



Grain Producers SA



24th April 2015

General Manager
Infrastructure & Transport – Access & Pricing Branch
ACCC
GPO Box 520.
Melbourne VIC 3001
Email transport@accc.gov.au

Dear Sir/Madam,

RE: Glencore/Viterra application seeking capacity allocation system approval under the Port Terminal Access (Bulk Wheat) Code of Conduct

Please find a submission from Grain Producers SA Ltd (GPSA) regarding Glencore/Viterra's application, seeking capacity allocation system approval under the Port Terminal Access (Bulk Wheat) Code of Conduct (Glencore/Viterra Application).

About GPSA

GPSA is the peak body representing South Australian grain producers.

The State's grain industries are large and diverse, making a significant contribution to the economy. Total grain production in South Australia from an estimated 3,000 grain producing businesses for the 2014-15 season was 7.63 million tonnes from 4.04 million hectares. With an estimated farm gate value of over \$1.8 billion & export value of \$2.2 billion, the grains industry is a not only a major contributor to this state's economy it is also a significant export earner for this state.

Despite the volume, value and importance of the grains industry to this state, increasingly we are seeing the profitability of farming being challenged by every increasing costs and community emphasis on urban issues and opportunities. A major cost to grain producers across South Australia is the cost of getting grain loaded at port.¹

¹ [AEGIC - The cost of Australia's bulk grain export supply chains](#)

GPSA's objectives are to improve the profitability and sustainability of South Australian grain producers through:

- Representing the views of South Australian grain producers to government, industry and the community on grains issues;
- Working with an effective state farming organisation and other commodity groups to represent South Australian grain producers on cross commodity issues;
- Working with government and industry to develop policies around creating and maintaining an efficient, accessible and cost effective supply chain;
- Working with government, industry and institutions to improve the technical and business skills of South Australian grain producers
- Working with Research, Development and Extension organisations to identify and disseminate research priorities in grain production, handling and management
- Supporting an effective national representative organisation to work with government around national initiatives to support the grains industry
- Providing a program to include and develop young farmers to be prepared to take on leadership roles within the SA grains industry.

GPSA thanks ACCC for the opportunity to make this submission and would welcome an opportunity to discuss this submission in general or answer any specific questions or concerns.

Yours sincerely



Darren Arney
CEO Grain Producers SA Ltd

This Submission is tendered against ACCC consenting to Glencore/Viterra's Application of April 2015 seeking capacity allocation system approval under the Port Terminal Access (Bulk Wheat) Code of Conduct. (Glencore/Viterra Application)

Overview:

GPSA has extensively reviewed both the Glencore/Viterra Application and the Issues Paper and submit that:

- The recommendations of the South Australian Parliaments, Select Committee on the Grain Handling Industry – September 2012 need to be acted upon prior to the Glencore/Viterra Application being assessed.
- The Glencore/Viterra Application for a capacity allocation system introducing long term agreements (LTA'S) is fundamentally anticompetitive and proposes no cost mitigation or reduction to consumers.
- The Glencore/Viterra Application gives extraordinarily broad discretionary powers to the supplier, Glencore/Viterra and therefore its parent company Glencore. There is a need for a complete review (Senate recommendation) prior to proceeding with the proposed changes.
- The Glencore/Viterra Application is not prescriptive enough to give client and consumer enough knowledge to make well informed decisions, there are many unknowns, leading to many questions.
- The Auctioning of capacity is on currently available information the most transparent and fair mechanism for allocating port capacity.

