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PRODUCTIVITY COMMISSION

DRAFT REPORT ON WHEAT EXPORT MARKETING ARRANGEMENTS

**DR W. CRAIK, Presiding Commissioner
MS A. MacRAE, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT ADELAIDE ON MONDAY, 17 MAY 2010, AT 9.38 AM

Continued from 11/5/10 in Sydney

INDEX

	<u>Page</u>
ELDERS TOEPFER GRAIN: MARK THIELE DARRYL BORLASE DAVID DRABSCH	550-564
SOUTH AUSTRALIAN FARMERS FEDERATION GRAINS INDUSTRY COMMITTEE: MICHAEL SCHAEFER PHILIP WILSDON DEANE CRABB GARY FLOHR DAVID MALPAS	565-577
VITERRA LTD: DAMIAN FITZGERALD TIM KRAUSE GAVIN CAVANAGH WAYNE LEACH (MALLESONS STEPHEN JACQUES)	578-597

DR CRAIK: Good morning and welcome to the final public hearing for the Productivity Commission's inquiry into wheat export marketing arrangements following the release of the draft report in March. My name is Wendy Craik and I'm the presiding commissioner on this inquiry. My fellow commissioner is Angela MacRae.

The purpose of this round of hearings is to facilitate public scrutiny of the commission's work and to get comment and feedback on the draft report. Prior to this hearing in Adelaide, hearings were held in Melbourne, Perth and Sydney. Following the hearings, we will be working towards completing a final report to government by 1 July 2010, having considered all the evidence presented at the hearings and in submissions, as well as other informal discussions. Participants in the inquiry will automatically receive a copy of the final report once released by government, which may be up to 25 parliamentary sitting days after completion.

We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, comments from the floor cannot be taken, but at the end of the proceedings and the day, I will provide an opportunity for any persons wishing to do so to make a brief statement. Participants are not required to take an oath but should be truthful in their remarks. Participants are welcome to comment on the issues raised in other submissions. A transcript will be made available to participants and will be available from the commission's web site following the hearings. Submissions are also available on the web site.

To comply with the requirements of the Commonwealth occupational health and safety legislation, you're advised that, in the unlikely event of an emergency requiring the evacuation of this building, the exits are located - you go out this door and you turn right and the fire exits are on the wall at the end. You can see two large doors so you can go down the stairs. The toilets: if you are a female, you turn out here and go left; if you're a male, you turn out here and go right. If you require assistance, please speak to one of our inquiry team members here today. Tea and coffee are outside. Please help yourself.

I would like now to welcome our first participant, Elders Toepfer Grain. I request that you introduce yourselves, giving your name and organisation for the transcript, and then if you've got a few opening remarks, we'd be pleased to hear them. Thank you.

MR THIELE (ETG): Thank you, Wendy, Angela. My name is Mark Thiele. I'm the managing director of Elders Toepfer Grain. We'd like to thank the commission for the chance to participate in this this morning. It's obviously a very important issue and it's important that all market participants are involved. On my left-hand side I have Darryl Borlase, who is our head merchant. He also has control of our

wheat trading operation but has responsibility for our oil-growing business as well. On my right-hand is David Drabsch. David is our financial controller. So that's the panel you have this morning.

Just as some opening comments, from our perspective we think this process has been good, it's been necessary, but it's really very early in the whole evolution of what's a transitional phase from a fully regulated market, both on the marketing and really regionally monopolised infrastructure system, to what will ultimately be, we hope, an efficient deregulated market.

From our perspective, much of our view is tied up in the intent of the Wheat Marketing Act of 2008. We were supporters of that whole process, but I think the intent really is designed to say that - in one of the minister's readings:

The bill will introduce competition to the bulk wheat export industry rather than forcing growers to sell wheat through a single exporter.

We read that not only as a single exporter but through a monopoly based export structure, be that a single monopoly or regional monopolies, and that's an issue for us. There were also risks identified in the Wheat Marketing Act, and some of the structures that we're discussing today are really part of the phase of the risks that were identified, and the act talks about fair, and transparent, access to export facilities. We think that the role that the Productivity Commission has played, and your draft findings, is really bringing to the industry a discussion on how we're evolving from that regulated market to a deregulated market and what parts of the chain are moving quickly and what parts of the chain are moving more slowly.

From our perspective we think that the act has achieved its primary purpose of bringing competition to the market. We actually think the grower community has adapted to the act and to the new environment possibly, if not probably, as quickly as anyone. We also think that whilst there are issues, and will continue to be, in marketing of bulk commodity, the customer end of the chain has reacted and taken up the new act quickly as well.

The part that I think was no great surprise to anyone was that we've moved from a single monopoly with regional infrastructure monopolies to an open-market philosophy, and that was always going to create challenges. From our perspective, what we need to do now is: whatever system we design must continue to bring efficiency and allow our farmers to have the best price; not at a level where there is a lack of total transparency to the price but at a level where the farmgate return to the farmer, the real cash that gets in his pocket, is something that he can make real decisions on, and run a business. We see in the industry already the farming community moving from, "I received a price," to managing their business through

cash flow influence as much as profit influences. When you have a gap of six to nine months sometimes between production and revenue, or cost and revenue, it's really important that we ensure every dollar is returned to that segment.

In our view, the infrastructure segment is really the key focus of this. We think the other parts of the chain are working reasonably well. As a part of that, what the infrastructure part of the chain should be is a marketing-enabling business. It should be about supporting commerce and it shouldn't be about creating commerce. In our view, which was totally expected, some of the mechanisms - as we've moved from a fully regulated market to a deregulated market, as we all learnt how to operate in this environment, some of the processes and systems in place are not as perfect as we hope they will be in years to come. So a lot of our focus is really about ensuring that the hard work that's been done to introduce the new system is not undone by us moving too quickly with our data and measurement, by moving reactively on issues that are things that we think might happen rather than know will happen.

I think we've already seen some examples. The commission asked for some comments about Grain Express, a system in the west of the country, and we think that's a classic example of where the industry had a view of what might happen, but what's transpired is quite different. We think that is a key learning: that we allow some of the systems and processes to embed, create some data, create some structure, measure that, review it. At this point in time, whilst we have to go through this process, the timing is possibly a little early because, if you think back, the key part - if you take our view about infrastructure, we really didn't have an agreement through the ACCC process until - call it 30 September, right at the eleventh hour.

We have interim agreements. That allowed us only to get into a process of negotiating for the first time with the infrastructure providers. The system that the ACCC delivered - the publish-negotiate-arbitrate - we're a supporter of that. We are not looking for anyone to overly prescribe our industry. We think that the methodology the ACCC has adopted will be a good methodology. It allows us to work things out. Having said that, everyone has to get used to it and we know there are still things to be done, but at this point in time, a company like ours, we don't have agreements with all the bulk handlers yet, so it's very difficult to say whether it's worked or it hasn't worked, although I can tell you: the fact we don't have agreements with all the bulk handlers maybe sends us in a direction.

We've also seen within the process so far quite a bit of change, and quite a bit of change looked at with the bulk handlers regarding the systems they implement as they learn more. So I think our message is clearly that we really need to allow some of the systems that we've got in place now to run their course to some degree. The measurement "How many arbitrations have we had?" is not a good measurement, because it's just impossible probably to get to that point now, with the time we've all

had to work with the bulk handlers about our agreements and, secondly, the time that people would have to collect data to see if there's been a problem anyway.

So I think fundamentally our position is - and we're very happy to take any questions - that the broad direction of the Productivity Commission's finding is totally in line with what we believe. We do not want an overly prescribed industry, but we want an industry that doesn't get in front of itself a little bit and put in place some systems and structures that might inadvertently see us go back to the risk that was identified in the original act of 2008.

We think that the will in the industry is to get to that position, but at this point in time we're not there. Clearly, to us, there is significant opportunity to reduce costs in the supply chain and there's significant opportunity for everyone to understand their role in the supply chain a little better than we do today, and if we let market forces, logic and economics take over we will get to that, but at this point we're not that confident that we have that all embedded and in place to let that happen.

DR CRAIK: Thanks very much, Mark, and thanks for your notes. We will wait to hear from you about a final submission, but thanks very much for your comments and your early notes. Just briefly, a couple of comments on the timing: we appreciate your concerns about the timing of this inquiry. As far as the Productivity Commission is concerned, the timing of the inquiry was preordained in the legislation that went through and it's in the legislation that we have to report by 1 July 2010. So the timing of the inquiry starting in September, to 1 July, was really put in place way back in 2008 and there's not a lot this commission can do about it.

If we could perhaps move on to questions. If I could ask you firstly: we've had some concerns and certainly some submissions that have indicated to us concern, suggesting that the bulk handler here in South Australia, Viterra, actually booked out a significant component, a significant percentage, of the shipping slots very early on in the season, thereby making it difficult for other traders to get any shipping slots booked, and then there's subsequently been a significant rate of cancellation of those shipping slots by Viterra but too late for other marketers to take up the slot. There's been that issue and I'd be interested in your comments on that and how that's affected your operations.

Also I guess there's been some interaction between that process and what's been going on in Western Australia, where traders bid for a large percentage of the shipping slots early in the season. Then, when people weren't selling grain and the price of grain fell down, there was some difficulty in actually obtaining the grain, getting good prices overseas, and basically traders feeling they had to take advantage of the fact that they had those commitments, those shipping slot commitments, and the consequences there. But the end result of that has been that the price in WA to

farmers has been better than the price in South Australia to farmers, so I'd be interested in your comments on that sort of interaction as we understand it.

MR THIELE (ETG): So how many hours have we got?

DR CRAIK: Briefly! And if I'm wrong in any of that, feel free to correct me.

MR THIELE (ETG): Thank you. I'll try to break it down to a few bits. I think some of the issues that you're discussing have become quite fundamental and from our perspective we'd like to rely on the logic of things. If there's an opportunity to have an option that we think is reasonable, then we've got some chance to test or benchmark the system. If there's no opportunity to have an option, it gets more difficult. So if I address the South Australian situation first, it's certainly the case that we put in nominations that we weren't able to have accepted at a point in time, due to the lack of capacity, and which I believe was a lack of capacity more than the transportation infrastructure system; and that's okay.

In South Australia, though, what we did have, which is where we come back to the model of the ACCC, is the process which we'd broadly call the direct port access model. That allows us some flexibility that if something can't happen, then we've got some choice. So in South Australia, if you understood the process, if you couldn't get your vessels nominated under Export Select, there was an opportunity to have them nominated under Export Standard, which simply meant that we could still use the up-country system of Viterra - and maybe there are some things there to be looked at, but we could use that system and take the product to the port.

We put at risk a small amount of money which was okay, because there was an efficiency benefit of Export Select. But we did have the choice, so we progressed throughout the season on the basis that if we couldn't get Export Select, we would nominate Export Standard, which we did. And, as such, I don't feel that we were ever blocked from the stem, other than the fact that you had to take on some risk that, if the stem unfolded the way it said, there could have been some significant issues for us from a logistics standpoint internally to get the product to port.

Notwithstanding that, we took that risk on, which is the beauty of having the option to do it, and as such we've had an ongoing program. I think we've been one of the major players in South Australia. Unlike some others, we certainly don't subscribe to the argument you couldn't buy grain this year. Growers didn't enjoy some of the lower prices at the time they were fact, but I think if you look at what's occurred, we've had an ongoing shipping program out of South Australia. But, having said that, if we didn't have that opportunity of Export Standard, we would have had a very, very big problem and a big difficulty.

Saying that, there are still challenges and we work with the bulk handling community generally to try and overcome those challenges, but it's fair to say that the stem was heavily booked. I think that's just factual. It's fair to say that a lot of those bookings have been withdrawn. I think that's purely factual. And I think it's fair to say now that, if you've got business on, which is a key tenet that we've had from day one, somehow we've got to get to a system that people don't speculate these shipping standards and people actually - if they've got sales, we've got a way that you can execute your sale with certainty, because at the end of the day, the rest is just wastage.

