law under the *Competition and Consumer Act 2010* (Cth) (**CCA**). Viterra is the only bulk grain export operator in Australia that is subject to Parts 3 to 6 of the Code in respect of all the port terminals it operates. Due to the unequal application of the Code, the costs of compliance have not been borne equally by the Australian bulk wheat export industry, but are largely shifted onto the South Australian wheat industry.

1 Introduction

Viterra owns and operates six port terminal facilities in South Australia through which bulk wheat is exported: Port Lincoln, OHB, IHB, Wallaroo, Port Giles and Thevenard.

Viterra requests that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in respect of each of these port terminal facilities.

Exemption from the requirements of Parts 3 to 6 of the Code would allow Viterra to compete on a level playing field with its competitors that are not similarly subject to these burdensome parts of the Code. It would also enable Viterra to respond more readily to exporter needs and promote the efficient and flexible operation of Viterra's facilities, encourage further investment in port terminal facilities.

Viterra considers that it is in the public interest for the ACCC to provide these exemptions. The grain industry is a significant contributor to the South Australian economy. The 2017/18 harvest produced 6.94 million tonnes of grain in South Australia worth an estimated \$1.7 billion at the farm gate, with about 5.94 million tonnes (86% of the harvest) exported.³ The ability of growers to export their product is a significant contributor to the South Australian rural and regional economies, and is dependent upon efficiencies to cover narrowing margins in a global market which is highly competitive and price-sensitive. Therefore, ensuring the efficient operation of the South Australian grain supply chain is in the public interest.

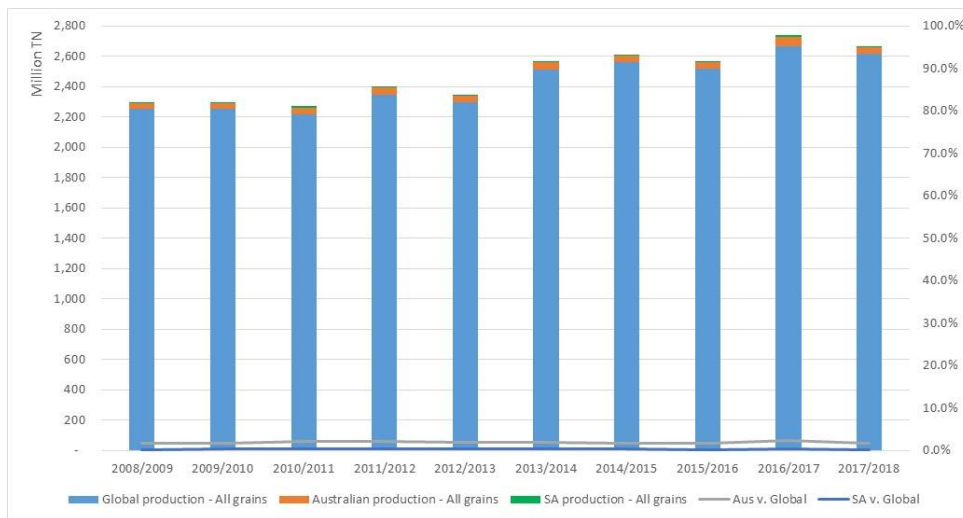
Viterra has provided information that supports an exemption of each of its six port terminal facilities in South Australia in this submission and the attachments, each of which relates to a specific port terminal for which an exemption from Parts 3 to 6 of the Code is sought.

2 Grain in South Australia

Over the past ten years, Australia produced, on average, approximately 46 million tonnes of grain annually. Of this total, around 14-16 million tonnes is consumed domestically. On a global scale, Australia, and South Australia, are both small producers of grain and wheat, as shown in Diagram 1 and Diagram 2 below.

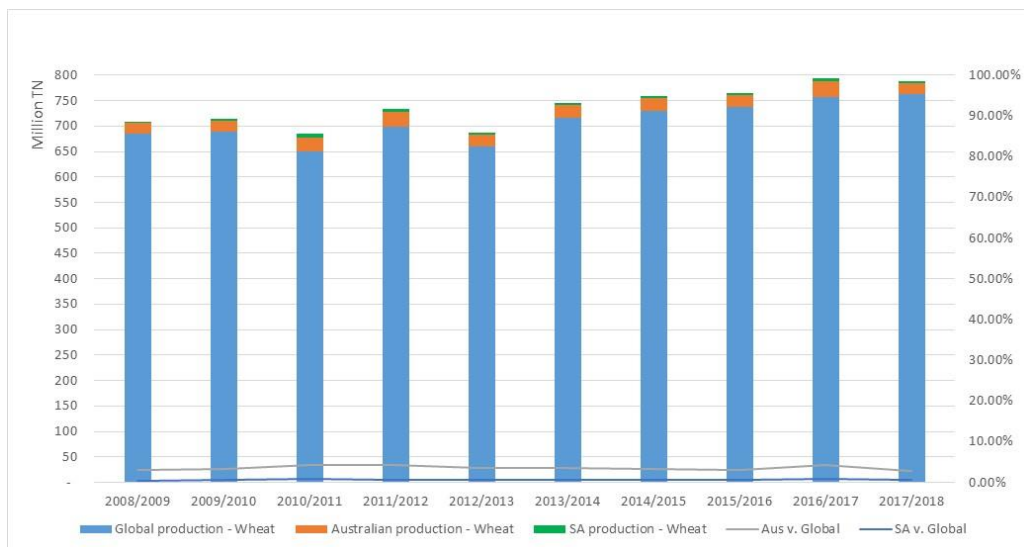
³ ABARE Crop Report for the 2017-18 season; PIRSA; and internal information.

Diagram 1: Grain production (Global v Australia v SA)



Source: Viterro, USDA publications, ABARES crop reports.

Diagram 2: Wheat production (Global v Australia v SA)

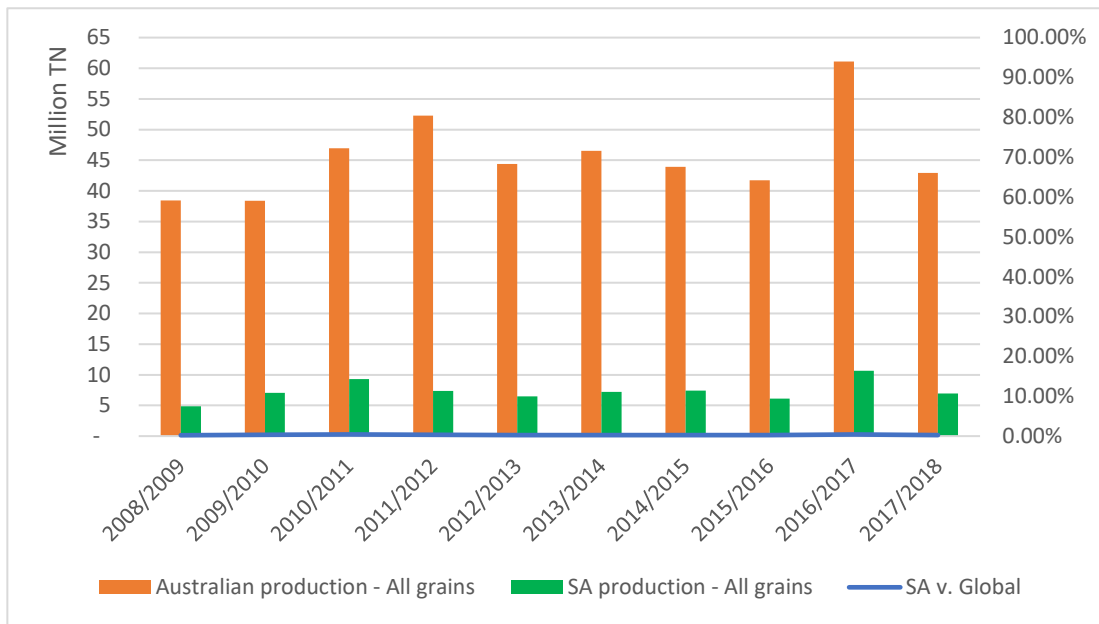


Source: Viterro, USDA publications, ABARES crop reports.

Over the past 10 years, South Australian grain production accounted for on average 16% of Australia’s total grain production (and South Australian wheat production accounted for approximately 17% of Australia’s total wheat production), with South Australia producing on average 7.34 million tonnes of grain (and 4.33 million tonnes of wheat) a year.

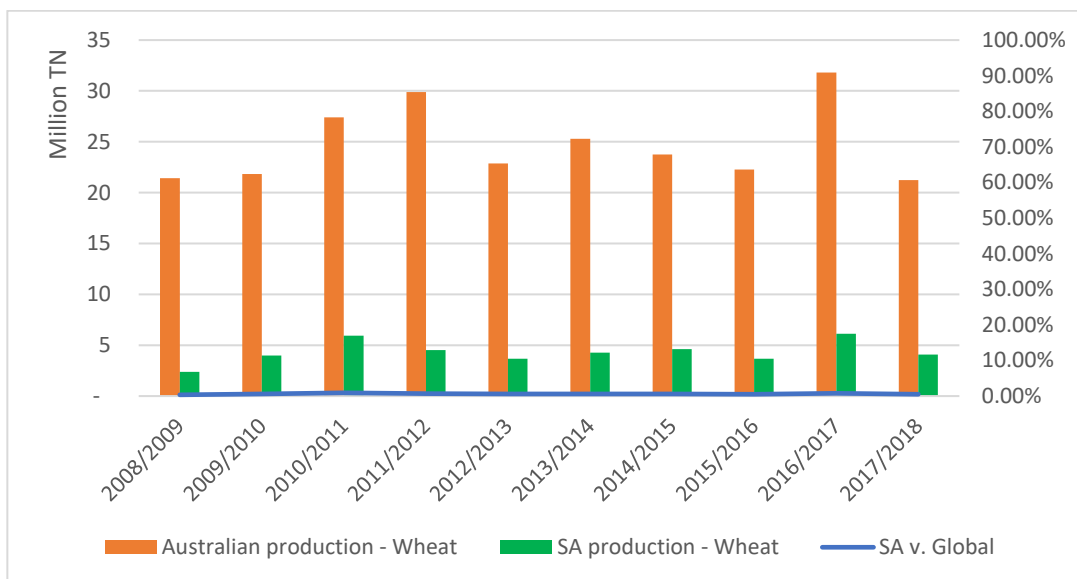
However, there is a significant variation in South Australian grain production, with the lowest year in the past decade being 2008/09 in which 4.86 million tonnes was produced (including 2.38 million tonnes of wheat) and the highest production year being 2016/17 in which more than twice as much grain (10.66 million tonnes) was produced (including 6.13 million tonnes of wheat). This is illustrated in Diagrams 4 and 5.

Diagram 4: SA v Australian grain production



Source: Viterra, USDA publications, ABARES crop reports.

Diagram 5: SA v Australian wheat production

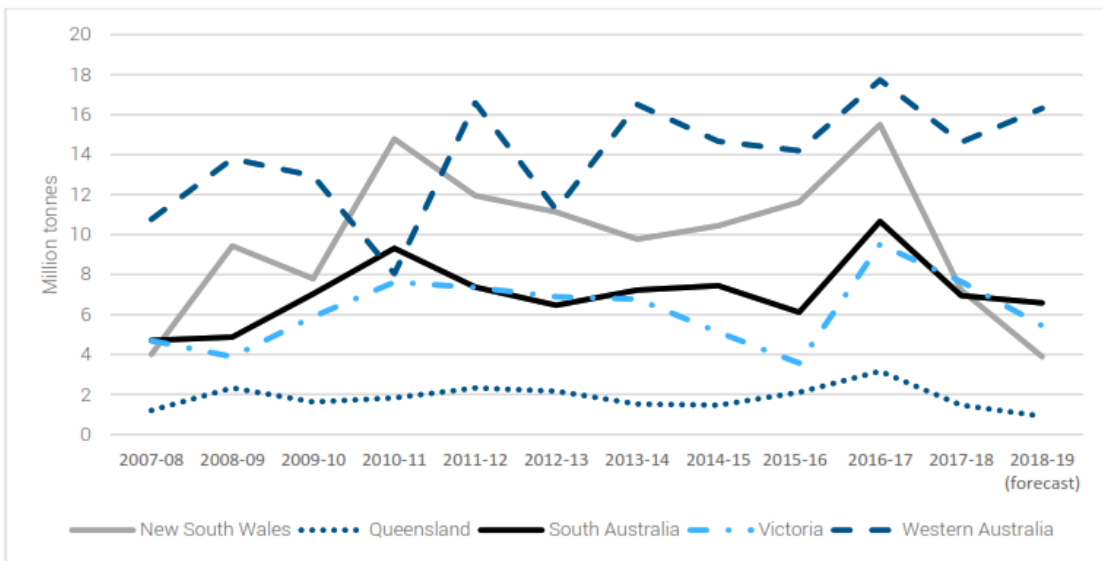


Source: Viterra, USDA publications, ABARES crop reports.

Responding to the variability of harvests is an important aspect of the supply chain. Participants need to be able to manage costs in poor harvest years, while still having the capacity and capability to manage large harvests.

As shown in Diagram 6, in Australia, on average, Western Australia is the largest grain production state (about 13 million tonnes per year), followed by New South Wales (about 10 million tonnes), South Australia (about 7 million tonnes) and Victoria (about 5 million tonnes). South Australia and Western Australia are primarily export-focused markets, each exporting around 85% of their grain production. New South Wales and Victoria export around 50% of their grain production.

Diagram 6: State grain production by volume 2007/08 to 2018/19



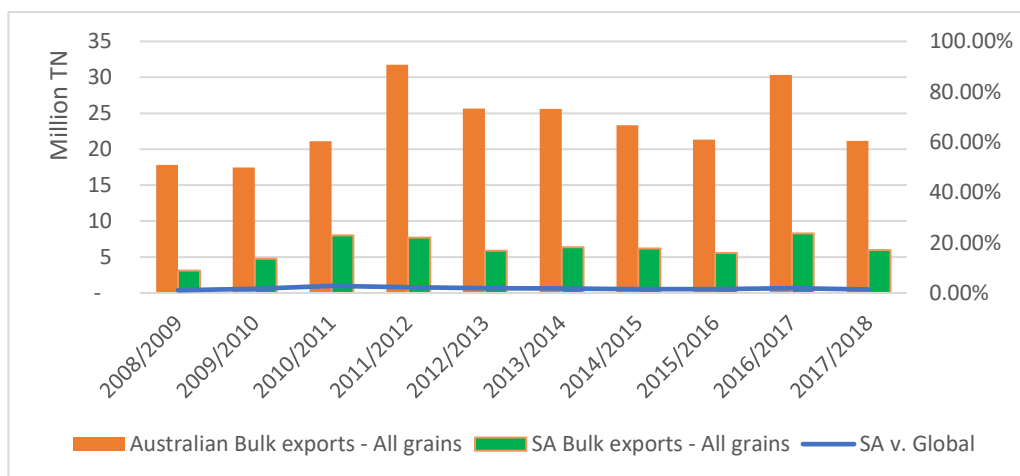
Source: ABARES and Commission.

Source: ABARES (ESCOSA Report, Figure 3.2)

In South Australia, wheat and barley are the largest crops, comprising around 59% and 20% of the state’s total harvest respectively. Other crops grown include pulses (such as lentils, peas, beans, chickpeas and lupins, comprising 9 % in total), canola (7%) and other cereal crops (5%).⁴

South Australia exports a large proportion of its grain production into global export markets, where it is a small player with a share of less than 3% (by volume).⁵ Given production volatility, grain exports from Viterra’s port terminals vary year on year, as illustrated in Diagram 7 and Diagram 8 below. Wheat comprised 66% of grain exported from Viterra’s port terminals in 2017/18, 60% in 2016/17, 66% in 2015/16, 70% in 2014/15 and 67% in 2013/14.

Diagram 7: Exports of grain from SA

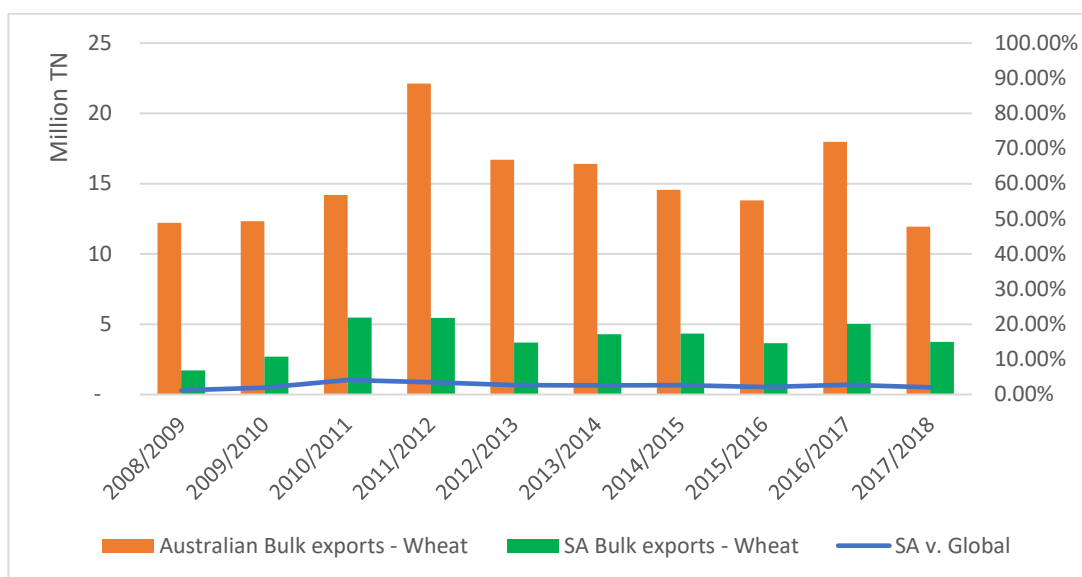


Source: Viterra, USDA publications, ABARES crop reports.

⁴ PIRSA, Submission to the Inquiry into the South Australian Bulk Grain Export Supply Chain Costs, May 2017, p. 4

⁵ ESCOSA Report, p 34.

Diagram 8: Exports of wheat from SA



Source: Viterra, USDA publications, ABARES crop reports.

South Australian production areas are clustered around the coast and, therefore, South Australia has the shortest distance to port of any state in Australia. However, whether South Australian grown grain will be transported to South Australian port terminals or to other port terminals across Australia (or sold to domestic customers) depends on a number of market factors, including the price of grain that can be achieved in the export market (compared with domestic sales), the level of port terminal fees and freight costs (both within Australia and sea freight to export). For example, since 2017, grain from the Eyre Peninsula and the Yorke Peninsula has been moved in large quantities to domestic customers in NSW, because the price that traders could obtain for domestic sales, given the costs of freight, made it more profitable for them to sell to domestic customers on the East Coast than to use port terminals in South Australia to export grain.

