Grain Producers SA

21 August 2015

General Manager
Infrastructure & Transport – Access & Pricing Branch
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Dear Sir/Madam,

Re: ACCC draft decision re Glencore/Viterra application for Long Term Agreements

Thank you for the opportunity to comment on the ACCC's draft decision re Glencore/Viterra's application seeking a change in port capacity allocation system from Auction to Long-term Agreements (LTA's). A key and hopefully ongoing benefit from this ACCC review is the materially increased dialogue between Grain Producers SA (GPSA) and Glencore/Viterra.

GPSA appreciates the draft decision reflects the flavour of GPSA's previous submission and the requests within that to continue with the current port capacity allocation system until a system is proposed that is at least as efficient and equitable to all parties involved and offers definitive benefits to the grain producers of South Australia. The value of the current system to farmers has been demonstrated a number of times and most recently in a letter to the GPSA Board from Glencore/Viterra on 6th August 2015 (Appendix 1) page 1, paragraph 5, *"The financial impacts of the auction last year saw export customers pay higher prices to secure grain for the auction slots rather than lose entitlement to rebates."* GPSA understands this risk was borne by the grain exporters and this demonstrates how a commercially sensitive market works where risk was taken on by the grain traders rather than the farmers.

However, it is noted by GPSA that there is a strong desire by Glencore/Viterra and grain traders generally to move away from the auction system to an LTA system. ACCC Draft decision, page 2: "*The ACCC notes that the concept of LTAs has broad support amongst exporter stakeholders.*" GPSA does not intend to stand in the way of this if its key concerns can be alleviated and specific requests met. GPSA's key concerns and requests with recommended remedies are:

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1. Equitable access and execution

The commercial "playing field" needs to be level. In particular it is critical that the penalty for those that book capacity and fail to execute is even handed. This was a key strength of the auction allocation system, the incentive to execute and disincentive not to execute on acquired capacity. This was accomplished through the pooling of Auction fees paid being rebated back to those that did execute and not to those who failed to execute. ACCC Draft decision, page 28: *"The ACCC also notes the GPSA argument relating to the rebating of the auction premium to all executors of grain, and that this system means that the auction system keeps Glencore incentivised to execute capacity it holds. The ACCC agrees with GPSA that the rebate system provides an incentive on Glencore to not obtain excess capacity than it actually desires, as any rebate not received will go to Glencore's competitors. In the context of the vertical integration present between Viterra and Glencore, the ACCC considers that this is a desirable mechanism. This is in contrast to the LTA proposal where Glencore, if it does not execute capacity, will only pay a penalty to Viterra, essentially constituting a transfer of funds between two arms of the same business."* In any new port capacity allocation system there must be a mechanism that rewards and penalises all parties equally for executing performance against booked capacity. We suggest the LTA allocation charges be pooled and rebated to those that execute. Considering the LTA allocation charges are set the same for all participants the issues around rebating the fees under the auction system should not occur.

2. Long Term and Short Term Availability

The current LTA proposal lacks transparency around available LTA volumes. Unlike the Short term contacts (STC) there is no obvious "rhyme or reason" to the indicative LTA volume available.

Port Zone	Viterra Proposed LTA Vol. Availability	Viterra Proposed LTA's as a % of Previous 3 year average exports
Lincoln	1,516,000	74%
Wallaroo	566,000	74%
Thevenard	550,000	156%
Giles	714,000	85%
Inner Harbour	600,000	52%
Outer Harbour	1,544,000	99%
Total	5,490,000	82%
I & O Harbour	2,144,000	79%

Table 1: Glencore/Viterra indicative LTA volumes expressed as a percentage of the last three season's average exported volumes by port.

GPSA believes a published rationale for the "indicative LTA volume" levels would give a great deal of confidence of the right thing being done to the grain traders and farmers as appears to be the case for STC's.