We take our risk of putting business on with customers, we take our risk that we'll buy it from the farmer. What we really don't want to do is then start to take a huge risk about the execution cost. That ultimately leads to a cost to the farmer, unfortunately, because the global market is very transparent. It's very efficient and we can't suddenly go and find 15, 20 dollars a tonne to the market. So someone wears the cost and that cost has been borne through the export community, it's been borne through the grower community, I'm sure it's been borne through the infrastructure community. I can't tell you the percentages of that but we certainly feel that the exporters have worn a bit of cost generally.

I think a part of that that also comes into account is our view that Part IIIA of the Trade Practices Act will not suffice in the nearby to manage the system. We probably have a different view than some of the views that were expressed in the findings of the Productivity Commission, only because we think the geographic nature of Australia - the production variability, the spread of that production around the country - means that, if this model was all to work on spare capacity above a reasonably anticipated demand rather than total capacity, I think the industry would have a lot greater cost. I think there would be a lot more risk premium built into forward margin and I don't think that would be positive for our industry.

So we're very much of a view that we need to have some basis of access regime rather than - with what we believe today is a need to have an ongoing accreditation, not because of accreditation from, if I could call it, a counter party risk to the grower; I think we've gone through that process, early on. But until we can have a detailed understanding of another form - if I can use the word "sanction", which I think is used widely in the Productivity Commission document - that will encourage the behaviours to get to an efficient industry, then we have an issue.

I think simply if you look at it, if you have to have sanctions involved to change behaviour and culture, and that's totally understandable when you've had 80-plus years of regulation, you've got to have something where there's a want, and you put the want at risk. It will change your behaviour. The current model really works around an access regime that the want is to be an exporter and the risk is, if

you lose your accreditation, you can't export. We're very open to other forms of finding a way to get that behaviour changed or aligned with an efficient market, but until we have that, we're probably going to play it a little safe and say, "We'd like to see that and get industry acceptance first."

So I think a very big part of the commission's document where we weren't quite as aligned with many of your principles was on the view that Part IIIA of the Trade Practices Act would suffice for the management of this until we understand that far, far better than we do today.

DR CRAIK: Can I just interrupt there and we'll come back to the WA situation. In your comments in relation to Part IIIA and concern about how Part IIIA might be interpreted in the absence of a Wheat Export Marketing Act, where at least the explanatory memorandum talks about fair and transparent access, are you suggesting that you think there is a necessity to have some direction as to how capacity should be interpreted forever in place, or are you saying at least for the foreseeable future it needs to be total capacity? Or are you suggesting the issue of total capacity needs to be on the table forever?

MR THIELE (ETG): No. We think this is a transition. Our starting point, if you like, is really October last year because in the first year everyone was learning a lot. We had a production skewed to the west, we had very well documented issues over there - we don't want to go there again. But the ACCC's involvement as the umpire, if you like - and hopefully they can be an umpire in the background, not giving all 50-metre penalties - is that it's a competition body looking at a competition issue and we think that the logic of that will suffice.

Once the behaviours, and everyone works out exactly where they are - we're not sure of the time frame - three, four, five years is the window that gives enough time from where we were to where we are to embed those behaviours and to measure it. And please don't interpret our comments about timing as an issue: we understand the timing, but I think if we'd started with the ACCC process from day one in 2008, we might have a little more knowledge and data today. We didn't and that's just a fact, so we move on.

Our principle is that the industry should self-regulate and self-manage, and we should be given a chance to do that. I think the ACCC system does - and access is the key part to us, more than accreditation. Accreditation is sort of a by-product now. But longer term we would like to see a totally deregulated market and I think your time frame with the access arrangement is totally acceptable to us, the 2014. It's just probably how we get to that point.

DR CRAIK: Okay. Can we go back to the interaction between WA and the WA

prices?

MR THIELE (ETG): Sure. I think WA is quite a different scenario than South Australia, particularly because today, in our opinion, we don't have the Export Standard equivalent in WA and fundamentally the WA system of auctions - we're ambivalent to the auction system.

If that's a mechanism to allocate capacity, fair enough, but it's not the auction system per se, it's the terms and conditions and rules and access undertakings that are wrapped around that. For example, if we took the South Australian model, we would have to pay an extra \$8.50 a tonne to take the product up-country, and then we're not allowed to move it to port unless we take a direct port access model, which we've had to tell you back in October, or November, or when the auction system is. We think the combination of some of the ways the terms and conditions have been constructed - and that's probably a learning curve for everyone as well - doesn't give us the opportunity to actually put a benchmark or a test if the capacity is tested, and really what we're after is just an ability to test that capacity mechanism which we have in South Australia.

As far as Grain Express per se, really that just means that we don't have the chance to do freight, and the logic of supporting that - which we, as well as many in the industry, did initially - was that it was logical in the fact that our product would be at port, we would be able to load our ships and execute our ships, and our view was there was risk-sharing in that, that we gave up our rights on the freights so we took some risk that we could be in a position where we couldn't change or challenge anything; but, for that risk-sharing, that we wouldn't incur extra cost above what we believed would be reasonable.

What has transpired is different than that and possibly is a part of our thinking why we need to be very careful to have real, measurable data looking back, rather than guessing what might happen looking forward, because at the moment it's not working as people anticipated.

As far as the auction system and the way that's unfolded per se, people have had to basically take a position on shipping slots. If you go back to our view on the world, that we really shouldn't have to create a speculative market in shipping slots, that should just execute our business, that's not what we're here for. We're here to move product from the farm on to a consumer or processor, and we really want to take out risk and speculation in a wildly production-variable country like ours, rather than add it.

We do believe that the market is being driven now by people looking at the cost of the risk of forfeiting the shipping slot versus the cost of loss in the

marketplace, and then if that drives any further shortfall position - 1000, 2000, 5000, 20,000 tonnes in your shipment - it's nearly like a double whammy. You've still got to go and buy it, and what that's done is kept the grower market strong in Western Australia.

From our analysis and our view, that market is operating at a value quite significantly, probably, above the economic spread between freight and storage and handling. So, whilst it's a benefit for the WA grower, it's certainly we think had an impact for the South Australian grower. We just would like to see a system that encourages commerce rather than creates these markets because of structures and systems we put in in the service provision rather than in the main game of price risk management.

DR CRAIK: Have you indicated your views on Grain Express to the ACCC?

MR THIELE (ETG): We have some submissions in play on a number of issues there, if I can leave it at that.

DR CRAIK: Sure.

MR THIELE (ETG): I think as far as this learning that we were talking about, some discussion papers have been asked for by the bulk handlers in Western Australia, which are asking for people's views on, essentially, the undertakings and how this structure has all evolved. Clearly, in their proposal there's an adjustment to, "Well, we've got to try and address some of these issues." So why I say I think it's an evolution is, it's not an us-versus-them theory, it's people making a view of what will try and meet the needs of the market and we won't get that right on day one.

DR CRAIK: You've got a comment suggesting that at this time you haven't got agreed protocols with all of the bulk handlers. I guess I'd ask: are you making progress with some of the bulk handlers in that respect?

MR THIELE (ETG): Yes, I think we'll make progress on all of that. I think that there's a number of factors in that, notwithstanding the biggest one is: you get into harvest mode and you get into executing your ships. But, yes, I think where we have had success: there's been a significant move from a starting position to where we got to and I think there was an urgency and a desire to get that done, for whatever reasons.

DR CRAIK: Yes, GrainCorp certainly told us that they had recently negotiated agreements with all their arbitrators.

MS MacRAE: You talked about speculating on the shipping stem, and from your

further comments I assume you're kind of relating that to the Western Australian situation. How do you see the first in, first served sort of situation in South Australia? Do you think that sort of model of access is something that should persist in the longer term or do you think South Australia should go to an auction model if we could get a good model operating in WA? Some of the exporters have said, "We'd love to have a single system that operated across all ports. It would be nice if we could have one system." I'd just be interested if you had a similar view and, if you did, which system, because there seemed to be a variation of views around that as well. We're pretty clear that none of the exporters would like to have the auction system as currently configured in Western Australia continue, but I think even CBH itself has, as you said, put out documents suggesting change there.

MR THIELE (ETG): Yes.

MS MacRAE: So I'd be interested in your views on that.

MR THIELE (ETG): We've always taken the view from day one, to anyone that wished to talk to us, that the first in, best dressed model would ultimately work, but that there really needs to be a penalty incentive system, or hopefully an incentive penalty system. I think the biggest penalty system is economic hardship and from our perspective there are probably a few people that have gone through some economic hardship this year by speculating on shipping slots.

The way the system is structured, we're reactive I think. We're fairly reactive beasts, and after last year in Western Australia with the expression-of-interest model, which was really just - well, it was what it was. The key thing that everyone wanted was certainty, so the incumbent in Western Australia gave us some certainty. There were just a few things wrapped around that certainty that were probably identified by some as a risk.

As an executor of shipping, the main thing we want is certainty that we can get our job done. We understand in our industry there are lots of things that come at you that you can't fix. We get insects, and we're not Canada, where the insects are going to be killed by the snow. We've got some things that are relevant to the Australian market. What we just want to do is to be able to put on business and then make sure, if we do all the best we can, and our service providers do the best they can, it gets executed.

Longer term, we think the allocation of capacity ultimately will resolve itself, and I'm going to speculate here, but if you took a poll of all the current exporters today versus this time last year - "Would you go into an auction for certainty?" versus, this time this year, "Would you go into an auction system for certainty?" - I think we'd have a wildly different result.

MS MacRAE: Yes.

DR CRAIK: Do you think first in, best dressed will be okay when there's a bumper harvest?

MR THIELE (ETG): Look, we do - only on the basis that the system will allow people to speculate if they want, but the mechanism should self-correct. The current mechanism, where we have this auction system: the secondary market, for whatever reason, hasn't worked and that's a key tenet in some of this, that the secondary market will resolve some of the issues. For whatever reason, that hasn't worked. I think as long as you have choice - rightly or wrongly, we're not infrastructure owners, but we believe Australia's total bulk capacity at the export level is far greater than what we have the capacity to utilise. And this is not the only place in the world that shipping gets held up.

As long as there's a process that allows everyone to understand what's real and why the importance of real knowledge and real timeliness on the shipping stem is there, so that people can make decisions - if we can get those things right, we believe that ultimately economics and logic will resolve that, without us needing to impact other regulatory structures that - by definition, it's very difficult to get something 100 per cent right in a commodity market like ours, with variability of production, because something will change this year from last year and everything that was perfect today will look different tomorrow.

That's why we've always tried to align more to the first in, best dressed, on the basis that we have true knowledge of what's happening, and if that's speculative and they don't get sales, then that will become available and the market will resolve that, and if someone tells us we can't do it, we've got a choice to say, "Well, let us show you we can do it," on the premise that we don't have an undercapacity of port elevation.

MS MacRAE: You mentioned before about needing to adjust the access undertaking so everyone is learning and everyone is agreed that there might be changes required. We did have a recommendation that any changes be - I don't know if we used the word "minimal", but as you've said, you support the publish-negotiate-arbitrate sort of model, and we also think that that's a good model, and we were concerned that, if there was too much adjustment and scope for too much flexibility and change, we might quickly then move to more of a building blocks model where you get set tariffs and things, which we didn't think would necessarily be a good thing. So the intent of that recommendation was to say, "Well, let's not get rid of the overarching model we've got here and throw it out for something that's much more restrictive in the way that it might apply."

