

Ms Julie-Anne Schafer
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Application for certification of the South Australian ports access regime

Dear Ms Schafer

Viterra welcomes the opportunity to make a submission in response to the application by the Premier of South Australia, the Hon Steven Marshall MP, for the certification of the South Australian ports access regime under section 44NB of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Viterra is a major long-term infrastructure owner and a significant employer and investor in South Australia. Viterra is driven to facilitate and contribute to the success and profitability of growers that use its system by maintaining a world-leading, fully integrated agriculture network that connects growers and consumers to supply sustainable, traceable and quality controlled agricultural products.

Viterra owns and operates six export port terminals in South Australia, with the bulk loaders at these terminals – Port Adelaide (inner and outer), Port Giles, Wallaroo, Port Pirie (no longer operated as a grain export port by Viterra), Port Lincoln and Thevenard – regulated under the *Maritime Services (Access) Act 2000* (**MSAA**).

The South Australian ports access regime is effective and balances the interests of infrastructure owners and users

Viterra considers that the South Australian port access regime has worked well, and as intended, since it commenced in 2001.

The regime provides a principles-based framework for the negotiation of access to regulated services. If an access dispute arises, and cannot be otherwise resolved by negotiations between the



parties, the South Australian regime provides for mediation and binding arbitration.

Viterra considers that the most efficient outcomes in markets are achieved by providing parties with the opportunity to reach commercial outcomes. Commercial negotiations are best able to take into account the interests of both parties and to reflect market conditions. Regulation should therefore not intrude on the opportunity to negotiate successfully commercial outcomes.

Viterra considers that, at present, the MSAA strikes an appropriate balance between the rights of infrastructure owners and users by ensuring that commercially negotiated outcomes are afforded primacy. The MSAA achieves this by setting out clear principles backed by a negotiate/arbitrate framework.

Viterra is not aware of any evidence to suggest that the South Australian ports access regime is not working as intended, or that parties are not able to achieve commercially negotiated outcomes, or to obtain resolution of any disputes that they choose to raise under that regime.

Regulation should apply equally and not create market distortions

Viterra considers that the framework set out in the South Australian port access regime is appropriate, and should be certified under section 44NA of the CCA. However, the regime should apply equally to all port terminal operators in South Australia so as not to create competitive distortions in the market.

As the Council may be aware, bulk wheat export terminals in Australia are subject to the mandatory code of conduct set out in the *Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014 (Cth) (Code)*. However, the Code is not applied equally to all port terminals. This has caused – and continues to cause – significant distortions, with the costs and uncertainties of regulation borne disproportionately by the South Australian industry and growers.

Viterra believes that the Code has served its purpose and should be repealed. However, Viterra's experience with the Code strongly highlights the importance of ensuring that any regulatory requirements, including under the MSAA, apply equally to all market participants. With the significant entry of new port terminal operators over the past five years, Viterra considers either that the South Australian access regime should no longer apply to Viterra's bulk loaders, or that the access regime applies equally to the port terminal operators that have commenced operations in South Australia since the commencement of the MSAA.



The principles-based approach in the MSAA remains an appropriate approach to regulation

The MSAA sets out clear principles for ensuring access to relevant infrastructure on reasonable terms, which balance the interests of owners and users.

Viterra does not consider that the access regime would be materially improved if it involved a lengthy, detailed and prescriptive list of requirements. In addition, Viterra considers that the fact the South Australian regime is principles-based does not provide any reason why the regime should not be certified under the CCA. To the contrary, Viterra considers that a principles-based approach has served the industry well over the past two decades, and is not aware of any evidence to suggest either that efficiency or competitive outcomes would be improved by inserting greater length, detail and levels of prescription into the MSAA.

In this regard, flexibility is critical to delivering operational efficiencies within the dynamic supply chain environment in which Viterra operates and to meet changing, and often bespoke, customer requirements. It is critical that the ability to meet these requirements is not stymied by overly prescriptive, intrusive and costly regulation.

Viterra supports the re-certification of the South Australian access regime, and would be pleased to provide further details if that would assist the Council.

Yours sincerely



Damian Fitzgerald
General Counsel