In addition, grain traders operate in a global export market and will source grain from regions, and move grain through port terminals, that are to their economic advantage given grain prices, input costs (including port terminal service fees) and freight differentials. Therefore, Viterra and South Australian growers are subject to significant competition from other Australian and global grain producing regions, and Viterra competes with port terminal providers elsewhere in Australia and around the world.

3 Viterra’s port terminals and supply chain operate efficiently and effectively

South Australia is a small participant in the global grain and wheat markets. It must continue to pursue efficiency in supply chain costs to enable the industry to maintain its global competitiveness.⁶

Viterra, therefore, has a strong commercial incentive to operate its infrastructure efficiently to maximise throughput and to provide transparent and open access to its facilities on reasonable terms.

The supply chain for grain in South Australia has been expressly recognised by ESCOSA as being efficient. ESCOSA found that *“the South Australian supply chain, at this time,*

⁶ ESCOSA Report, p 18.

is not demonstrably inefficient in terms of its costs”⁷ and stated that ESCOSA had “not found or been presented with any conclusive evidence of Viterra exercising market power to the detriment of competition”⁸. In the ESCOSA Report, ESCOSA also stated that:⁹ Viterra has successfully extracted efficiencies from the supply chain by carefully controlling and managing bulk grain accumulation and travel within its upcountry-to-port system. These efficiencies, plus a focus on reducing operating costs, have allowed Viterra to drive down real operating costs per tonne—a prerequisite for it to maintain market share in the highly competitive global market for grains.

3.1 Efficient supply chain with reduced operating costs

The efficiency of Viterra’s supply chain is reflected in the statements by ESCOSA above.

The grain industry in South Australia is characterised by the provision of open access to a wide range of exporters (which Viterra and its predecessors provided long before it was required to provide the ACCC with access undertakings), increases in export capacity, competition between a diverse range of exporters, and significant investment in supply chain infrastructure. Since 2012, Viterra has allocated more than 30 million tonnes of port terminal capacity for grain to 26 exporters – via auction, long term capacity and first-in-first-served short term capacity.

Since the Code was introduced, Viterra has not received any dispute notifications under its Port Loading Protocols in relation to the allocation of capacity at its port terminals and has, in fact, received positive feedback about the new long term capacity arrangements.

In addition to wheat exports, there are significant volumes of other commodities that are exported through Viterra’s port terminals. The Code also has a significant impact on, and indirectly regulates, the export of these commodities because it would be inefficient to have multiple port loading protocols for a port terminal. The grain and non-grain volumes shipped through Viterra’s port terminals are set out in Table 1 below.

Table 1: Exports from Viterra operated terminals (tonnes)

Year	Wheat Only	All Grain	Non grain	Grain exporters
1 October 2011 – 30 September 2012	5.4 million	7.7 million	[c-i-c]	12 exporters
1 October 2012 – 30 September 2013	3.7 million	5.9 million	[c-i-c]	12 exporters
1 October 2013 – 30 September 2014	4.3 million	6.3 million	[c-i-c]	18 exporters
1 October 2014 – 30 September 2015	4.3 million	6.1 million	[c-i-c]	19 exporters
1 October 2015 – 30 September 2016	3.5 million	5.3 million	[c-i-c]	14 exporters
1 October 2016 – 30 September 2017	4.5 million	7.5 million	[c-i-c]	11 exporters
1 October 2017 – 30 September 2018	3.6 million	5.4 million	[c-i-c]	13 exporters

Viterra has made significant investments in its supply chain, including port terminal infrastructure, to ensure and enhance the long-term sustainability, reliability and capacity of the supply chain. Over the past 5 years, Viterra has made investments in capital and maintenance of over \$200 million in port terminal and supply chain infrastructure.

⁷ ESCOSA Report, p 1.

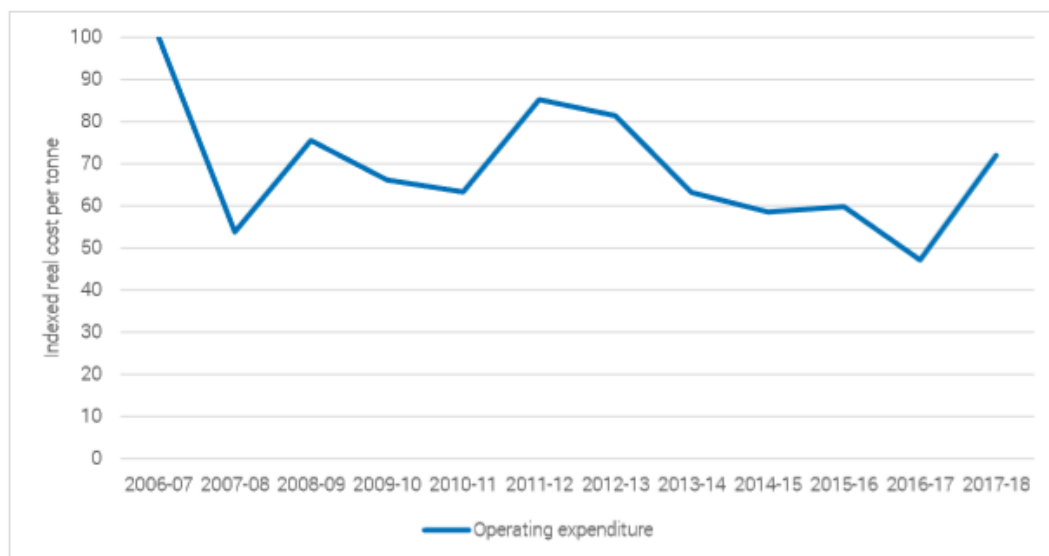
⁸ ESCOSA Report, p 35.

⁹ ESCOSA Report, p 2.

From 2017 to 2019, ESCOSA conducted a thorough and wide-ranging review into the South Australian bulk grain supply chain which involved extensive industry consultation. The ESCOSA Report found that Viterra is a well-managed firm, receptive to customer needs, and is pursuing innovation. In particular, it found that Viterra actively pursues lower cost solutions and invests sufficiently to maintain a sustainable asset base. It also found that Viterra provides good customer service, noting that, in response to the record 2016/17 harvest, Viterra constructed additional storage (0.9 million tonnes) at short notice to ensure timely handling and processing of grain. In addition, the report found that Viterra actively pursues innovation, noting that Viterra is using drive over hoppers for bunker loading and adopting leading electronic sampling and quality control devices.¹⁰

ESCOSA found that, over the past 12 years, Viterra achieved a consistent downward trend in real \$/tonne operating costs as shown in Diagram 9 below.

Diagram 9: Movement in operating expense, Viterra, 2006/07 to 2017/18¹¹



Source: Commission analysis of Viterra provided data.

Source: ESCOSA Report, Figure 4.1

Viterra's price increases for port terminal services have been modest since 2012. In addition, its rates of return over this period have been reasonable. The main reasons for its increases in prices at various port terminals relate to increases in energy and labour costs, and maintenance requirements.

3.2 Premium quality exports

As stated in the ESCOSA Report, *"Australian growers cannot compete in the world market on price alone. High quality product is necessary to maintain existing markets and potentially open the door to new markets."*¹²

¹⁰ ESCOSA Report, p 110, section 4.4.1.

¹¹ The financial information provided by Viterra includes revenues and expenses associated with both domestic and export bulk grain handling activities. To disaggregate this information in order to isolate the export supply chain component would require apportionment. In this context, on average, around 90% of Viterra's grain receipts are exported. Given asset values are also based on sites used for both domestic and export bulk grain handling, the financial return estimates have been derived on a consistent basis, noting that export is the dominant element.

¹² ESCOSA Report, p 17, section 3.1.

South Australia has a strong track record of quality, food safety and traceability, which is a leading differentiator from other growing regions and helps to support higher returns for exporters and growers.

Viterra's quality management and food safety practices start at the receipt point where all grain is quality tested and segregated in accordance with relevant standards. Testing continues while grain is held in storage, transported to port and when loaded into vessels. Growers transfer all quality and stock risk to Viterra when they deliver their grain. Viterra takes responsibility for ensuring grain quality is maintained while in its system.

All Viterra facilities meet the highest international standards of food safety management through its ISO 22000:2018 accreditation, with sites subject to biannual internal and annual external audits. A dedicated, state-of-the-art laboratory oversees all classification testing as well as ongoing testing for chemical residue levels and contaminants.

At the point of export, representative samples of grain are taken continuously on loading. Authorised Officers working for the Department of Agriculture and Water Resources (**DAWR**) ensure the grain meets the relevant importing country's phytosanitary requirements. Viterra conducts further analysis to ensure each parcel of grain meets the customer's contract quality specifications, and an independent, internationally accredited surveyor may be appointed by the customer.

4 Viterra operates in a competitive environment

Viterra competes with a number of port terminal operators—in South Australia, Australia and globally. In addition, Viterra competes with domestic demand for grain and, when market conditions (including the grain price, freight and other supply chain costs) make it more profitable to sell to domestic customers, Viterra will lose throughput to this competition.

The concept of traditional "catchment zones" for grain grown in South Australia are fluid and increasingly outdated constructs.

Traders purchase grain from, and traders and growers move grain to, the locations where it is most profitable having regard to the price of grain that can be obtained in domestic and export markets, the cost of freight to port terminals, the cost of sea freight, and the cost of using a particular port terminal. If Viterra is inefficient or its terms of access—including its fees—are unreasonable, grain traders will source grain from regions outside of South Australia or use alternative and competing ports in South Australia or neighbouring states to export South Australian produced grain, or will sell grain in Australia, including directly from on-farm storage. In addition, South Australian growers will deliver to storage sites in neighbouring states (i.e. Victoria) if they are able to earn a higher return than delivering to South Australian sites.

The global bulk grain export market is highly competitive and South Australia's share is less than 3% by volume. As a result, Viterra is a price taker. If Viterra is not efficient in out-turning bulk wheat to vessels and keeping fees as low as possible, it will lose business to competitors in South Australia, other states and overseas.

Competition from within South Australia

The breakdown of traditional “catchment zones” and the ability for traders to switch port terminals across South Australia is illustrated by the entry of LINX at Berth 29 at Port Adelaide. This has had an effect on throughput at all of Viterra’s port terminals.

After the entry of LINX, [c-i-c] exporters are able to access alternatives to Viterra to export wheat from across South Australia.

[c-i-c]

Competition within South Australia is intensifying, with new entrants at Port Adelaide and on the Eyre Peninsula, and proposed projects at Wallaroo and on the Eyre Peninsula. Viterra is therefore subject to increasing and significant competitive constraints. If it were to foreclose access to its services or set unreasonable terms of access, it would be likely to lose a substantial amount of its potential throughput.

The possibility of losing throughput—even a relatively small amount—to competitors is a significant competitive constraint for Viterra.

Competition from other states

Grain will move to where it is most profitable—every dollar change to the price of grain or the cost of port terminal services will result in a change to the direction of movement of grain. Relatively small price differentials between port terminals can influence the decision made by growers and traders about where to send their stock. For this reason, catchment zones are very fluid concepts and the flow of grain is highly variable.

This means that Viterra is constrained by competition with port terminals in other states. This is particularly the case for grain grown in the eastern regions of South Australia—this grain is often exported through port terminals in Victoria.

[c-i-c]

Competition from domestic sales

Viterra is also competitively constrained by domestic sales of wheat – if selling wheat to domestic customers is more attractive for growers and traders than exporting wheat, then the amount of wheat exported through Viterra’s port terminals will decline.

Recent grain movements since 2017/18 exemplify the power of this variable – large volumes of grain have been transported from South Australia (the Eyre Peninsula and the Yorke Peninsula) and Western Australia to the east coast of Australia, rather than for export, because traders were receiving higher prices on the East Coast for their grain.

In regard to grain stored by Viterra, [c-i-c] grain has been transported to NSW by road and train in 2018/19 to date. In addition, since 2017/18, more than [c-i-c] tonnes has been shipped from Viterra’s port terminals to QLD and NSW. This underestimates the total amount of grain moved interstate to the east coast, as it only represents grain moved from Viterra’s sites. It is likely that significant quantities have also been transported from competitors’ sites (such as Cargill’s sites) and directly from on-farm storage.

The interplay between South Australian-grown grain and supply to other parts of Australia was described in the ESCOSA Report:¹³

... there is no physical constraint preventing Eyre Peninsula grain moving to domestic markets located to the east and the evidence is that grain will move to these markets when the price spread is sufficient to offset additional costs.

What the 2018 eastern Australian drought has shown is that grain price spreads can be such as to draw grain from South Australia to meet NSW and Queensland domestic needs. South Australian grain can and is being shipped to ports such as Newcastle and Brisbane. There are media reports of grain being shipped from Port Lincoln into Brisbane. Also, grain accumulated in one port zone can be swapped for grain in another port zone, to allow grain in favourable positions to be shifted east. So, Eyre Peninsula grain does not have to be physically shipped out of Port Lincoln to be headed for eastern States domestic markets. This is an example of the benefits in having an integrated supply chain network operating in South Australia.

Consequently, the South Australian grain industry is dynamic and interlinked across geographic areas and responsive to grain price spreads. South Australia, or sub-regions within South Australia, are not separate in the market context.

It is clear that grain will be moved to where it is most economically advantageous to growers and traders. If Viterra's pricing is uncompetitive, traders not only look to other grain producing regions and port terminals from which to export wheat, they will also consider transporting grain longer distances to other port terminals (in South Australia or another state) where there is a price advantage to doing so (as occurred in the last season).

The markets for grain trade are, therefore, highly dynamic and will respond very quickly to market changes. Since 2017/18, this has been evidenced by the significant volumes of grain moved from South Australia to NSW (to be sold to domestic customers). This flexibility is further evidenced by grain moving to NSW from Canada in the same period.¹⁴

Global competition

Viterra's main customers are global grain traders. Grain traders purchase grain from growers (or other traders) for export or to sell to domestic customers. The bulk export grain trading market is global, and worth around US\$200 billion per year. Grain traders source grain from regions, and move grain through port terminals, that are to their economic advantage given grain prices, input costs and freight differentials.¹⁵ Therefore, in addition to competition within South Australia, Viterra and South Australian growers are subject to significant competition from other Australian and global grain producing regions elsewhere in Australia and the world.

In 2017/18, the grain exported through South Australian port terminals represented a very small proportion of grain traded in global markets (less than 1.5%). For this season, the

¹³ ESCOSA Report, pp 135 - 136.

¹⁴ <https://www.graincentral.com/markets/manildra-breaks-import-impasse-with-canadian-wheat-buy/>

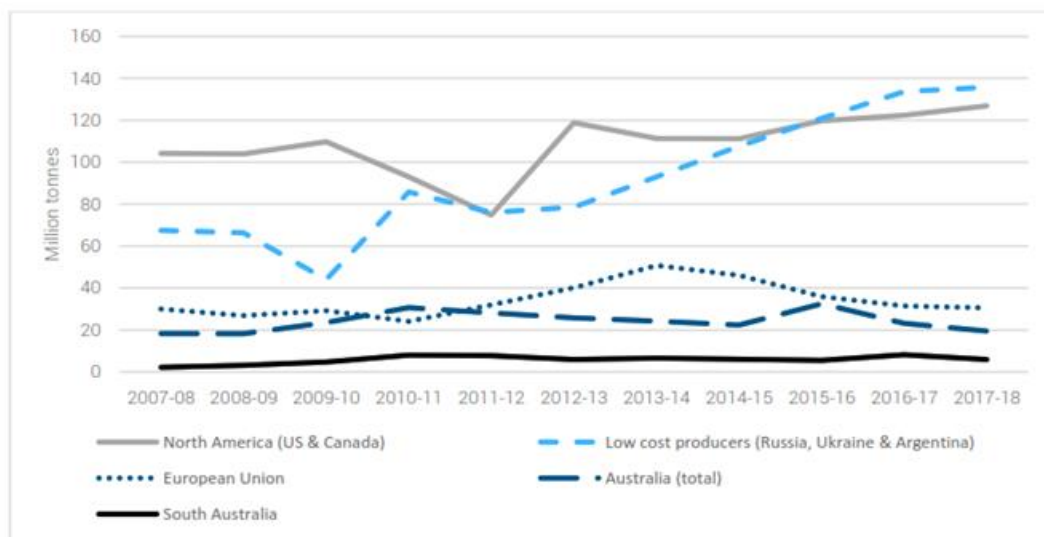
¹⁵ ESCOSA Report, p 17.

wheat exported through South Australian port terminals also represented a very small proportion of grain traded globally (less than 1%). On average, over the past ten years, the:¹⁶

- grain exported through South Australian port terminals represented a very small proportion of grain traded globally (1.8%);
- wheat exported through South Australian port terminals represented a very small proportion of wheat traded globally (3%); and
- wheat exported through South Australia represented a very small proportion of grain traded globally (1%).

Diagram 12 shows South Australia’s grain export (by volume) over the past 10 years.¹⁷

Diagram 12: Grain exports by country vs South Australia, by volume, 2007/008 to 2017/18



Source: US Department of Agriculture.

Source: US Department of Agriculture, (ESCOSA Report, Figure 3.2)

Given these dynamics, as stated by ESCOSA:¹⁸

The South Australian bulk grain industry is a price taker within the global market. Globally, Viterro faces pressure to be efficient in outturning bulk wheat to vessels, and to keep fees as low as possible, while maintaining the quality at required specification. To do so, Viterro should focus on the efficiency of its whole supply chain, from receiving bulk grain upcountry to transporting it to port and then loading it onto vessels. Otherwise, Viterro risks losing business to interstate and overseas competitors.

‘Price taking’ refers to the seller having no ability to affect the market price through their own actions, and so having to accept the prevailing prices in the market.¹⁹ It is, therefore, important that the supply chain in South Australia is efficient and does not create cost

¹⁶ ABARES Crop Reports, USDA information and internal competitive information.

¹⁷ ESCOSA Report, Figure 3.1.

¹⁸ ESCOSA Report, p 42.

¹⁹ ESCOSA Report, p 42.

barriers to South Australian grain being traded on the international market. As stated by ESCOSA:²⁰

[T]o maintain competitiveness in the global grain market, South Australian participants need to operate at scale in a cost-efficient manner that gets the right amount of grain to the right place at the right time, and at the required quality. This complex logistical task challenges all operators competing in the global market for bulk grain. If South Australia fails to meet this challenge, end users will find alternative suppliers, to the detriment of the South Australian grain industry.'