Questions;

GPSA proposes these questions need to be answered before a final assessment of the Glencore/Viterra Application can be made:-

1. What independent analysis has been carried out to review the performance of the auction system and what are the positive attributes that should be retained?
2. How much tonnage in which port zones were allocated through the auction system?
3. What is the breakdown by exporter of the slots purchased?
4. What is the number of tonnes exported by each exporter?
5. Why has the \$5.00 per tonne booking fee been retained under the current auction system when the auction premium paid by exporters is now the incentive to execute the shipping slot. GPSA estimates the booking fee of \$5 per tonne would generate approximately \$35 million in a service charge that the cost of the service of staff recording slots would be approximately 1 to 2 Full Time Equivalents (FTE)
6. LTA's endeavours to de-risk Glencore/Viterra capital in port storage and handling facilities on the demand side. SA grain growers have de-risked the supply side by growing and delivering more grain with less volatility. What reduction in port terminal costs will be implemented for this reduction in risk?
7. In South Australia the task for exporters in accumulating grain upcountry and transporting to port terminal is inextricably linked with the loading of the vessel. What impact will the new

allocation system have on the Export Select process of grain accumulation for the trade and benefits for growers?

8. In regard to Export Select, the proposed efficiency gains were to be passed on to the trade by lower charges, however the pricing regime has seen increases in grain logistics and transport costs. Will there be certainty for growers that the proposed efficiency gains under the LTA system will be passed back to growers by reduced charges?
9. The current auction system requires the rebating of the auction premium to all executors of grain onto the shipping stem. This ensures that the vertically integrated marketer Glencore is incentivised equally with competing exporters to execute their Viterra shipping stem. How will the LTA system ensure that the same level of incentivisation continues?

Answers to specific questions raised in the Issues Paper are below:-

1.1. Introduction of long term agreements

Issues for comment

1. *Do you agree with Glencore/Viterra's observation that exporters would prefer to enter longer term contractual arrangements with Glencore/Viterra than participate in the current auction system?*

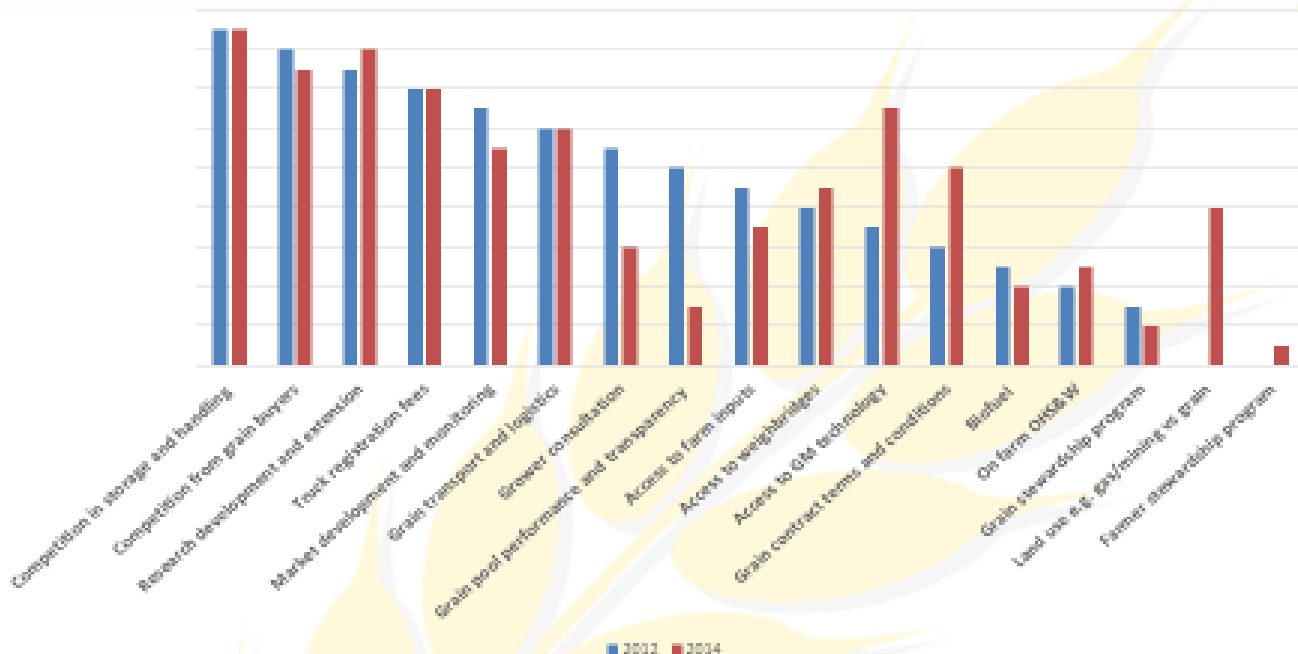
1.5 Feedback from Glencore/Viterra's clients has overwhelmingly indicated that they desire the certainty of longer-term contractual arrangements and the flexibility of commercial negotiations in preference to the current auction system. Many of Glencore/Viterra's clients have also indicated that the auction system is not meeting their commercial requirements.