I see from your point of view you're saying, "Well, that's not how we're looking at it. We're saying that what we've got here has some inflexibilities in it. We'd like a bit more flexibility in there." I guess putting on the table where we were coming from: would you agree that the publish-negotiate-arbitrate is a better model that you'd like to keep, going forward, and how would you see giving flexibility to those arrangements without risking upsetting that balance?

MR THIELE (ETG): I think the best way to start with that is that probably by the end of next harvest I'll have a lot more data to tell you.

MS MacRAE: Yes.

MR THIELE (ETG): I think the base principle we've got is: is there an assumption that we have it 80 per cent right now? I think until we get true ability for options and competition - and I fully appreciate the position of the infrastructure owners; they've got an asset there. That's fine. The worst thing we believe that can happen to the Australian grain sector - and it will come back to hurt all of us, but particularly our grower community, and everyone knows margins are tight in that business. Our group, with Elders, we know both sides of that pretty intimately; that it's a competitive marketplace. So we think that we've got to have an ability to challenge the parts of the chain that we can challenge.

MS MacRAE: Yes.

MR THIELE (ETG): And until the direct port access - and we say there's an infrastructure there and, to me, I think ultimately the logical - I need to get as much through my infrastructure, be it up-country, at the port, a truck, a train, whatever, as is available, and I'll only get really good at that if I've got some competition and some innovation that challenges where I'm at. So we think that the work in progress is that the model is really a bit early; that it's hard in some places to do the direct port, because we would never see a fully ex-farm supply chain develop across the majority of the industry. We've got a lot of infrastructure there. Why waste capital on building new infrastructure that we don't think is required? But we'll only find that out when we actually are able to fully test it. If we fully test it and everything we've got is perfect and the cost is right, we'll tick the box and walk on like the next guy. But we don't feel we're in that position yet.

MS MacRAE: But you'd say you're closer to that in South Australia than Western Australia?

MR THIELE (ETG): I think everywhere in the country has still got some work to do.

MS MacRAE: Yes, okay.

DR CRAIK: That's very diplomatic.

MR THIELE (ETG): Look, you have discussions with all people about parts. One model fits all? I'm not sure, with many industries in Australia, just because of the diverse nature of climate and geography and distance, I'd feel comfortable. One overarching principle fits all? I can deal with that. So from our perspective, I think we look at what assets are there, what infrastructure is there, what capacity is there, what further capital needs to be invested, and we say, "Okay, we've got enough," "We haven't got enough," "We need more," "We don't need more." So if we've got all that, "Is the cost right or wrong?" or, "We think we can do it differently without wasting capital. Let's test it."

DR CRAIK: Can we just follow up, too, while we're still in this kind of general access area: you did mention that we'd recommended in our report that we remove the need for accreditation but that the access undertaking and the access test still needed to be in place I guess till 2014, but there would still need to be another sanction should the bulk handlers not meet the access test, and you've expressed the view that accreditation to export is - I'm using my words here - I suppose about the best sanction that you could think of. I guess they're my words, but would that be a fair interpretation of what you're essentially saying for the bulk handlers?

MR THIELE (ETG): I can answer that by saying it's the only one I know today.

DR CRAIK: I guess there are choices. Fines and things like that are the other sorts of alternatives.

MR THIELE (ETG): I think that we need to keep it pretty simple. If the key want that people all want is to be able to export, and that's the biggest thing that you could lose or put at risk, then it's probably not a bad place to start. There's obviously a lot of thought goes into forming the Wheat Marketing Act of 2008 and these risks were identified. As we've noted, we don't see accreditation required for accreditation's sake. We think that that process has been done. We think the grower deserved to have the ruler run over companies to make sure that they were going to uphold Australia's market reputation; that they had financial capability; that they had a good corporate governance system, et cetera. But we think that's probably done. What we're saying is we'd like to see the current position kept for a period till - and I think there's been some suggestion through the AGEA - we're also a member of that body - of some time frames and we'd be reasonably consistent with that, because we really don't want to ultimately have a prescriptive market. So this is a transition. It's an evolution. It's a learning curve that we adjust on data rather than adjust on notion.

DR CRAIK: Thanks. Just one more question on accreditation: you're suggesting that you didn't find the costs of accreditation onerous. We were asking in our report, because we only had information from the bulk handlers on the costs of accreditation to them, for others to give us an indication of the costs of accreditation to them. You've suggested they're not onerous. Was it like someone's time? Was that the sort of issue that was involved mostly?

MR THIELE (ETG): David, do you want to comment?

MR DRABSCH (ETG): Yes, sure. All our costs were internal costs, so we didn't actually find that very onerous ourselves, because we have certain reporting requirements internally as well, so it was just a matter of attaching that to our current requirements. We haven't had to employ any external resources. After the initial accreditation, as far as the ongoing notifications are required, we're able to accommodate that within our current structure as well, so we don't find it a great burden at all.

DR CRAIK: Okay.

MR THIELE (ETG): If I can add, part of this whole process is people's view of what compliance and that is required, and from our perspective we think the model of publish-negotiate-arbitrate allows a lot of flexibility to change things and do things, but I think, as everyone is learning, there are maybe different interpretations of what people can do, and I'm sure that that adds cost to some parts of the market that doesn't add cost to ours. But frankly, and I think we've said, we don't see cost as the primary driving issue here and we don't see cost as probably in the top three or four primary driving issues. But that's easy for me to say from our perspective. Internally there's been some value in that, because you have to revisit your systems and things like that, and processes and risk management, and sometimes you just need an external to tell you to do that, but overall we don't see that as being onerous.

DR CRAIK: Did WEA undertake any functions that you think it would be important for them to continue, over and above accreditation?

MR THIELE (ETG): I think their focus in the early days has been very heavily about accreditation for - and if I could use the term - more that counter-party management, looking after growers' interests type structure, which we've said is okay. I suppose there's a bigger question, which I don't have an answer for. There are a number of functions that are required. You've asked questions about other issues: that maybe there's a monitoring role on other things, maybe there are some other industry-good functions that we don't do today.

The question to me is, do we think accreditation is a key part of the job? No. Does the WEA potentially have a role elsewhere? Well, you've got a body set up. You've had all the start-up costs. You've had all of that already used, and the costs are sunk there, and if there's a function of somebody under the act to do some things, then there's already a structure there, but certainly not per se to be an accreditation vehicle.

DR CRAIK: Okay. Thanks. I don't actually think I have any more. Do you?

MS MacRAE: I don't think so.

DR CRAIK: No.

MS MacRAE: Sorry, we're just checking our notes. Just for the record, we did get these only this morning, so we're just making sure that we haven't got anything that we haven't picked up; but I think we've covered everything.

DR CRAIK: I think we've pretty much covered everything that we wanted to cover. Yes, I think I've covered everything I want to cover, so thank you very much. We appreciate your time today and your comments. What people can do now is grab a cup of tea or something and we'll start at 10.30 with South Australian Farmers.

DR CRAIK: We might resume and we have South Australian Farmers appearing. If you could give your name and organisation for the transcript, and then if you've got a few opening remarks, we'd be pleased to hear them.

MR SCHAEFER (SAFF): Michael Schaefer, chairman of the South Australian Farmers Federation Grains Industry Committee. We've got Philip Wilsdon next to me but also in the audience we've got our executive officer Deane Crabb; Gary Flohr, a representative from the Mallee; and David Malpas, a representative from the South-East. As you can see, growers across the state are taking this very seriously. The supply chain has concerned a number of us for a long period of time and we welcome the Productivity Commission's inquiry into it and hopefully something positive can come out.

Firstly, there wasn't a lot we agreed with in your preliminary discussion paper but one of the things we did agree with was the "no need to continue to accredit traders". That's been done and dusted. I think the purpose has been served. Where we do disagree with you is that the WEA is set up. It does have an understanding of the supply chain marketplace and we think that it would be very useful to keep an eye on the regional monopolies that are in Australia, particularly about ports. And because it's set up, we don't need to duplicate that.

Between that and the ACCC, the sanctions to hit bulk handlers I think is needed, until they have shown that they can work with the rest of the industry. Our hope is that, with the sale of ABB to Viterra, that will come about. I think we've seen some positive things occur from that sale that would not have occurred under the old regime. I'm not naive enough to think that things will be fixed up, because there are still people working there that put those poor practices into place. Nevertheless, we live in hope.

I'd like to put the remark on record of congratulating a grower from Western Australia, Kim Halbert, on his submission. I wish that we'd done as good a job with our submission. I think he hit the nail on the head very, very well and I note that he did also recognise that he was on the WEA panel, which is more than we can say for some other growers' submissions, particularly those CBH directors. I think from a grower perspective, in the South Australian grains committee, unlike other growers across Australia, we firmly believe in the importance of the deregulation of the marketplace and the benefits that that has brought about over the last two to three years. So we have no issue with what the government has done with wheat in particular but there are a number of issues in the supply chain that we think need to be addressed.

The Trade Practices Act you mentioned in the preliminary report as a mechanism of keeping people in line. We feel it's far too cumbersome,

time-consuming, and the time that any of that sort of legal action would take - those traders still have to load boats. Not that we think Viterra would do anything wrong, but it leaves that trader to greater risk that some penalties may be imposed on them while that was occurring. So we don't think that the Trade Practices Act is the right way of going about dealing with this issue.

Certainly we don't want further regulation. What is needed is a clear set of rules so that everybody that's participating in the marketplace knows what they are and they can work with them. That means that there is risk and reward to all parties so that, in the exporting of grain, there is risk for the trade: they have to buy it and they have to export it and they've got a lot of other risk down to the consumer overseas; and the bulk handler needs to have reward for doing a really good job, but under the current way things operate, they don't have any risk because that's farmed out. The only way they can do that is because they have such a strong control over the supply chain.

We view it as like the stock exchange: the stock exchange has some rules. Everyone knows what they are, then you participate like bugger to do your best to maximise your benefits. That has got to be good for the grower, because at the end of the day, any costs in the execution of any business come back to us. I'm not making enough money anyway and having people not wanting to come to South Australia to purchase grain and export it is affecting us fundamentally. That wasn't the point of deregulating the marketplace.

The point of the whole wheat deregulation was that we'd have the maximum amount of people coming here to participate and hopefully doing a great job and South Australian growers getting the benefit of that. I guess that's the demurrage/dispatch issue, that right through the supply chain there needs to be demurrage/dispatch including with growers. If they don't do the right thing, they should get belted. That moves right through to getting it onto the boat.

Another area that I don't think was touched on well enough in the preliminary report was transparency of stocks, sales, warehouse, freight, things like that. The issue with knowing what is in store is very important to everybody in the industry but particularly to growers because we have the least ability to understand what is in store to make decisions on marketing. While you are concerned with wheat, an example is beans. Beans aren't a big commodity but if you don't get your beans on a boat when they're exported, you're left with them. If you don't know that there's only 5000 tonnes or 10,000 tonnes left in store, how do you know whether you should be selling them or not? Whereas, if you have that knowledge, you will make - you might not be happy with the price but getting something for them is better than continuing to get fees until the next year's crop and so on, carrying them through store.

One of the issues that we see that's an issue, and you did spend a lot of time with Elders on, is the \$5 slot fee. An issue we see coming up is, in May I think there's about 600,000 tonnes on the stem. Another issue with transparency is, we're not sure what the capacity is any more. However, that's an awful lot of tonnage and if those tonnes aren't delivered onto boats, somebody is going to be paying a lot of demurrage. The problem with that is, the evil traders might have to wear it but the grower is the one that wears it at the finish because that money has to be left on the table to deal with those issues, and currently the person that's organising the slots, taking the bookings and trying to put the grain on the boat isn't subject to any penalty for not doing that job properly. It's almost as though they're more than happy to have 600,000 tonnes at \$5 a tonne on the books, get the money in, and then if they can't deliver it, well, it doesn't matter because they are not being penalised.

