



# Australian Grain Exporters Association

## Submission to the Public Consultation in relation to Viterra's proposed Port Terminal Services Access Undertaking

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### Introduction

The Australian Grain Exporters Association (AGEA) was formed in 1980 and is the representative body for exporters of Australian grain. AGEA represents its members to facilitate an efficient and effective export industry and support Australian grains and oilseeds in both domestic and export markets. Members are active in grain accumulation, storage, handling and processing, as well as risk management and hedging strategies involving commodity futures, foreign currency and counterparty risk. AGEA member companies also have substantial investments in non-grain sectors of the rural economy, such as meat processing and intensive livestock production, oilseed crushing, fertiliser distribution, ocean freight ownership and bulk and container shipping.<sup>1</sup>

AGEA's submission to the ACCC public consultation on the proposed Viterra port terminal services access undertakings is structured to follow the broad issues raised by ACCC in its issues paper. AGEA's focus is on the principles that underpin the port terminal services and port loading protocols that will facilitate an efficient and competitive market. Individual members may have specific issues or issues of a commercial nature that they wish to raise directly with the ACCC.

The port access undertakings have assisted to facilitate a more level playing field through helping to establish more reasonable terms from the bulk handling companies and developing benchmarks against which bulk handling companies are accountable. The obligation on bulk handling companies to negotiate rather than impose terms has led to the development of some improved flexibility in the provision and pricing of port terminal services. However, there is still some improvements to be made to establish an efficient and competitive marketplace that maximises the opportunity for bulk wheat exports from Australia.

The objective of port access arrangements is to promote an efficient supply chain. The undertakings should be a tool to ensure that there are no processes or practices in place that would hinder achievement of this objective. Specific outcomes that are yet to be realised or require improvement include:

- A transparent shipping stem
- Greater flexibility including tradeable shipping slots
- Consistency in key terms and conditions and flexibility across the various port terminal operators
- Improved information around capacity and stocks at port

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<sup>1</sup> Viterra is a member of AGEA. The Viterra representative abstained from AGEA discussion in relation to the Viterra Undertakings.

## AGEA response to ACCC issues for comment

### **Capacity**

AGEA believes that capacity should be published as this is part of the benchmark for the start of negotiations around access, services, pricing and performance.

The inclusion of a definition of capacity in the proposed undertaking would assist to increase clarity and certainty for access seekers. It is AGEA's view that capacity should mean the quantity that can be loaded in any given period for any given terminal. Where capacity may be split between Export Select and Export Standard, then the drivers impacting capacity for each of these categories should be identified.

AGEA would like to see capacity and forward projections for Export Select and Export Standard stated. This could be updated and revised as required.

AGEA would like to see the Capacity Table published with the additions of:

- Capacity offered by Export Select and Export Standard
- Remaining capacity
- Additional capacity potential which might be a range and subject to change/revision etc

It has been the experience of AGEA members that Export Standard capacity has generally been converted to Export Select capacity, causing exporters to incur the premium associated with Export Select and making it difficult to get a true reflection of capacity and performance against Export Standard capacity.

AGEA believes that the most efficient method in regard to advice about additional capacity would be to update the Capacity Table on the website and then send an email alert to customers that the table has been updated. This will allow those who are interested to seek out the information, but will also ensure that any party who may not be on the Viterra customer list (e.g. may not have been an active participant in that season to date, may not currently hold a booking or a new player) to ensure they have access to the latest information.

### **Port loading protocols**

AGEA supports the "first come, first served" approach, however, AGEA does not believe that the port loading protocols have been fully tested yet in terms of the ability to efficiently allocate port loading capacity due to the small crop in 2009. This is likely to be tested in current season. Individual exporters may have incurred issues which they may choose to raise directly with the Commission.

Similarly, it is hard to be definitive on whether the 'first come, first served' approach to allocation of capacity is sufficient to efficiently allocate resources in a year where demand exceeds supply as this has not yet been tested. In principle, AGEA believes that the 'first come, first served' approach can work efficiently, however, the effectiveness could be impacted by the behaviour of the bulk handling company in relation to their own trading division (this has not been evident to date) and/or the interaction of inland inefficiencies/capacity allocation and port capacity allocation. The "first come, first served" approach could be improved by the inclusion of principles such as trading of slots which would further enhance the flexibility for exporters.

