

Our Ref: 44389
Contact Officer: Kerry Leigh Taylor
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**Australian
Competition &
Consumer
Commission**

5 April 2011

Mr James Maw
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By Email: James.Maw@glencoregrain.com.au

Dear Mr Maw

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

As you will be aware, the Australian Competition and Consumer Commission (ACCC) is currently considering an access undertaking in relation to the provision of port terminal services (**proposed 2011 undertaking**) by Viterra Operations Limited (**Viterra**). The proposed 2011 undertaking, if accepted by the ACCC is intended to replace the existing 2009 undertaking which is due to expire on 30 September 2011.

The ACCC is required to assess the proposed 2011 undertaking pursuant to Part IIIA of the *Competition and Consumer Act 2010* (CCA). In assessing the proposed 2011 undertaking, the ACCC is considering the manner in which capacity of Viterra operated infrastructure is allocated to access seekers. 'Capacity' in this instance refers to the ability to load vessels with bulk grain through a port terminal.

Currently, capacity is allocated pursuant to the port loading protocols that are contained in the 2009 undertaking on a 'first in, first served' model. Viterra has adopted the same model in its proposed 2011 undertaking. The 2009 undertaking and the proposed 2011 undertaking relate only to the provision of port terminal services for the export of bulk wheat, however the port loading protocols apply to the allocation of capacity for all bulk grains. The ACCC is considering the operation of the first in, first served model operated by Viterra and whether it is appropriate going forward. Consequently, in assessing the proposed 2011 undertaking, the ACCC is also considering the transitional arrangements relating to bookings made pursuant to the 2009 undertaking for execution after 30 September 2011 (**the 2012 bookings**).

In order to determine if the transitional arrangements and capacity allocation model as contained in the proposed 2011 undertaking are appropriate, the ACCC is seeking information from participants in the wheat export industry.

Accordingly, please find attached at schedule 1 a notice pursuant to section 44ZZBCA(1) of the CCA requesting information. Please note that a copy of this notice will be provided to Viterra and placed on the ACCC's website however any responses will not be published.

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. Section 44ZZBCA is attached for information at schedule 2.

The ACCC notes that the 2012 bookings have been placed on the Viterro shipping stem with a pending status. The ACCC intends to consider Viterro's proposed approach as a matter of urgency. In order for the ACCC to do so, could you please provide a response in writing to transport@accc.gov.au by 5:00pm on 7 April 2011. Alternatively, responses can be faxed to (03) 9663 3699. Please make any faxed responses for the attention of Ms Kerry Leigh Taylor.

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 or alternatively, myself on ph: (03) 9290 1804.

Thank you for your co-operation.

Yours sincerely

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

Anthony Wing
General Manager
Transport & General Prices Oversight Branch

Schedule 1

INFORMATION REQUESTED PURSUANT TO S.44ZZBCA(1)

Q1. Based on information that appears on the Viterra Operations Limited (**Viterra**) shipping stem, it appears that on 8 March 2011, Glencore Grain Pty Ltd (**Glencore**) nominated for shipping slots during January, February, March and April 2012 for a total of 500,000 tonnes (**8 March bookings**). On 11 March 2011, Glencore nominated for shipping slots between October 2011 and May 2012 for a total of 300,000 tonnes (**11 March bookings**).

a) Prior to making the 8 March bookings, did Glencore communicate with Viterra regarding bookings for execution after 30 September 2011. If so, please provide details as to the nature of those communications.

b) What prompted Glencore to make the:

- 8 March bookings?
- 11 March bookings?

c) Please provide details of any business planning or forecasting of shipping requirements carried out by Glencore prior to submitting the 8 March bookings. Has this differed in 2011 from any processes carried out in previous years? If so, please provide details.

d) On or about 16 March 2011, Viterra requested information from exporters who nominated bookings for execution after 1 October 2011. If Glencore provided information in response to this request, please provide a copy to the ACCC.

Q2. Between 8 March 2011 and 31 March 2011, approximately 6.8 million tonnes of grain has been nominated for shipping after 1 October 2011 on the Viterra shipping stem. The majority of these bookings are for the period 1 January 2012 to 30 April 2012. Please estimate what capacity, which port and what shipping slots Glencore would normally have nominated for if these bookings did not appear on the Viterra shipping stem.

Q3. Did Glencore export bulk grain through Viterra operated South Australian Terminals during the period 1 January 2011 to the date of this notice?

a) If so, please provide the following details in table format:

- date booked
- tonnage nominated
- shipping slots nominated
- port nominated
- what commodity

Q4. What has been the effect of the bookings made after Glencore's 8 March bookings on business planning for the period 1 October 2011 to 30 September 2012 ?

Q5. Has the 'first in, first served' capacity allocation system operated by Viterro efficiently allocated capacity for the period 1 January 2012 to 30 April 2012? Please provide the reason(s) for your view.

Q6. What alternative methods for efficiently allocating shipping capacity might be appropriate:

- a) for the period 1 January 2012 to 30 April 2012?
- b) for the period 1 October 2011 to 30 September 2012?
- c) for the remainder of the period covered by the proposed 2011 undertaking (to 30 September 2014)?

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.