

Our Ref: 44389
Your Ref:
Contact Officer: Kerry Leigh Taylor
Contact Phone: (03) 9220 6922



**Australian
Competition &
Consumer
Commission**

5 April 2011

Mr Damian Fitzgerald
Director Legal
Viterra Operations Limited
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By email: Damian.Fitzgerald@viterra.com

cc Wayne Leach
Mallesons Stephen Jaques

By email: wayne.leach@mallesons.com

Dear Mr Fitzgerald

**Request for information – Allocation of shipping capacity at Viterra Operations’
South Australian port terminals**

I refer to the teleconference between the Australian Competition and Consumer Commission (ACCC) and Viterra representatives on Thursday, 31 March 2011 regarding bookings made pursuant to the 2009 undertaking for execution after 30 September 2011 (**2012 Bookings**).

As discussed during that teleconference, the ACCC is examining the first in, first served capacity allocation model included in the proposed 2011 undertaking. The ACCC notes that the proposed model is similar to the capacity allocation model currently in operation under the 2009 undertaking.

In order to assess whether the first in, first served capacity allocation method is appropriate, the ACCC has issued notices pursuant to s.44ZZBCA(1) of the *Competition and Consumer Act 2010* (CCA) to exporters that currently, and have previously appeared on the Viterra shipping stem. The purpose of the s.44ZZBCA(1) notices is to gather information and views from stakeholders as to the operation of the first in first served model operated by Viterra Operations Limited to inform the ACCC’s assessment of the proposed 2011 undertaking. Please note that as the first in first served model applies not only to bulk wheat, the ACCC is seeking information regarding all bulk grains exported through Viterra Operations Limited port terminals.

In addition, the ACCC seeks further information from Viterra Operations Limited in relation to this matter. Accordingly, please find attached at schedule 1 a notice pursuant s.44ZZBCA(1) of the CCA. For information, a copy of s.44ZZBCZ is also attached at schedule 2.


Please note that a copy of this notice will be published on the ACCC's website. Unless information provided in response to this notice is marked confidential, it will be made available to any organisation or person on request. The information that is confidential should be clearly identified.

I understand that the 2012 bookings have been placed on the Viterra shipping stem with a pending status and that Viterra Operations Limited are waiting on feedback from the ACCC before proceeding. The ACCC is considering this issue as a matter of urgency and therefore requests that a response to the notice be provided in writing to transport@accc.gov.au by 5:00pm, Friday 8 April 2011.

If you have any questions in relation to the contents of either this letter, or the attached notice, please contact Ms Taylor on ph: (03) 9290 6922.

Thank you for your co-operation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony Wing', followed by a horizontal line.

Anthony Wing
General Manager
Transport & General Prices Oversight Branch

Schedule 1 – Viterra Operations Limited

INFORMATION REQUESTED PURSUANT TO S.44ZZBCA

1. In the view of Viterra Operations Limited, has the ‘first in, first served’ capacity allocation system operated by Viterra Operations efficiently allocated capacity for the period 1 January 2012 to 30 April 2012? Please provide the reason(s) for your view.
2. What alternative methods for efficiently allocating shipping capacity might be appropriate:
 - For the period 1 January 2012 to 30 April 2012?
 - For the period 1 October 2011 to 30 September 2012?
 - For the remainder of the period covered by the proposed 2011 undertaking (ie to 30 September 2012)?
3. What date was the first booking (or set of bookings if the exporter nominated more than one shipping slot) received by Viterra Operations for shipping slots after 30 September 2010? Which exporter made those bookings? What was the total tonnage nominated? On what date was the first booking (or set of bookings) accepted onto the shipping stem for execution after 30 September 2010?
4. What was the date of the second booking (or set of bookings) received by Viterra Operations for shipping slots after 1 October 2010? Which exporter made those bookings? What was the total tonnage nominated? On what date was the second booking (or set of bookings) accepted onto the shipping stem for execution after 1 October 2010?
5. In relation to shipping slots for the period 1 October 2010 to 30 September 2011, please provide the following details (in table form) of any nominations that were not accepted by Viterra Operations Limited:
 - date of the nomination
 - shipping slot nominated
 - exporter
 - tonnage
 - the reason for refusal
6. In relation to accepted bookings for shipping slots for the period 1 October 2010 to the date of this notice, please provide the following details of any cancellations by Viterra Operations Limited including:
 - shipping slot booked (and accepted)
 - exporter
 - tonnage
 - date of cancellation
 - reason booking was cancelled
7. In the event that Viterra Operations Limited cancelled an accepted booking for shipping slots for the period 1 October 2010 to the date of this notice, was the

shipping capacity subject of the cancellation subsequently utilised by another exporter (replacement booking)? If so, please provide the following details:

- date bookings was cancelled by Viterro Operations Limited
- date the replacement booking was nominated
- date the replacement booking was accepted
- exporter
- tonnage

8. In relation to accepted bookings for shipping slots for the period 1 October 2010 to the date of this notice, please provide the following details of any cancellations by Exporters:

- shipping slot booked (and accepted)
- exporter
- tonnage
- date of cancellation
- reason booking was cancelled (as far as Viterro Operations is aware)

9. In the event that an Exporter cancelled an accepted booking for shipping slots for the period 1 October 2010 to the date of this notice, was the shipping capacity subject of the cancellation subsequently utilised by another Exporter (replacement booking)? If so, please provide the following details:

- date bookings was cancelled by the Exporter
- date the replacement booking was nominated
- date the replacement booking was accepted
- exporter
- tonnage

10. Please provide a copy of the complete shipping stem from 1 October 2010 to the date of this notice.

Schedule 2

44ZZBCA Commission may request information

- (1) The Commission may give a person a written notice requesting the person give to the Commission, within a specified period, information of a kind specified in the notice that the Commission considers may be relevant to making a decision on an access undertaking application or an access code application.
- (2) The Commission must:
 - (a) give a copy of the notice to:
 - (i) in the case of an access undertaking application—the provider of the service (unless the provider is the person); and
 - (ii) in the case of an access code application—the industry body that gave the application to the Commission (unless the body is the person); and
 - (b) publish, by electronic or other means, the notice.
- (3) In making a determination, the Commission:
 - (a) must have regard to any information given in compliance with a notice under subsection (1) within the specified period; and
 - (b) may disregard any information of the kind specified in the notice that is given after the specified period has ended.