Overseas low cost grain producers, in Russia, Ukraine and Argentina, impose a significant (and increasing) competitive constraint on South Australian exports. As DAWR noted in the 2018 Final Report of the *Review of the Wheat Port Code of Conduct (DAWR Report)*, future improvements in the quality and stability of Black Sea wheat exports could displace exports from higher cost producers, including Australia.²¹ This will further increase the competitive pressure on Viterra to maintain a cost effective and efficient supply chain.

If Viterra's supply chain becomes inefficient, or its terms and conditions are unreasonable, exporters can readily move their investment and shipping programs to other grain producing regions and port terminal service providers.

To date, Viterra's supply chain has been recognised as efficient and its terms of access (including prices) reasonable. As noted by ESCOSA, a significant number of grain traders have booked shipping slot capacity with Viterra to export grain (11 for the 2016/17 grain harvest, and 12 for the 2017/18 harvest).

Viterra has been operating its terminals efficiently and competitively for many years. The ESCOSA Report found there to be a lack of evidence that market power is being used to disadvantage competition in South Australia.²² Instead, it found that the supply chain in South Australia is efficient and that port terminal fees are not considered excessive compared with the total fee levels charged by its Australian counterparts.²³

5 There are low barriers to entry for the supply of port terminal services

The low (and lessening) barriers to supply of port terminal services limits any ability of Viterra to exercise market power.

It is evident that, as the wheat export industry has moved towards deregulation both interstate and within South Australia itself, investment in port terminal operations has increased. From around the time that the Code was introduced five years ago, new port terminal operators have commenced, or will be commencing this year, wheat export port operations at:

- Port Adelaide (LINX Cargo Care at Berth 29 and Semaphore at Osborne);
- Eyre Peninsula (T-Ports at Lucky Bay);

²⁰ ESCOSA Report, p 17.

²¹ DAWR Report, p 14, section 2.4.1.

²² ESCOSA Report, p 1.

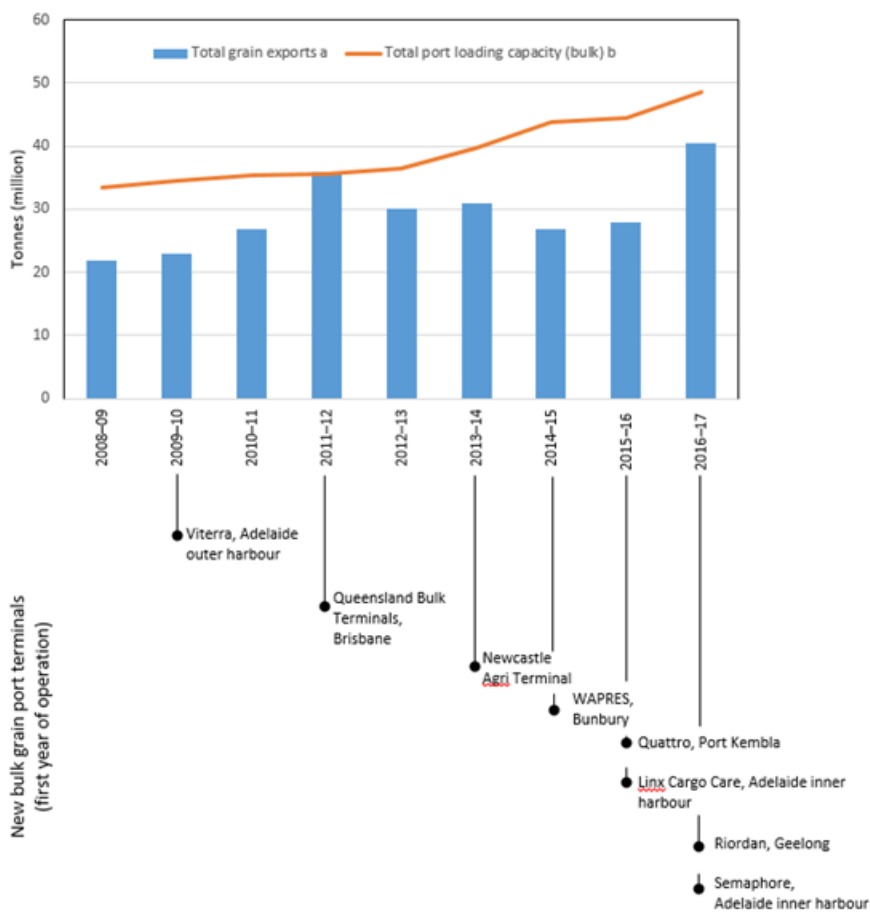
²³ ESCOSA Report, pp 35 and 39.

- Geelong (Riordan Grain Services at Port of Geelong);
- Portland (Riordan Grain Services at Portland);
- Bunbury (WAPRES at Bunbury Port);
- Newcastle (Agri Terminal at Carrington); and
- Port Kembla (Quattro at Port Kembla).

The ACCC has granted, or is considering, exemptions for each of these port terminals.

New developments from 2009 to 2017 are shown in the graph below. This does not include the Lucky Bay development which will commence exports for the 2019-20 season.

Diagram 13: Australian bulk grain export capacity, 2008/09 to 2016/17



Source: ESCOSA Final Report, Figure 3.1. 'Total grain exports' includes wheat, barley, canola, sorghum, oats, chickpea, lupins and field peas in bulk and containers.

In addition, further entry is currently being proposed for Wallaroo by T-Ports and on the Eyre Peninsula at Port Spencer and Cape Hardy. These recent and continuing developments illustrate that the barriers to entry are low.

There have also been significant technological changes at port terminals, meaning that the cost of entry has further reduced. For example, T-Ports has stated that Lucky Bay has a “*lower build cost...compared to traditional grain export port facilities in South Australia, making the financial feasibility of the investment easier to attain with a lower throughput requirement.*”²⁴

The development of mobile ship loaders has also made entry into the export of wheat easier. These facilities have lower construction costs than traditional grain export terminals, reducing barriers to entry.²⁵

Containers are also a lower cost entry alternative and are extensively used in Victoria, and are becoming more common in South Australia.

Containerised trade of Australian imports and exports have experienced an average growth rate of 2.4% annually over the last seven years across Australia’s five largest container ports in Melbourne, Sydney, Brisbane, Fremantle and Adelaide.²⁶ The Bureau of Infrastructure, Transport and Regional Economics (**BITRE**) forecasts that container trade in Australia will increase by between 172% and 205% across each of the five major Australian container ports to 2032-33.

6 There is excess capacity across Viterra’s port terminals

As set out above, grain production varies significantly from year to year, which inherently creates a risk for port terminal operators in Australia, particularly if the port terminal operator (such as Viterra) underwrites the take or pay risk in rail agreements. High production variability also means that the amount of excess capacity varies year to year.

However, even in high production years (such as 2016/17, which was unusually high), there was excess capacity across Viterra’s port terminals.

Excess capacity is also increasing in South Australia with new developments at Port Adelaide and Lucky Bay, and the proposed further developments in the Eyre Peninsula and Wallaroo.

- On the Eyre Peninsula, T-Ports has stated that the new facility could add a further 3.6 million tonnes of shipping capacity per year on the Eyre Peninsula, and anticipates shipping 600,000 tonnes of grain per annum.²⁷ According to the 2018 Eyre Peninsula Freight Study commissioned by the SA Department of Planning, Transport and Infrastructure, the production outlook for Eyre Peninsula for the next 5 years is predicted to be 2.24 million tonnes per annum. T-Ports is therefore expecting to export more than 25% of the amount of grain to be produced on the Eyre Peninsula. If domestic and container sales are taken into account, its proportion of bulk exports of grain grown on the Eyre Peninsula will be higher. Further, given that its nameplate capacity is 3.6 million tonnes, the amount that T-Ports could theoretically export is much higher.

²⁴ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 4.

²⁵ Wheat Port Code Review – Summary p vi.

²⁶ BITRE, Maritime Waterline 62, October 2018, pp 12-15.

²⁷ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p. 2.

- At Port Adelaide, Semaphore and LINX export around 20% of the task at Port Adelaide.
- At Wallaroo, T-Ports is also proposing a new development which is intending to export approximately 350,000 to 550,000 tonnes of grain.

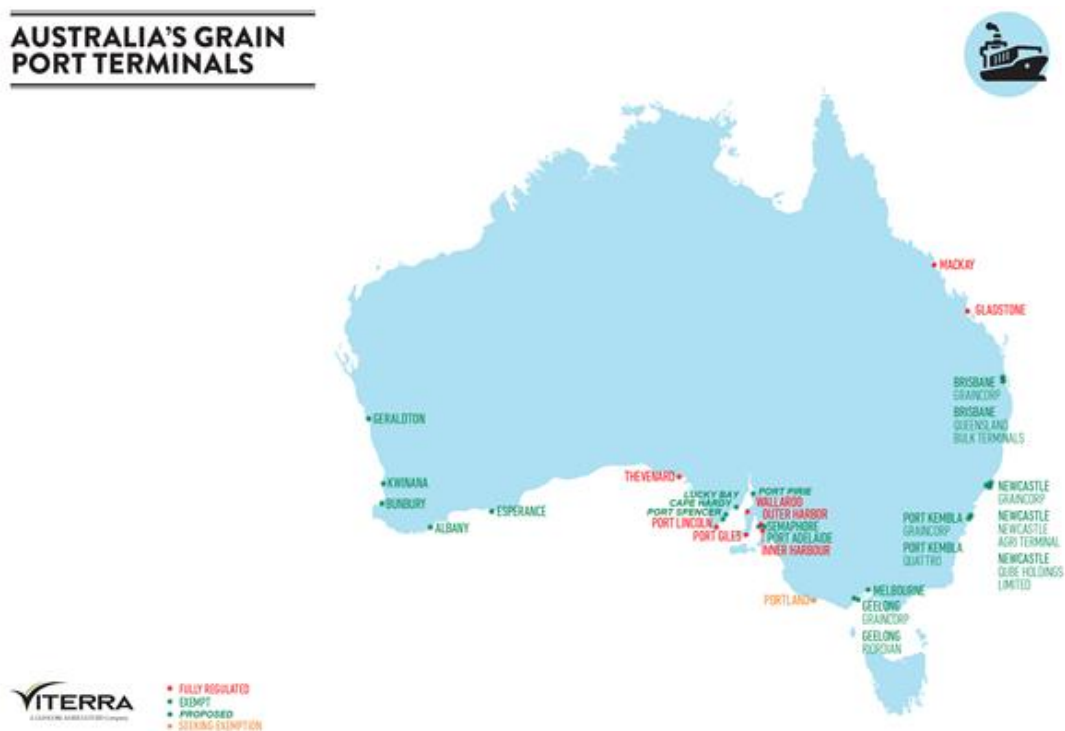
This will mean that there will be increased excess capacity in peak and non-peak periods at Viterra’s port terminals. This is playing out in the 2018/19 period in which exporters have been slow to book available capacity at Viterra’s port terminals. In June 2019, Viterra released 3.5 million tonnes of capacity for 2019-2020 season (including 2 million tonnes of short term capacity). As at 28 June 2019, only 30,000 tonnes had been booked.

7 The Code is costly, restricts flexibility and its unequal application distorts efficient outcomes

7.1 Cost of compliance

Of the 26 operational bulk wheat port terminals in Australia, there are only eight operating terminals that are subject to Parts 3 to 6 of the Code. As shown in Diagram 14 below, six of these are Viterra’s bulk wheat port terminals in South Australia.

Diagram 14: Bulk wheat export port terminals in Australia



Of the approximately 21.2 million tonnes of grain (including 11.9 million tonnes of wheat) exported from Australia in 2017/18, 5.4 million tonnes of grain (including 3.6 million tonnes of wheat) was exported by Viterra. However, despite accounting for only 26% of grain exports from Australia (and 30% of wheat exports) in 2017/18, Viterra remains the only bulk wheat port terminal operator in Australia that is still subject to Parts 3 to 6 of the Code in respect of all its port terminals.

The regulation is therefore not equally applied to port terminal operators.

Parts 3 to 6 of the Code are onerous and are a significant cost to any port terminal operator that has to comply with them. The resources reallocated to, and the costs of responding to, requests for information by the ACCC and other regulators since the Code was introduced are extensive. In addition, costs are incurred to develop systems, processes and expertise that are necessary to ensure compliance with regulation. These regulatory requirements have also impeded the availability of key personnel during crucial operational times.

The unnecessary cost of compliance has been recognised by exemption applicants to date.²⁸ The ACCC has also recognised that parties subject to a higher level of regulation are likely to have higher levels of compliance costs.²⁹

Due to the unequal application of the Code, the costs of compliance have not been borne equally by the Australian bulk wheat export industry, but are largely shifted onto the South Australian wheat industry, impeding its ability to compete nationally and globally.

7.2 Lack of operational flexibility

Parts 3 to 6 of the Code substantially reduce the flexibility of a non-exempt port terminal operator as it cannot quickly and readily respond to changing circumstances or exporter requests in regard to the allocation of capacity. These costs and limitations are more acute today than when the Code was first introduced due to its unequal application.

The ACCC has itself recognised that a service provider has greater operational flexibility if only Parts 1 and 2 of the Code applies, as the provider can more freely engage in direct commercial negotiations and vary operational rules as it considers necessary for particular exporters. For example, exempt service providers have the flexibility to facilitate slot trades and re-order the priority with which vessels will be berthed and loaded without having to comply with protocols that cannot be changed without ACCC approval, “*making them more responsive to the needs of their customers.*”³⁰

A port terminal service provider that is not exempt from Parts 3 to 6 of the Code is less able to respond to operational requirements, changes in market conditions, and the interests of both the provider and customers. Non-exempt port terminal service providers are less able to offer timely and flexible commercial solutions.

²⁸ See, for example, Emerald Grain, Submission, Application for Exemption under cl 5(2) Port Access Code of Conduct, November 2014, at p 4; GrainCorp, Submission, Victorian Port Terminals: Exemption from Port Terminal Access (Bulk Wheat) Regulation, December 2014, at p 4; Queensland Bulk Terminals, Submission, Application for continued exemption from the Competition and Consumer (Industry Code - Port Terminal Access (Bulk Wheat)) Regulation 2014, May 2015, at p 4; GrainCorp, Submission, Fisherman Islands (Brisbane): Exemption from Port Terminal Access (Bulk Wheat) Regulation, June 2015, p 3; WA Chip & Pulp Company Pty Ltd, Submission, Application for Exemption from Parts 3 to 6 of the Port Terminal Access (Bulk Wheat) Code of Conduct, July 2015, p 5; GrainCorp, Submission, Port Kembla: Exemption from Port Terminal Access (Bulk Wheat) Regulation, April 2015, p 4; Quattro Ports, Submission, Application for Exemption from Parts 3 to 6 of the Port Terminal Access (Bulk Terminal) Code of Conduct, April 2015, p 5; Patrick, Submission, Application for Exemption from the Port Terminal (Bulk Wheat) Code of Conduct, January 2016, p 13; Semaphore Container Services Pty Ltd, Submission, Application for Exemption from the Port Terminal (Bulk Wheat) Code of Conduct, May 2017, p 3; Riordan Grain Services, Submission, Application for exemption from the Port Terminal (Bulk Wheat) Code of Conduct, May 2017, p 2; Riordan Grain Services, Submission, Application for exemption from the Port Terminal (Bulk Wheat) Code of Conduct for Corio Quay North and Portland, October 2018, p 1; GrainCorp, Response, Riordan Grain Services application for exemption from the Port Terminal (Bulk Wheat) Code of Conduct, November 2018, p 5; T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 1.

²⁹ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

³⁰ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 10.

7.3 Unequal application of the Code and lack of flexibility leads to inefficient outcomes

The operational inflexibility of the Code—and its unequal application—gives rise to inefficient outcomes. This was clearly demonstrated in relation to Viterra’s proposal to introduce long term agreements for access to its port terminals in South Australia.

Despite the strong initial calls for the auction system by exporters and the ACCC, by 2014-2015 the auction system did not have the support of any exporters. In fact, many of the concerns raised by Viterra prior to the introduction of the auction system (in response to calls for the auction system by industry participants and the ACCC) proved well-founded. In response to these issues, Viterra consulted extensively over many months with all exporter clients and the ACCC to design and introduce a system for allocating both long term and short term capacity at its South Australian port terminals.

Viterra’s key purpose in introducing long term agreements was to provide greater certainty, both in response to requests from exporter customers (who wanted long term agreements so they could better plan longer-term export programs and obtain a greater ability to build long term relationships with overseas customers and growers) and for itself as the infrastructure owner.

Viterra also considered that the introduction of long term agreements would provide a greater ability to align booked capacity more closely with supply chain planning and secure commitments in relation to the acquisition and exporting of South Australian grain, and therefore facilitate more efficient investment in, and the expansion of, supply chain infrastructure.

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.

The inability to provide certainty of export paths for clients leading into the 2015-2016 season had a direct impact on the competitiveness of South Australian grain when compared to other Code-exempt grain origination regions in Australia and globally. This involved real and significant costs, including missed opportunities for South Australian growers.

In particular, because of the regulatory process required by the Code, Viterra had to push back the start of its long term capacity allocations by 12 months from 1 October 2015 to 1 October 2016. The resulting commercial uncertainty, and the availability of long term contracts in Western Australia and the eastern States, resulted in exporters committing to acquire both grain and capacity in those other States for a number of years, ahead of, and in preference to, making commitments to acquire grain from growers in South Australia.

CBH has raised similar issues around the inflexibility of intrusive regulation of its capacity allocation system and the benefits of being able to adapt its capacity allocation system to changing conditions in the absence of intrusive regulation.

In its response to DAWR's draft report on the Code review, CBH stated:³¹

... before the Wheat Port Code came into effect and CBH was granted an exemption, between 2009 and 2014 CBH was not permitted to offer LTAs to its customers under the compulsory undertakings that it was required to lodge. The reality of trying to implement changes to port capacity allocation that required regulatory approval was costly, inflexible and frustrating.

By way of example, prior to being exempted from the Code, over a seven month period beginning in early 2014, CBH sought to shift to LTAs as a way of allocating port capacity, due to significant customer dissatisfaction with the auction capacity allocation system which had resulted in large capital outlay by exporters every year and high risk.