3. LTA Implementation timeframe

The Auction system to allocate the shipping stem is now in its fourth season. The auction for 2015/16 recently concluded on 12 August 2014 with 3,639,000 tonnes of capacity (from an offer of 7.2 million) with premiums ranging from $0.50 up to $7.00 per tonne. GPSA acknowledges the concerns of exporters in the 2014/15 auction that resulted in much higher premiums being paid and subsequent capital requirements. Although the auction for 2015/16 season has only recently been completed, GPSA recommends the ACCC undertake additional consultation with exporters of the effects of the much lower premiums paid in the seasons 2012/13, 2013/14 and 2015/16.

The initial LTC time frame of five years is too long. With any system there are issues and opportunities from "teething challenges to past use by date" scenarios. Having this in mind GPSA's recommendation is to introduce this proposed change to the port allocation system carefully and in a measured way. GPSA recommend the LTA system be introduced first for two seasons at the Glencore/Viterra proposed indicative volumes, with the subsequent three seasons at a limit of half the proposed indicative volumes with both ongoing annual consultation as well as a formal review after two seasons by the ACCC before rolling out a further 3 years. On detailed review of ACCC's Item 5 *"preliminary assessment of Viterra's proposed long-term capacity allocation"* it is clear at numerous junctures the potential risks are too great to lock this new system in for more than two seasons. The ACCC itself suggests at a number of points a shorter initial term would mitigate some of the potential downside risks of this systems introduction.

4. Port Capacity and Up Country Infrastructure

Transparency of negotiations following the allocation of LTA capacity and in particular the pricing arrangements need to be clear to all. The potential savings from various activities and value shifts between Glencore/Viterra and grain exporters are already quantified and well known by the two parties and a schedule of discounts for services offered would be a more transparent mode of operation than individual negotiations behind closed doors, again giving greater confidence to all involved. It seems reasonable to GPSA, if arrangements between Glencore/Viterra and Genesee & Wyoming Australia (GWA) can be agreed for 10 years, similar levels of certainty should be afforded to farmers and grain exporters through the publishing of prices and discounts for services rendered by grain exporters or other third parties. Viterra's press release, 1st July 2015[1]: *"Our investment in the rail network, supported by road, will underpin the efficiency of the whole supply chain, providing certainty for our growers, exporters and the state. Rail is critical to providing the capacity to move the SA crop each year," he said. The new rail agreement will enable Viterra to offer sustainable, competitive freight rates to growers and exporters providing the most efficient and cost effective access to markets."*

The linkage between port capacity allocation and upcountry logistics needs strengthening. Allocation of port capacity is only one part of the supply chain. Vertical integration of ports through to up country storage provides both efficiencies and control to the owner of the infrastructure. In the port capacity allocation process upcountry storage and importantly transportation of the grain needs to be linked. ACCC Draft decision, page 77: "S*ome exporters have expressed concern that Viterra will not provide any certainty or scope to make arrangements linking LTC with Export Select. This may constrain some exporters, particularly smaller exporters*

[1] Viterra News - Viterra makes long term SA rail investment - 1 July 2015

from seeking LTC." Linkage would provide confidence to capacity seekers as under the current Glencore/Viterra LTA proposal it is not linked and therefore possible Glencore/Viterra who controls the transportation through Export Select Pricing expressed as Location Differential (LD's) could change LD's to favour, or not, a port that another party has booked capacity. For example the nett change of cost to transport grain from Caltowie to Outer Harbour vs. Caltowie to Wallaroo was 16 percent (up 4 down 12 percent respectively) from season to season.