AGEA supports the principle of moving to tradeable shipping slots, but also recognises that the structure and rules relating to this need to be developed and tested to avoid creating other inefficiencies such as that which might arise from speculative behaviour. AGEA would see it as appropriate that the structure of tradeable slots is developed via consultation between the bulk handling companies and Australian wheat exporters.

The current approach does allow for the potential for over-booking and there were concerns raised about this in the first year the undertakings operated. As noted above it tradeable slots was introduced, there would need to be a review of the current arrangements to minimise the risk of speculative behaviour. AGEA members report that, more recently, Viterra has queried them where bookings have varied significantly from previous activity which suggests that Viterra is exercising diligence in managing bookings.

In regard to the effectiveness of port loading protocols in managing excess vessel bookings and cancellation of bookings, AGEA members have identified some issues in relation to the management of Export Select and Export Standard capacity. When booking Export Select capacity an exporter is passing the responsibility for meeting the requirements of that shipment to Viterra and has an expectation that this will be performed to avoid any delays or costs for the exporter. However, there is currently little transparency or means of the exporter knowing the capacity allocated to Export Standard and the impact this may have on Viterra's ability to meet Export Select customer requirements. Some members report that they have had examples of where the performance against Export Select booking has been adversely impacted by acceptance of Export Standard bookings but that Viterra has not accepted responsibility for problems resulting in non performance. This would be assisted if Viterra provided DES/DEM on vessels booked under Export Select.

### **Publication of key port information**

The additional information included in the proposed undertakings will assist exporters.

### **Approved third party storage**

AGEA believes that the port terminal services should not discriminate between Australian wheat exporters based on where grain was stored (i.e. whether it was stored in the bulk handling company's up-country storage and handling network, a third party storage network or on-farm) or how it was transported to the BHCs' facilities.

The scope of the Undertakings is around port terminal services and thus, the implementation should be around managing risks at port not extending that control up country. All grain should be tested and assessed on arrival port and then managed according to its suitability and compliance.

The current third party storage arrangements as part of the Viterra's undertakings could be improved to reduce any potential discrimination through:

- Publishing standards for third party storage and these should not be greater than the requirements placed on the bulk handling company's own storages
- The auditing and accreditation of third party storages being undertaken by an independent party not the bulk handling company
- Ensuring that grain being placed at port for shipment from third party storages is not be hindered or discriminated against in operational terms such as operating hours etc (AGEA members report that execution of shipments under Export Standard with grain from non bulk handling company storages has proved very difficult)
- Removing the differentials in pricing between grain from third party storages and bulk handling company storage (the additional charges imposed on grain third party storages should be justified as currently it is not possible for exporters to know if the price differential between approved and non approved third party storage accurately reflect the additional costs of managing risks associated with receiving wheat from non-approved third party sites?)

### **Port loading protocols variation process**

In general, AGEA understands that access seekers are relatively satisfied with the consultation process carried out by Viterra prior to varying its port terminal protocols, although AGEA members reported limited consultation in regard to the 2010 variation process.

The flexible approach to the port loading protocols (i.e. allowing Viterra to vary the port loading protocols without seeking formal approval from the ACCC) has not caused any issues for Australian wheat exporters. AGEA supports this flexibility as part of the framework. AGEA and exporters cannot speak for any issues that Viterra may have incurred. Individual exporters may have incurred issues which they may choose to raise directly with the Commission.

### **Approach to pricing**

The measures have provided a framework which has allowed access seekers to commercially negotiate with Viterra within an established framework. Individual members may have issues that they wish to raise directly with the Commission based on their experience. In relation to arbitration around the Undertakings, this has not been tested as far as AGEA is aware and thus, AGEA cannot make any comment.

### **Substance of the Indicative Access Agreement**

The approach of publishing standard terms earlier has been helpful to exporters. There does appear to be some lack of clarity in relation to whether the standard terms can be varied. AGEA believes it would assist if ACCC provided clear guidelines on the ability to vary standard terms to deliver a better outcome than standard terms to individual access users and that such terms should not be less advantageous than those applying to the Viterra trading division.

### **Dispute resolution**

As noted above, the dispute resolution provisions in the 2009 Undertaking have not been tested to AGEA's knowledge. In principle, no issues are expected with the dispute resolution process.

### **Term of the undertaking**

AGEA has no issues with the proposed term of the Proposed Undertaking as put forward by Viterra.