Despite the majority of exporters by number and volume supporting and urging a change to CBH's capacity allocation system, the regulator's inflexible change approval process under which port capacity changes were managed meant CBH's proposed undertakings were rejected three times by the ACCC. At one point the rejection from the regulator came so close to the capacity booking period and, subsequently, the harvest period due to delays in the regulator's consultation process, CBH had to revert to the auction system at the final hour, right before harvest commenced – causing significant frustration and uncertainty for the exporters seeking to buy grain from WA growers and make international sales. It was not until the exemption was granted in late 2014 that CBH was able to move forward and negotiate LTAs directly and flexibly with its customers, ensuring their feedback could be incorporated into the agreements.

Once CBH was exempted from the Code and was no longer subject to a regulatory drawn-out approval process, the LTAs CBH subsequently negotiated created considerably enhanced access certainty and flexibility of service for export customers.

...

To reiterate, the exemption under the Code allowed CBH to implement the LTAs which gave clear signals by commercial customers of their long term needs which gave CBH added certainty to be able to invest in its port terminals and upgrade its upcountry storage and handling network.

Viterra considers that the unequal application of the Code (and the exemptions granted in respect of the vast majority of the industry) has had the undesirable effect of discriminating against regions in which non-exempted port owners operate (most notably South Australia), leading to distorted and inefficient market outcomes. The South Australian grain industry is seen by international shippers and exporters to be a highly regulated, inflexible and complex environment in which to operate when compared to its global competitors.

The removal of the requirement for Viterra's ports to comply with Parts 3 to 6 of the Code would be a significant step in removing regulatory distortions in the marketplace and

³¹ CBH, Supplementary Submission, Review of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, June 2018, at pp 13-14. Also see CBH, Submission, Review of the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, January 2018, at p 7.

enhance the ability of South Australian grain to compete with other grain producing regions both in Australia and globally.

8 Request for exemption

Viterra requests that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to its six port terminal facilities in South Australia through which bulk wheat is exported.

To assist the ACCC, Viterra has provided further information in support of its applications for exemptions at each of its six port terminal facilities in South Australia in the following attachments:

- Port Lincoln (Attachment 1);
- Thevenard (Attachment 2);
- Port Adelaide Outer Harbor (Attachment 3);
- Port Adelaide Inner Harbour (Attachment 4);
- Wallaroo (Attachment 5); and
- Port Giles (Attachment 6).

If the ACCC has any questions in relation to these applications, please contact Damian Fitzgerald, General Counsel at Viterra.

Attachment 1: Port Lincoln

1 Introduction

Port Lincoln is a deep water port located at the southern tip of Eyre Peninsula, 682 km from Adelaide by road. The main commodities handled at Port Lincoln are grains and seeds, petroleum products and fertilisers. Further information about Port Lincoln can be found at <https://www.flindersports.com.au/ports-facilities/port-adelaide/>

Viterra requests that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in respect of Port Lincoln. In making its determination, the ACCC must have regard to the following factors in clause 5(3) of the Code:

- (a) the legitimate business interests of the port terminal service provider;
- (b) the public interest, including the public interest in having competition in markets;
- (c) the interests of exporters who may require access to port terminal services;
- (d) the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services;
- (e) the promotion of the economically efficient operation and use of the port terminal facility;
- (f) the promotion of competition in upstream and downstream markets;
- (g) whether the port terminal services provider is an exporter or an associated entity of an exporter;
- (h) whether there is already an exempt service provider within the grain catchment area; and
- (i) the promotion of efficient investment in port terminal facilities.

For the reasons set out below in regard to each of these factors, there is no need to continue to require Viterra to be subject to Parts 3 to 6 of the Code for Port Lincoln. To continue to do so places Viterra at an unfair competitive disadvantage.

Port Lincoln has had a throughput shipping capacity of between 2.2 and 2.5 million per annum over the past five years.

The amount of grain and wheat exported from Port Lincoln in the past three years is shown in Table 1.1 below. As shown, wheat exported from Port Lincoln in 2017/18 represented approximately 10% of the wheat exported from Australia. This equates to approximately 0.7% of wheat traded globally.

Table 1.1: Grain and wheat exported from Port Lincoln (tonnes)

Year	Grain exported from Port Lincoln	Grain exported from Australia and % attributable to Port Lincoln	Wheat exported from Port Lincoln	Wheat exported from Australia and % attributable to Port Lincoln
2017/18	1.6 million	21.2 million (7.6%)	1.2 million	11.9 million (10.2%)
2016/17	2.5 million	30.3 million (8.4%)	1.7 million	18.0 million (9.3%)
2015/16	2.1 million	21.3 million (10.0%)	1.6 million	13.8 million (11.2%)

Source: Viterra

Port Lincoln competes with other port terminals in South Australia (including the newly constructed Lucky Bay terminal on the Eyre Peninsula) as well as with other grain export port terminals in Australia and further afield (as explained in section 3 below). Accordingly, Viterra considers that it is contrary to its interest, the interest of its customers, the interests of the South Australian grain industry and the interests of the public to continue to require Viterra to comply with Parts 3 to 6 of the Code in relation to a port terminal that represents such a small amount of grain and wheat exported from Australia and globally.

An exemption from the requirements of Parts 3 to 6 of the Code for Port Lincoln would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation. In addition, it would enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports and support lower supply chain costs and increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

An exemption for Port Lincoln is in Viterra's legitimate business interests, as it would reduce its costs and enable more flexible and timely solutions with its customers.

As set out in section 7 of our submission, Parts 3 to 6 of the Code impose significant costs on those port terminal operators that continue to be subject to it. In addition to the costs of participating in regulatory processes, costs are incurred to develop systems, processes and expertise that are necessary to ensure compliance with regulation.

In addition, these Parts of the Code reduces the flexibility of those operators in responding to changing conditions and customer needs. As set out in our submission, this played out in relation to the introduction of long-term agreements for capacity at Viterra's port terminals.

This has also played out in relation to other aspects of Viterra's operations. The fact that Viterra must strictly comply with the Port Loading Protocols that cannot easily be varied—particularly, the strict rules in relation to vessel loading—has at times adversely impacted the efficiency of the supply chain and has frustrated clients. If Viterra had greater flexibility it would be able to maximise vessel loading opportunities and overall capacity.

In a recent example, a client was frustrated because the Port Loading Protocols prevented it from being able to use a small amount of capacity it had allocated to a later shipping slot (2,000 tonnes) to load onto a vessel allocated to an earlier shipping slot (in this case, the preceding shipping slot) without its position on the shipping stem being affected. This was despite the client having sufficient stock ready to ship at the port terminal and in circumstances where it would not adversely affect other vessel loading times and priorities. In this situation, the client noted that the port loading rules were "rigid and uncommercial". In addition, from time to time, clients need to increase their capacity requirements in a

particular slot (e.g. by 2,000 tonnes) in response to changing circumstances. Despite this often being operationally possible (e.g. by Viterra increasing working hours on a particular day), it can often only be done by releasing additional capacity under clause 3.19 of the Port Loading Protocols which, if the slot is more than 6 months away, must be made available on a first-in-first-served basis. This means that Viterra cannot work quickly to enable its client's needs to be met, and Viterra is also unable to guarantee to that client that it will be able to obtain the additional capacity. This process can be frustrating for clients.

The strict timeframes of the Port Terminal Protocols frustrate parties in the supply chain not only for wheat exports, but for *all* grains– it is impractical to have different port loading protocols for non-regulated grains and, therefore, the approved Port Terminal Protocols apply to the export of all grain from Viterra's port terminals. These costs and inflexibility undermine efficiency and competitive outcomes in circumstances where Parts 3 to 6 of the Code only apply to a small number of port terminals.

An exemption from Parts 3 to 6 of the Code for Port Lincoln would result in the regulatory cost to Viterra decreasing significantly. In addition, the exemption would enable Viterra to operate with improved flexibility in responding to customer needs in the increasingly competitive landscape. This would improve the efficiency of the Viterra export supply chain, as Viterra would have the ability to act in a timely manner, respond quickly to agricultural events and develop port operations that maximise throughput and capacity.

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

The ACCC has previously stated that it considers that subclauses 5(3)(b) and 5(3)(g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as any upstream, downstream and related markets.³² The ACCC has stated that, for the purposes of subclauses 5(3)(b) and 5(3)(g), it considers that the following issues are relevant:³³

- whether there is sufficient competition in the provision of bulk wheat export port terminal services such that the full application of the Code may not be required to promote competition for those services or in upstream or downstream markets;
- whether reducing regulation will allow the port terminal operator to better compete in upstream or downstream markets such that it would also promote competition; and
- whether the competitive situation in upstream and downstream markets would allow a vertically integrated port terminal operator to exercise market power in the provision of services at ports in the absence of Parts 3 to 6 of the Code applying, and whether the competitive situation would change as a result of the exemption.

Viterra considers that if an exemption were granted to it in relation to Port Lincoln, it would not be to the detriment of current and future levels of competition in the market for bulk wheat port terminal services or any upstream, downstream or related market. A lower level of regulation could also enable Viterra to compete more effectively with its non-exempted competitors in the provision of port terminal services.

³² ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

³³ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, pp 10-11.

3.1 Competition in bulk wheat export operations

There are significant constraints on Viterra operating its port terminals in a manner that is detrimental to competition, namely:

- Viterra competes with port terminal providers elsewhere in Australia and around the world.
- Viterra is also subject to competition for supply to domestic customers. If it is more profitable to sell grain to domestic customers (as occurred in 2017/18), the amount of grain available for export through Viterra's port terminals will reduce.
- On the Eyre Peninsula (the grain growing region that Port Lincoln has traditionally served), there is a strong new competitor, T-Ports. Its new facility at Lucky Bay will be a strong competitor to Port Lincoln on the Eyre Peninsula.
- With the introduction of T-Ports' port terminal at Lucky Bay, there will also be a significant amount of excess capacity across the port terminals operating in this area in peak and non-peak times.
- Barriers to entering the market to provide port terminal services are low, with a number of proposed new developments on the Eyre Peninsula at Port Spencer and Cape Hardy.
- Relying on, or favouring, one trader is an uncommercial model for Viterra given that grain trading is a high risk enterprise involving significant investment. A healthy diversity in traders is, therefore, essential to maintaining the stability of Viterra's supply chain.

Port Lincoln has traditionally sourced grain from growers on the Eyre Peninsula in South Australia. However, competition for this grain is not limited to port terminals close to, or on, the Eyre Peninsula (such as Thevenard, T-Port's new Lucky Bay development or proposed new developments on the peninsula). As set out in section 4 of the submission, grain can and will move to where it is most profitable—whether this is to be sold to domestic customers or exported from port terminals further away. Therefore, in addition to competition within South Australia, Viterra and South Australian growers are subject to significant competition from other Australian and global grain producing regions and Viterra competes with port terminal providers elsewhere in Australia and the world.

Port Lincoln also faces competition from domestic demand, particularly in low production years. Industry participants can flex their supply chain subject to demand points and economic outcomes. For example, as set out in our submission above, since 2017/18, grain from the Eyre Peninsula has been moved in significant quantities to customers on the East Coast of Australia.

On the Eyre Peninsula itself, Viterra is also facing intensified competition from a new port terminal at Lucky Bay, and proposed new developments at Port Spencer and Cape Hardy.

(a) *Lucky Bay*

A new port terminal facility is being constructed at Lucky Bay on the Eyre Peninsula, and will be operated by T-Ports.

The Lucky Bay port facility is a shallow harbour port located on the Eyre Peninsula. A draft transshipment vessel with a capacity of between 3,300 and 3,500 tonnes will be used at the facility, allowing Panamax vessels to be completely loaded within five days.³⁴

The project features two upcountry bunker storage sites at Lock (with 150,000 tonnes of storage capacity) and Lucky Bay (with 360,000 tonnes of storage capacity),³⁵ as well as steel silos at port with approximately 24,000 tonnes of capacity.³⁶ T-Ports received grain into its Lock storage bunker in April 2019. The grain was purchased by Archer Daniels Midland Company (**ADM**) during the 2018/19 season and stored on-farm in anticipation of delivery into T-Ports' storage.³⁷

T-Ports will be open for grower receivals at port from October 2019,³⁸ with first exports to occur in January 2020.³⁹ T-Ports has stated that exports through Lucky Bay will be up to 40% cheaper on average to growers than via existing supply chains, and that there will be road travel reductions of up to 170km in local haulage distances when moving grain to Lucky Bay compared to Port Lincoln.⁴⁰ It has therefore set itself up as an aggressive competitor to Viterra's Port Lincoln terminal and made clear statements to growers and exports about its ability to export substantial amounts of grain.

T-Ports has stated that the new facility could add a further 3.6 million tonnes of shipping capacity per year on the Eyre Peninsula, and anticipates shipping 600,000 tonnes of grain per annum.⁴¹ According to the 2018 Eyre Peninsula Freight Study commissioned by the SA Department of Planning, Transport and Infrastructure, the production outlook for Eyre Peninsula for the next 5 years is predicted to be 2.24 million tonnes per annum. T-Ports is expecting to export 25% of the amount of grain to be produced on the Eyre Peninsula and is, therefore, likely to be a very significant competitor.

(b) *Port Spencer*

Free Eyre Limited (a collection of hundreds of Eyre Peninsula grain farmers) has proposed a deep water port facility at Port Spencer on the southern end of the Eyre Peninsula, 70km north east of Port Lincoln. The site will house 1 million tonnes in bunker storage and 50,000 tonnes in silo storage.⁴² Free Eyre intends for the port to be a grain-only port and has stated that grain would need to be transported 70

³⁴ <https://tports.com/lucky-bay/>

³⁵ <https://tports.com/lucky-bay/>

³⁶ <https://tports.com/t-ports-lock-site-commissioned-with-first-loads-of-grain/>

³⁷ <https://tports.com/lucky-bay-project-update-2/>

³⁸ <https://tports.com/lucky-bay-project-update-2/>

³⁹ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 1.

⁴⁰ Richard Evans, "Eyre Peninsula Port a Game Changer for Transportation", *The Advertiser Business Daily*, 2 March 2019.

⁴¹ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 2.

⁴² <https://www.stockjournal.com.au/story/6202220/land-bought-for-new-ep-port/>

kilometres less to port when compared to Port Lincoln (saving farmers a 140km round trip).⁴³

In June 2019, Free Eyre Limited settled the purchase of land for the port from Centrex Metals and announced the establishment of its subsidiary company Peninsula Ports.⁴⁴

The project, which would be located between Tumbly Bay and Port Neill, includes a 620-metre wharf that is capable of loading Panamax sized vessels, a ship loader, a multi-commodity conveyor system, silos and sheds. Free Eyre is targeting the port being operational by the 2020-21 harvest.⁴⁵

Free Eyre has stated that “of the 2.5 million tonnes of grain produced annually on the [Eyre] peninsula, about half was grown closer to the potential site than any other port, and a further 500,000 tonnes were grown where this port would be as convenient as others”.⁴⁶

(c) *Cape Hardy*

A new deep sea multi-commodity port at Cape Hardy has been proposed. The proposal involves multiple partners, including Emerald Grain and a newly established small farmer cooperative, the Eyre Peninsula Co-operative Bulk Handling.

As recognised by AEGIC, the establishment of a new multi-user port on the Eyre Peninsula at Cape Hardy will create additional grain export capacity.⁴⁷

3.2 Excess capacity

According to the 2018 Eyre Peninsula Freight Study commissioned by the SA Department of Planning, Transport and Infrastructure, the production outlook for Eyre Peninsula for the next 5 years is predicted to be 2.24 million tonnes per annum. The shipping capacity at Port Lincoln exceeded this in three of the past five seasons.

Shipping capacity varies year to year as a result of logistics including scheduled shut-downs (e.g. for maintenance), loading rates, working hours and available stock. Over the past five years, Port Lincoln had shipping capacity of between 2.2 and 2.5 million per annum, as shown in Table 1.2 below:

Table 1.2: Shipping capacity at Port Lincoln (tonnes)

[c-i-c]

In addition, Thevenard—which also takes grain from the Eyre Peninsula— had shipping capacity of approximately 1.2 million per annum over the past two years, as shown in Table 1.3 below. When Thevenard’s capacity is included in addition to Port Lincoln, the shipping capacity on the Eyre Peninsula exceeded 2.24 million tonnes in each of the past five seasons.

⁴³ <https://www.portlincolntimes.com.au/story/5955749/port-spencer-to-be-dedicated-to-grain/>

⁴⁴ <https://www.portlincolntimes.com.au/story/6200704/port-land-settled/>

⁴⁵ <https://www.portlincolntimes.com.au/story/5833182/a-step-forward-for-port-spencer/>

⁴⁶ <https://www.eyretribune.com.au/story/5644963/plan-floated-for-new-ep-port/>

⁴⁷ <https://www.aegic.org.au/wp-content/uploads/2018/11/FULL-REPORT-Australias-grain-supply-chains-DIGITAL.pdf>;
<https://www.portlincolntimes.com.au/story/5951515/grain-review-called-with-cape-hardy-at-centre/>

Table 1.3: Shipping capacity at Thevenard (tonnes)

[C-i-C]

T-Ports has stated that its new facility at Lucky Bay could add a further 3.6 million tonnes of shipping capacity each year on the Eyre Peninsula.⁴⁸

The combined capacity of Port Lincoln (using 2.2 million tonnes) and Lucky Bay (3.6 million tonnes), without taking Thevenard into account, will exceed the expected annual production on the Eyre Peninsula for the next five years by around 3.5 million tonnes per annum.

Even if a much more conservative estimate of logistics capacity at Lucky Bay is used (e.g. 1.2 million tonnes per annum), then Port Lincoln’s capacity, in addition to the expected Lucky Bay throughput, will exceed the expected annual production on the Eyre Peninsula for the next five years by around 1.2 million tonnes per annum.

Further, if—even more conservatively—T-Ports’ 600,000 tonnes per annum throughput estimate is used as a proxy for additional capacity,⁴⁹ then capacity on the Eyre Peninsula will still exceed the expected annual production on the Eyre Peninsula for the next five years by at least 600,000 tonnes per annum, without taking Thevenard into account.

Adopting a conservative position of 1.2 million tonnes of capacity for Lucky Bay, then—based on historic throughput for the past three years at Port Lincoln—there would have been excess capacity available on the Eyre Peninsula in all months except April 2016, December 2016, February 2017 and May 2017 (noting that 2016/17 was the biggest crop and shipping year in at least a decade), as shown in Diagram 1.1, Diagram 1.3 and Diagram 1.5 below.