One of the problems with the around 1.1 million tonnes of slots that have been cancelled is that they've been cancelled with 14 days' notice. Under the current rules, you need 18 days to nominate your tonnage, so all of those slots have been wasted, and that hasn't been beneficial for the grower at all.

The \$5 a tonne is fair enough. People can't just put up those ships, and so the \$5 a tonne is important, but you shouldn't be able to pay with the right hand to the left hand either. Everybody needs to be at risk; their \$5 needs to be at risk. We would see the need for an escrow account or something so that everyone puts their tonnes up, the \$5 a tonne goes into an escrow account and then it's divided pro rata for those that have actually shipped the tonnes - and that is the shipping of the tonnes, not just that you might put a slot up and then on-sell it to someone else and they ship them. The people that ship the tonnes get the pro rata of the unshipped tonnes. That's how we would view making the slot thing work a lot better.

DR CRAIK: Thanks very much. I think you were suggesting that the grower directors of CBH didn't identify themselves as directors of CBH in their submissions. They did in fact identify themselves as directors.

MR SCHAEFER (SAFF): Did they?

DR CRAIK: Yes, they did, in their submissions to us. They were quite clear, yes. I just wanted to make sure that that was on the record.

MR SCHAEFER (SAFF): Well, that's good, because that wasn't my understanding.

DR CRAIK: Am I interpreting what you're saying correctly? When you're saying you're concerned about just relying on the TPA in relation to the access issues for the

bulk handlers because it's slow and expensive and cumbersome and all the things that everybody acknowledges it is, you would prefer to see some other sanction still, like the accreditation-to-export sanction that's there now.

MR SCHAEFER (SAFF): Yes.

DR CRAIK: Are you suggesting that that or some other sanction needs to continue in place, at least for a period? Is that what you're suggesting?

MR SCHAEFER (SAFF): Yes.

DR CRAIK: And do you think that they need to continue forever, or do you think sometime in the future - like we've suggested 2014 for the access undertakings?

MR SCHAEFER (SAFF): I think 2014 is too short a time frame currently, from this position. I think if it was 2020 and behaviour was modified and changed, the supply chain was working efficiently and there was general agreement in the industry that things were operating pretty right, then you can always change that, but if you put a time limit in at 2014, it won't take very long to get there and what is there to stop that behaviour occurring afterwards? I would like to see it indefinitely, simply because of the lack of trust, I suppose. The ACCC is in place, the WEA is in place - partly funded or a fair part of it funded by the grower anyway - and so there is the ability to utilise that structure now.

It's not like we're having to build anything new to enforce or do any of these things. The people involved have an understanding of the industry now, and that's something that we've found over the last three or four years. The grains industry is a very interesting industry and it takes a lot of getting your head around to understand how things actually work. So, while we've got all those institutions in place, we should be utilising them. I guess we could live with the 2020 line, because hopefully 10 years of behaviour would be entrenched then and it would be very difficult for them to go away from that.

DR CRAIK: Would you suggest that WEA, for instance, would need to stay in place till 2020 for that accreditation-to-export issue for - - -

MR SCHAEFER (SAFF): The bulk handlers?

DR CRAIK: - - - the bulk handlers?

MR SCHAEFER (SAFF): Yes, I think so. These things can always be changed down the track, but once you lose them you can't get them back. They're in place now. We see an incredible change over the next three or four years in the behaviour

of the bulk handlers, then perhaps the industry can come to a decision and go to government and say, "We don't think it's needed any more," and that would be a sign of a maturing industry, and I'm not sure the grains industry is a mature industry yet. We can do those type of things, but once we lose that ability, I'm not sure where we go to get change if behaviour is viewed as poor.

DR CRAIK: Okay. In terms of trying to interpret your comments about what's needed for South Australia to improve the competitive environment there, what you're saying is we need to keep the access undertakings; we need to keep WEA with the accreditation-to-export issue there in relation to the bulk handlers; we need to see more sharing of the risk in terms of, I guess, demurrage, dispatch and all the related issues.

MR SCHAEFER (SAFF): Yes.

DR CRAIK: Are they the main issues in relation to the structural issues?

MR SCHAEFER (SAFF): Yes. The other one I think that we need is the transparency in stocks - warehouse - so that growers know whether there's half a million tonnes of hard wheat, 50,000 tonnes of hard wheat or whatever the quantities are, and I don't think it should be restricted to just wheat. The shipping stem should have, "The Ho Chi Minh is coming in and taking a hatch of beans" or "half a boat of beans," so that growers can see there is a boat coming in for beans: "Should I get onto this boat? Are there X number of tonnes of beans that are going to be going out at a later date and we'll speculate that the price will go up for that demand?"

At the moment growers don't have any idea of how many beans are about in the state, or how much hard wheat is about, or how much APW wheat or ASW wheat. That knowledge helps build skills in marketing, but an individual grower doesn't have the ability to go out and find out what those tonnages are unless they've got a very, very good friend in the bulk handler, and they can't tell you anyway because they would probably get sacked - as they should under the current thing. But that's the issue that we have as growers. We are fragmented, and even if SAFF Grains had the ability to get that information - well, we can't get that information on behalf of all growers.

It should be available. It was available in 2004 before ABB took over Ausbulk and it should be available to the industry now so that the industry can function efficiently. That's why we're here: to have an industry that functions efficiently so that all players, including the bulk handler with their infrastructure, can get a return on their investment.

MR WILSDON (SAFF): I think also one of the issues you brought up was the

grower education. I think without the proper information of what stocks run-off, with the feed wheat or GP wheat, that may go into domestic markets - the growers need information like that to understand the tonnage that's in the system, whether it's going to meet just domestic needs or needs to be shipped. With proper transparency through the whole supply chain, growers would be educated to make proper market decisions.

DR CRAIK: So are you really talking about the sort of information that the bulk handlers have? Is that the sort of information you are talking about, or are you talking about additional - - -

MR WILSDON (SAFF): A lot of it is information under Ausbulk. Years ago it was all freely available on the Internet site. Since it's been taken over by ABB, now Viterra, that information is no longer there. If you buy a tonne in the system as a trader, you get stack averages which may not be an individual sell. It's just the stack of that system. Overall, knowing what tonnages are positioned at what ports and all that, growers can be informed either directly themselves or through commentary, just how much grain is going to meet certain needs domestically and, if some needs to be shipped, they can make decisions on when they need to market it. Without any of that information, they are making guesses about what is happening.

I think what has happened this year is, a lot of growers have just frozen. They haven't made decisions and there are still stocks remaining in the system that probably should have been sold and, at the end of the day, whether it is in pools or in growers' storage or warehouse, it's going to be carried by the grower and the grower is carrying that risk. I think a lot of that has been indecision because of a lack of information. Having grower education sessions to teach growers about swaps and futures and whatever is all good, but supply, demand and cost of where things have to get there is basically what sets your price and that's information I don't think growers have got access to; certainly haven't got the means to access it. Big trading companies have people doing that all the time, but individual growers just can't do that. It needs to be more transparent.

MS MacRAE: Perhaps we should ask this question of Viterra when they come on. We have had a lot of trouble trying to establish exactly what was available in 2004 and we do have a specific question about it in our draft, asking people could they please tell us what was specifically available in 2004 to growers that's not available now. If you've got those details, that would be really useful to us, to have that. We have heard that, and I think you mentioned that at our last hearings, but we still haven't been able to track down exactly what. So in terms of specifics of detail of what growers had in 2004 and what they have now and the differences that are there now, that would be really helpful to us, just to clarify that picture, because we have tried to chase that quite hard and we still haven't been able to clarify it.

MR WILSDON (SAFF): Michael has touched on it. It is more than just wheat: it's other grains as well like canola and legumes. There might be one boat going and that is the only boat. If you're not on it, you're going to carry it right through the new season. For the wheat issue, it seems like if there has been a rainfall event and there has been some shot grain around and we have got therefore feed segregations, if there's a certain tonnage that's domestically required and there's less than that amount of tonnage in the system, you know as a grower, "If I market that, it may be going domestically, I might be able to get a premium." But if there's excess of market domestic requirements, you'll know that this is going to have to go on a boat somewhere, and that might change your decision-making and how you market it. It's the information like that we haven't got access to.

MR SCHAEFER (SAFF): Last harvest there was a scare about rain-damaged wheat. I'm not sure that there was the amount that people thought, and so growers at harvest time were almost panicked into making decisions that, if the actuals were known, might have made different behaviour. There was only one entity that knew what was available, and that's the problem. If everybody knows, the information is available, then the marketplace is going to work far more efficiently. We keep coming back to where the grower sits. That's who we're representing, and those signals need to be seen clearly. In fact, there have been 70 years of very poor market signals from the main seller of wheat in particular, and also barley, and so we need to get those sorts of things sorted out so that our business in Australia of growing grain is able to compete efficiently with the rest of the world.

DR CRAIK: It's been suggested to us that when growers warehouse their grain with bulk handlers, as the growers still own that grain they should suggest to the bulk handlers - as they are the owners of the grain, they are the ones who own that information - that they should be entitled to have that information given back to them, rather than it be held by the bulk handlers, and that growers should actually try to pursue that line.

MR WILSDON (SAFF): I think it's the warehouse's grain. Whether it's owned by a trader warehousing it there or a grower, there shouldn't be any difference to myself. But it's more than that: it's actually when you rock up at the silo and you want to market your grain or to do a contract with the farmer that they will sell it for cash, you haven't got the information available to make the decision before you decide to warehouse it. So it's an issue back further than just that. But, yes, an owner of grain in that system, whether you are a grain trader or a grower, I don't think it should be treated any differently. You should have access to that information as well.

DR CRAIK: Can I change tack and go to your submission to us. I was reading your details of Genesee and Wyoming on the charges for a pilot on the line from

Dry Creek to Port Adelaide. Can you explain that to me. I'm just trying to make sure that I really understood exactly what you were saying here.

MR SCHAEFER (SAFF): One of the issues is, because things aren't transparent - I'm not sure any of us understand exactly how it works - that line, to our understanding, is owned by ABB and there is another line that is owned by - I think it's owned by Genesee and Wyoming, from Pinnaroo to Tailem Bend, and the ability to access these lines makes it very difficult for another train operator to participate in the haulage of rail grain freight. The charges that are put on another party to access those lines make it nearly cost-prohibitive, so that it seems to be having the effect of reducing competition in South Australia for carting grain to South Australian ports.

I think El Zorro have carted grain from South Australia to other parts of Australia, for whatever reason they want to - that's for them. But it does seem a bit strange that they're not using those trains to cart grain, particularly from their storage sites at Crystal Brook and Pinnaroo and Balaklava into port, into Adelaide. You would think that they would be able to manage that freight logistic pretty well, since they have an agreement with El Zorro. And, even if they didn't have an agreement with El Zorro, El Zorro is there with train sets. There should be an ability to compete, to make sure that the freight rates that are being set are realistic freight rates. That's something we don't know because it's an agreement between ABB and Genesee and Wyoming. But those agreements set the freight for all of us, whether it's rail or road.

DR CRAIK: Thanks.

MR WILSDON (SAFF): We do recognise that to secure some of those rail assets Viterra will have to put deposits up and whatever, so they are socialising those costs over the state, but because it's not transparent, we're not aware of what's happening. We're in the dark there and you don't know. We believe that the freight component of the supply chain is just a profit centre at this stage. They are a monopoly there; they bought a monopoly to make profits. If there is another provider that can provide the service more economically, we need them to have access.