GPSA concur with Glencore/Viterra on their observation that a number of their clients would prefer to enter into long term contractual arrangements however GPSA note the Australian Grain Exporters Association (AGEA) have long held the view that the action system is the fairest and most transparent method of capacity allocation *AGEA Comments on the Consultation Paper*. and a key industry player in CBH of Western Australia chose not to pursue LTA's due to broad industry concern. *CBH withdraws LTA proposal Sept 2014*

Further, GPSA proposes that these clients of Glencore/Viterra are not the consumers of the service and the consumer's views are significantly different to the clients. The consumers of the service are the grain producers of South Australia who ultimately pay for the service. The price paid by the client is passed onto the consumer, the grain producer. The client has limited incentive to negotiate hard as any change in the cost can be passed onto the consumer. A worthwhile analogy is that of Electricity in the South Australian market. Where the Generators (Suppliers) have been able to manipulate the market they have been able to pass on these cost through the wholesalers to the consumers. *The Advertiser - SA set for cheaper electricity prices 16042015*

GPSA surveys for the past two years have indicated “competition in storage and handling” is the number one concern of grain producers (consumer) in South Australia and their preference deserves at least the same weighting as the client. Summary of last two years consumer survey below.

Farmers Priorities 2013 v 2014



- What will be the benefits and/or detriments of the proposed long term arrangements, including on related markets and the grain acquisition market, transport and storage and handling services?

GPSA challenge the validity of Glencore/Viterra’s “Benefits of negotiated long term agreements” to clients &/or consumers.

GPSA has long been calling for the findings of the South Australian Parliaments, Select Committee on the Grain Handling Industry – September 2012. In particular the recommendation that:-

The State Government authorise the Essential Services Commission of South Australia (ESCOSA) to undertake a review of the entire grain supply chain with the objective of establishing arrangements that provide the basis for pricing of and access to grain

storage and bulk handling facilities (including up-country services) that are consistent with the requirements of a competitive and deregulated wheat export market.

GPSA is of the strong opinion this review would provide a substantive platform for the entire grain supply chain to move forward on rather than the current piece meal approach.

-
- 3.6 In contrast, Glencore/Viterra considers that there are a number of substantial benefits that will flow from introducing an opportunity for exporters to enter into long term agreements. These include the benefits previously identified by the ACCC
- (a) greater certainty in planning longer-term export programs;

GPSA cannot find any material evidence that the capacity allocation system has any effect on short or long-term export programs neither has any been presented by Glencore/Viterra's application.

- (b) a greater ability to build long term relationships with overseas customers;

By far the majority of grain sales are via and competitive tender system and there has been no evidence tendered by either Glencore/Viterra or the other exporters that the capacity allocation system is positive or negative on any relationships with overseas customers. Grain is bought and sold in a global and extremely competitive environment where transparency at every point is valued.

- (c) a greater ability to align booked capacity more closely with supply chain planning;

This may be the case however no evidence has been presented

- (d) and creation of a commercial environment that encourages investment in, and expansion of, infrastructure. This, in turn, can facilitate improvements in the efficiency of port terminal facilities and the availability of additional capacity.

GPSA have not seen any evidence of this being the case and as per 3.7 below GrainCorp has not demonstrated this proposed increase investment due to the introduction on LTA's.

