



25 March 2015

The Essential Services Commission of South Australia
Level 1
151 Pirie Street
Adelaide SA 5000

Attention: SA Rail Access Regime Review

Dear Sirs

We refer to the 2015 South Australian Rail Access regime Review Issues Paper prepared by the Essential Services Commission of South Australia (**Commission**).

Background

Viterra Operations Limited (**Viterra**) is a subsidiary of Glencore plc (**Glencore**). Glencore is one of the world's largest diversified natural resource companies and a major producer and marketer of over 90 commodities worldwide. In Australia, Glencore's diverse operations make it a major contributor to local, state, regional and national economies. This contribution extends to its substantial investment in the South Australian grain industry through its ownership of Viterra.

Viterra has extensive operations across Australia, servicing growers and both domestic and international grain markets. Specifically, in South Australia, Viterra provides a grain storage and handling network spanning key growing regions. This well established upcountry and port terminal network has been servicing customers for more than 50 years and is critical to the South Australian grain industry. To provide effective solutions to key stakeholders, such as growers and grain marketers, Viterra relies heavily on rail services to operate its network and to accumulate grain for marketers in export positions at South Australian Port Terminals. These rail services are currently provided by Genesee & Wyoming Australia Pty Ltd (**GWA**) on regulated rail infrastructure the subject of the existing rail access regime under the *Railways (Operations and Access) Act 1997 (SA)* (the **Act**).

As an interested party directly involved in the use of railway services in South Australia from GWA, Viterra welcomes the opportunity provided by the Commission to provide feedback on the current rail access regime under the Act.

Submission

In response to the Issues Paper, Viterra provides the following response:

Question 1: Is there any evidence of misuse of market power by rail operators?

Viterra, as an access-seeker under the Act, has been able to commercially negotiate access arrangements with GWA directly for access to the regulated services and

infrastructure. These commercial negotiations were successful without the need to rely on the Access Regime under the Act.

Question 2: Has the current Access Regime been successful? How should this success be measured?

Viterra has not needed to rely on the Access Regime under the Act to obtain access to regulated services and infrastructure. Accordingly, Viterra is not in a position to comment on the success or effectiveness of the Access Regime.

Question 3: What are the benefits of retaining the current Access Regime? What would be the risks (if any) if it was to expire?

Viterra has not needed to rely on the Access Regime under the Act to obtain access to regulated services and infrastructure. Viterra has no grounds to believe that any future dealings or negotiations with GWA would require the protection of the Act. Accordingly, Viterra is not in a position to provide direct comments on the benefits of retaining the current Access Regime or otherwise allowing it to expire.

Question 4: What are the current costs of the Access Regime (e.g. costs of compliance and administration)?

Viterra has not needed to rely on the Access Regime under the Act to obtain access to regulated services and infrastructure. Accordingly, Viterra has not incurred any direct costs of compliance and administration as a result of obtaining access to regulated services and infrastructure. Despite this, Viterra considers it has possibly incurred additional costs as a result of the Access Regime but these would be indirect and likely incorporated in GWA's existing access fees paid by Viterra (similar to any other general corporate overhead).

Question 5: Are there alternative approaches to achieving the intent of the Access Regime that are appropriate at this time? For example, would adoption of the national access rules (under the Commonwealth *Competition and Consumer Act 2010* (Cth) be suitable?

Please refer to our response to question 7.

Question 6: What are the intentions of rail services providers and their customers in the next 5 years? Are there any key developments in the foreseeable future that may impact the demand for the services?

All aspects of Viterra's business, including its demand for regulated rail services and infrastructure, is exposed to seasonal climatic conditions and the size of annual harvests. Accordingly, it is difficult to predict with any certainty Viterra's future demand for rail services. Despite this, as set out above, rail services are critical to Viterra's ability to operate its grain storage and handling network and service its customers. Compared with road movements, for the majority of Viterra's current business, rail freight currently provides the most efficient logistics solution to manage peak harvest grain receivals and export demand. Viterra does not see any reason why its existing commitment to rail freight would change assuming:

- the service levels provided by GWA remain efficient and cost competitive;

- growers and grain marketers continue to support and see tangible benefits from Viterra's rail solution;
- in considering State and specific regional conditions, rail freight continues to have an economic and efficient benefit over road movements; and
- rail service and infrastructure providers (such as GWA) continue to be incentivised to invest in rail infrastructure in South Australia, and

In addition, Viterra's existing commitment to rail freight is always dependent on the development and viability of alternative grain supply chains and the acceptability of these alternatives to the grain industry generally compared with road freight.

Question 7: What other issues are relevant to the decision to continue, or discontinue the current Access Regime?

Viterra does not have a strong position on whether the Access Regime under the Act should be retained or allowed to expire. However, Viterra strongly advocates for anything that would reduce regulatory burden and costs and incentivise investment in rail infrastructure in South Australia. This includes regulatory burden arising from multi-levels of Federal and State regulation that places South Australia (specifically the grain industry) at a competitive disadvantage. Viterra would consider that any reduction in costs of obtaining services from GWA (even indirect costs) or increased investment in rail infrastructure, would ultimately benefit growers and the South Australian grain industry generally. Accordingly, Viterra would welcome any change to the Act or the Access Regime that would assist achieve these outcomes.

Viterra appreciates that, in some instances, access regulation for infrastructure services can benefit stakeholders and access seekers if there is demonstrated market failure or where it can be shown that the infrastructure provider has unfairly exercised its market power. However, regulating based on perceived, opposed to actual, need has the potential to reduce business confidence and discourage investment in rail infrastructure and the South Australian economy generally. Viterra considers that there should always be demonstrated public benefit in increasing or retaining regulation (including retaining the Access Regime under the Act).

Question 8: Are there any other matters that the Commission should consider as part of the Review?

There are no further matters which Viterra wishes to raise at this time.

Viterra thanks the Commission for the opportunity to make this submission and would be happy to respond to any further questions you may have, or to meet with you to expand on the issues raised above.

Yours sincerely



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