MS MacRAE: Can I just go back a little bit. Sorry. This is kind of taking us right back to where we started. You mentioned that you wanted WEA to keep an eye on exports, if I can use your words, and I wondered precisely how you see that working. In relation to what WEA currently does and their powers in relation to the access undertakings, basically the ACCC signs off on the access undertaking and, if they do that, then the WEA is basically required to give them a tick. It seems to me that what you're most concerned about is that access undertaking and you're not too worried about the accreditation per se. So what role do you see - if I can ask you specifically, what does "keeping an eye on" mean? Is it just in relation to the fact that they've got

the sanction? That's the thing that you would want to keep; that, absent that tick, they wouldn't be able to export. Is that what you're worried about, or do you see WEA having a wider role?

MR SCHAEFER (SAFF): I would like to see WEA have a wider role in that regard, because they have the ability to investigate, they understand the supply chain, and if they were able to work - it's a two-part thing. The ACCC do their job.

MS MacRAE: Yes.

MR SCHAEFER (SAFF): But I think WEA have a very good understanding of the supply chain, and if they were able to make recommendations to the ACCC - these things have to be sorted out. We haven't got it yet, so that's a discussion for later.

MS MacRAE: Yes, okay. That was one thing. I wanted to know whether you thought they currently had those powers that you want to see.

MR SCHAEFER (SAFF): No. But I think the WEA unfortunately has got a very limited, very small, area that they can focus on. We think that that should be broadened to take in the supply chain so that if there were any anomalies that were occurring, they would be able to look at that as part of their practice, for want of a better word.

MS MacRAE: I guess from what you've just said, then, you would see WEA making recommendations back to the ACCC but the ultimate arbiter of the sanction would still be the ACCC. Is that how you would see that?

MR SCHAEFER (SAFF): No. Well, yes. The ACCC I guess are the competition body. The bulk handlers need to be able to show them that they are acting in a scrupulous fashion. The ACCC also have some issues because their parameters that are defined are too narrow as well, and so we think it should be a grains exporting authority, not just a wheat exporting authority, and both have wider - "powers" isn't the right word, but the ability to look at things throughout the supply chain, not just based at the port, so the things we were talking about with rail and other freights, and the up-country storage facilities that aren't owned by the bulk handler have fair and reasonable access to the ports. Those types of issues don't seem to be able to be answered by any particular body and we view that as detrimental to the ability of the industry to operate efficiently.

DR CRAIK: So you're really looking for more regulatory oversight - - -

MR SCHAEFER (SAFF): I know.

DR CRAIK: - - - even though you're in favour of deregulation?

MR WILSDON (SAFF): I think the issue is, we're very juvenile in a new marketing system.

MR SCHAEFER (SAFF): Yes.

MR WILSDON (SAFF): We're going to evolve. Until we've evolved enough down the track that things will stand on their own two feet, you need some regulation. We don't like regulation, but there's a need for it until it matures enough to be able to stand on its own two feet, and who knows when that's going to be? I think with no control it will be a long way down the track.

MR SCHAEFER (SAFF): Yes.

MR WILSDON (SAFF): With some controls in place, we may speed that process up.

MR SCHAEFER (SAFF): There's a very prohibitive cost of entry into building a port or rail or roads or storage facilities and, as was pointed out by Elders Toepfer, we've got more than enough capacity. It's how that capacity is used, and it needs to be used efficiently so that both the owner of the capacity gets a return on investment - and I'm not sure that a 6 per cent bond rate is a very good return on investment, but everybody in the industry needs to know that it's operating as efficiently as possible, and, when you have a monopoly, who is driving that competition efficiency and who is getting the benefit, and unfortunately monopolies only ever look after themselves, not everyone.

I would like to think Viterra are a little bit different to that, but we're only in a very early stage of Viterra operating. They have shown some wherewithal to approach things differently than they did under the old ABB, and that's positive, but we are still taking a great big risk to allow a monopoly to have carte blanche on everything. Look, if they show that they are fair dinkum about making sure everything is working, then a lot of these worries disappear, but I don't think that we can take their word for it right now, on past behaviour, that that's going to occur, and I guess that's what concerns us from a grower point of view.

I appreciated the smirk or smile when you talked about further regulation. That's the conundrum we have. We don't want greater regulation, because that inevitably reduces the ability for people to do things as well, and we don't want that. But we are unsure how we can make a monopoly behave in some sort of competitive fashion if we don't have the stick to whack them if they don't, and probably the best

one is: if you misbehave with your use of the supply chain, you don't get to export, because there are still plenty of other people that will export. Losing one exporter is not going to make a big difference.

MS MacRAE: Can I just ask then, around the relative competitiveness of not so much the port, although that's important as an element there, but in relation to the supply chain and getting access to port, how easy or hard is it for you to be able to get grain direct to port? Would a farmer be able to do that? How do you see port charges and things at the Viterra ports? We heard from Elders, saying that they felt that although - and I get mixed up which is Export Select and which is Export Direct, but the direct-to-port option seemed to be one that they said they were relatively comfortable with; that from their point of view they could do that if they needed to. Just from your comments about competition being largely stifled, I appreciate there's the single port, but in terms of being able to access that port and the options around being able to bypass Viterra's up-country system, can you just be a bit more explicit about how you see that?

MR WILSDON (SAFF): Some of the problem is, if you are a long way up-country with a distance to travel, you're not going to load grain in your paddock, in your truck and take it all the way to port. It's just not the efficient way to move grain to a centralised and up-country site. Rail, or road through bulk road freight carriers, is the most economic way to do it. So you're always going to have that price that's going to prohibit you from directly delivering to port anyway, if you could. Some ports, growers can't deliver directly to; there's a penalty cost to do that. The distance of freight: if you're more than 200 K's away from the port, it's not economic for you to deliver from your paddock direct to the port, so that's probably not going to happen through economics. So there's always going to be that margin there that can be creamed off.

MR SCHAEFER (SAFF): Although this year we did have an issue on Eyre Peninsula, which is different again, where Port Lincoln got blocked up because growers were delivering direct to port because the access arrangements made it more attractive. We pointed out, when they came out, that that could be a result of those access arrangements. Sure enough, at the end of the November it's all blocked up and the growers within about 20 K's of Lincoln were having to drive back to Cummins to unload grain. Well, that's just silly.

MR WILSDON (SAFF): This was some of our concern with the up-country. There's lack of competition there. The cream you can extract out of that freight becomes that great that growers try to bypass that and deliver direct to port themselves and it jams the system up.

MR SCHAEFER (SAFF): Yes.

MR WILSDON (SAFF): If there was an up-country competitor that could operate and get equal access, all of a sudden the creaming-off of profits off that freight rate wouldn't be there and you'd have the whole system working more efficiently. We can't all deliver to the port. It just physically will get jammed up and you'll get the wrong grain in the wrong place. The whole system is set up to hold some up-country grain back up-country and deliver to port the varieties and whatever classifications are required to load the ship at a certain time.

MS MacRAE: So you're arguing there that if a trader, for example, wanted to do their own accumulation up-country and bring it in, that there are barriers to stop them doing that?

MR WILSDON (SAFF): Yes. A lot of the costs originally were at port and they have now been shifted up-country. It gets outside the parameters of the port access, but the price penalty is still there; it's just in a different form. Some of it's under rebate, some of it's Export Select, and if you're a non-ABB site, you can't gain that rebate, and then there are extra charges on - we're not saying that there's no cost at all to ABB to receive grain out of non-ABB sites. There are some costs there, but not as great as they are charging. It's way too prohibitive and it appears that it's just set up to not let anyone else compete.

MR SCHAEFER (SAFF): I've got a letter here that was written to me by a grower that, although it's not wheat, does show some of the issues around. I would like to table it for your information. It's a very courageous thing for a grower to write a letter.

DR CRAIK: Is he happy to have it on the record?

MR SCHAEFER (SAFF): Very much so; it's actually a she grower - and more than happy to answer any questions if you've got them; and have other people that are prepared to back them up that this is the way it occurred. I think it reflects some of the issues that we have in this state with the way the supply chain works.

DR CRAIK: Thanks, that will be very helpful. I think we've exhausted the questions that we've got. Thank you, Michael, and thanks, Philip. Thank you very much.

MR SCHAEFER (SAFF): Thank you. I hope that the preliminary report did what it was intended to and got people to actually stand up and be counted, because at the end of the day the growers are the ones that are affected by this, but if the trade don't stand up and say that there are some issues - and I can understand their reluctance to, because at the end of the day they've got to load boats - we'll all be losers. I don't

want to go back to a one-marketing state, because that just doesn't work. Thank you very much.

DR CRAIK: Thank you. I know we're a bit early, but we might move on to Viterra if you're ready.

DR CRAIK: Thanks very much. If you could identify yourselves for the record and your organisation, then if you've got a few introductory remarks we'd be happy to hear them.

MR FITZGERALD (VL): Thank you. We represent Viterra Ltd. Thank you for the opportunity to come along today. We would like to put a submission, just to speak to it. It's a little bit longer than the others but we think it's worthwhile just to get our points clear. I'm Damian Fitzgerald and I'm the director of legal for Viterra in Australia. I have Tim Krause, who is Viterra's general manager of transportation and logistics, and Wayne Leach from Mallesons Stephen Jacques, who had quite a lot of involvement with Viterra when the access undertaking was submitted. We also have Gavin Cavanagh, who's the manager of planning and strategic analysis for grain at Viterra.

In general, Viterra supports the findings in the commission's draft report. We support the findings that the current level of regulation that applies exclusively to the exporting of bulk wheat and not to any other agricultural export commodity imposes unnecessary costs on the Australian industry which cannot be justified. We also support the commission's finding that the transition from the single desk to competition has progressed remarkably smoothly and that the industry is performing well under the new arrangements. In the space of only two harvest seasons, the industry has moved from a monopoly exporter of bulk wheat to 29 different, accredited exporters. By any standards, that's a rapid transition which has involved and will continue to involve significant benefits for the Australian and South Australian economies and significant benefits for farmers and the broader wheat industry.

Since October, a number of different parties have exported bulk wheat through Viterra's port terminal facilities and approximately 80 per cent of the bulk wheat exported through those facilities during the current harvest has been by non-Viterra parties. This clearly demonstrates the access that other exporters have both to our terminal facilities and to the South Australian shipping stem. In any period of rapid transition, there are bound to be new issues raised that have to be dealt with. It is a new environment for all of us and we have all had to adapt to the new challenges and respond to issues as they arise. We'll deal with some of those issues shortly.

However, we appreciate that in its review the commission is keeping its focus on the greater economic goal; that is, the anticipated greater efficiencies, competitiveness of the Australian industry and benefits to the Australian economy which can be achieved by striking the correct regulatory settings. It would be a very unfortunate outcome if those important benefits were forgone, either because of unnecessary regulatory costs or a short-sighted focus on minor transitional and operational issues.

While Viterra supports the commission's proposed roll-back of unnecessary and costly regulation, we still have concerns that the time frame for winding back those multiple layers of regulation should be accelerated. In particular, our view is that there is no justification for extending either the accreditation requirements or the access test beyond 30 September 2010. These concerns about the need for any access test have also been echoed by the NCC. We acknowledge that this time frame may not be possible, given the necessary commission and governmental processes. Accordingly, if it's not feasible to cease the accreditation requirements before 30 September 2011, we consider that the application of the access test should also cease on that date.

Now just the outline of the key issues. We want to speak about four issues: first, the WEA accreditation requirements and the proposed time frame for removing those requirements; second, the role of the WEA, particularly in relation to administering and managing the accreditation requirements; third, the current access test, the costs and benefits arising from compliance with the access test and the proposed timing for removing that test; and finally, addressing and putting in perspective certain allegations that have been made about Viterra without, we think, any factual basis or evidence and often in the face of significant evidence to the contrary. I'll just pass over to Tim now.