Location	Port	LD 09-10	LD 10-11	LD 11-12	LD 12-13	LD 13-14	LD 14-15	LD 09-10 to 10-11	LD 10-11 to 11-12	LD 11-12 to 12-13	LD 12-13 to 13-14	LD 13-14 to 14-15	09-10 to 14-15
ANDREWS	OUTER HARBOR	20.65	21.88	23.82	26.50	26.73	27.15	6%	9%	11%	1%	2%	31%
ANDREWS	PORT GILES	27.90	29.22	32.08	33.87	36.64	35.75	5%	10%	6%	8%	-2%	28%
ANDREWS	WALLAROO	16.95	17.45	19.10	21.73	22.15	23.85	3%	9%	14%	2%	8%	41%
BRINKWORTH	OUTER HARBOR	21.60	22.61	24.65	25.52	25.60	22.01	5%	9%	4%	0%	-14%	2%
BRINKWORTH	PORT GILES	23.90	25.03	27.51	30.09	29.34	28.15	5%	10%	9%	-2%	-4%	18%
BRINKWORTH	WALLAROO	11.65	12.20	13.34	14.87	15.17	16.55	5%	9%	11%	2%	9%	42%
CALTOWIE	OUTER HARBOR	22.25	23.29	25.61	26.90	25.47	26.40	5%	10%	5%	-5%	4%	19%
CALTOWIE	PORT GILES	32.60	34.14	37.49	38.14	38.13	37.00	5%	10%	2%	0%	-3%	13%
CALTOWIE	WALLAROO	17.65	18.49	20.18	21.31	20.36	18.00	5%	9%	6%	-4%	-12%	2%
JAMESTOWN	OUTER HARBOR	21.00	21.98	24.76	25.70	26.00	26.35	5%	13%	4%	1%	1%	25%
JAMESTOWN	PORT GILES	33.95	35.56	39.02	41.20	39.83	37.65	5%	10%	6%	-3%	-5%	11%
JAMESTOWN	WALLAROO	19.00	19.90	21.76	23.30	22.99	23.45	5%	9%	7%	-1%	2%	23%
ORROROO	OUTER HARBOR	29.85	31.24	34.96	33.15	32.65	34.55	5%	12%	-5%	-2%	6%	16%
ORROROO	PORT GILES	40.20	42.10	46.22	49.05	48.31	46.91	5%	10%	6%	-2%	-3%	17%
ORROROO	WALLAROO	26.35	27.60	30.26	32.37	31.88	31.65	5%	10%	7%	-2%	-1%	20%
REDHILL	OUTER HARBOR	15.25	15.96	21.00	22.50	23.71	23.83	5%	32%	7%	5%	1%	56%
REDHILL	PORT GILES	25.75	26.97	29.54	33.79	32.95	32.05	5%	10%	14%	-2%	-3%	24%
REDHILL	WALLAROO	12.80	13.41	14.65	16.10	16.10	15.00	5%	9%	10%	0%	-7%	17%
SNOWTOWN	OUTER HARBOR	11.50	12.04	13.68	14.30	13.58	14.14	5%	14%	5%	-5%	4%	23%
SNOWTOWN	PORT GILES	21.00	21.99	24.20	25.95	25.30	24.95	5%	10%	7%	-3%	-1%	19%
SNOWTOWN	WALLAROO	9.10	9.53	10.44	11.90	11.10	11.10	5%	10%	14%	-7%	0%	22%

Table 2: Examples of how the LD price relativity between port and up country sites change at Glencore/Viterra's discretion.

From Glencore/Viterra's letter to GPSA on the 6th August 2015, it is not clear how exporters are protected from this discretionary power Glencore/Viterra maintains. It is however clear that the volumes create the efficiencies and therefore exporters are economically locked into Export Select *"Increased volumes of grain being transported through Export Select allows for economies of scale to deliver competitive transport prices for all participants in the Viterra supply chain."*

5. Third Party Storage Access

A further concern is Glencore/Viterra's third party access regime has historically stifled upcountry infrastructure investment. ACCC Draft decision, page 86: *"There are some other storage and handling operators, including Cargill's GrainFlow sites. However Viterra provides customers a bundled storage and logistics service with a rebate program, making it difficult for Viterra's customers to justify operating outside of the Viterra supply chain".* This difficulty needs to be addressed to allow potential upcountry investors access to port loading facilities outside of Glencore/Viterra's control systems. For example if an up country storage competitor had the ability to load grain onto a vessel using the Viterra Port belt without need to go through Glencore/Viterra's delivery assessment and storage and handling system, this could address grain storage and handling competition.