If Thevenard is also included (which exports grain from the Eyre Peninsula), there would have been significant excess capacity on the Eyre Peninsula in all months in the 2015/16 and 2017/18, as shown in Diagram 1.2, Diagram 1.4 and Diagram 1.6 below. In 2016/17, which was the biggest crop and shipping year in at least a decade, there would have been capacity across both peak and non-peak periods (the only months in which there would have been no excess capacity was December 2016 and May 2017). However, in high bumper crop years, port terminal operators increase logistical capacity to meet the extra demand by, for example, increasing working hours and staff.

Therefore, Viterra expects that even in a future “bumper crop” year there would be excess capacity in all months on the Eyre Peninsula (particularly given Lucky Bay’s estimate of 3.6 million p.a. optimal capacity).

[C-i-C]

⁴⁸ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 2

⁴⁹ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 2

3.3 Barriers to entry

The barriers to entry for the supply of port terminal services are low.

This is shown by the fact that, in less than 5 years, new port terminal operations have commenced at:

- Port Adelaide, LINX
- Port Adelaide, Semaphore
- Geelong, Riordan Grain Services
- Portland, Riordan Grain Services
- Albany, Riordan Grain Services
- Bunbury, WAPRES
- Newcastle, Agri Terminal
- Port Kembla, Quattro

In addition, a port terminal will commence receiving grain at port this year on the Eyre Peninsula (Lucky Bay), and three more are currently proposed (T-Ports at Wallaroo, Emerald Grain and Eyre Peninsula Co-operative Bulk Handling at Cape Hardy and Free Eyre Limited at Port Spencer). These are discussed in section 3.1 of this attachment.

There have also been significant technological changes at port which have further lowered barriers to entry imposed by cost. For example, on the Eyre Peninsula, Lucky Bay will use a low-cost barge operation and T-Ports has stated that *“lower build cost...compared to traditional grain export port facilities in South Australia, making the financial feasibility of the investment easier to attain with a lower throughput requirement.”*⁵⁰

With impending entry at Cape Hardy and Port Spencer on the Eyre Peninsula—which will result in there being five port terminals exporting wheat on the Eyre Peninsula (operated by four competitors)—it would be difficult to suggest that barriers to entering the market are anything but low.

3.4 Competition in upstream, downstream and related markets

The ACCC has stated that the relevant upstream markets include the acquisition of grain, as well as other markets, such as grain storage and handling services and the transport of grain to port. Related markets include container grain exports and domestic demand for grain.⁵¹ Viterra considers that container grain exports compete with bulk grain exports, and therefore act as a competitive constraint to bulk grain port terminal service providers. In addition, the supply of grain to domestic customers is as a competitive constraint on bulk grain port terminal service providers. This is considered further in section 3.1 above

⁵⁰ T-Ports, Submission, Application for exemption from the Competition and Consumer (Industry Code – Port Terminal Access (Bulk Wheat)) Regulation 2014, 28 March 2019, p 4.

⁵¹ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

3.4.1 Grain acquisition and trading

As set out in section 4 of the submission, the grain acquisition and trading market is global. ESCOSA has stated that *“the global bulk grain export market is highly competitive, and South Australia’s share is less than three percent (by volume).”*⁵² As recognised by ESCOSA, South Australia faces vigorous competition from other Australian states, Canada, the United States of America, France, Germany, Russia, Ukraine and Argentina in the supply of grain.⁵³

The grain (and wheat) that is exported through Viterra’s port terminals represents an even smaller proportion of the grain (and wheat) traded globally (1.8% for grain; 3% for wheat).⁵⁴ In addition, grain from South Australia can be moved (and is moved) to domestic sales, depending on market conditions.

An exemption for any of Viterra’s port terminals will not, therefore, have any material impact on the global grain acquisition and trading market.

3.4.2 Freight services

The exemption of Port Lincoln will not have any impact on the supply of freight services in South Australia. Viterra does not have any ownership interests in road or rail freight companies, and the supply of freight in South Australia is highly competitive, with road competing with freight due to the short distances to port.⁵⁵

In South Australia, Genesee & Wyoming Australia is the main supplier of freight rail services and the primary provider of rail haulage of the state’s export grain. The road freight industry has a large number of participants and minimal market entry barriers.⁵⁶

Between 60 and 70% of grain is currently transported to port by road on the Eyre Peninsula, and the South Australian government secured \$100 million from the Federal Government to upgrade the South Australia section of the Port Augusta to Perth road corridor, \$25.6 million of which will be allocated to upgrading roads across the lower Eyre Peninsula region.⁵⁷ Road is therefore expected to become more important on the Eyre Peninsula, for which there are many available options to port terminal operators.

As shown in Diagram 1.7, distances from upcountry grain sites to port by road are generally shortest in South Australia (averaging about 144 kilometres) and longest in NSW (averaging about 418 kilometres). The short haul length—combined with volatile grain production and the absence of other users of the rail services—means the use of intrastate rail services is generally low in South Australia. In addition, it means that road transport in South Australia is very competitive with rail, as road cost to port is generally competitive with rail transport

⁵² ESCOSA Report, p 42.

⁵³ ESCOSA Report, p 15.

⁵⁴ In 2017/18, the proportion of South Australian grain (and wheat) traded on the global market was 0.27% for grain and 0.54% for wheat. The source for this information is the ABARES Crop Reports, USDA information and internal competitive information.

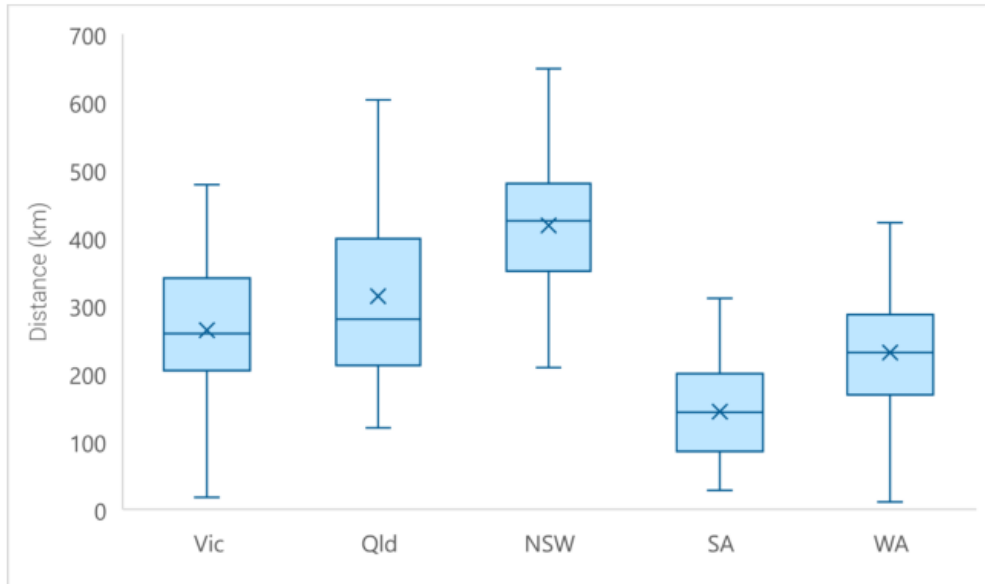
⁵⁵ ESCOSA Report, p 27.

⁵⁶ ESCOSA Report, p 38. See Bureau of Infrastructure, Transport and Regional Economics, Road and Rail Freight: Competitors or Complements?, Information Sheet 34, 2009, p9 https://bitre.gov.au/publications/2009/files/is_034.pdf; Bureau of Transport and Regional Economics, An Overview of the Australian Road Freight Transport Industry, Working Paper 60, 2003, p. 5, available at https://bitre.gov.au/publications/2003/files/wp_060.pdf.

⁵⁷ <https://www.rdawep.org.au/eyre-peninsula-freight-study-released/>

costs for distances of up to 200 kilometres.⁵⁸ Three quarters of South Australian upcountry receival sites are within 200 kilometres of an export port.⁵⁹

Diagram 1.7: Road distance from upcountry receival site to closest export port, by state



Source: AEGIC.

Source: AEGIC (ESCOSA Report, Figure 3.6)

New port terminal entrants on the Eyre Peninsula are readily able to take advantage of the competitiveness of freight in South Australia. Viterra is not vertically integrated with any road or rail provider of freight, and has no competitive advantage under any freight agreement. There are low barriers to entering the transport logistics market. Growers, exporters and traders can enter into an agreement with a rail or road transport provider and, as noted above, there are many providers of road transportation services in South Australia that can transport grain from upcountry to port. These providers are distributed across the state.

3.4.3 Grain storage and handling

Upcountry grain storage and handling in South Australia will not be affected by Viterra being granted an exemption for Port Lincoln.

The provision of storage and handling services in South Australia is not currently subject to regulation, is characterised by a large number of service providers, increasing competition and low barriers to entry (in particular, in regard to on-farm storage) and is operating efficiently.

Competition in grain storage and handling

In South Australia, Viterra currently competes with 11 alternative providers of upcountry storage facilities (including T-Ports on the Eyre Peninsula). This is in addition to the large amount of on-farm storage. These third-party providers include:

⁵⁸ ESCOSA Report, p 27.

⁵⁹ ESCOSA Report, p 37.

- T-Ports — which owns the new Lock facility on the Eyre Peninsula and has a substantial amount of storage capacity at its port bunker.
- Cargill — operates its Grainflow receival and storage sites at Pinnaroo, Crystal Brook, Maitland and Mallala. Cargill road freights grain from upcountry sites, delivering interstate or to Berth 29 in Port Adelaide.⁶⁰
- Pilgrim Grain Storage — operates a grain receival and storage site at Bordertown. Its list of buyers include ADM, COFCO, Cargill, Louis Dreyfus, JK Milling, AGE, AGT Foods, and Ag Farm.⁶¹ It also provides a road freight service in South Australia.⁶²
- Australian Grain Exports (**AGE**) — operates a grain receival and storage site at Dublin. AGE Dublin is a high capacity packing plant completed in late 2016 located at Dublin, approximately 57km North West of Port Adelaide.⁶³
- Australian Growers Direct (**AGD**) — is a privately-owned Australian grain trading and grain storage business in South Australia, with its storage site located in Balaklava.⁶⁴
- Kangaroo Island Pure Grain (**KI Pure**) — operates a grain receival and storage site at Kingscote and also has a container package plant with associated storage at Osborne.⁶⁵
- San Remo — operates durum wheat receival sites at Balaklava and Kulpara (Northern Yorke Peninsula).
- TE Storage and Logistics — is a grain storage operator with facilities in Naracoorte.⁶⁶
- AW Vater & Co — operates a grain receival and storage site and a road transport logistics service at Saddleworth.⁶⁷
- AGT Foods — operates a storage and packing facility at Bowmans and a storage facility at Kadina.
- Tremletts — operates a grain receival and storage site at Sheoak Log.

As Australia's largest grain handler, GrainCorp also operates a number of receival and storage facilities in Victoria near the border of South Australia. Hawkers Grain also operates a storage facility at Serviceton in Victoria, very close to the border of South Australia.

In addition, more than one million tonnes of grain can be stored in on-farm storage facilities in South Australia.⁶⁸ This represents approximately 9% to 14% of the South Australian harvest. Some of this storage is for short-term purposes, but some growers have invested in larger scale long-term storage to capitalise on direct grain marketing opportunities. Grain

⁶⁰ Primary Industries and Regions SA (PIRSA), SA Grain Industry Overview, 16 May 2017.

⁶¹ <http://pilgrimbordertown.com.au/services/grain-storage-solutions/>

⁶² <http://pilgrimbordertown.com.au/services/freight-bulk-haulage/>

⁶³ <http://www.australiangrainexport.com.au/dublin-packing-facility/>

⁶⁴ <http://www.ausgrowersdirect.com.au/storage/storage-overview/>

⁶⁵ Primary Industries and Regions SA (PIRSA), SA Grain Industry Overview, 16 May 2017.

⁶⁶ <https://testorage.com.au/about/>

⁶⁷ <https://www.awvater.com.au/about/grain-trading-transport>

⁶⁸ Primary Industries and Regions SA (PIRSA), SA Grain Industry Overview, 16 May 2017.

can be delivered directly from farm to bulk grain port terminals operated by Viterra or by others, or can be delivered directly to operators who sell the grain to export customers in containers or to domestic customers.

Viterra's customers are also able to organise their own storage and/or transport from upcountry storage facilities to port by entering into agreements with rail or road providers. There are numerous road transport companies of various sizes and locations that exporters can use for this purpose.

In addition, in South Australia, Viterra competes with port terminal service providers, Semaphore Container Services (at Osborne) and LINX (at Berth 29, Port Adelaide). As set out above, Cargill (who exports grain from Berth 29) operates its own grain receival and storage sites in Pinnaroo, Crystal Brook, Maitland and Mallala. At Osborne, Semaphore Container Services provides container storage, packing and exporting services and KI Pure has a new container packing plant with associated storage.

Viterra also competes with other port terminal operators who have storage at port. In this regard, T-Ports has developed a storage facility at Lock (with capacity of 150,000 tonnes), and at-port bunkers (with capacity of 360,000 tonnes). These are receiving (Lock) or will shortly be receiving (at port) grain.

Low barriers to entry

Upcountry facilities are also characterised by low barriers to entry. This is particularly the case for on-farm storage. The costs of upcountry grain receival sites are around 10 times less than those of port facilities with public construction costs of some recently constructed (or being offered for sale) upcountry grain storage facilities being in the range of \$3 million to \$19 million.⁶⁹ In addition, on-farm storage is relatively inexpensive to build, with short-term storage able to be set up very quickly and with very low capital cost.

Viterra understands that five of the alternative providers of storage in South Australia (Cargill, Tremletts, Pilgrim, TE Storage, and KI Pure) have expanded capacity in the past five years. There have also been new entrants into the supply of storage for the bulk grain export market in the past three years — AGE opened its Dublin facility in 2016-2017, and Semaphore commenced supplying storage for the bulk export market in 2015.

Barriers to entry and expansion are particularly low for exporters that use Viterra's port terminals. These exporters are large multi-national businesses that have already invested in port terminal and upcountry storage infrastructure. It would be easy for these customers to invest upcountry in South Australia if they considered that Viterra or Viterra's upcountry competitors were not offering an efficient and competitive service.

Given the low barriers to entry, there is also further competition posed by future new entrants (including increased on-farm storage) if current upcountry facility and service providers, including Viterra, increase their fees above competitive levels. This includes competition from recent entrants in other states that are easily able to enter South Australia such as Bunge, which built two upcountry facilities in Western Australia in 2015.⁷⁰

⁶⁹ DAWR Interim Report, p 50.

⁷⁰ <http://bunge.com.au/storage-handling-client-info/>

Open access and reasonable terms

Viterra provides, and has always provided, open access to its upcountry facilities. Viterra's business is based on providing access and its pricing reflects the competitive nature of the market in which it operates, with its upcountry storage and handling fees having declined in real terms over the past six years.

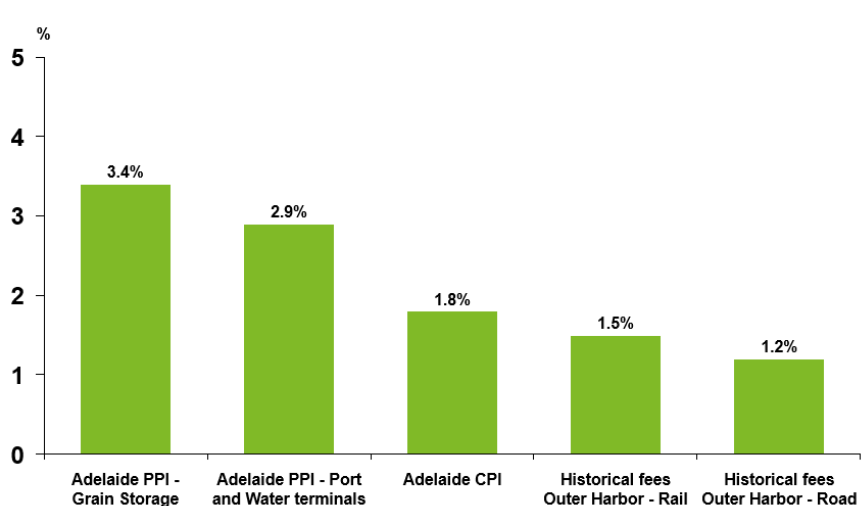
Diagram 1.8 below sets out Viterra's base fees for upcountry, port, and freight services since 2013. As illustrated, total fees charged to export customers by Viterra during that period increased by 1.5% per annum (when rail was used) and by 1.2% per annum (when road was used), which was less than CPI during that period.

[c-i-c]

This has occurred despite Viterra's cost base being put under pressure over the same period.

Diagram 1.9 illustrates that Viterra's costs of grain storage and water and port terminals have increased by more than CPI, during which period its base fees decreased in real terms.

Diagram 1.9: Average increase in percentage terms since 2013 for relevant inflationary indices and Viterra's base fees for road and rail



Source: Viterra

The fact that Viterra's upcountry fees have decreased in real terms, while its cost base for grain storage and port and water terminals has increased over the past six years, illustrates that Viterra is constrained by competition (including the threat of new competition).

Viterra is an efficient provider of grain storage and handling

In its recent report into the supply chain in South Australia, ESCOSA found that the South Australian supply chain was efficient.⁷¹

If Viterra did not operate an efficient supply chain, growers and traders would turn to these other providers of upcountry storage and receival facilities in South Australia and Victoria. In addition, as explained above, the international grain market is highly competitive. If it is

⁷¹ ESCOSA Report, p 92

more competitive to use supply chains in other Australian states or overseas, grain buyers will look to those other regions for the purposes of sourcing grain.

To maintain competitiveness, Viterra needs to operate at scale in a cost-effective manner that gets the right amount of grain to the right place at the right time, keeping fees as low as possible, while maintaining the quality at the required specification. This complex logistical task challenges all operators (including Viterra) competing in the global market. If Viterra (and other service providers in South Australia) fail to meet this challenge, end users will find alternative suppliers, to the detriment of the South Australian grain industry.

It is, therefore, essential that Viterra operates a cost-effective, efficient supply chain and that its terms and conditions of access to upcountry services and to port terminals (including price terms) are reasonable. If not, exporters and traders of grain will readily move their investment and shipping programs to other grain producing regions.

For the reasons set out above, upcountry grain storage and handling in South Australia will not be affected by Viterra being granted an exemption for Port Lincoln.

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

As set out in section 3.1 of this attachment, Viterra is subject to significant new competition on the Eyre Peninsula, and is also competitively constrained by port terminal operators exporting grain from other grain growing regions around the world. Given this, along with the low barriers to entry for supplying port terminal services and the increasing excess capacity on the Eyre Peninsula, Viterra has a strong incentive to maximise throughput grain at its port terminals and to ensure that its terms and conditions of access are reasonable.

