Application for port exemption

Support a level playing field for South Australia's grain industry

Background

The Port Terminal Access (Bulk Wheat) Code of Conduct (Code) was introduced in 2014 to ensure Australian grain port terminal operators provide fair and open access to their facilities to all grain exporters.

The Code has two tiers of regulation, with many port terminal operators exempted from a number of key requirements. Viterra is the only port terminal operator in Australia subject to the full requirements of the Code for all of our terminals. This inequitable application of the Code means the burden and costs of the access regime are borne by South Australian growers.

It is a significant advantage to be classified as an exempt operator because of the reduced regulatory burden and cost, and greater operational efficiency and flexibility. Viterra has requested the Australian Competition and Consumer Commission (ACCC) exempts our port terminals.

An independent report prepared by leading international economics consultancy Charles River Associates supports the case for exemption. The report, by highly experienced economists, Dr Chris Pleatsikas and Dr Andy Baziliauskas, undertakes a detailed analysis of the competitive constraints faced by Viterra. It explains that removal of the regulation would be beneficial to South Australian growers and would not have any detrimental impact on competition.

Key findings from Charles River Associates Report

Viterra does not have market power in the supply of port terminal services

There are competing port terminals in South Australia.
The growth in alternative grain supply chains in South Australia (SA) means growers and exporters can access export markets through competing export terminals. These alternate terminals have a combined capacity to handle up to 5.9 million tonnes, which is approximately the average SA grain export total.

Grain markets in South Australia are competitive.
There are active grain buyers bidding for growers' grain and competing terminal operators providing services to grain exporters.

There is no commercial incentive for Viterra to deny customers access to its terminals.
The costs to Viterra of denying terminal access to competing exporters, in terms of lost gross margin on port terminal operations, are likely to be substantial and exceed any potential benefit.

There has been no market failure that justifies the continued application of the full Code.
To the contrary, the market has matured and evolved. It is a significantly more competitive landscape than what it was five years ago. The continuation of the Code in its current form adds unnecessary regulation and cost, unfairly borne by SA growers and the local industry.

The unintended consequences of the Code are hurting SA growers and the local industry

The unequal application of the Code disproportionately affects the SA grain industry.
Of the 26 operational bulk wheat port terminals in Australia, only nine are not exempt, six are Viterra's SA port terminals. The cost of complying with the Code is disproportionately being borne by the SA grain industry despite SA only accounting for around a quarter of Australia's grain exports.

The Code is artificially fragmenting the SA grain export market.
The ACCC's undue emphasis on 'fair' or 'open' access to terminal capacity has seen a disproportionate amount of capacity reserved for smaller exporters and potential entrants. This is unnecessarily fragmenting the SA grain export market resulting in loss of economies of scale and scope that would otherwise be achieved by successful exporters and passed on to growers. Smaller, efficient and innovative exporters will survive and flourish in an unregulated market.

The Code is protecting inefficient exporters.
The need to set aside large volumes of future capacity prevents efficient contracting by limiting contract duration and flexibility with exporters.

The costs of the Code are borne by growers.
Fragmentation, contract inefficiencies and the costs of ACCC oversight are ultimately reflected back to growers.

The benefits of exemption will flow to growers

Supply chain costs would reduce.
Allocation of port terminal capacity would be more efficient leading to reductions in supply chain costs which will largely benefit growers in the form of higher prices for their products.

There would be further investment in infrastructure and markets.
With greater operational certainty and commitment, Viterra will be incentivised to invest in infrastructure and exporters will be incentivised to invest in developing export markets and supply relationships with growers.

The purchase of grain will remain competitive.
Markets for the purchase of grain from growers in SA are competitive and will remain highly competitive if Viterra's terminals are exempted from the Code. The benefits of exporter de-fragmentation and more efficient capacity allocation at Viterra terminals will ultimately flow to growers.