MR KRAUSE (VL): However, before addressing these issues, we'd like to highlight what we see as the broader policy issue that needs to be addressed; that is, what is special or unique about the export of bulk wheat? Specifically, why is it necessary for there to be special accreditation requirements for exporting bulk wheat? Why is it necessary for there to be a unique access regime which applies to port terminals for the export of bulk wheat? Why is it necessary for there to be a separate organisation administered at the cost of the industry to regulate the export of bulk wheat?

In each case, this arises in circumstances where there are no similar accreditation requirements for the export of any other agricultural commodities. The NCC, the body charged by the federal government to administer the national access regime, has never considered whether there is a genuine case for access regulation to apply to export port terminal facilities and in particular whether bulk wheat port terminals should be subject to a unique, mandatory access test which does not apply to the export of any other agricultural commodities. And there is no similar regulatory body with statutory powers to compel audits and compliance with accreditation conditions in relation to the export of any other agricultural commodities.

These are important questions to ask in this review. Previously the answer to,

"What is unique about bulk wheat?" was simple. There was a single exporter. However, in circumstances where there are now 29 accredited exporters, we would suggest that there is no longer anything unique about the export of bulk wheat. We're encouraged that our view is consistent with the commission's draft report, which states:

There is no persistent market failure that requires government intervention in the bulk wheat export industry. There is nothing particular about wheat that requires a system of accreditation that other grains and agricultural commodities markets do not have.

We also consider, given this fast transition, which has largely already taken place and has not proved to be either as dramatic or painful as some have suggested likely, that the current level of regulation does not bring about any benefits to the efficiency of the Australian industry or the Australian economy which do not already exist in relation to other agricultural commodities where no such regulation exists. The current level of regulation does, however, involve significant costs, both immediate and longer term in the form of reduced incentives for efficient investment. Viterra strongly advocates the modifications to the regulatory regime proposed in the commission's draft report, but within a faster time period, given the lack of demonstrated benefits and clearly demonstrated costs.

Turning now to the first and second issues that we'd like to address - the accreditation requirements and the role of the WEA - there is little more that Viterra wishes to add to its previous written submissions in relation to the current accreditation requirements. We view it as an unnecessary system that does not apply to other agricultural commodities and which involves unnecessary costs on the industry. There have been some views expressed about the accreditation requirements providing a form of credit security for growers. From our perspective, while this may have provided some initial benefit in moving from one monopoly exporter to a range of competitors, there are some obvious shortcomings with this logic which significantly undermine any perceived benefit. Those shortcomings are dealt with in our written submissions and there is no need to repeat them today.

However, given the extremely modest benefits of the accreditation system and the significant shortcomings which undermine those benefits, Viterra considers that the cost of maintaining it is not justified. In our experience, growers are capable and independent businesspeople who know what is best for their businesses. They can assess creditworthiness, quality of service, supply loyalty, prices and, ultimately, who they wish to deal with, without the industry incurring what is in effect a levy to the WEA.

In this regard, they already do this for domestic wheat sales, container sales

and for sales of every other commodity - barley, lupins, beans, peas, canola, lentils. To put this into some perspective, this season to date exports of bulk wheat out of the state have accounted for less than 50 per cent of grain exports. Accordingly, we see that there is no case for continuing the accreditation requirement in respect of bulk wheat and we would urge the commission to recommend the removal of this requirement as soon as possible.

Viterra also supports the commission's draft recommendation that the WEA should be disbanded at the same time as the accreditation system. Viterra is supportive of initiatives to promote the export wheat industry. However, we consider that, without the role of establishing and monitoring the accreditation system, it is difficult to justify the WEA's existence. Wayne will talk briefly now about the access test.

MR LEACH (VL): Sure. Thank you. The third issue we would like to discuss is the current access test and, as set out in Viterra's previous submissions, the key point we would like to highlight is that these benefits, or any benefits associated with that access test, have come at a significant and continuing cost. Given the transition that has taken place so far in a rapid space of time, Viterra strongly supports the commission's draft view that any benefits which might have been associated with requiring a mandatory access undertaking are rapidly diminishing and leaving only significant costs.

Coming back to the policy point that Tim raised, the key issue as we see it is why is there a need to impose an additional level of access regulation in relation to port terminals for the handling of one export commodity in circumstances where there's no special regime, a similar unique regime for any other agricultural or mineral commodities? Second, export port terminals, particularly in South Australia, have a demonstrated history of providing open access on reasonable terms for competitors of other non-regulated grains, and the fact that Viterra also has a very powerful commercial incentive to allow access on commercial terms so that the fixed costs can be defrayed against a wide group of users. I think that's demonstrated also by what Damian mentioned. In the current harvest to date, 80 per cent of the bulk wheat has been exported by non-Viterra parties.

The third issue in this policy basket is that the NCC, which is the body that's been charged by federal government to administer the national access regime, has never considered whether there is a genuine case for access regulation for export port terminal facilities for bulk wheat, and in particular whether there's a justification for a unique and special requirement, as there currently is and, to the contrary, we support the NCC's comments in its submission, that to date there is little, if any, evidence been provided to establish that it is necessary. You've got the quote in their submission, but in such circumstances the council considers that "it's undesirable and

risky to continue imposing access regulation to port terminal services"

We would like to highlight that we do not see this as a small point. Part IIIA of the Trade Practices Act clearly sets out the circumstances in which parliament, following an agreement at the COAG level, has considered that infrastructure services should be subject to the potential for mandatory third party access rights. Part IIIA seeks to strike a fairly difficult balance sometimes between the rights and legitimate interests of infrastructure providers and the public interest in sometimes providing or mandating third party access. To strike this important balance, Part IIIA sets out a criteria for determining which services the regime should apply to and sets a specific body, the NCC, to determine whether that criteria is satisfied. We think it's equally clear from that, and part of the COAG bargain, that if an infrastructure service doesn't meet that criteria, then there's no justification, either in law or policy, for requiring mandated access.

We would like to highlight that, notwithstanding this carefully struck balance, we find ourselves in a situation where under the WEMA it bypasses any assessment of the declaration criteria, it bypasses the views of the NCC and simply requires that port terminal operators submit to a mandatory access regime. Viterra's position is quite simple and it's just that Australian businesses shouldn't be made subject to additional regulatory costs and burdens in circumstances where it hasn't been clearly demonstrated, first, that there are benefits which outweigh the costs and, second, that the form of regulation imposed is the minimum necessary to achieve those benefits. This regulatory principle has clearly not been applied in relation to the WEMA access test.

Viterra's written submissions provide substantial details in relation to the costs of compliance with the access test and we don't propose to go into that detail again here. However, we are encouraged that the commission has clearly recognised that the direct costs associated with establishing, managing and complying with the required access undertakings are only the tip of the iceberg. The most significant costs associated with the access test and any unnecessary regulation is the strong disincentive for future efficient investment in infrastructure. In this regard, the existing structure of the access test and access undertaking exposes Viterra and other port terminal operators to a significant degree of uncertainty as to how the ACCC or an arbitrator would make decisions, and this uncertainty reduces the incentives for investment and expansion.

It also needs to be contrasted with the position that applies in relation to the export of minerals through Viterra's mineral port terminals. Those arrangements involve long-term contracts with guaranteed tonnages and, when coupled with the seasonal variations inherent in the grains industry, it cannot be said that the current level of regulation and regulatory uncertainty in relation to bulk wheat encourages

new investment. Unnecessary access regulation also results in reduced incentives for other operators to invest in competing infrastructure.

As a final point on the access test, we note the commission's draft recommendation that any changes to the access undertaking should be kept to a minimum until the access test falls away. We would just like to highlight a question as to how that would work in practice, the ACCC being an independent body that's bound under the Trade Practices Act to consider all submissions put before it. It's not clear to us how it would be possible to fetter the ACCC's discretion and how it would be possible to streamline that process in any meaningful way. Given our experience of the process for negotiating the initial undertaking, Viterra is going to need to start working on - and, in fact, the ACCC is actively encouraging Viterra to start work on - negotiating a new access undertaking in the next month or so, and this is likely to involve significant costs and about 12 to 15 months' worth of work.

MR FITZGERALD (VL): Thanks, Wayne. In summary, Viterra's position is this: there's no demonstrated case for mandatory access regulation of port terminal services for the export of bulk wheat. There is certainly no case for specific access regulation outside of the Part IIIA arrangements which apply to the rest of the economy, telcos excluded. There is a strong history of Viterra providing, and powerful commercial incentives for Viterra to continue to provide, open access to its port terminal facilities on reasonable terms. In these circumstances, and given the rapid move from one to 29 exporters, it is open to question whether there are any significant benefits associated with the current access regulation.

Even if there are benefits - for example, shipping stem transparency, publication of port protocols, publication of reference prices and negotiation procedures - these can be achieved without the access test and through other less intrusive means, such as a code of conduct. There are very substantial costs associated with the access regulation, and these have been recognised by both the commission and the NCC in the strongest terms. Given these matters, Viterra considers the access test should cease as soon as possible and no later than 30 September 2011 when the existing access undertakings expire and the accreditation arrangements may cease.

We just want to talk briefly about decoupling the access test from accreditation requirements. If the commission were to recommend that the access test continues beyond the expiry of the accreditation arrangements, we have concerns with any proposal that introduces unclear and unspecified sanctions for failing to enter into an access undertaking. This proposal heightens the level of investment uncertainty for infrastructure providers. If the commission were to proceed down this path, we believe that it's imperative that the commission considers fully the potential consequences on investment certainty and in efficient investment infrastructure, and

any proposals considered openly and transparently, with a proper opportunity for industry participants to consider and comment on any proposed sanctions.

We believe there's a risk that this proposal could result in significant consequences for infrastructure providers, in circumstances where the commission has already recognised there are limited and diminishing benefits of the access test in the first place. We believe the access test should be removed as soon as practicable and the only access regulation that should apply is the general provisions of Part IIIA of the Trade Practices Act.

MR KRAUSE (VL): Just turning to the key allegations made about Viterra, finally we'd like to highlight to the commission that we're aware that certain parties have recently used the media to make a number of uninformed and unsubstantiated claims about access issues at Viterra's port terminals. We do not wish to go into great detail addressing those concerns, other than to highlight that they are just that: allegations, without any real evidence. The level of access that non-Viterra parties have had to our port terminal facilities over the season - and, as I mentioned before, 80 per cent bulk wheat exports this season have been by non-Viterra parties - provides clear evidence to the contrary.

Viterra has complied fully with its access undertaking in relation to the terms on which it provides access. No decisions have been made with a view to benefiting Viterra's marketing arm over other exporters. We have, however, had to respond to operational issues, both for our marketing arm and other customers. We are not aware of any genuine claims in relation to discrimination or denial of access having been made to the ACCC, and a number of the issues that have been raised are, at best, classified as minor transitional and operational issues.

It is an operational environment which is subject to constant changes. It is also important to remember that we provide services to a diverse range of customers, with diverse requirements, for the exporting of a wide range of grains and other agricultural commodities. 50 per cent of all the grain exports to date this year are not wheat. Mineral commodities are also exported through our port terminals. This inevitably involves exporters having competing interests, and a need for Viterra to make compromises and decisions which are based on optimising the efficiency and the throughput of the infrastructure for the benefit of all our customers. We have worked and continue to work through these issues as they arise, and it is perhaps a little opportunistic for certain parties to suggest that they involve material issues in the context of determining appropriate regulatory settings, rather than what they are: genuine operational and/or transitional issues.

In conclusion, Viterra supports the findings in the commission's draft report. However, we believe that the time frame for rolling back unnecessary regulation

needs to be accelerated. Given our significant commitment to growers, our customers and to the increased efficiency, development and international competitiveness of the Australian industry, these matters are of very real importance to us. We would respectfully request the commission to carefully balance the alleged benefits of the current regime with the very material costs. Thank you.