Viterra has demonstrated that it is committed to providing fair and open access to exporters, and to responding to exporter needs. There are currently 11 exporters using the Viterra system in South Australia. There have been no complaints to Viterra under the Port Loading Protocols since the introduction of the Code.

Over the past 10 years, each change to Viterra's capacity allocation system has been in response to customer feedback. However, as set out in section 2 of this attachment, Viterra has been limited in its ability to quickly respond to its customers' needs due to regulatory restrictions.

Viterra needs to be able to provide as much flexibility to exporters as possible, to enable the South Australian grain industry to remain competitive in a global market. A reduction in the level of regulation at Port Lincoln will enable Viterra to operate more flexibly, innovate with its customers and freely compete to provide an efficient export pathway for customers.

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

The ACCC has previously stated that, when having regard to the matters listed at subclauses 5(3)(e) and 5(3)(f) of the Code, the following are relevant:

- whether competition among port terminal operators will drive efficient operation and use of the port terminal facility in the absence of full regulation under the Code;

- whether a requirement to comply with Parts 3 to 6 of the Code would result in lesser uptake of the port terminal service than would otherwise be efficient; and
- whether efficient investment in port terminal facilities will be influenced by a reduction in regulation.

5.1 Promotion of the efficient operation and use of Port Lincoln

In circumstances where port terminal operators face competitive constraints—which, as set out above, Viterra does in regard to Port Lincoln—exemption from Parts 3 to 6 of the Code will assist infrastructure owners to engage commercially and flexibly with third party exporters. This, in turn, facilitates the efficient allocation and use of port terminal infrastructure with reduced potential for regulatory distortions.

Exempting Viterra from having to comply with Parts 3 to 6 of the Code in relation to Port Lincoln will provide it with greater flexibility in the way it allocates and manages capacity. For example, Viterra would be able to facilitate slot trades as well as additions and changes to its shipping stem at short notice. This greater flexibility makes it more likely that Viterra will be able to meet the different needs of its customers and therefore is likely to drive higher utilisation of port terminal infrastructure.

5.2 Promotion of efficient investment in port terminal facilities

Viterra has shown itself to be a responsible, committed and long term participant in the South Australian grain supply chain.

In the five years to December 2018, Viterra made significant investments in its port terminal infrastructure and in operational improvements affecting bulk loading facilities at its port terminals. In this period, it invested [c-i-c] at Port Lincoln. Its investments include:

- installing a belt and replacing the dust plant for the bulk loading facility;
- upgrades to conveyor belts, rail weighers and substations; and
- concrete and weighbridge remedial works.

In order to compete with the new port terminal at Lucky Bay, Viterra will have a continued incentive to keep its costs down and make efficient investments in order to attract exporters to use its facility and maximise its return on investment. It is unlikely that applying the full scope of obligations in Parts 3 to 6 of the Code would improve Viterra’s existing incentives to keep its costs down and invest in the context of competition from the Lucky Bay and the low barriers to entry in this area, as evidenced by recent and continuing entry.

6 Whether Viterra is an exporter or an associated entity of an exporter

Viterra is an associated entity of an exporter, Glencore Agriculture. However, vertical integration is not in and of itself anti-competitive, and a corporation should not be subject to regulation merely because of its vertical integration.

Courts, regulators, and commentators around the world, including the ACCC, have recognised that vertical integration typically promotes efficiency.⁷² For example, vertical

⁷² ACCC, Merger Guidelines 2008 (updated November 2017), at 5.18-5.21 (“It is often the case that vertical mergers will promote efficiency by combining complementary assets/services which may benefit consumers...In the majority of cases, non-horizontal mergers will raise no competition concerns”), <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF>; United

integration enables businesses to reduce their supply and distribution costs and pass those savings on to consumers. In the absence of vertical integration, firms at different levels of a supply chain each take a profit margin. A vertically integrated firm, by contrast, only needs to factor in a single profit margin, which enables it to charge consumers lower prices. Further, seamless integration between products that work together can streamline the customer experience and create opportunities for innovation. As such, businesses routinely promote their own products and services and vertically integrate in order to offer consumers improved products and services.

In the port terminal industry, vertical integration is, therefore, becoming increasingly common as it provides significant efficiency benefits in a high fixed cost industry. Free Eyre's proposal for a new port terminal on the Eyre Peninsula is an example of vertical integration for the purposes of efficiency, as is Quattro's port terminal at Port Kembla.

To the extent that there are concerns about particular conduct, the ACCC has existing investigative tools to address this. Importantly, the Australian Government amended Section 46 of the CCA in 2016 in order to address unilateral conduct that forecloses competitors through discrimination and reduces competition.

Further, as set out above, any ability of Viterra to exercise market power as a vertically integrated owner of Port Lincoln is limited because:

- Port Lincoln will face significant competition from Lucky Bay for grain on the Eyre Peninsula.
- If Port Lincoln is inefficient or its terms of access—including its fees—are unreasonable, grain traders will source grain from regions outside of the Eyre Peninsula (which are closer to other port terminals) or use alternative and competing ports in South Australia or neighbouring states to export South Australian produced grain. This acts as a significant competitive constraint on Viterra, particularly given the small proportion of globally traded wheat that is exported through Port Lincoln (less than 1%).
- Grain production in South Australia is highly variable year on year and, therefore, Port Lincoln has been built to handle grain throughput in higher production years. This means that there is excess capacity at Port Lincoln in South Australia. In light of Lucky Bay and other upcoming developments, this excess capacity will increase significantly.
- There are low barriers to entry for the provision of port terminal services, as evidenced by the significant entry that has occurred, and is continuing to occur, in Australia.

Viterra's supply chain in South Australia has been characterised by Viterra actively pursuing lower cost solutions, investing sufficiently to maintain a sustainable asset base, providing

States v. AT&T Inc., 310 F. Supp. 3d 161, 193 (D.D.C. 2018) ("Further complicating the Government's challenge is the recognition among academics, courts, and antitrust enforcement authorities alike that 'many vertical mergers create vertical integration efficiencies between purchasers and sellers.'"); European Commission Guidelines on Non-Horizontal Mergers ("vertical and conglomerate mergers provide substantial scope for efficiencies."); The Federal Trade Commission's Hearings on Competition and Consumer Protection in the 21st Century, Vertical Mergers, Comment of the Global Antitrust Institute, Antonin Scalia Law School, George Mason University (6 September 2018) (discussing empirical research relating to the effects of vertical mergers and concluding by finding "that recent empirical evidence continues to support the proposition that vertical integration generates abundant efficiencies and is generally procompetitive."), <https://gai.gmu.edu/wp-content/uploads/sites/27/2018/09/GAI-Comment-on-Vertical-Mergers.pdf>.

good customer service, and actively pursuing innovation, as acknowledged in the ESCOSA Report.⁷³

- **Reasonable prices for regulated services.** Viterra’s price increases for regulated services have been modest since 2012. In addition, its rates of return over this period have been reasonable, indicating that it is not achieving monopoly returns. The main reasons for the increases in prices at various port terminals relate to increases in energy and labour costs, and maintenance requirements.
- **Significant investment in supply chain infrastructure and operational improvements.** As set out above, in the past five years, Viterra has made a number of significant investments in its port terminal infrastructure and in operational improvements affecting bulk loading facilities at its port terminals, including Port Lincoln.
- **The continued provision of open access to a range of exporters.** Since 2012, Viterra has allocated more than 40 million tonnes of port terminal capacity for grain – via auction, long term capacity and first-in-first-served short term capacity – to 26 exporters. As set out above, it is highly incentivised to continue providing open access on reasonable terms and conditions to its port terminals.

These factors are inconsistent with a use of market power to disadvantage competition. Indeed, ESCOSA specifically inquired into, and found that there is no evidence of Viterra using any market power to disadvantage competition.⁷⁴ ESCOSA stated that “*Viterra is a well-managed firm, receptive to customer needs and pursuing innovation*”, because it considered that “*these are all the elements expected of an efficient competitive firm*”.⁷⁵

7 Whether there is already an exempt service provider within the grain catchment area

Viterra understands that the ACCC “*generally considers that, where there is already an exempt service provider within a grain catchment area, or where the Code does not otherwise apply to a service provider in a catchment area, this may support an exemption.*”⁷⁶

As set out above, Port Lincoln has traditionally sourced grain from growers on the Eyre Peninsula in South Australia. The T-Ports Lucky Bay port terminal also will also export grain from the Eyre Peninsula. On 28 March 2019, T-Ports applied to the ACCC for an exemption from the application of Parts 3 to 6 of the Code in relation to Lucky Bay.

Viterra also considers that traditional grain catchment areas are fluid and increasingly outdated, and that its port terminals face competition from port terminals across the world and from domestic sales. Therefore, Port Lincoln faces competition from many exempted ports across Australia, and also from port terminals in other parts of the world.

Viterra’s view is that it is imperative to also exempt Port Lincoln so that it can compete on a level playing field with Lucky Bay and these port terminals.

⁷³ ESCOSA Report, pp 116-117.

⁷⁴ ESCOSA Report, p 1.

⁷⁵ ESCOSA Report, pages 110, 116 and 117.

⁷⁶ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 21.

Viterra understands that the ACCC is likely to have regard to the fact that Lucky Bay is not yet operational.

This will not be the first time that the ACCC has had to consider this. The ACCC considered GrainCorp Operations Limited's exemption application for its Port Kembla terminal at a time when Quattro's Port Kembla terminal was under construction, and at the same time that Quattro was seeking an exemption.

In its Final Position (1 October 2015),⁷⁷ the ACCC acknowledged the significant competitive constraint that Quattro, when operational, would pose for GrainCorp (particularly given the amount of excess capacity across the two terminals at Port Kembla). It decided that that it was appropriate to grant an exemption to GrainCorp for its Port Kembla facility at the same time it granted an exemption to Quattro for its Port Kembla facility. To address uncertainty about when Quattro would commence operations, it decided to grant an exemption to Quattro on the date that its Port Kembla facility became covered by the Code and grant an exemption for GrainCorp on the date Quattro was granted an exemption.

Similarly, if the ACCC decides to exempt Port Lincoln conditional on Lucky Bay becoming operational, it could grant an exemption for Lucky Bay on the date it is covered by the Code and grant an exemption for Viterra's Port Lincoln on the date T-Ports is granted an exemption

⁷⁷ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015.

Attachment 2: Thevenard

1 Introduction

The Port of Thevenard is located 793 kilometres west of Adelaide and 3 kilometres from the centre of Ceduna. The main cargoes handled at Thevenard are gypsum, salt, mineral sands, and grain and seeds. Further information about Thevenard can be found at <https://www.flindersports.com.au/ports-facilities/thevenard/>

Viterra asks that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to the Thevenard port terminal.

In making its determination, the ACCC must have regard to the factors set out in clause 5(3) of the Code, which are considered below. For the reasons set out in regard to each of these factors, there is no need to continue to require that Viterra be subject to Parts 3 to 6 of the Code for Thevenard, and to continue to do so places Viterra at an unfair competitive disadvantage.

Thevenard had shipping capacity of between 1.23 and 1.25 million tonnes in the past two seasons (see Table 1.3 in Attachment 1 above).

The amount of grain and wheat that has been exported from Thevenard is shown in Table 2.1 below. As shown, annual grain throughput for Thevenard was significantly lower than shipping capacity over the past three years—grain represented only 10% of shipping capacity at Thevenard in 2017/18 (compared with 40% in 2016/17 and 2015/16). In addition, the wheat exported from Thevenard represented a very small proportion of all wheat exported from Australia (1% in 2017/18 and less than 3% in the two previous seasons).

Table 2.1: Grain and wheat capacity and exports from Thevenard (tonnes)

Year	Shipping capacity	Grain exported from Thevenard	Grain exported from Australia and % attributable to Thevenard	Wheat exported from Thevenard	Wheat exported from Australia and % attributable to Thevenard
2017/18	[c-i-c]	0.1 million	21.2 million (0.6%)	0.1 million	11.9 million (1.0%)
2016/17	[c-i-c]	0.5 million	30.3 million (1.8%)	0.5 million	18.0 million (2.7%)
2015/16	[c-i-c]	0.3 million	21.3 million (1.4%)	0.3 million	13.8 million (2.1%)

Source: Viterra. Note: Shipping capacity increased after 2015/16 because of infrastructure upgrades to address the “bumper harvest” in 2016/17

Viterra considers it highly unusual that a port terminal exporting such a small proportion of grain from Australia is subject to full regulation, and indeed, to greater regulation than port terminals that export a higher proportion of grain from Australia. An example of this is Kwinana in Western Australia (which has the capacity to handle the entirety of South Australia’s average export task by itself), and LINX’s and Semaphore’s combined operations at Port Adelaide (as well as each of LINX and Semaphore in 2017/18).

An exemption from the requirements of Parts 3 to 6 of the Code for Thevenard would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation, enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports, and support lower supply chain costs and

increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

Please refer to the response in section 2 of Attachment 1 (Port Lincoln).

As referred to in section 2 of Attachment 1 (Port Lincoln), the strict requirements of the Port Terminal Protocols frustrate parties in the supply chain not only for wheat exports, but for *all* commodities— it is impractical to have different port loading protocols for non-regulated grains and, therefore, the approved Port Terminal Protocols apply to the export of all grain from Viterra’s port terminals. This is particularly relevant for Thevenard, given the small proportion of wheat (as compared to other grains and commodities) exported from Thevenard.

Vessel owners and customers that use Thevenard have noted that Viterra is limited in its ability to respond to changing circumstances due to the requirements under the Port Loading Protocols. For example, the lack of flexibility of the Code makes it difficult to change the loading priority of vessels even if this could increase efficiency for all users.

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

3.1 Competition in bulk wheat export operations

Thevenard has traditionally sourced grain from growers on the Eyre Peninsula in South Australia. However, competition for this grain is not limited to port terminals close to, or on, the Eyre Peninsula (such as Port Lincoln, T-Port’s new Lucky Bay development or proposed new developments on the peninsula). As set out in section 4 of the submission, grain can and will move to where it is most profitable—whether this is to be sold to domestic customers or exported from port terminals further away.

For competition from port terminal operations on the Eyre Peninsula, please refer to the response in section 3 of Attachment 1 (Port Lincoln). As set out in this section, T-Ports has publicly stated that it has throughout capacity of approximately 3.6 million tonnes and expects to export 600,000 tonnes of grain from its new port terminal at Lucky Bay annually. This capacity is three times the shipping capacity of Thevenard and the expected throughput is four times the amount of grain exported from Thevenard in 2017/18 (it is 50,000 tonnes more than the grain exported from Thevenard in 2016/17 and twice as much as the grain exported from Thevenard in 2015/16).

In addition to Lucky Bay and the proposed developments on the Eyre Peninsula discussed in section 3 of Attachment 1 (Port Lincoln), there is also proposal for a standalone port terminal at Decres Bay on the Eyre Peninsula which will compete with Thevenard.⁷⁸

For further information on competition, please refer to the response in section 3 of Attachment 1 (Port Lincoln).

3.2 Excess capacity

Please refer to the response in section 3.2 of Attachment 1 (Port Lincoln).

⁷⁸ ESCOSA Report, p 44; <https://www.whyllanewsonline.com.au/story/5253264/authority-on-ports/>

Shipping capacity varies year to year as a result of logistics, including scheduled shut-downs (for example, for maintenance), loading rates, working hours and available stock. Over the past two years, Thevenard had shipping capacity of between 1.23 and 1.25 million per annum, as shown in Table 2.2 below.

Table 2.2: Shipping capacity for grain at Thevenard (tonnes)

[c-i-c]

There is significant excess capacity at Thevenard. As set out above in section 1, the annual capacity at Thevenard significantly exceeded grain throughput for the past three years. Based on historic throughput at Thevenard, there was excess capacity available in both peak and non-peak periods. There was excess capacity for the past three years in all months except April and May 2016, and May 2017, as shown in Diagram 2.1 to 2.3 below.

[c-i-c]

In addition, the combined shipping capacity of Thevenard and Port Lincoln— which both take grain from the Eyre Peninsula—exceeded expected grain production on the Eyre Peninsula for the next five years (2.24 million tonnes per annum) in each of the past five seasons. The Lucky Bay development will significantly increase the excess capacity on the Eyre Peninsula, as will the new proposed developments discussed in section 3.1.

For further information on excess capacity on the Eyre Peninsula, please refer to section 3.2 of Attachment 1 (Port Lincoln).

3.3 Barriers to entry

For information on barriers to entry, including in downstream and related markets, please refer to the response in section 3.3 of Attachment 1 (Port Lincoln).

3.4 Competition in in upstream, downstream and related markets

For information on competition in upstream, downstream and related markets, please refer to the response in section 3.4 of Attachment 1 (Port Lincoln).

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

Please refer to section 4 of Attachment 1 (Port Lincoln) and section 2 of this Attachment (Thevenard).

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

Please refer to section 5 of Attachment 1 (Port Lincoln).

In addition, Viterra notes that it has made a number of significant investments at Thevenard in the five year period to 31 December 2018. In this period, it invested [c-i-c] including:

- recladding the bulk loading facilities;
- upgrading and replacing elevator belts;

- upgrading electrical switch rooms; and
- installing a cable reeler gearbox for the bulk loading facility.

The continued application of Parts 3 to 6 of the Code on Thevenard is particularly constraining for Viterra, given that Thevenard is primarily a port for exporting gypsum, salt and mineral sands and, as shown in Table 3.2 below, the proportion of wheat exported from Thevenard is small [c-i-c].

Table 2.3: Exports of commodities through Thevenard (tonnes)

[c-i-c]

As set out above, the amount of grain exported from Thevenard also represents a very small proportion of grain and wheat exported from Australia:

- The amount of grain exported through Thevenard was 0.6% of grain exports from Australia in 2017/18 (in prior years, it was 1.8% of grain exports from Australia in 2016/17 and 1.4% of grain exports from Australia in 2015/16).
- The amount of wheat exported through Thevenard was 1% of wheat exports from Australia in 2017/18 (in prior years, it was 2.7% of wheat exports from Australia in 2016/17 and 2.1% of wheat exports from Australia in 2015/16).

6 Whether Viterra is an exporter or an associated entity of an exporter

Please refer to section 6 of Attachment 1 (Port Lincoln).

As set out in section 5 above, the proportion of wheat exported from Thevenard is very small. The fact that Viterra is an associated entity of Glencore Agriculture does not, and would not, therefore, have any effect on how it operates Thevenard.