6. Ability to Influence Storage and Handling Charges / Sharing of Efficiency Gains

The FOB costs continue to increase despite reduced risk and increased efficiencies as detailed in our April 2015 submission to the ACCC.

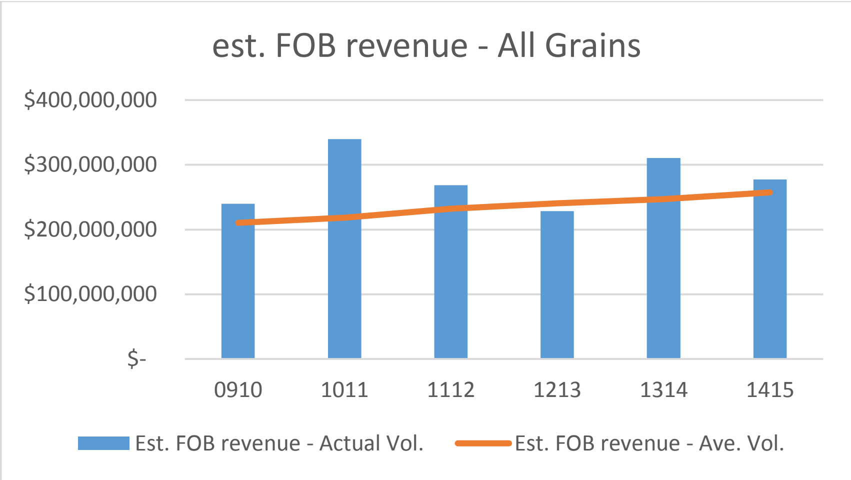

Table 3: Estimated FOB charges paid by farmers over the past six seasons.

It is often the single largest cost of grain production. GPSA in various consultation with industry participants understands grain traders do not consider the negotiation of the actual "reference prices" as their domain. They consider the level of fee the producer's responsibility to negotiate. Traders simply pass these fees onto the producer. Currently there is no formal mechanism for this negotiation to occur and needs to change as there are a number of unjustifiable expenses within the system that need addressing directly between Glencore/Viterra and the grain producers of South Australia. For example the warehouse monthly charge introduced some years ago is diametrically opposed to Glencore/Viterra's aim of smoothing out the export year by financially motivating exporters and farmers to not warehouse grain into the quieter months of the export calendar. E.g. monthly warehouse storage fee increase from $1.20/month to $1.50 May 2015.

Further, the "Client to Client Transfer in-store Admin fee" increased 100% last season (from 25 to 50 cents) per tonne despite this type of transaction becoming more and more automated in nature is unacceptable. GPSA recommend, as this fee is an administrative fee not related to volume of grain being transacted, that it becomes a fee per transaction. e.g. $100 per transaction.

It is critically important to GPSA that the suggested benefits from the introduction of the LTA system to farmers are clearly defined and measurable. *(ACCC Draft decision Page 50) "Given that they are a further step removed in the supply chain, it is less clear what benefits the proposal may provide to growers. The ACCC notes the key concerns highlighted by growers."*

In a spirit of cooperation with the SA grain industry generally and Glencore/Viterra specifically GPSA has met several times recently with Glencore/Viterra and shared this letter with them prior to sending. In addition GPSA recommends that a taskforce be established to build a ten year strategic plan for the grain industry of South Australia. There are many areas the industry as a whole could benefit from e.g. Eyre Peninsula Rail if a cohesive and mutually agreeable plan was created and implemented. GPSA wishes to continue to be heavily involved in any future proposals and believe the need for the Port Terminal Access (Bulk Wheat) Code of Conduct is critical long-term as it has proved its value throughout this process.

If the above areas of concern can be adequately addressed by changes, additions and/or edits by Glencore/Viterra to their LTA proposal GPSA would be willing to support a change in port capacity allocation system.

We are keen to continue conversations around this issue with both ACCC and Glencore/Viterra. Please don't hesitate to contact me if you have any concerns, comments or questions.

Yours sincerely
Grain Producers SA Ltd

Darren Arney
Chief Executive Officer