- 3.7 As an infrastructure owner, [Confidential] it is clearly in Glencore/Viterra's interests to obtain greater certainty about the use of that infrastructure. This, in turn, will facilitate further efficient decisions about investment in, and expansion of, the export supply chain for the benefit of Glencore/Viterra, exporters, growers and the South Australian economy

ACCC allowed GrainCorp to introduce long-term part access agreements in November 2012. Since that time there has been no evidence of additional investment attributed to the LTA arrangements. Earlier in May 2012, an announcement to make significant investment into its country network Reinvest to improve intake speed at country sites was made and the subsequent major investment announcement made in June 2014 as part of Project Regeneration a much broader investment plan and not identified as associated with LTA's.

3.10 Having regard to the matters set out above – and, in particular, the strong industry support for long term agreements - Glencore/Viterra considers that the proposed variations to the Protocols appropriately balance both the interests of Glencore/Viterra as infrastructure owner and the interests of existing and new users. The variations will also result in substantial benefits for growers.

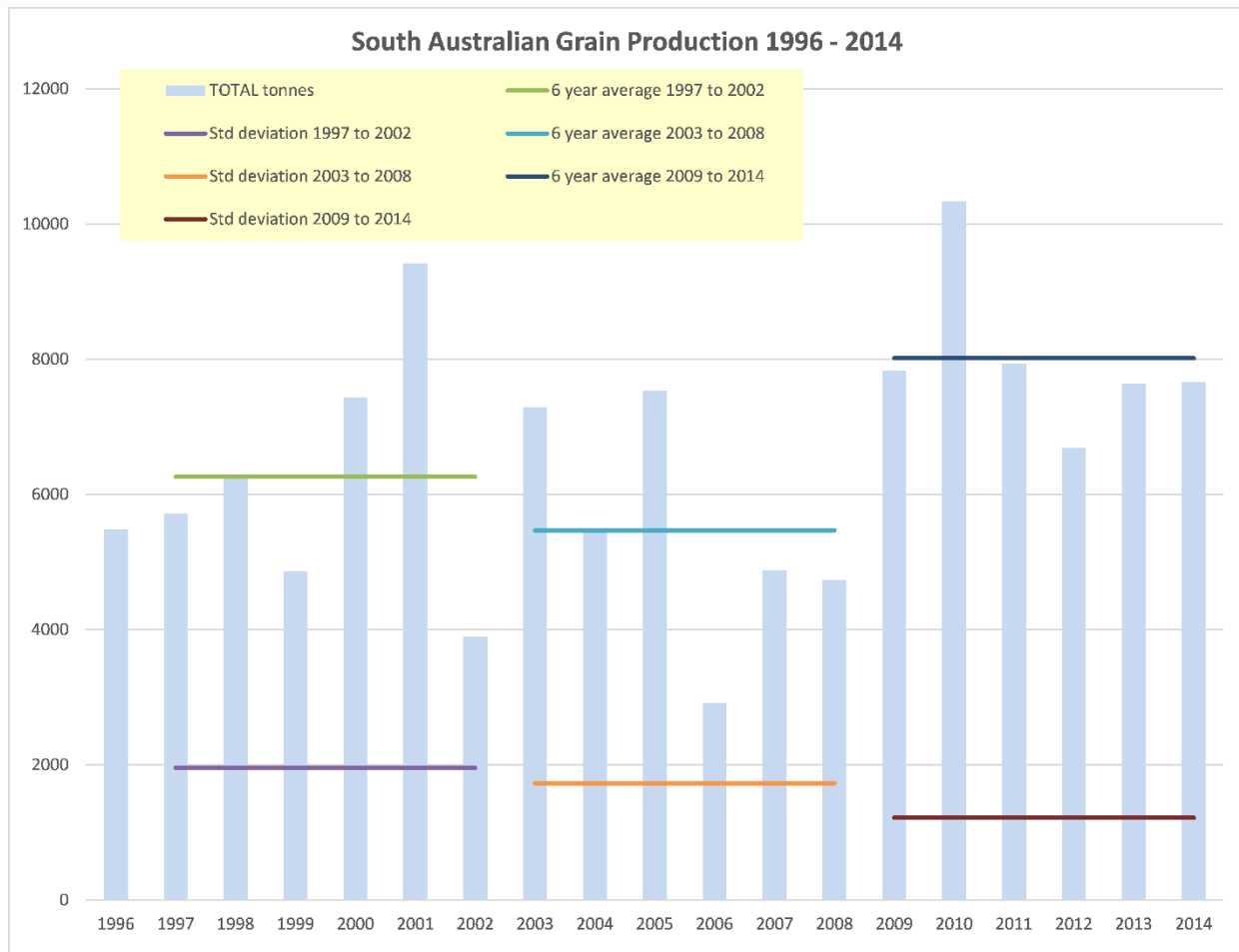
There's nothing but this one simple and bland statement about the benefit to the consumer in the entire Glencore/Viterra Application indicating that this is all about Glencore/Viterra and the "client", not the consumer.