7 Whether there is already an exempt service provider within the grain catchment area

Thevenard has traditionally sourced grain from regions including the Eyre Peninsula in South Australia. Along with Thevenard and Port Lincoln, the Lucky Bay port terminal will also export grain from the Eyre Peninsula. On 28 March 2019, T-Ports applied to the ACCC for an exemption from the application of Parts 3 to 6 of the Code in relation to Lucky Bay.

Viterra also considers that traditional grain catchment areas are fluid and increasingly outdated, and that its port terminals face competition from port terminals across the world and from domestic sales. Therefore, Thevenard face competition from many exempted ports across Australia.

Viterra's view is that it is imperative to also exempt its Thevenard terminal so that it can compete on a level playing field with Lucky Bay and these port terminals.

For further information, please refer to section 7 of Attachment 1 (Port Lincoln).

Attachment 3: Port Adelaide Outer Harbor

1 Introduction

OHB is a deep-water port at Port Adelaide, and is located 11km downstream of IHB). OHB is capable of handling Panamax size dry bulk vessels. The main commodities handled at OHB are grains and seeds. Further information about Port Adelaide and OHB can be found at <https://www.flindersports.com.au/ports-facilities/port-adelaide/>

Viterra asks that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to OHB.

In making its determination, the ACCC must have regard to the factors set out in clause 5(3) of the Code, which are considered below. For the reasons set out in regard to each of these factors, there is no need to continue to require that Viterra be subject to Parts 3 to 6 of the Code for OHB, and to continue to do so places Viterra at an unfair competitive disadvantage.

Over the past five years, OHB has had shipping capacity of between 2.1 and 2.6 million tonnes per annum. The amount of grain and wheat has been exported from OHB is shown in Table 3.1 below. As shown, the wheat exported from OHB represented less than 8% of wheat exported from Australia in 2017/18, and less than 5% in the two preceding years. In addition, Table 3.1 shows that the grain exported from OHB each year was significantly below the annual shipping capacity at OHB.

Table 3.1: Grain and wheat exported from OHB (tonnes)

Year	Shipping capacity	Grain exported from OHB	Grain exported from Australia and % attributable to OHB	Wheat exported from OHB	Wheat exported from Australia and % attributable to OHB
2017/18	[c-i-c]	1.7 million	21.2 million (7.9%)	0.9 million	11.9 million (7.9%)
2016/17	[c-i-c]	1.8 million	30.3 million (6.1%)	0.8 million	18.0 million (4.3%)
2015/16	[c-i-c]	1.2 million	21.3 million (5.7%)	0.6 million	13.8 million (4.3%)

Source: Viterra.

An exemption from the requirements of Parts 3 to 6 of the Code for OHB would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation, enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports, and support lower supply chain costs and increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

Please refer to the response in section 2 of Attachment 1 (Port Lincoln).

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

The ACCC has previously stated that it considers that subclauses 5(3)(b) and 5(3)(g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as any upstream, downstream and related markets.⁷⁹

⁷⁹ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

The ACCC has stated that relevant upstream markets include the acquisition of grain, as well as other markets such as grain storage and handling services, and the transport of grain to port. Related markets include container grain exports and domestic demand for grain.⁸⁰ Viterra considers that container grain exports compete with bulk grain exports and are part of the same market. In addition, the supply of grain to domestic customers is a competitive constraint on bulk grain port terminal service providers. Viterra also considers that a related market is the global market for grain trading, as bulk wheat port terminal services are provided within this context.

Viterra considers that if an exemption were granted in relation to OHB, it would not have any adverse impact on competition in the market for bulk wheat port terminal services or any upstream, downstream or related market. A lower level of regulation could also enable Viterra to compete more effectively with its non-exempted competitors in the provision of port terminal services.

For further information on competition, please refer to the response in section 3 of Attachment 1 (Port Lincoln).

3.1 Competition in bulk wheat export operations

There are significant constraints on Viterra operating its port terminals in a manner that is detrimental to competition, namely:

- Viterra competes with port terminal providers elsewhere in Australia and around the world.
- Viterra is also subject to competition for supply to domestic customers. If it is more profitable to sell grain to domestic customers (as occurred from 2017/18), this will reduce the grain available for export through Viterra's port terminals.
- At Port Adelaide, there are several competitors providing port terminal services — namely, Semaphore and LINX — and containers are being used for grain export at Port Adelaide. GrainCorp's port terminals at Geelong and Portland, and Emerald's port terminal at Melbourne—and Riordan's port terminal at Geelong and Portland—also export grain grown in the region from which Port Adelaide terminals have traditionally sourced grain.
- There is excess capacity across the port terminals operating in Port Adelaide in peak and non-peak times.
- Barriers to entry in providing port terminal services are low.

Port terminals at Port Adelaide have traditionally sourced grain from a large grain growing region that encompasses the Yorke Peninsula and a large area surrounding Adelaide, which stretches to Doon in the west of Victoria, to Werrimull in north Victoria, and north-west to Port Pirie and Melrose in South Australia. Competition for grain grown in this area is not limited to the various port terminals run by various operators at Port Adelaide. It is often delivered to Wallaroo in South Australia and to port terminals in Victoria operated by GrainCorp, Emerald and Riordan.

⁸⁰ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

In addition, as set out in section 4 of the submission, grain can and will move to where it is most profitable—whether this is to be sold to domestic customers or exported from port terminals further away. For example, as set out in section 4 of the submission, small changes to supply chain costs (both within and outside South Australia) will divert grain from South Australian sites and ports to Victorian sites and ports.

In addition, traders can decide to transport grain stored in Viterra’s South Australian sites to Victoria for sale to domestic customers or for export. In 2018/19 to date, [c-i-c] has been transported from Viterra’s storage sites to Victoria. Viterra expects it is likely that Cargill and other storage providers have also seen similarly significant quantities of grain transported from their South Australia sites to Victoria for domestic sales and/or export.

At Port Adelaide itself, since 2015/16, LINX has operated port terminal services at Berth 29. [c-i-c] Viterra also competes with Semaphore, which exports bulk grain through Osborne Berth 1 at Port Adelaide. Semaphore recently announced plans to invest in a new 11,500 tonne capacity grain storage shed and shipping container development.

Viterra understands that approximately 500,000 tonnes of grain was exported from Berth 29 and Osborne in 2017/18, and approximately 765,000 tonnes of grain was exported from these terminals in 2016/17. This equates to 30% and 42% of the volume of grain exported from Viterra’s OHB terminal during 2016/17 and 2017/18 respectively, and amounts to 22% and 17% of the share of grain exports through Port Adelaide in 2016/17 and 2017/18 respectively.

Semaphore and LINX are therefore significant competitors.

Exporters are also able to, and do, use containers for exports from Port Adelaide from Bowmans, Two Wells and Port Adelaide. Viterra estimates that approximately 700,000 tonnes of grain are currently exported from South Australia in shipping containers – either bulk loaded or bagged (sometimes palletised) and packed into the container.⁸¹ In addition, grain grown in South Australia can be packed into containers for export from other states.

The barriers to entry for container exports are very low, and the BITRE forecasts that container trade in Australia will increase by between 172 and 205% across each of the five major Australian container ports to 2032-33. The highest growth is expected to be in Brisbane, followed by Adelaide, Melbourne and then Sydney.⁸²

With increasing on-farm storage in South Australia, containers provide potential for further competition and an avenue for possibly earning a higher return from on-farm storage in the case of high-quality grain.⁸³

Proposed new port terminal on the Yorke Peninsula

T-Ports has announced that it is looking to expand its operations to the Yorke Peninsula, with plans for a port at Wallaroo progressing through the development application process. T-Ports has stated that there “*are efficiencies and cost savings in building this port on the*

⁸¹ Based on ABS data for 2016/17.

⁸² BITRE, Containerised and non-containerised trade through Australian Ports to 2032-33, December 2014, pp 34-63.

⁸³ ESCOSA Report, p 45.

opposite side of the Spencer Gulf to Lucky Bay as [it] will utilise the same transshipment vessel” as Lucky Bay.⁸⁴

The development will include port and loading facilities, as well as bunker storage. The port will have silo facilities with approximately 32,000 tonnes of storage, while the bunkers will have storage capacity up to 250,000 tonnes of grain. The new port facility will be capable of loading up to, and including, Panamax size vessels, and is designed to handle up to 2 million tonnes of grain per annum. It is expected to have an annual grain throughput of up to 500,000 tonnes.⁸⁵

T-Ports has stated that construction on the port is likely to begin in 2020, with the site to be operational in 2021.⁸⁶ The Wallaroo facility is targeting 30% of grain (350,000 to 550,000 tonnes) in a grain growing region which is typically directed to Wallaroo and Port Adelaide.⁸⁷ The proposed new port at Wallaroo will also therefore be a significant competitor.

3.2 Excess capacity

Shipping capacity varies year to year as a result of logistics including scheduled shut-downs (for example, for maintenance), loading rates, working hours, and available stock. Over the past five years, OHB had shipping capacity of between 2.1 million and 2.6 million per annum, as shown in Table 3.2 below. In the bumper crop year (2016/17), it was able to increase its logistics capacity to 2.6 million. IHB (which also operates at Port Adelaide) had shipping capacity of between 1.26 million and 1.29 million per annum in the past two years, as shown in Table 3.2.

Table 3.2: Viterra’s shipping capacity at Port Adelaide (tonnes)

[c-i-c]

There is significant excess capacity at OHB and at Port Adelaide.

As set out above in section 1 of this attachment, the annual capacity at OHB significantly exceeded grain throughput at OHB for the past three years. Based on historic throughput at OHB, there was excess capacity available in both peak and non-peak periods. The only months in which there was not excess capacity for the past three years were February to May 2017 (which was a bumper crop), February 2018 and April 2018, as shown in Diagrams 3.1 to 3.6 below. This indicates excess capacity was available across non-peak and peak periods in 2015/16 and 2017/18.

If capacity at each of Viterra’s Port Adelaide terminals is accounted for, then—based on historic throughput at IHB and OHB— there was excess capacity in all months for 2015/16 and for all months except one in 2017/18. This indicates that in normal or low production years, there is significant excess capacity. For the unusually high production season 2016/17, there was still excess capacity in peak and non-peak periods. Although, there was no excess capacity in December 2016 and in January, March and May 2017, there was excess capacity in February and April 2017 (both within the peak period), and Viterra was also able to expand its operational capacity (e.g. by increasing operating hours) to meet the

⁸⁴ <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>

⁸⁵ <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>; ICAM / T-Ports, Information Presentation to the Copper Cost Council, <http://www.coppercoast.sa.gov.au/page.aspx?u=2272> (File 10 – April 2019 Agenda – Appendices 1-7).

⁸⁶ <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>

⁸⁷ ICAM / T-Ports, Information Presentation to the Copper Cost Council, <http://www.coppercoast.sa.gov.au/page.aspx?u=2272> (File 10 – April 2019 Agenda – Appendices 1-7).

unusually high demand for this season. Viterra expects that its competitors at Port Adelaide are similarly able to expand logistical capacity.

[c-i-c]

Since 2015/16, LINX and Semaphore have added further capacity at Port Adelaide. In 2016/17, LINX exported 420,000 tonnes of grain. However, Viterra understands that the potential capacity of its facility is approximately 1.5 million tonnes.⁸⁸ In 2015, Semaphore established a mobile grain loading facility providing capacity to load about 220,000 tonnes of grain, which was exceeded in 2016/17 with the export of more than 300,000 tonnes.⁸⁹

T-Ports' proposed new facility at Wallaroo will further increase excess capacity at Port Adelaide, as T-Ports intends to export more than 300,000 tonnes of grain that is typically sent to Wallaroo or Port Adelaide..

3.3 Barriers to entry

For information on barriers to entry, including in downstream and related markets, please refer to the response in section 3.3 of Attachment 1 (Port Lincoln).

3.4 Competition in upstream, downstream and related markets

For information on competition in upstream, downstream and related markets, please refer to the response in section 3.4 of Attachment 1 (Port Lincoln).

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

Please refer to section 4 of Attachment 1 (Port Lincoln).

In addition, as set out in section 3.1 above, Viterra is subject to competition at Port Adelaide. Given this, along with being competitively constrained by port terminal operators exporting grain from other grain growing regions around the world, the low barriers to entry or expansion for port terminal services, and the excess capacity at Port Adelaide, Viterra has a strong incentive to provide open access and reasonable terms in order to maximise throughput grain at its port terminals.

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

Please refer to section 5 of Attachment 1 (Port Lincoln).

In addition to this, Viterra notes that it has made a number of significant investments at Port Adelaide IHB and OHB in the five year period to 31 December 2018. In this period, it invested [c-i-c] at Port Adelaide, including:

- recladding the bulk loading facilities;
- upgrading the electrical switch rooms;

⁸⁸ AEGIC, Australia's grain supply chains – costs, risks and opportunities, November 2018, accessed at https://www.aegic.org.au/wp-content/uploads/2019/01/FULL-REPORT-Australias-grain-supply-chains-DIGITAL_.pdf, page 32.

⁸⁹ AEGIC, Australia's grain supply chains – costs, risks and opportunities, November 2018, accessed at https://www.aegic.org.au/wp-content/uploads/2019/01/FULL-REPORT-Australias-grain-supply-chains-DIGITAL_.pdf, page 32.

- replacing conveyor and elevator belts;
- concrete remedial works; and
- upgrading weighbridges and bulk loader compressors.

In order to compete with the Semaphore and LINX, and other new entrants in South Australia, Viterra will have an incentive to keep its costs down and make efficient investments in order to attract exporters to use its facility and maximise its return on investment. It is unlikely that applying the full scope of obligations in Parts 3 to 6 of the Code would improve Viterra's existing incentives to keep its costs down and invest. This is particularly the case given competition from Semaphore and LINX, and the low barriers to entry, as evidenced by recent and continuing entry.

6 Whether Viterra is an exporter or an associated entity of an exporter

Please refer to section 6 of Attachment 1 (Port Lincoln).

7 Whether there is already an exempt service provider within the grain catchment area

Semaphore's Berth 29 and LINX's Osborne port terminals are situated at Port Adelaide and export grain that is grown in the same region as grain exported from Viterra's Port Adelaide terminals. Each of Semaphore's Berth 29 and LINX's Osborne terminals are exempt from the application of Parts 3 to 6 of the Code. In addition, GrainCorp and Riordan have exemptions for their Geelong port terminals, Emerald has an exemption for its Melbourne port terminal and Riordan and GrainCorp are applying for an exemption at Portland. These port terminals also export grain sourced from the same regions from which Viterra's Port Adelaide terminals source grain.

Viterra also considers that traditional grain catchment areas are fluid and increasingly outdated as a conceptual framework, and that its port terminals face competition from port terminals across the world and from domestic sales. Therefore, its Port Adelaide terminals face competition from many exempted ports across Australia, not only those at Port Adelaide, Geelong and Melbourne.

Viterra's view is that it is also imperative to exempt its Port Adelaide terminals so that it can compete on a level playing field with these port terminals.

Attachment 4: Port Adelaide Inner Harbour

1 Introduction

IHB is a shallow water port at Port Adelaide. It is capable of handling vessels up to and including Panamax-sized vessels. The main commodities handled at IHB are grains and seeds. Further information about Port Adelaide and IHB can be found at <https://www.flindersports.com.au/ports-facilities/port-adelaide/>

Viterra asks that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to IHB.

In making its determination, the ACCC must have regard to the factors set out in clause 5(3) of the Code, which are considered below. For the reasons set out in regard to each of these factors, there is no need to continue to require that Viterra be subject to Parts 3 to 6 of the Code for IHB, and to continue to do so places Viterra at an unfair competitive disadvantage.

IHB had shipping capacity of 1.29 million tonnes in 2017/18, 1.26 million tonnes in 2016/17 and 863,500 tonnes in 2015/16. The amount of grain and wheat that has been exported from IHB is shown in Table 4.1 below. The amount of grain exported was significantly below the annual shipping capacity at IHB in each of these years. Further, as shown in Table 4.1 below, the wheat exported from IHB represented only 3.3% of wheat exported from Australia in 2017/18, and 3.2% and 2.5% in the two preceding years respectively.

Table 4.1: Grain and wheat exported from IHB (tonnes)

Year	Shipping capacity	Grain exported from IHB	Grain exported from Australia and % attributable to IHB	Wheat exported from IHB	Wheat exported from Australia and % attributable to IHB
2017/18	[c-i-c]	0.8 million	21.2 million (3.5%)	0.4 million	11.9 million (3.3%)
2016/17	[c-i-c]	0.9 million	30.3 million (2.9%)	0.6 million	18.0 million (3.2%)
2015/16	[c-i-c]	0.5 million	21.3 million (2.5%)	0.4 million	13.8 million (2.5%)

Source: Viterra. Note: Shipping capacity increased after 2015/16 because of infrastructure upgrades to address the “bumper harvest” in 2016/17

Viterra considers it highly unusual that a port terminal exporting such a small proportion of wheat from Australia is subject to full regulation, and indeed, to greater regulation than port terminals that export a higher proportion of wheat from Australia. An example of this is Kwinana in Western Australia (which has the capacity to handle the entirety of South Australia’s average export task by itself).

In addition, the grain exported from IHB represented only 3.5% of grain exported from Australia in 2017/18 and 2.9% in 2016/17. This is not materially higher than the proportion of grain exported from LINX’s and Semaphore’s combined operations at Port Adelaide (2.5% in 2017/18 and 2.4% in 2016/17), both of which are exempted from Parts 3 to 6 of the Code.

An exemption from the requirements of Parts 3 to 6 of the Code for IHB would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation, enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports, and support lower supply chain costs and increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

Please refer to the response in section 2 of Attachment 1 (Port Lincoln).

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

For further information on competition, please refer to the response in section 3 of Attachment 1 (Port Lincoln).

3.1 Competition in bulk wheat export operations

Please refer to the response in section 3.1 of Attachment 3 (OHB).

In regard to new entrants at Port Adelaide, after the entry of LINX, [c-i-c] Further, as set out in section 3.1 of Attachment 3 (OHB), Viterra understands that approximately 500,000 tonnes of grain was exported from Berth 29 and Osborne in 2017/18, and approximately 765,000 tonnes of grain was exported from these terminals in 2016/17. This equates to 67% and 86% of the volume of grain exported from Viterra's IHB terminal during 2016/17 and 2017/18 respectively.

3.2 Excess capacity

The annual throughput at IHB was significantly below its annual shipping capacity for each of the last three years. Based on historic throughput at IHB, there was excess capacity available in both peak and non-peak periods (see Diagrams 4.1 to 4.3 below). This indicates that, even in a bumper crop season (2016/17), there was still excess capacity in peak periods at IHB.

