

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 Limited  
124-130 South Terrace  
Adelaide SA 5000

GPO Box 520  
Melbourne Vic 3001

Level 35, The Tower  
360 Elizabeth Street  
Melbourne Vic 3000

tel: (03) 9290 1800  
fax: (03) 9663 3699

[www.accc.gov.au](http://www.accc.gov.au)

**By email: [Damian.Fitzgerald@viterra.com](mailto:Damian.Fitzgerald@viterra.com)**

cc Wayne Leach  
Mallesons Stephen Jaques

**By email: [wayne.leach@mallesons.com](mailto: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 considering 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 section 44ZZBCA(1) of the *Competition and Consumer Act 2010 (CCA)* to exporters that currently, and have previously appeared on the Viterra shipping stem. The relevant notice for Viterra Limited is attached at schedule 1. The purpose of the section 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.

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

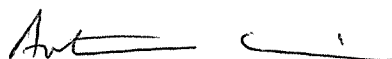
should be clearly identified. For information, a copy of section 44ZZBCA is attached at schedule 2.

I understand that the 2012 bookings have been placed on the Viterra shipping stem with a pending status. The ACCC is considering this issue as a matter of urgency and therefore requests that the response to this notice be provided in writing to [transport@accc.gov.au](mailto: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 notices, 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 Limited**

### **INFORMATION REQUESTED PURSUANT TO S.44ZZBCA**

1. In relation to bookings made for capacity on the Viterra Operations Limited shipping stem (shipping stem) by Viterra Limited for execution after 1 October 2011, please provide the following information in table format:
  - date nomination was made
  - tonnage nominated
  - commodity
  - port terminal
  - shipping slot nominated
2. In relation to bookings made for capacity on the shipping stem by Viterra Limited for execution during the period 1 October 2010 to 30 September 2011, please provide the following information in table format:
  - date nomination was made
  - tonnage nominated
  - commodity
  - port terminal
  - shipping slot nominated
3. Please provide details of any nominations from Viterra Limited for execution during the period 1 October 2010 to 30 September 2011 that were not accepted in accordance with clause 3 of the Port Loading Protocols ? Please provide the reason(s) provided to Viterra Limited why the nomination was not accepted.
4. In relation to the response to (2) above, please provide details of the shipments of bulk grain made against those bookings to date, including but not limited to:
  - allocated load date (pursuant to cl 5 of the Port Loading Protocols)
  - date ship was actually loaded
  - tonnage loaded
  - commodity
5. For any bookings for execution between 1 October 2010 and the date of this notice made by Viterra Limited, that were not executed in accordance with the booking, please provide the following details:
  - shipping slot
  - tonnage
  - commodity
  - port terminal
  - reason(s) why, as far as Viterra Limited is aware, the booking was not executed in accordance with the booking
  - any cancellations of booking by Viterra Limited, and the date on which the cancellation was notified to Viterra Operations Limited
6. Please provide details of any business planning or forecasting of shipping requirements carried out by Viterra Limited prior to Viterra Limited

submitting nominations on 8 or 9 March 2011? Has this differed in 2011 from any processes carried out in previous years? If so, please provide details.

7. What prompted Viterra Limited to make the 2012 bookings? In the absence of the GlenCore nominations received on 8 March 2011, would Viterra Limited have made the bookings referred to in question 1?
8. What has the effect of the bookings made between 8 March 2011 and 31 March 2011 on Viterra Limited's future business planning for the period 1 October 2011 to 30 September 2012?
9. Has Viterra Limited entered into any contracts or arrangements for the sale of grains in connection with nominations for bookings for execution after 30 September 2011? If so, when were the contracts or arrangements finalised?
10. Please provide a copy of any submission made by Viterra Limited to Viterra Operations in relation to Viterra Operations' correspondence of 16 March 2011, for the purpose of applying clause 12 of the Port Loading Protocols.
11. In the view of Viterra 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.
12. 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)?

## **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.