There is no benefit to the consumer (farmers) in changing from the auction system to the Glencore/Viterra Application indeed there are a number of negatives that we identified below.

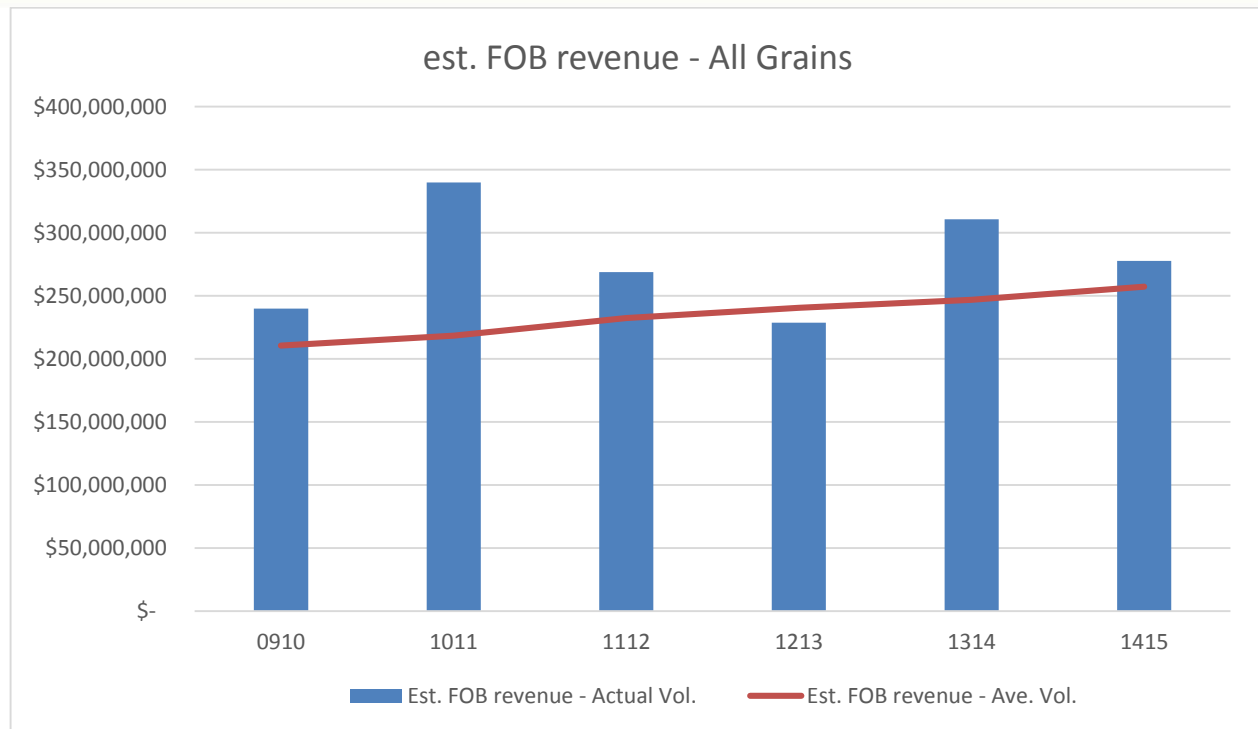
The Glencore/Viterra Application shifts more production risk to the farmers. The farmer already carries the bulk of the production risk. A shift away from the auction system increases that risk without reduction in logistics or supply chain risk. This shifting of risk is identified in the Glencore/Viterra Application.