For further information about excess capacity at Port Adelaide, please refer to the response in section 3.2 of Attachment 3 (OHB).

[c-i-c]

3.3 Barriers to entry

For information on barriers to entry, including in downstream and related markets, please refer to the response in section 3.3 of Attachment 1 (Port Lincoln).

3.4 Competition in in upstream, downstream and related markets

For information on competition in upstream, downstream and related markets, please refer to the response in section 3.4 of Attachment 1 (Port Lincoln).

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

Please refer to the response in section 4 of Attachment 3 (OHB).

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

Please refer to the response in section 5 of Attachment 3 (OHB).

6 Whether Viterra is an exporter or an associated entity of an exporter

Please refer to section 6 of Attachment 1 (Port Lincoln).

7 Whether there is already an exempt service provider within the grain catchment area

Please refer to the response in section 7 of Attachment 3 (OHB).

Attachment 5: Wallaroo

1 Introduction

Wallaroo is located on the eastern side of Spencer Gulf, 158 kilometres north-west of Adelaide. The main cargoes handled at Wallaroo are grains and seeds. Further information about Wallaroo is at <https://www.flindersports.com.au/ports-facilities/wallaroo/>

Viterra asks that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to Wallaroo.

In making its determination, the ACCC must have regard to the factors set out in clause 5(3) of the Code, which are considered below. For the reasons set out in regard to each of these factors, there is no need to continue to require that Viterra be subject to Parts 3 to 6 of the Code for Wallaroo, and to continue to do so places Viterra at an unfair competitive disadvantage.

Wallaroo had a throughput grain capacity of approximately 760,000 tonnes in 2015/16 and 1.1 million tonnes in 2016/17 and 2017/18. The amount of grain and wheat that was exported from Wallaroo in this period is shown in Table 5.1 below. The amount of grain exported was significantly below the annual shipping capacity at Wallaroo in each of these years.

As shown in Table 5.1, the grain exported from Wallaroo represented only 2.6% of grain exported from Australia in each of the past three years. This is similar to the proportion of grain that is exported by Semaphore and LINX from their operations at Port Adelaide (2.5% combined in 2017/18 and 2.4% combined in 2015/16), both of which are exempted from Parts 3 to 6 of the Code. In addition, the wheat exported from Wallaroo represented only 3.6% of wheat exported from Australia in 2017/18, and less than 3% in the two preceding years.

Table 5.1: Shipping capacity, grain and wheat exported from Wallaroo (tonnes)

Year	Shipping capacity	Grain exported from Wallaroo	Grain exported from Australia and % attributable to Wallaroo	Wheat exported from Wallaroo	Wheat exported from Australia and % attributable to Wallaroo
2017/18	[c-i-c]	0.6 million	21.2 million (2.6%)	0.4 million	11.9 million (3.6%)
2016/17	[c-i-c]	0.8 million	30.3 million (2.6%)	0.5 million	18.0 million (2.7%)
2015/16	[c-i-c]	0.6 million	21.3 million (2.6%)	0.4 million	13.8 million (2.6%)

Source: Viterra. Note: Shipping capacity increased after 2015/16 because of infrastructure upgrades to address the “bumper harvest” in 2016/17

It is unusual that a port terminal exporting such a small proportion of grain (and wheat) from Australia is subject to full regulation, and to greater regulation than port terminals that export a similar or higher proportion of grain (and wheat) from Australia. An example of this is Kwinana in Western Australia (which has the capacity to handle the entirety of South Australia’s average export task by itself), and LINX’s and Semaphore’s combined operations at Port Adelaide.

An exemption from the requirements of Parts 3 to 6 of the Code for Wallaroo would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation, enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports, and support lower supply chain costs and

increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

Please refer to the response in section 2 of Attachment 1 (Port Lincoln).

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

The ACCC has previously stated that it considers that subclauses 5(3)(b) and 5(3)(g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as any upstream, downstream and related markets.⁹⁰

The ACCC has stated that relevant upstream markets include the acquisition of grain, as well as other markets such as grain storage and handling services, and the transport of grain to port. Related markets include container grain exports and domestic demand for grain.⁹¹ Viterra considers that container grain exports compete with bulk grain exports and are part of the same market. In addition, the supply of grain to domestic customers acts as a competitive constraint to bulk grain port terminal service providers. It also considers that a related market is the global market for grain trading, as bulk wheat port terminal services are provided within this context.

Viterra considers that if an exemption was granted to it in relation to Wallaroo, it would not have an adverse impact on competition in relation to port terminal services or in any upstream, downstream or related market. A lower level of regulation could also enable Viterra to compete more effectively with its non-exempted competitors in the provision of port terminal services.

3.1 For further information on competition, please refer to the response in section 3 of Attachment 1 (Port Lincoln). Competition in bulk wheat export operations

There are significant constraints on Viterra operating its port terminals in a manner that is detrimental to competition, namely:

- Viterra competes with port terminal providers elsewhere in Australia and around the world.
- Viterra is subject to competition for supply to domestic customers. If it is more profitable to sell grain to domestic customers (as occurred in 2017/18), this will reduce the grain available for export through Viterra's port terminals.
- The annual shipping capacity at Wallaroo exceeds annual throughput.
- LINX's and Semaphore's port terminals at Port Adelaide export grain grown in the region from which Wallaroo traditionally sourced grain.
- Lucky Bay is proposing a new port terminal at Wallaroo, which will increase the excess capacity at Wallaroo and impose further competitive constraints on Wallaroo.

⁹⁰ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

⁹¹ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

- Barriers to entry in relation to the provision of port terminal services are low.

Wallaroo has traditionally sourced grain from a region that extends from above Melrose down to the Yorke Peninsula.

Grain grown in the region from which Wallaroo has traditionally sourced grain is often delivered to Port Adelaide. Therefore, containers from Port Adelaide, and each of LINX and Semaphore at Port Adelaide, are strong competitors to Wallaroo. Further information in this regard is set out in section 3 of Attachment 1 (Port Lincoln).

In addition, as set out in section 4 of the submission, grain can and will move to where it is most profitable—whether this is to be sold to domestic customers or exported from port terminals further away. Growers from Yorke Peninsula deliver into rail heads such as Bowmans, Snowtown, Gladstone, Crystal Brook to access NSW- or Victorian-based pricing at harvest. In 2017/18, large quantities of grain from the Yorke Peninsula were transported to domestic customers in NSW.

T-Ports has also announced that it is looking to expand its operations to the Yorke Peninsula, with plans for a port at Wallaroo progressing through the development application process. T-Ports has stated that there *“are efficiencies and cost savings in building this port on the opposite side of the Spencer Gulf to Lucky Bay as [it] will utilise the same transhipment vessel”* as Lucky Bay.⁹²

The development will include port and loading facilities as well as bunker storage. The port will have silo facilities with approximately 32,000 tonnes of storage, while the bunkers will have storage capacity up to 250,000 tonnes of grain. The new port facility will be capable of loading up to, and including, panamax size vessels and is designed to handle up to 2 million tonnes of grain per annum. It is expected to have an annual grain throughput of up to 500,000 tonnes.⁹³

T-Ports has stated that construction on the port is likely to begin in 2020, with the site to be operational in 2021.⁹⁴ The Wallaroo facility is targeting 30% of grain (350,000 to 550,000 tonnes) typically directed to Wallaroo and Port Adelaide.⁹⁵

3.2 Excess Capacity

Shipping capacity varies year to year as a result of logistics including scheduled shut-downs (for example, for maintenance), loading rates, working hours and available stock. Over the past two years, Wallaroo had shipping capacity of approximately 1.1 million tonnes per annum, as shown in Table 5.2 below.

Table 5.2: Viterra’s shipping capacity at Wallaroo (tonnes)

[c-i-c]

There is a significant amount of excess capacity at Wallaroo.

⁹² <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>

⁹³ <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>; ICAM / T-Ports, Information Presentation to the Copper Cost Council, <http://www.coppercoast.sa.gov.au/page.aspx?u=2272> (File 10 – April 2019 Agenda – Appendices 1-7).

⁹⁴ <https://tports.com/t-ports-to-expand-to-yp-with-wallaroo-port/>

⁹⁵ ICAM / T-Ports, Information Presentation to the Copper Cost Council, <http://www.coppercoast.sa.gov.au/page.aspx?u=2272> (File 10 – April 2019 Agenda – Appendices 1-7).

As set out above in section 1, the annual shipping capacity significantly exceeded grain throughput at Wallaroo for the past three years.

Based on historic throughput at Wallaroo, there was excess capacity available in both peak and non-peak periods (see Diagrams 5.1 to 5.3 below). These diagrams indicate that, with the exception of a small number of months, there was excess capacity in peak and non-peak periods – even in the bumper crop 2016/17 year.

T-Ports' proposed new facility at Wallaroo will further increase excess capacity that is available to exporters.

[c-i-c]

3.3 Barriers to entry

Please see section 3.3 of Attachment 3 (OHB).

It is also evident that barriers to entry are low given the proposed project by T-Ports at Wallaroo discussed in section 3.1 above.

3.4 Competition in upstream, downstream and related markets

Please see section 3.4 of Attachment 1 (Port Lincoln).

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

Please refer to section 4 of Attachment 1 (Port Lincoln).

In addition, as set out in section 3.1 above, Viterra is subject to competition at Port Adelaide (which serves the same catchment zone as Wallaroo) and T-Ports has proposed a new port terminal at Wallaroo. Given this, along with being competitively constrained by port terminal operators exporting grain from other grain growing regions around the world, the low barriers to entering the market for the provision of port terminal services and the excess capacity at Wallaroo, Viterra has a strong incentive to provide open access and reasonable terms in order to maximise throughput of grain at its port terminals.

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

Please refer to section 5 of Attachment 1 (Port Lincoln).

In addition to this, Viterra notes that it has made a number of significant investments at Wallaroo in the five year period to 31 December 2018. In this period, it invested [c-i-c] at Wallaroo, including:

- recladding the bulk loading facilities;
- replacing the trestle legs on the bulk loading facility;
- replacing conveyor and elevator belts; and
- concrete remedial works.

In order to compete with the Semaphore and LINX, and a new terminal at Wallaroo, Viterra will have a continued incentive to keep its costs down and make efficient investments in order to attract exporters to use its facility and maximise its return on investment. It is unlikely that applying the full scope of obligations in Parts 3 to 6 of the Code would improve Viterra's existing incentives to keep its costs down and invest. This is particularly the case given competition from Semaphore and LINX, impending new competition at Wallaroo, and the low barriers to entry, as evidenced by recent and continuing entry.

6 Whether Viterra is an exporter or an associated entity of an exporter

Please refer to section 6 of Attachment 1 (Port Lincoln).

7 Whether there is already an exempt service provider within the grain catchment area

The port terminals at Port Adelaide export grain grown in the same region as grain exported from Wallaroo. As set out in section 3.1 of Attachment 3 (OHB), Semaphore and LINX have each been granted an exemption for their port terminals at Port Adelaide.

In addition, Viterra considers that traditional grain catchment areas are fluid and increasingly outdated, and that its port terminals face competition from port terminals across the world and from domestic sales. Therefore, Wallaroo faces competition from many exempted ports across Australia in addition to Semaphore and LINX.

Viterra's view is that it is imperative to also exempt its Wallaroo terminal so that it can compete on a level playing field with these port terminals.

Attachment 6: Port Giles

1 Introduction

Port Giles features a deep-water berth, situated on the eastern side of Yorke Peninsula, 217km by road and 35 nautical miles from Adelaide. The main cargoes handled at Port Giles are grains and seeds. Further information about Port Giles can be found at <https://www.flindersports.com.au/ports-facilities/port-giles/>

Viterra asks that the ACCC makes a determination under clause 5(2) of the Code to exempt Viterra from the application of Parts 3 to 6 of the Code in regard to Port Giles.

In making its determination, the ACCC must have regard to the factors set out in clause 5(3) of the Code, which are considered below. For the reasons set out in regard to each of these factors, there is no need to continue to require that Viterra be subject to Parts 3 to 6 of the Code for Port Giles and to continue to do so places Viterra at an unfair competitive disadvantage.

The shipping capacity, and the amount of grain and wheat has been exported from Port Giles, is shown in Table 6.1 below. Port Giles had a shipping capacity of approximately 1 million tonnes in 2015/16 and approximately 1.6 million tonnes in 2016/17 and 2017/18. The annual shipping capacity at Port Giles significantly exceeded annual throughput for each of these years. Further, as shown, the wheat exported from Port Giles represented only 4.1% of wheat exported from Australia in 2017/18, and less than 3% in the two preceding years.

Table 6.1: Grain and wheat exported from Port Giles (tonnes)

Year	Shipping capacity	Grain exported from Port Giles	Grain exported from Australia and % attributable to Port Giles	Wheat exported from Port Giles	Wheat exported from Australia and % attributable to Port Giles
2017/18	[c-i-c]	0.7 million	21.2 million (3.4%)	0.5 million	11.9 million (4.1%)
2016/17	[c-i-c]	0.9 million	30.3 million (2.9%)	0.5 million	18.0 million (2.9%)
2015/16	[c-i-c]	0.6 million	21.3 million (2.7%)	0.4 million	13.8 million (2.7%)

Source: Viterra. Note: Shipping capacity increased after 2015/16 because of infrastructure upgrades to address the “bumper harvest” in 2016/17

It is unusual that a port terminal exporting such a small proportion of wheat from Australia is subject to full regulation, and to greater regulation than port terminals that export a higher proportion of wheat from Australia, such as Kwinana (which has the capacity to handle the entirety of South Australia’s average export task by itself).

In addition, the grain exported from Port Giles represented only 3.4% of grain exported from Australia in 2017/18 and 2.9% in 2016/17. This is not materially higher than the proportion of grain exported from LINX’s and Semaphore’s combined operations at Port Adelaide (2.5% in 2017/18 and 2.4% in 2016/17), both of which are exempted from Parts 3 to 6 of the Code.

An exemption from the requirements of Parts 3 to 6 of the Code for Port Giles would place Viterra on a level playing field with competing port terminal operators who do not operate under the same level of regulation, enable Viterra to provide more competitive and flexible services to exporters for bulk grain exports, and support lower supply chain costs and increased investment by allowing Viterra to operate its port terminal with more flexibility and efficiency.

2 The legitimate business interests of the port terminal service provider

Please refer to the response in section 2 of Attachment 1 (Port Lincoln).

3 The public interest, including the public interest in having competition in markets; the promotion of competition in upstream and downstream markets

The ACCC has previously stated that it considers that subclauses 5(3)(b) and 5(3)(g) of the Code relate to the promotion of competition in markets, including the market for bulk wheat port terminal services as well as any upstream, downstream and related markets.⁹⁶

The ACCC has stated that relevant upstream markets include the acquisition of grain, as well as other markets such as grain storage and handling services, and the transport of grain to port. Related markets include container grain exports and domestic demand for grain.⁹⁷ Viterra considers that container grain exports compete with bulk grain exports and are part of the same market. In addition, the supply of grain to domestic customers acts as a competitive constraint to bulk grain port terminal service providers. It also considers that a related market is the global market for grain trading, as bulk wheat port terminal services are provided within this context.

Viterra considers that if an exemption were granted to it in relation to Port Giles, it would not have an adverse impact on competition in any market for bulk wheat port terminal services or in any upstream, downstream or related markets. A lower level of regulation could also enable Viterra to compete more effectively with its non-exempted competitors in the provision of port terminal services.

3.1 For further information on competition, please refer to the response in section 3 of Attachment 1 (Port Lincoln). Competition in bulk wheat export operations

Port Giles competes for the same grain as port terminal operators at Port Adelaide. This is evident by the fact that, as explained in section 3 of Attachment 3, since the entry of LINX, [c-i-c].

Further, as explained in our submission, Viterra competes with port terminal providers elsewhere in Australia and the world.

Viterra is also subject to competition for supply to domestic customers. If it is more profitable to sell grain to domestic customers (as occurred since 2017/18), this will reduce the grain available for export through Viterra's port terminals.

3.2 Excess capacity

Shipping capacity varies year to year as a result of logistics including scheduled shut-downs (e.g. for maintenance), loading rates, working hours and available stock.

Over the past two years, Wallaroo had shipping capacity of approximately 1.6 million tonnes per annum, as shown in Table 6.2 below.

Table 6.2: Viterra's shipping capacity at Port Giles (tonnes)

[c-i-c]

⁹⁶ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

⁹⁷ ACCC Final Position – GrainCorp Operations Limited and Quattro Ports at Port Kembla, 1 October 2015, p 11.

The annual shipping capacity significantly exceeded grain throughput at Port Giles for the past three years. In addition, based on historic throughput at Port Giles, there was excess capacity available in each month for the past three years during both peak and non-peak periods. The only months in which there was no available excess capacity were April 2016, February 2017, April 2017 and June 2018, as shown in Diagrams 6.1 to 6.3 below.

T-Ports' proposed new facility at Wallaroo is likely to further increase the excess capacity available for exporters.

[c-i-c]

3.3 Barriers to entry

Please see section 3.3 of Attachment 1 (Port Lincoln).

3.4 Competition in upstream, downstream and related markets

Please see section 3.4 of Attachment 1 (Port Lincoln).

4 The interests of exporters who may require access to port terminal services; and the likelihood that exporters of bulk wheat will have fair and transparent access to port terminal services.

Please refer to section 4 of Attachment 1 (Port Lincoln).

5 The promotion of the economically efficient operation and use of the port terminal facility and the promotion of efficient investment in port terminal facilities

Please refer to section 5 of Attachment 5 (Wallaroo).

In addition to this, Viterra notes that it has made a number of significant investments at Port Giles in the five year period to 31 December 2018. In this period, it invested [c-i-c] at Port Giles, including:

- recladding the bulk loading facilities;
- installing a 40 metre weighbridge;
- silo roof sealing; replacing conveyor and elevator belts; and
- electrical switch room upgrades.

6 Whether Viterra is an exporter or an associated entity of an exporter

Please refer to section 6 of Attachment 1 (Port Lincoln).

7 Whether there is already an exempt service provider within the grain catchment area

As set out above, Port Giles competes for the same grain as Port Adelaide and, therefore, exempted port terminals LINX and Semaphore. However, Viterra considers that traditional grain catchment areas are fluid and increasingly outdated, and that its port terminals face competition from port terminals across the world and from domestic sales.

As such, Port Giles faces competition from many exempted ports across Australia.