DR CRAIK: Thanks very much for that comprehensive presentation. To answer your question, "How does the Productivity Commission fetter the powers and authority of the ACCC?" I think the answer is: we don't. We can make recommendations in our report, but the extent to which the ACCC will take them up is very much a matter for the ACCC.

MR LEACH (VL): Yes. It wasn't a suggestion that the commission would seek to do that. It was just a practical question of how that would play out.

DR CRAIK: We would just put the recommendations in our report and then it would be up to the ACCC to act on them or not, within the terms of their own legislation. So anything we recommend to the ACCC will be perfectly public and clear. Other than that, that's the end of our role with the ACCC, just to make that quite clear. I can't imagine Graeme Samuel welcoming any intervention other than that, frankly.

MR LEACH (VL): I think that's kind of the point: that it's one thing to suggest they are minimised and costs are kept to a minimum, but what will be will be.

DR CRAIK: That's correct. I guess they're our respective roles. Can I take up the comments that you've made about the access test. Certainly in your submission and previously you've made the point that the publication of the shipping stem, the port protocols, the voluntary code of conduct, can deal with the issues in relation to access without the need for either an access undertaking or anything else, I guess, that's regulated. My question is: what would you see would be different other than the fact that there wasn't a regulator there sitting over your shoulder? What would be different between now and if you had that sort of totally voluntary arrangement? Do you see that anything would be different, particularly if the access undertaking wasn't there, and relying on the Trade Practices Act only? Would that change your approach to allocating capacity at ports?

MR FITZGERALD (VL): No. I think the situation would remain very similar, except we wouldn't have all those obligations to drop everything and jump whenever we receive a letter from the WEA or the ACCC comes knocking on the door. There are some advantages with what's happened with the access test and all of the regulation, in that we have now managed to produce the information that the industry seems to want. They can now see the ships that are coming in; they can see who has

the ships. The shipping stem I think is operating pretty well and the feedback we get is positive, and we will continue to provide all of that information going forward, in consultation with our customers. I think - that's right - the only real issue is that there wouldn't be the requirement, the manpower, the cost of the compliance. We would be continuing to do what we've always done, and that's provide services to customers, that we've done for nearly 60 years, and exporting bulk wheat.

DR CRAIK: So you would be still providing fair and transparent access and so it would be non-discriminatory access?

MR FITZGERALD (VL): Yes.

DR CRAIK: Okay, you wouldn't see any change there. Your comment about the access undertaking and its potential impact on investment: are there any instances that you can cite where the existence of the access undertaking and the link between access and accreditation has impacted potential investment, given the apparently acknowledged sufficient capacity for exporting bulk wheat in Australia?

MR FITZGERALD (VL): I think it's probably a little bit early to cite any examples. The current environment is really one of flux and that's not conducive to investment anyway, so people are going to be holding off until they can see things settle down. That's my view. The deregulation has actually caused us to have to invest in some infrastructure, mainly because of the slowness of the shipping. We had to build extra capacity up-country - more bunkers - which was a significant cost, to be able to hold the grain.

DR CRAIK: So you've done that since deregulation?

MR FITZGERALD (VL): We have. We could see that people weren't going to be able to ship grain out over that harvest period, which was traditionally the time that a lot of it went, and so to be able to try to keep things moving we had to build some extra storage. That's probably the opposite of what you expected; but, yes, that's a cost that we've had to bear.

MR LEACH (VL): Yes. The negotiate-arbitrate has certain advantages - or, sorry, the "negotiate" part, but if the arbitration is a fall-back, that necessarily provides a level of uncertainty and the greater level of uncertainty is this debate at the moment about spare capacity and total capacity. That makes decisions by any infrastructure provider about new investment very difficult. That is one of the key areas that we think needs some clarification as well.

MS MacRAE: Part IIIA doesn't really help you very much, does it? If we were to go immediately to Part IIIA, you've still got this issue around "reasonably anticipated

requirements", which is also not very well established in law. So, yes, to the extent there are arguments around what's excess, what's total and where the balance lies, you'd still have an uncertainty there, would you?

MR LEACH (VL): Well, it does ultimately end up in front of the ACCC, and an access dispute around what is "reasonably anticipated", but I think it is fairly well accepted under Part IIIA that the access regime should apply to excess capacity. There's not a requirement that everyone makes way for new users. You shouldn't be in a situation where an infrastructure owner is spending hundreds of millions of dollars on new infrastructure, with no guarantee that they will be able to use it for their own requirements and the requirements of existing users. But, again, yes, there's a review of Part IIIA going on. To the extent that can be made clearer, that would be helpful.

DR CRAIK: We're trying to encourage that to happen. Again, we can only recommend.

MR LEACH (VL): Yes.

DR CRAIK: You expressed concern about the link between access and accreditation. Has the issue of accreditation to export been a powerful sanction? I mean, you've expressed concerns about our recommendation about the potential need for another sanction, but the issue of the link between the access test and the ability to export, accreditation to export, is that a powerful sanction to have? Is that a credible threat to a bulk handler who also wants to export?

MR LEACH (VL): I would probably articulate it slightly differently.

DR CRAIK: I'm sure you would.

MR LEACH (VL): It's an unusual situation, whereby if the access undertakings weren't approved by 1 October last year, it could have had the effect that three of the important exporters wouldn't have been participating in the market, which would have driven an entirely unanticipated consequence for growers and everyone else in the industry. I think we'd probably articulate it in terms of, is there a need for accreditation? Is there a need for an access test? If the legislation says there is, and Viterra wants to participate as an exporter, then it does drive a particular behaviour. But whether that's appropriate or not, I think we differ there.

MS MacRAE: You talked about 80 per cent of the grain from your ports being from non-Viterra sources. Is that true then to say that 80 per cent of that came outside of your supply chain as well, or not?

MR KRAUSE (VL): No.

MS MacRAE: Do you know what proportion came outside of the supply chain to your port?

MR CAVANAGH (VL): We don't have that figure off the top of the head. It's changing all the time, depending on the marketing strategy - to hold it in a competitor's storage or on-farm for a period of time - and markets are balancing other costs in, holding it national versus holding it in competing storages, and then making their decision on when to export it.

DR CRAIK: What about the freight? Have you got an indication of who used your - whichever export. I can never remember either which is Export Select and which is Export Standard - but using your own freight system as opposed to using their own freight system, their own organisation.

MR KRAUSE (VL): To date, 100 per cent of people that have shipped through with grain from our up-country system have used Export Select.

DR CRAIK: Which is yours.

MR KRAUSE (VL): Which is ours, which is our logistics package.

DR CRAIK: Yes.

MR KRAUSE (VL): But it needs to be remembered there's quite a lot of grain that's actually delivered direct to port by growers as well. We don't offer an Export Select in other people's storages because the nature of Export Select is that it's a package we offer customers; that when they use our supply chain in an efficient manner we actually reward them for that. So that's, in effect, a rebate. We get considerable operational benefits by them putting grain into Export Select which allows us to put full trains into sites and clear sites; avoid part-cell fumigations and things like that. So obviously we don't have those opportunities to get logistical efficiency in somebody else's supply chain.

DR CRAIK: Of the wheat that's gone through your ports, do you have any idea of how much your freight system didn't bring to port?

MR KRAUSE (VL): I think I would have to take that one on notice, unless - - -

MR CAVANAGH (VL): What I would add is that we do have bookings on the stem in the future for Export Standard capacity as well as people using our freight services or our bundled logistics packages. What is not clear to us, though, is where

that grain will come from. That doesn't have to be nominated. Whether it's out of our system or whether it's going to be out of the competitors' storage, we aren't going to be aware of that until about 18 days prior to the shipment occurring. But there is a provision. As I said, we do have bookings on the stem now currently for Export Standard capacity.

DR CRAIK: Are you suggesting you haven't had them before? Isn't the "now" important in your sentence?

MR CAVANAGH (VL): Sorry. What we try to do is allow all the exporters a reasonable amount of operational flexibility, so most clients are telling us, "Look, it's an Export Select cargo." Prior to just before they actually select their stock to put against that cargo they're determining whether they want to do it 100 per cent out of our system or a percentage out of our system and a percentage out of the competitors' storage. Earlier in the year we had some Export Standard cargoes on the stem which were converted to Export Select when we were able to roll capacity forward at the terminals that weren't utilised in the previous months due to a slower shipping program. So most of the clients are only making that decision about 18 days prior to accumulating for their vessel and certain clients have used our freight services to move out of competitors' storage, other clients have used their own freight services to move out of competing storages.

MS MacRAE: Just to be clear, when you book a slot, you don't have to nominate whether you're using Export Standard or Export Direct until 18 days before. Is that what you said?

MR CAVANAGH (VL): We ask for that, but we try and offer as much operational flexibility - to work with a client to give him that flexibility. As Elders Toepfer spoke about before, a lot of clients are booking stem a fair way out.

MS MacRAE: Yes.

MR CAVANAGH (VL): They don't know yet whether they're going to sell-on from direct deliveries to the terminal, from competing storages or from our system. So it's a little bit inflexible for us to ask them to tell us, "It's all Export Select," if when they come out of a competitor's storage they don't have that option.

DR CRAIK: You would have heard the South Australian farmers' suggestion of a \$5 a tonne booking fee - or whatever the proper description of it is - the notion that that be put into some kind of an account to ensure that the incentives are fairly distributed amongst the exporters; in other words, you wear the same risk as the other exporters; that there be a rebate system where those who shipped get a rebate proportional to the tonnage shipped. CBH have a system which is intended to do that

in Western Australia. Have you considered that? Would you consider that?

MR KRAUSE (VL): The \$5 booking fee was a recommendation made by the WEA audit, which we adopted. I think the thing that appears to get overlooked a fair bit is that Viterra are significant infrastructure owners. We've got a significant investment and our incentive is to actually get as much volume as possible through our terminals. When those terminals aren't doing anything, that's costing us money. In terms of incentives, disincentives, I think we've got a significant one.

DR CRAIK: CBH might say the same thing, because they're also a significant infrastructure owner and they would be in the same position that you would be, I would think, in relation to infrastructure and marketing.

MR CAVANAGH (VL): There are a couple of subtle differences, and I don't pretend to understand the CBH system perhaps the same as Elders Toepfer would or our own marketing division. The first one is that the \$5 booking wasn't a new fee. We effectively split our shipping fee and put a proportion at risk if someone didn't perform by ultimately presenting us a vessel for loading of grain. It wasn't an additional fee whereas, as I understand the WA system a little bit, you're paying premiums in the auction - - -

DR CRAIK: True.

MR CAVANAGH (VL): - - - which is what comes back to all the exporters to participate in, whereas what we've done is essentially not created a new fee but taken our original fee and split that fee and put a proportion at risk, as Tim said, as recommended by the WEA audit so that we have some certainty in supply chain planning and will hopefully be able to predict what we can ship each month and be able to plan on that basis, in terms of our storage plans, what we need. As we found during harvest, when the shipping wasn't executed, that cost us more than that \$5 to go out and build extra storage at harvest time. We are also, as was recognised in one of the earlier presentations, incurring a weekly rail bill, regardless of whether we're shipping or not. I guess we're incentivised. We want those slots to be used, no matter who books them; whether it be a third party, whether it be Viterra. It's not in our interests and there's a cost associated with the cancellations of those bookings.

DR CRAIK: Okay. Thanks. Can we go to this issue that we raised at the beginning of the hearings today. Statements were made that at the opening of the season Viterra booked a significant percentage of the shipping slots and then gradually through the season has been cancelling them close to when the shipping window, or whatever your term for it is - and so somebody else couldn't step in and take them up, and that prevented others from being able to access the shipping slot, notwithstanding your comment that 80 per cent of the grain - presumably that

includes both wheat and other grains?