1.5 Cargill has recently stated publicly that a key reason for seeking alternate export paths from South Australia is to reduce its exposure to production risk that exists under the current auction system.

Farmers have been reducing the production risk significantly over the past two decades for both themselves and the supply chain. They have achieved these significant production risk decreases through adoption of modern technologies e.g. no till, summer weed control, precision agriculture, overtly and progressively over the past two decades. (see chart below)



The value of this lessening of production risk has not been reflected in supply chain costs which continue to rise (see graph below). The Glencore/Viterra Application suggests a number of benefits from reduced regulation to the port Service Provider and exporters (Clients) suggesting more efficiency leading to lower cost for them but at no point is there a correlation between these improved services leading to lower costs for the consumer. (Farmer). It is imperative that reduced regulation and better service is linked to more efficient and lower costs to Farmers. It is far too nebulous a relationship to simply assume reduced risk at the port will lead to higher prices for grain from farmers.



The Glencore/Viterra Application likely reduces competition for South Australian farmer's grain through;

- Favours incumbents
- Favours larger organisations
- Discourages new entrants
- Discourages smaller regionalised firms

An analogy of LTA's would be for the livestock saleyard auction system being removed and the agents then allocating pens amongst themselves.

3. *The opportunity to ship from certain SA port terminals and in certain shipping periods are valued by industry more highly. Does the Glencore/Viterra proposal adequately account for the different levels of interest held by the market in SA port terminal capacity?*

No.

History demonstrates the valuation per slot is highly variable both per season

In 2014/15 auction prices ranged from as low as 6/t) to greater than \$60/t for highly sort after slots.

And, over time e.g. past 3 years;

Initial auction average across all tonnes auctions range from approximately \$5/t in 2013/14 up to \$31/t in 2012/13 and \$32/t in 2014/15.

GPSA does not for see how these massive differences in value for location, seasonal and or yearly time frames can be transparently negotiated behind closed doors and for periods of up to five years.

1.2. LTC capacity allocation framework

Issues for comment

4. *As per the purpose of the Code, will the proposed LTC allocation process, in conjunction with the other features of the proposal, allow for a fair and transparent allocation of capacity?*
Unlikely to be fair and definitely not transparent. All negotiations are behind closed doors and only open to the entire market after the negotiations and arrangements have been concluded.
5. *Are the 50 per cent initial long term capacity allocation restrictions per quarter appropriate? No. Will exporters be able to secure meaningful capacity with these caps in place?*
Yes. The risk is only a very few exporters would be able to secure meaningful capacity.
6. *Given the likely strong interest from exporters in securing capacity at Port Lincoln and Adelaide Outer Harbour is the 40 per cent cap in the January to March quarter appropriate, or should a different cap or parameters be applied?*
It is not appropriate. It is highly likely 80 percent of this prime capacity will be taken up by the largest incumbent organisations for the entire five years immediately, effectively reducing competitive pressures for grain from farmers for half a decade.(Also see answer to questions 8 below)
7. *Will exporters who do not secure sufficient LTC in accordance with their application proposals be able to participate in the SA bulk grain export market?*
Unknown. Their ability to participate will at least be severely hampered.
8. *Is it probable that a large proportion of the total available LTC available across the five years will be taken up in the initial allocation process?*
Yes. The large incumbent organisations will take significant positions knowing the worst case is forfeiting capacity at cost of 25% of the fee or more likely trading it on the secondary market.(Glencore/Viterra Application Clause 7 page13) *What effect will this have on the scope for new entrants to enter the market and/or possible growth opportunities for existing exporters?*
It will limit the scope for new entrants to enter the market.

