

17 November 2020

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Dear Sir / Madam

**RE: Viterra Operations exemption under the Port Terminal Access (Bulk Wheat) Code of Conduct (Draft Decision)**

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to provide a submission on the ACCC's Draft decision with regards to Viterra's application for exempt provider status under the Port Terminal Access (Bulk Wheat) Code of Conduct (the Code).

As you may be aware, SAFC is the State's peak, multi-modal freight and logistics industry group that advises all levels of government on industry related issues. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

SAFC is disappointed in the draft decision; in particular that our views have not been listened to and given the consideration they deserve. The vast majority of our points have been discounted without valid consideration, whereas counterpoints are almost always considered favourably. The few occasions where our points have been given weight is where they correspond with the ACCC's apparently pre-determined view.

Upon review of SAFC's submissions on the Issues Paper and Supplementary Issues Paper, we believe that the points previously made still apply. As such we re-asset those points, and make the following comments in addition.

In relation to Port Loading Protocols (PLPs), the ACCC responded to SAFC's concerns over lack of flexibility by noting that Viterra has not sought to change its capacity allocation system since 2015<sup>1</sup>. We respond by noting that given it takes a year for the ACCC to approve such a request<sup>2</sup>, there is little point in Viterra making this attempt to optimise PLPs for the conditions faced in each discrete year. The ACCC's approval timeframes, in conjunction with parts 3 to 6 of the Code, are creating inefficiencies to the detriment of South Australian grain exporters. These inefficiencies are not faced in the same way by interstate grain exporters, due to the Code's unreasonable focus on South Australia.

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<sup>1</sup> ACCC, Draft determination, p128

<sup>2</sup> ACCC, Supplementary Issues Paper, p25

SAFC notes that in discussions about Port Adelaide IH and OH, the ACCC states *'more generally, the ACCC also acknowledges that the existence of viable, though limited, alternative capacity may be sufficient to provide an incentive for a dominant PTSP to provide fair and transparent access to third party exporters<sup>3</sup>'*.

SAFC believes the draft determination casts unreasonable doubt over the Lucky Bay operations of T-Ports, undercuts its potential (and therefore potential competitive value), and casts doubt over the amounts of grain the new entrant can reasonably handle. SAFC sees no basis for doubting that T-Ports can handle in excess of 600,000 tonnes of grain per annum, although achieving theoretical maximums (in this case 3.6mt) is always reliant on perfect circumstances (and the grain actually being available).

Annual Grain production on the Eyre Peninsula over the past 5 years has averaged 2.41 million tonnes per annum. Even at the 600,000 tonne per annum T-Ports export target this equates to 25% of the annual average crop – which should exceed the ACCC's self-identified threshold of 'viable, though limited, alternative capacity'.

We also note that the prospective Peninsula Ports facility at Port Spencer has moved forward significantly in the time it has taken for the ACCC to prepare its draft determination.

As announced by Deputy Premier Vicky Chapman, Peninsula Ports has completed the major development assessment process, including achieving signoff on its Public Environmental Report<sup>4</sup>. Media reports note the facility will be ready to receive grain for the 2021 harvest<sup>5</sup>.

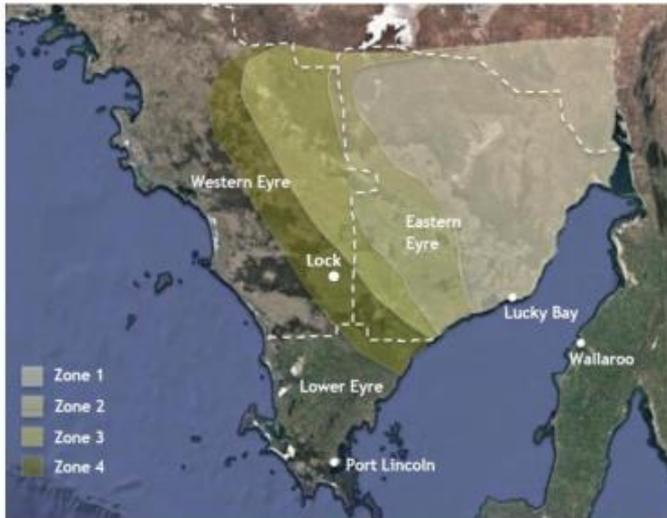
This deep-water, high capacity port would represent a major competitor to Viterra at Port Lincoln, and given its geographic position on the peninsula could isolate Port Lincoln from a significant proportion of grain producers. Many, if not most producers on the peninsula would have a shorter land transport leg to Port Spencer than Port Lincoln, offering a substantial road transport cost competitive advantage to the new port. If a similar figure to 3.6 (on Page 90 of the draft determination – replicated below) was completed to include Port Spencer and its potential catchment areas, it would not leave much of the peninsula left for Port Lincoln to claim a road freight advantage over.

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<sup>3</sup> ACCC, Draft determination, p28

<sup>4</sup> <https://peninsulaports.com.au/wp-content/uploads/2020/08/Attorney-General-Media-Release-Port-Spencer-Grain-Facility-approved-13.8.2020.pdf>

<sup>5</sup> <https://www.adelaidenow.com.au/messenger/port-lincoln/port-spencer-deep-water-port-grain-export-facility-work-set-to-begin-in-september/news-story/99a1568d641f58fbb81854e740fe83ff?btr=97b70a7b6c9bd66b8ea63f99e576acd3>



	Domestic Haulage Advantage (\$/t)
Zone 1	15 – 20
Zone 2	10 – 15
Zone 3	5 – 10
Zone 4	0 – 5

In SAFC’s opinion, given the further advancement of this proposal and the approvals now secured, this prospective port must now be heavily weighted in evaluating likely future competition to Port Lincoln. This should alter analysis in section 4.3 (b) and the resultant conclusions.

We further note that there no impediment to granting exemptions to all ports applied for by Viterra at this time, and revoking them in the future should evidence be presented of uncompetitive conduct by Viterra, or of a reduction in competition in the market (due to competitors leaving):

*‘In making its draft decision the ACCC considered the power to revoke an exemption as relevant to its assessment. The ACCC has the ability under subclause 5(6) of the Code to review an exemption determination with a view to revoking it in certain circumstances. Similar to the process for granting an exemption, the ACCC may revoke an exemption determination if, after having regard to matters (a) to (j) of subclause 5(3) of the Code, it is satisfied that the reasons for granting the exemption/s no longer apply.’<sup>6</sup>*

This ability should give the ACCC the courage to grant the requested exemptions – potentially on a trial basis with a review in 3-5 years – based on the strong evidence provided by Viterra and others for this to occur, and safe in the knowledge that a review will in and of itself provide an additional incentive for Viterra to act in a just manner.

Again, I thank you for the opportunity to provide a submission on this important topic. Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email [knapp.evan@safreightcouncil.com.au](mailto:knapp.evan@safreightcouncil.com.au).

Yours Sincerely,

**Evan Knapp**  
Executive Officer, SA Freight Council.

<sup>6</sup> ACCC, Draft Decision, pg 153