MR KRAUSE (VL): 80 per cent is wheat.

DR CRAIK: 80 per cent is wheat, okay - wheat has been shipped by other people through the port. Can you reconcile those comments for me?

MR KRAUSE (VL): Okay. Perhaps if I make some comments around that, and maybe others can add a little bit more. Viterra are and have been a significant exporter of grain out of Australia and their level of bookings in South Australia is consistent with past export requirements. I think it should also be pointed out that Viterra book a substantial amount of capacity in other states as well, in anticipation of those particular requirements. Once the access undertaking was accepted by the ACCC - and, as has been mentioned, our shipping slot system works on a first in, first served basis - any marketer was able to come and book slots on our shipping stem, and in fact we saw very little activity through a period probably from 1 October to 20 October. There was limited interest by other exporters, to a point where - in that week of the 20th was when the first CBH system was held, and I think as people saw the auction process unfold and the costs of shipping there, we saw our nomination process go from a few nominations a week to considering 38 nominations in a two-day period, representing pretty significant tonnages.

When we talk about booking out the shipping stem, as I said, it's a first in, first served basis. Viterra's requirements were consistent with what was previous. Also mentioned in one of the early discussions this morning was that at all times Export Standard was available. In other words, people could provide their own logistics capacity to put a vessel on the stem, if you like. We've spoken about export capacity: well, there's significant export capacity in our terminals, so that was never a limiting factor.

In terms of cancellations, there's probably a couple of points to make there. Each year is a little bit different, but I think there was a grower perception that the prices were very low this year, and certainly in South Australia we saw - - -

DR CRAIK: It's probably a reality, isn't it, as well?

MR KRAUSE (VL): Well, I'll let the farming groups comment on that, but I think growers were reluctant sellers at the prices that were there, and if you haven't got the grain and aren't able to buy the grain, you obviously can't export it. One of the other comments I'd make is that the cost of cancelling slots in Western Australia probably meant that there was a fair incentive to actually execute those slots in Western Australia. I think Gav mentioned about the shipping availability or the amount of shipping during the harvest period. It's something that we tend to rely on, and

Viterra are generally a front-end shipper, a shipper in the first sort of six months of the year. The impact of that lack of shipping actually filled the Port Lincoln terminal and did in fact mean that we had to invest in more storage on the Eyre Peninsula.

In terms of "14 days and no-one else can book vessels", there's no 14-day requirement that you have to give us to nominate a vessel. Somebody can turn up with a vessel at any particular time. There may be costs associated with late notice or something like that, but people are able to put a vessel on the stem if there's space available.

DR CRAIK: Okay. Thanks for that.

MS MacRAE: This is altogether a separate question, but in relation to the \$5 fee, you said that it came as a result of a WEA recommendation out of one of their audits. Under what power did the WEA - well, I guess they've got audit powers, but is that part of their assessment of you being fit and proper? It is? Okay.

MR LEACH (VL): Yes.

MS MacRAE: How intrusive, if I can call it that, or how widespread would some of the nature of what you do and how you do it have been influenced by those sorts of recommendations? How influential has WEA been in how you go about doing your business?

MR FITZGERALD (VL): That's a direct result, obviously, of their audit, but are you talking about what impact do they have on our business?

MS MacRAE: Yes; I guess through their audits and the other things that they do.

MR FITZGERALD (VL): I'm happy to talk to you about the sort of imposition that comes about as a result of the audits. We have a good relationship with WEA.

MS MacRAE: Yes, sure, and I wasn't trying to imply anything different.

MR FITZGERALD (VL): They're on the phone to me fairly regularly. But I was just thinking about this the other day. I've been in the position for two months at Viterra as director of legal and - - -

MS MacRAE: You're not on top of it already? It's all so easy, this field!

MR FITZGERALD (VL): It is! I made a list of the requirements that we've had to comply with in that last two months, since mid-March. The ACCC has visited; there have been four members of the ACCC come and visit us to talk about port protocols

and how the harvest went. We had an audit request from WEA for an audit of our risk management system, IT, disaster recovery, enterprise risk management, which they then two weeks later cancelled, but then they provided a letter requesting an extensive amount of documentation on the same sort of topics, and then if the documents we provided are not satisfactory they will then carry out an audit.

We've had another audit request in the last couple of days from WEA for an audit of the shipping stem to be completed by the end of the month. We've obviously had the written submission to the Productivity Commission lodged during April. We've had this appearance today. We've also had to lodge our compulsory quarterly report to the WEA. That reports on all the changes to risk management; what the integration process has meant to us. And, as Wayne said, the ACCC told us that we should start working on the new access undertaking within the next month, to get it ready for 15 months' time when it's going to be in place.

I don't know if you're aware of the breadth of the requirements for information, but I brought a copy of the letter that WEA puts in and sends to us. They provide a non-exhaustive list of the sort of information they require. I'm happy just to provide that to you to have a look at outside of this forum.

MS MacRAE: Thank you. Yes, that would be great.

DR CRAIK: That would be useful. So the implication of all that is that there's a lot required. I assume you wouldn't regard this two months as unusual?

MR FITZGERALD (VL): Well, I don't know. I'm hoping it's unusual. Instead of being able to get on with the normal day-to-day work that you'd like to do, and make the company run better and be more efficient, like I said earlier, you have to drop everything. You've got short time frames to provide this information. I have to call in the team, and it is quite an imposition on the business.

MR LEACH (VL): Assuming that the other 28 exporters are getting a similar volume of requests as Viterra, that's quite a cost on the industry. If they're not getting similar requests, then it's very distortionate in its impact. I don't know the answer to that. I'm just acknowledging the comment earlier that it wasn't a significant imposition. Viterra's experience is a little bit different on that.

DR CRAIK: How are you going with negotiating port protocols with other exporters? Is that a work in - - -

MR FITZGERALD (VL): You mean port protocols or our storage and handling agreements?

DR CRAIK: I guess all the agreements that other exporters want to reach with you that are outside the standard terms and conditions.

MR FITZGERALD (VL): We've always had a publish and negotiate system and the vast majority of marketers accept the terms and conditions as they go out there. There are a small number that we deal with that might want additional services or reduced charges or something like that that we need to talk about. We haven't had any go to arbitration. It's negligible, the number that are - I'm a bit loath to say the number exactly, but we have completed them all basically, except for just a tiny bit. It seems to be operating fine. No-one has gone to arbitration. It's all done by negotiation and it always has been and it seems to work.

DR CRAIK: Before you actually get to arbitration, no-one has actually had to notify an access dispute?

MR FITZGERALD (VL): I haven't seen one, no.

DR CRAIK: Do you know if there were any prior to your coming along?

MR FITZGERALD (VL): I don't believe so, no.

MS MacRAE: The previous people were talking about queues at Port Lincoln and the difficulty of delivering direct. Is that an issue that you've looked at in terms of capacity? I guess it's the usual thing: it's not the capacity at port, it's the capacity of the supply chain to deliver to port that seems to be the issue, not just in South Australia but in Western Australia and, to a lesser extent, New South Wales. Do you have a comment on that?

MR KRAUSE (VL): That particular issue at Port Lincoln - and Gav might be able to provide a little more detail - was in fact related to lack of shipping during the harvest period. The Eyre Peninsula is a big place, so you have the growers that are harvesting early delivering to port, with no shipping during that period or limited shipping during that period. The terminal is relying on some shipping to actually make space for the harvest as it moves further south. In terms of providing more capacity at the port - I don't know. There's three or four hundred thousand tonnes there. I can't sort of see that providing extra capacity through building more storage there would be an option.

MR CAVANAGH (VL): I think it's fair to say that our supply chains are very different geographically. We have just-in-time ports versus, say, Port Lincoln which has three to four hundred thousand tonnes of storage behind it, and I think that will become evident as we publish our performance figures as part of the undertaking requirements. At the moment there is less wait out of, like, Port Lincoln, where you

have a lot of storage behind you, because your supply chain kind of never stops or very rarely stops. It did during harvest, but that's most probably the first time in history that we've had to limit grower deliveries in there, whereas in your just-in-time ports, if a vessel was to fail a survey, your supply chain grinds to a halt maybe for a day or two and that has an impact on the waiting time of all vessels in the queue. So I think that will become evident, that unfortunately not all of the supply chains - you know, we've got five ports; very different supply chains. Two are serviced by rail and road, three are road only, so they're very different supply chains that we operate in.

DR CRAIK: Going back to the issue of access, do you see the threat of declaration if you're only subject to Part IIIA? Do you actually see the threat of declaration as a very real threat, or do you take comfort in the view that it would be surprising if every port were one of national significance, for instance?

MR LEACH (VL): Yes, it's a threat. A declaration is not a proceeding that anyone particularly wants to go through and it does moderate behaviour. I think the other side though, as we mentioned in the opening comments, is that if a particular port or a particular service doesn't satisfy the criteria then there should not be a justification for regulation of it in any event. So it is a weighing process, but that's why the NCC is appointed to undertake that task.

DR CRAIK: Thanks. You have a comment about the CBH auction system. You say:

Put another way, an auction system is inherently a "band aid" solution, rather than a solution which enables expansion and investment.

Can you clarify precisely what you mean by that?

MR FITZGERALD (VL): Can you just say that again. What was that, sorry?

DR CRAIK: I'm quoting from page 88 of your submission, down the bottom, the last paragraph.

MR FITZGERALD (VL): I've got it here somewhere, but if you could just - sorry.

DR CRAIK: Basically, you said:

Put another way, an auction system is inherently a "band aid" solution, rather than a solution which enables expansion and investment to remove any capacity constraints.

MR LEACH (VL): I think the point really was that in an auction we're in the realms of talking about scarce capacity and who wants to pay for that capacity, who wants that capacity, and it's a solution at port rather than something that necessarily drives investment all the way up-country. It was really, as I understand it, just a comment that that's what it is. What we're talking about is the allocation of scarce capacity at port, but it doesn't comment on what happens in the rest of the supply chain.

DR CRAIK: It would seem that if you did have scarce capacity, inherently as a matter of principle it's actually not a bad way to allocate scarce capacity. I guess that's the view that we would take on the face of it.

MR LEACH (VL): Yes. I think what that's really intended to be a comment about - that that's what we're talking about: we're allocating capacity rather than necessarily driving increased capacity. But we acknowledge that's a separate decision as to whether that can be justified.

DR CRAIK: Okay.

MS MacRAE: Do you think that the first in, first served would work well in a bumper year? Have you had any thoughts about an auction system? Would it be in the realms of possibility?

MR KRAUSE (VL): First in, first served has probably served us fairly well. We've had some pretty bumpy sort of shipping months so far this year. I think it's been mentioned. I think October might have been under 100,000 tonnes; this month might be 800,000 tonnes. Put that over a year and the issue is about trying to put some smoothness on the task over a whole year rather than trying to ship it out in a short period. As I mentioned before, terminal capacity in terms of loading vessels is not limiting, and if people are providing logistics facilities and things like that, I think the market will find the way to smooth out that demand.

DR CRAIK: I think I've completed all my questions and Angela has completed hers, so thank you very much.

MS MacRAE: Thank you.

DR CRAIK: That concludes today's scheduled proceedings. For the record, I need to ask is there anyone else who wants to appear today before the commission? Okay. I'd like to take this opportunity, on behalf of my colleague Angela MacRae and me, to thank everybody who's participated through the course of this inquiry. We'll use the second round of submissions and input to prepare a final report, which is due to go to the government by 1 July. We'll continue to accept submissions, so if you're

going to send something, please send it in, and we encourage people to get these in sooner rather than later; the time we have to consider them will become increasingly short. We will close the hearings now. Thank you very much, and thank you once again to Viterra.

AT 12.16 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY