



20 July 2012

2012 Ports Pricing and Access Review
Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

By email: Peter.Lim@escosa.sa.gov.au

Dear Sir

2012 Ports Pricing and Access Review Draft Report – Viterra Submission

We refer to the Commission's invitation for submissions contained in its 2012 Ports Pricing and Access Review Draft Report dated June 2012 (**Draft Report**) and to Viterra's submission dated 28 March 2012 (**First Submission**) which was lodged in response to the 2012 Ports Pricing and Access Review Issues Paper (**Issues Paper**).

Viterra agrees with the findings of the Commission in the Draft Report that:

1. The current form of price regulation (price monitoring) is appropriate and should be maintained for a further five year regulatory period; and
2. The access regulation (negotiate-arbitrate) should continue for a further five-year regulatory period in its current form.

Viterra would also like to respond to and comment on some of the issues raised in submissions to the Issues Paper by Grain Producers SA Limited (**GPSA**), the South Australian Select Committee on the Grain Handling Industry (**Select Committee**) and the Government of South Australia.

In particular, we welcome the submission by the Government of South Australia dated April 2012 and wish to highlight two key aspects of that submission:

1. the recognition that "...it is important that regulatory arrangements facilitate investment in port facilities."; and
2. the view that "ESCOSA's current approach to ports pricing and access appears to strike a balance between the need to ensure potential benefits are realised, without imposing undue compliance costs on port operators".

This is consistent with the views set out in Viterra's First Submission.

A. REGULATORY ENVIRONMENT

In its submission, GPSA recommends that the Commission's powers should be increased to enable oversight of the entire supply chain and this is discussed at page 43 of the Draft Report. Viterra does not consider that an increase in the level of scope of regulation is warranted.

Viterra already operates in a heavily regulated environment that is designed to ensure fair and open access to all exporters. This presently includes:

- An Access Undertaking dated 28 September 2011 with the Australian Competition and Consumer Commission (ACCC). This voluntary undertaking, provided by Viterra, clearly articulates Viterra's obligations to provide open and non-discriminatory access to port terminal services for all access seekers. It details the requirement for standard terms and reference prices which are available for all access seekers and the protocols for establishing and managing priorities to port terminal services (all of which are publicly available on Viterra's website). It details Viterra's increased provision of information and commitment to the introduction of an auction system for the allocation of port terminal services for all grain commodities. The undertaking also makes it clear that access seekers have the right to negotiate the terms of access, and contains a comprehensive dispute resolution process and provides the ACCC with the right to audit and request information from Viterra.
- ESCOSA compliance requirements. These include the Ports access regime, the Rail access regime, various Codes, Guidelines and Rules, periodic reviews and reporting requirements and certification activities. Both regimes contain dispute resolution procedures; and
- Wheat Exports Australia requirements which include accreditation, continuous reporting and audit requirements.

Viterra is also subject to external reviews and inquiries by the Commonwealth Senate Committee and the South Australian Select Committee. It is also currently undertaking an extensive consultative process with industry and the ACCC both in relation to the introduction of a market-based auction system for the allocation of grain port-loading capacity and the potential introduction of an industry code of conduct. In addition, the Productivity Commission has only recently concluded its review of the wheat export marketing arrangements. Each of these reviews is in addition to the market reviews and consultation with industry that Viterra undertakes as part of its ongoing business, for example, via Post Harvest Reviews and silo committee meetings.

Any increase in regulatory oversight would increase Viterra's compliance costs both in monetary terms and resourcing. Such costs would be borne by exporters who would ultimately pass them on to South Australian growers. In light of the existing level of regulatory oversight, it is also not clear what issue such increased regulation might be seeking to address, what the benefits of that increased regulation might be, and how any perceived benefits might outweigh the likely increased costs to, and potential reduction in competitiveness of, the South Australian grain industry in the global marketplace.

Viterra considers that the present level of price regulation (that is, price monitoring by ESCOSA, complemented by the negotiate / arbitrate arrangements under the ACCC Access Undertaking) provide for a fair and efficient market and include appropriate processes to address any potential market failure or misuse of market power. The South Australian Government has expressed a similar view in its submission to the Issues Paper (4.2.1), which is supported by the fact that the Government is not aware of any disputes in regards to port pricing or access or misuse of market power by port operators in South Australia.

In the absence of any evidence of market failure or misuse of market power (or, for that matter, failure of the current regulatory environment), there is simply no case for further, more extensive or more intrusive regulation.

B. GRAIN SUPPLY CHAIN

Viterra provides an integrated supply chain solution to the grain industry for moderate returns (taking into account the high capital investment made by Viterra in South Australia and the uncertainty of revenue due to seasonal factors).

We note that there are no material barriers to entry for other providers to build grain storage or provide their own logistics capacity. We also note the comment in the Select Committee's submission that it has heard during its inquiry that Viterra "controls the ports (and rail) access" so there is no opportunity for competitors. The submission goes on to say "if this is the case then it appears that the current access arrangements are failing in that they allow a monopoly to exercise discriminatory behaviour".

Viterra makes two comments in response to this contention:

- Firstly, Viterra does not control the rail access in South Australia. Rail access is provided by the rail infrastructure owners and access is governed by relevant legislation and access arrangements. Viterra's use of rail assets involves the leasing of above rail assets. Through these leasing arrangements, Viterra effectively underwrites the provision of above rail services for the benefit of South Australian agriculture. If other parties were prepared to take on the risk of underwriting the use of rail transport in South Australia this would be welcomed by Viterra.
- Secondly, Viterra does not – and the current arrangements do not allow Viterra to - engage in discriminatory behaviour. It is clearly set out in Viterra's ACCC Port Terminal Access Undertaking that Viterra must provide a "non-discriminatory approach to pricing and the provision of Port Terminal Services" for accredited wheat exporters. If it were ever suggested that Viterra were discriminating against users of its Ports then the ACCC has the power to investigate those allegations and if necessary impose penalties. It is simply not the case that there is no opportunity for competitors.

SUMMARY

Any action to further regulate the grain industry in South Australia is likely to increase costs to growers and may well decrease South Australia's competitiveness in export markets and result in exporters favouring other sources of grain over South Australia.

Investment in the grain supply chain infrastructure in SA requires a long term commitment that requires regulatory certainty.

Increased regulation should not be imposed unless there is a clearly identified concern, the proposed regulation addresses that concern in the least intrusive way, and where the costs associated with the increased regulation do not outweigh any possible benefits. Viterra is pleased that the Commission appreciates these issues and has recognised that there is no evidence to support any increase to the already substantial level of regulation in the South Australian grain export industry.

Yours sincerely



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