LTC capacity oversubscription allocation process

Issues for comment

9. *Given the level of discretion available to Glencore/Viterra to allocate LTC, will the oversubscription process facilitate a fair and transparent allocation of capacity to all exporters? No. Which exporters or what type of exporter is likely to benefit from these arrangements?*
Large incumbent exporters e.g. Glencore. (Glencore/Viterra Application 4.26 a)- f) These allocation principles are subjective, lack transparency and favour a reduction in competition.

10. *Is the information provided in the protocols on the allocation of oversubscribed capacity sufficient enough for exporters to fully understand the process of allocation?*

No, the discretion afforded Glencore/Viterra is extraordinary broad.

11. *Considering the oversubscription allocation decision making framework, and past shipping activity, Glencore (an associated entity of Glencore/Viterra) may be in a strong position to obtain the maximum allowable LTC allocation as set out in the protocols. Glencore will also be able to obtain STC and potentially other additional capacity when made available. Is such a potential outcome a concern, taking into account Glencore's position in the SA market?*

Yes. The key reason Glencore/Viterra was forced to go to an auction system in (2010/11) was because they booked up all the desirable slots ahead of all others. (need to reference these documents)

12. *Given the matters Glencore/Viterra will consider when allocating LTC, will the maximum five year term prevent some exporters being able to compete for access to desirable shipping slots? Yes. Only current exporters can compete and it is very possible new export companies will arise. Change is inevitable yet this Glencore/Viterra Application doesn't allow for material changes that are very real possibilities over the next five years. Are exporters satisfied with the dispute resolution process available to them in relation to LTC negotiations?*

Unknown

1.3. Short term capacity allocation framework

Issues for comment

13. *Will the available STC reasonably satisfy the shipping requirements of both exporters with a long term agreement and those without? Unknown. Will some ports more than others be unable to cater to all exporters STC capacity applications?*

Unknown. This is the core of the issue. It's not knowing how much STC capacity will be available any particular port at any particular time.

14. *Is there sufficient certainty about the amount of STC Glencore/Viterra will make available, and how that will be allocated across ports and quarters? No. Is it appropriate that Glencore/Viterra propose only to "spread reasonably" the 500,000 tonnes of capacity across all port terminals? No. Is any more information or clarification needed about STC?*

Yes

1.4. Interaction between the LTC and STC allocation frameworks

Issues for comment

15. *Will the amount of LTC available be appropriate in comparison to the amount of STC available? Unknown. Is there sufficient certainty about the amount of LTC and STC that will be available?*

No.

16. *Is it reasonable that an exporter, who secures a large LTC allocation (potentially up to the caps per port terminal), have the same access to STC as other exporters who have secured a lesser LTC or none at all?*

No. A very small number of organisations could dominate a specific port or ports.

17. *Is an exporter who is unsuccessful at acquiring LTC likely to seek STC?*

Unknown. Smaller and perhaps fewer exporters are likely to be in a position to secure LTC therefore STC may be appropriate dependent on availability and cost. Too many unknowns.

18. *Will the prospect of not having access to STC in the future at an exempt port influence how much long term capacity exporters will apply for? Unknown. Again this is the issue, too many unknown's and at the "mercy" of Glencore/Viterra a conflicted provider.*

1.5. Non-discrimination obligation and the appointment of an Independent Auditor

Issues for comment

19. *Do exporters find value in having an independent audit role set out in the protocols? Unknown although GPSA assume the independent audit role would be valued by the exporters.*

20. *Are other safeguards appropriate or needed given the level of discretion in the model developed by Glencore/Viterra? Yes. GPSA proposes the Glencore/Viterra application has excessive discretion for Glencore/Viterra and the current Auction system should be continued to avoid the risks to exporters and consumers alike.*