



FLINDERS PORTS PTY LTD

SUBMISSION TO ESCOSA

**RESPONSE TO PORTS PRICING AND ACCESS REVIEW
2022**

14 February 2022

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GLOSSARY

Term	Definition
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
CIRA	Competition and Infrastructure Reform Agreement 2006
CPA	Competition Principles Agreement – 11 April 1995 (<i>As amended to 13 April 2007</i>)
CPA Principles	The principles at Clause 6 of the CPA
ESC Act	<i>Essential Services Commission Act 2002 (SA)</i>
ESCOSA	Essential Services Commission of South Australia
ESCOSA's 2017 Review	ESCOSA, " <i>2017 Ports Access and Pricing Review: Final Report</i> " September 2017
Essential Maritime Services	The relevant maritime services defined under section 4 of the MSA Act to constitute Essential Maritime Services (and for the purposes of this submission only, pilotage services facilitating access to a Proclaimed Port).
Flinders Ports	Flinders Ports Pty Limited (ACN 097 377 172)
FPH	Flinders Port Holdings Pty Limited (ACN 117 687 313)
Hilmer Report	Frederick Hilmer, Mark Rayner and Geoffrey Taperell, " <i>National Competition Policy</i> " August 1993
MSA Act	<i>Maritime Services (Access) Act 2000 (SA)</i>
National Access Regime	The access regime established under Part IIIA of the CCA.
NCC	The National Competition Council
Previous Reviews	ESCOSA, " <i>2012 Ports Pricing and Access Review: Final Report</i> " October 2012 and ESCOSA's 2017 Review
Proclaimed Ports	Port Adelaide, Port Lincoln, Port Pirie, Thevenard, Port Giles and Wallaroo
Regulated Services	The relevant maritime services declared by proclamation under the MSA Act to be "regulated services".
Review	ESCOSA's Ports Pricing and Access Review 2022
SA Ports Access Regime	The access regime established by Part 3 of the MSA Act
SA Ports Pricing Regime	The regime established by the MSA Act and ESC Act under which ESCOSA is authorised to make a price determination under Part 3 of the ESC Act relating to essential maritime industries in South Australia.
Treasurer	The Commonwealth Treasurer

PART A: EXECUTIVE SUMMARY

The Review

1. Section 43 of the MSA Act requires ESCOSA to “conduct a review of the industries subject to [Part 3 of the MSA Act] to determine whether this Part should continue to apply to those industries.”
2. Under section 10 of the MSA Act, the relevant industries subject to Part 3 of the MSA Act comprise the Regulated Services in so far as they are provided by a person who carries on the business of providing maritime services at a Proclaimed Port.
3. Flinders Ports makes these submissions on the basis that, in carrying on the business of providing maritime services, it provides Regulated Services at the Proclaimed Ports.

Should access regulation apply to the Regulated Services?

4. It is well established that access regulation should only apply to services in the following circumstances:
 - a) the services are provided by “essential facilities” or natural monopoly infrastructure (i.e. facilities that cannot be economically duplicated resulting in the owner having unconstrained and enduring market power);
 - b) access to the services provided by these facilities would materially promote competition in upstream or downstream markets;
 - c) the facilities are of economic or national significance; and
 - d) access would promote the public interest.
5. There is real doubt as to whether Flinders Ports is likely to hold unconstrained and enduring market power in relation to the Regulated Services:
 - a) there are a number of actual and potential substitutes that compete or are likely to compete with the Regulated Services provided by Flinders Ports over the next 5 years;
 - b) users of the Regulated Services are sophisticated global shipping companies that compete in global shipping markets and exert countervailing power and that service customers that also compete in global commodity markets;
 - c) since Flinders Ports’ commencement as the owner and operator of Proclaimed Ports in 2001, there have been no disputes from third parties about the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services (either directly raised with Flinders Ports or with ESCOSA under the MSA Act) or any

submissions to ESCOSA as part of its Previous Reviews complaining about these issues;

- d) Flinders Ports does not enjoy excessive profits from the provision of Regulated Services. Previous price benchmarking analysis and price increase trends demonstrate that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and have been in line with CPI or are based on actual costs – this is likely to still be the case. ESCOSA has also not indicated any concerns with annual pricing reports submitted to it by Flinders Ports; and
- e) a number of uncertainties will continue to constrain Flinders Ports including the effects of the global COVID-19 pandemic on global shipping markets and domestic grain production.

SA Ports Access Regime

6. To the extent that access regulation should continue to apply to the Regulated Services, the SA Ports Access Regime as currently drafted, implemented and enforced is appropriate and effective:

- a) there is ample evidence of the SA Ports Access Regime resulting in commercially negotiated resolutions;
- b) many of those agreements have resulted in prices negotiated below published prices for Essential Maritime Services;
- c) since Flinders Ports' commencement as the owner and operator of Proclaimed Ports in 2001, there have been no disputes from third parties about the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services (either directly raised with Flinders Ports or with ESCOSA under the MSA Act) or any submissions to ESCOSA as part of its Previous Reviews complaining about these issues;
- d) Flinders Ports does not enjoy excessive profits from the provision of Regulated Services. Previous price benchmarking analysis and price increase trends demonstrate that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and have been in line with CPI or are based on actual costs – this likely to still be the case. ESCOSA has also not indicated any concerns with annual pricing reports submitted to it by Flinders Ports;
- e) Flinders Ports has made a number of investments in the facilities that provide the Regulated Services over the last 10 years for the benefit of third parties who acquire those services and the South Australian economy;

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- f) the SA Ports Access Regime continues to achieve the objectives of the MSA Act and the ESC Act;
 - g) the Treasurer on recommendation from the NCC recently certified the SA Ports Access Regime until 2031 under Part IIIA of the CCA; and
 - h) there are no other forms of access regulation that provide additional benefits to third parties that acquire Regulated Services but for less cost.
7. In the above circumstances, the SA Ports Access Regime should be extended for a further 5 years.

The SA Ports Pricing Regime

8. On the basis that pricing regulation is necessary, the SA Ports Pricing Regime as currently drafted, implemented and enforced is appropriate and effective because:
- a) it contains appropriate forms of pricing regulation;
 - b) it continues to achieve the objectives of the MSA Act and the ESC Act;
 - c) more intrusive forms of pricing regulation will result in substantial costs with no additional benefits; and
 - d) current price comparison methodologies are reasonable and appropriate.
9. In the above circumstances, the SA Ports Pricing Regime should be extended for a further 5 years.

PART B: BACKGROUND

The Review

11. On 3 December 2021, ESCOSA published a notice pursuant to section 43(3) of the MSA Act calling for submissions in response to the Review.¹
12. Section 43 of the MSA Act requires ESCOSA to “conduct a review of the industries subject to [Part 3 of the MSA Act] to determine whether this Part should continue to apply to those industries.”
13. Under section 10 of the MSA Act, the relevant industries subject to Part 3 of the MSA Act comprise the Regulated Services in so far as they are provided by a person who carries on the business of providing maritime services at a Proclaimed Port.
14. Regulated Services are defined under the MSA Act as:
 - (a) providing, or allowing for, access of vessels to the port;
 - (b) pilotage services facilitating access to the port;
 - (c) providing berths for vessels at the following common user berths –
 - (i) Port Adelaide Outer Harbour berths numbers 1 to 4 (inclusive), 16 to 20 (inclusive), and 29;
 - (ii) Wallaroo berths numbers 1 South and 2 South;
 - (iii) Port Pirie berths numbers 5 and 7;
 - (iv) Port Lincoln berths numbers 6 and 7;
 - (v) berths adjacent to the loading and unloading facilities referred to in paragraph (d);
 - (ca) providing port facilities for loading or unloading vessels at berths adjacent to the loading and unloading facilities referred to in paragraph (d);
 - (d) loading or unloading vessels by means of port facilities that –
 - (i) are bulk handling facilities as defined in the South Australian Ports (Bulk Handling Facilities) Act 1996 (SA); and
 - (ii) involve the use of conveyor belts;
 - (da) loading or unloading vessels by means of port facilities that are bulk handling facilities situated at Port Adelaide Outer Harbor berth number 8; and
 - (e) providing access to land in connection with the provision of the above maritime services.²

Flinders Ports

15. Flinders Ports is South Australia’s leading port operator.

¹ Essential Services Commission of South Australia, ‘Ports Pricing and Access Review 2022’, 3 December 2021 <https://www.escosa.sa.gov.au/projects-and-publications/projects/ports/pricing-and-access-review-2022>.

² South Australia, The South Australian Government Gazette, No 141, 25 October 2001, 4686; South Australia, The South Australian Government Gazette, No 77, 26 August 2004, 3405; South Australia, The South Australian Government Gazette, No 75, 29 October 2009, 4985.

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16. It operates seven ports in South Australia, namely: Port Adelaide, Port Lincoln, Port Pirie, Thevenard, Port Giles, Wallaroo and Klein Point. Each of these ports, other than the port at Klein Point, is a proclaimed port pursuant to the MSA Act. Flinders Ports also provides shipping management services to third party port operators at Port Bonython, Ardrossan and Whyalla.
 17. Flinders Ports is a wholly owned subsidiary of FPH. Flinders Ports was established in 2001 when it acquired a number port assets, 99 year land leases and port operating agreements from the State of South Australia as part of a privatisation of the State's port assets.
 18. Flinders Ports makes these submissions on the basis that, in carrying on the business of providing maritime services, it provides Regulated Services at the Proclaimed Ports.

PART C: SHOULD ACCESS REGULATION APPLY TO THE REGULATED SERVICES?

Access regulation should only apply in exceptional circumstances

19. It is well-recognised that the policy for access regulation in Australia was described in the Hilmer Report in 1993.

20. In introducing the concept of access regulation, the Hilmer Report emphasised that fundamental property rights of owners were paramount and should not be “lightly disturbed”:

“As a general rule, the law imposes no duty on one firm to do business with another. The efficient operation of a market economy relies on the general freedom of an owner of property and/or supplier of services to choose when and with whom to conduct business dealings and on what terms and conditions. This is an important fundamental principle based on notions of private property and freedom to contract, and not one to be lightly disturbed.”³

21. Further, in recommending the National Access Regime, the Hilmer Report warned that it would be important to be:

“...conscious of the need to carefully limit circumstances in which one business is required by law to make its facilities available to another. Failure to provide appropriate protection to the owners of such facilities has the potential to undermine incentives for investment.”⁴

22. These policy comments clearly demonstrate that access regulation is not a preferred outcome and is only warranted in limited circumstances.

The circumstances in which access regulation is warranted

Hilmer Report

23. The Hilmer Report described the circumstances in which access regulation should apply in the following terms:

“The regime would only be applied to the limited category of cases where access to the facility was essential to permit effective competition and the declaration was in the public interest having regard to the significance of the industry to the national economy and the expected impact of effective competition in that industry on national competitiveness.”⁵

24. In relation to the types of facilities to which access regulation should apply, the Hilmer Report stated:

“An “essential facility” is, by definition, a monopoly, permitting the owner to reduce output and/or service and charge monopoly prices, to the detriment of users and the economy as a whole. In addition, where the owner of the facility is also competing in markets that are dependent on access to the facility, the owner can restrict

³ Hilmer Report, page 242.

⁴ Hilmer Report, page 248.

⁵ Hilmer Report, page xxxii.

access to the facility to eliminate or reduce competition in the dependent markets.”⁶

25. The Hilmer Report continued:

“Some economic activities exhibit natural monopoly characteristics, in the sense that they cannot be duplicated economically. While it is difficult to define precisely the term “natural monopoly”, electricity transmission grids, telecommunication networks, rail tracks, major pipelines, ports and airports are often given as examples. Some facilities that exhibit these characteristics occupy strategic positions in an industry, and are thus “essential facilities” in the sense that access to the facility is required if a business is to be able to compete effectively in upstream or downstream markets. For example, competition in electricity generation and in the provision of rail services requires access to transmission grids and rail tracks respectively.”⁷

26. In addition, the Hilmer Report noted that access regulation should only apply “[w]here a clear public interest exists, but not otherwise”.⁸

27. The above concepts as recommended by the Hilmer Report were largely incorporated into Part IIIA of the CCA⁹ and the CPA¹⁰ and subsequently endorsed by Commonwealth and State and Territory governments under CIRA and then by the Productivity Commission in its review of Part IIIA of the CCA¹¹ to reflect the circumstances in which access regulation should apply.

Part IIIA of the CCA

28. Part IIIA of the CCA sets out the circumstances in which access regulation is warranted pursuant to what is known as the declaration criteria. The relevant criteria can broadly be summarised as follows:¹²

- a) The services are provided by “essential facilities” or natural monopoly infrastructure (i.e. facilities that cannot be economically duplicated);
- b) Access to the services provided by these facilities would materially promote competition in upstream or downstream markets;
- c) The facilities are of national significance; and
- d) Access would promote the public interest.

CPA and CIRA

29. The CPA Principles establish similar criteria for the State and Territory access regimes (but without the national significance requirement).¹³

⁶ Hilmer Report, page 239.

⁷ Hilmer Report, page 240.

⁸ Hilmer Report, page 248.

⁹ CCA, s 44CA.

¹⁰ CPA, page 7.

¹¹ Productivity Commission Inquiry Report, National Access Regime (No 66, 25 October 2013).

¹² CCA, s 44CA.

¹³ CPA, clause 6(3)(a).

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30. In 2006, the Commonwealth and all States and Territories entered into the CIRA, clause 4.1(a) of which provides that the parties agree that:

“...ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power.”¹⁴

31. In 2013, the Productivity Commission reviewed the operation of Part IIIA of the CCA and concluded that:

“The only economic problem that access regulation should address is an enduring lack of effective competition, due to natural monopoly, in markets for infrastructure services where access is required for third parties to compete effectively in dependent markets.”¹⁵

32. Significantly, the Productivity Commission noted that:

“A monopoly position in a market is not sufficient to warrant access regulation

Even where an infrastructure service provider has a monopoly position in a particular market, its market power might be constrained by the existence of substitutes, countervailing market power or the threat of entry.”
[original emphasis] ¹⁶

33. The Productivity Commission continued:

“Access regulation is unlikely to increase efficiency where the infrastructure service provider has no ability to affect prices in downstream markets — for example, where prices are determined in world commodity markets. The infrastructure service provider would have a strong incentive (through the sharing of its fixed costs) to provide access to any capacity that will be unused for the foreseeable future, provided the access price recovers the full costs of use by the third party. Intervention to require access where these conditions apply risks lowering efficiency and, in the long term, adversely affecting incentives to invest in markets for infrastructure services.

Despite incentives to provide access to foreseeably unused capacity, there may be other reasons why an infrastructure service provider might deny access to another market participant in a real world market situation: the desire for unfettered control over all parts of the production process, distortions in input markets, errors in commercial judgment, a monopoly business culture that does not give effective consideration to new information or innovation, or even poor relationships between market participants. However, these reasons do not relate to the economic problem that access regulation should address, and thus taken alone they are not sufficient to justify using the Regime.”¹⁷

Conclusion

34. The above history demonstrates that access regulation is only warranted where:
- a) The services are provided by “essential facilities” or natural monopoly infrastructure (i.e. facilities that cannot be economically duplicated resulting in the owner having

¹⁴ CIRA, clause 4(1)(a).

¹⁵ Productivity Commission Inquiry Report, National Access Regime (No 66, 25 October 2013), page 7.

¹⁶ Productivity Commission Inquiry Report, National Access Regime (No 66, 25 October 2013), page 8.

¹⁷ Productivity Commission Inquiry Report, National Access Regime (No 66, 25 October 2013), page 10.

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- unconstrained and enduring market power);
- b) Access to the services provided by these facilities would materially promote competition in upstream or downstream markets;
 - c) The facilities are of economic or national significance; and
 - d) Access would promote the public interest.

Flinders Ports is unlikely to have unconstrained and enduring market power in relation to the Regulated Services

Overview

35. There is real doubt as to whether Flinders Ports is likely to hold unconstrained and enduring market power in relation to the Regulated Services:
- a) there are a number of actual and potential substitutes that compete or are likely to compete with the Regulated Services provided by Flinders Ports over the next 5 years;
 - b) users of the Regulated Services are sophisticated global shipping companies that compete in global shipping markets and exert countervailing power and that service customers that also compete in global commodity markets;
 - c) since Flinders Ports' commencement as the owner and operator of Proclaimed Ports in 2001, there have been no disputes from third parties about the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services (either directly raised with Flinders Ports or with ESCOSA under the MSA Act) or any submissions to ESCOSA as part of its Previous Reviews complaining about these issues;
 - d) Flinders Ports does not enjoy excessive profits from the provision of Regulated Services. Previous price benchmarking analysis and price increase trends demonstrate that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and have been in line with CPI or are based on actual costs – this likely to still be the case. ESCOSA has also not indicated any concerns with annual pricing reports submitted to it by Flinders Ports; and
 - e) a number of uncertainties will continue to constrain Flinders Ports including the effects of the global COVID-19 pandemic on global shipping markets and domestic grain production.

Competing ports

36. There are a number of competing ports that represent existing or potential substitutes for the Regulated Services provided by Flinders Ports at the Proclaimed Ports.
37. That some of these ports may not currently be operational misses the point. They are regarded by Flinders Ports as credible threats that may enter the market in the next 5 years. New entry provides the same economic constraints as existing players for the purposes of competition law.
38. The extent of competition from each of these ports depends upon the location of product to be exported and the comparative transport costs involved of getting that product to port (including back-haul railway options).
39. A summary of competing intrastate ports is set out in **Annexure A**. Flinders Ports is the sole regulated entity amongst South Australia port services providers.
40. A summary of competing interstate ports is set out in **Annexure B**.
41. A summary of the types of products that other ports can compete for is set out in **Annexure C**.

Other forms of competition

42. Flinders Ports is increasingly competing with railways as an alternative means by which customers are transporting goods or cargo from or to South Australia to other locations within Australia.
43. For example, in 2022, Flinders Ports sought to transport product from its Proclaimed Ports to Bunbury, WA for one of its long-standing customers. However, given increased coastal shipping prices as a result of constrained global shipping markets and competitive rail transport prices, the customer ultimately acquired interstate railway services rather the Regulated Services to transport product from SA to Bunbury. Flinders Ports lost this cargo volume as a result.

Users of Regulated Services

44. The majority of users of the Regulated Services are global shipping companies, large shipping agents or commodity companies that compete on a global or national basis. They are sophisticated customers that exert countervailing power on Flinders Ports in negotiating prices for the Regulated Services and Essential Maritime Services.
45. This is reflected in the large number of commercial agreements struck at prices below the prices published by Flinders Ports pursuant to the SA Ports Pricing Regime. Indeed, over 60% of contracted cargo shipped by Flinders Ports are at prices below the prices published by Flinders Ports.

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46. If these users did not have countervailing power, Flinders Ports would be able to price higher than the published prices under the SA Ports Pricing Regime.

No pricing disputes or complaints

47. Since Flinders Ports' commencement as the owner and operator of the Proclaimed Ports, there have been no disputes from access seekers regarding the provision, terms and conditions, or price of Regulated Services or Essential Maritime Services directly raised with Flinders Ports. In addition, there have been no disputes raised with ESCOSA regarding the price of Regulated Services or Essential Maritime Services under the provisions of the MSA Act.
48. This evidence in combination with the substantial evidence of commercially negotiated access pricing outcomes between Flinders Ports and access seekers is telling and should not be dismissed.
49. The hypothetical assertion that an absence of pricing disputes does not necessarily mean that access seekers are content with commercially negotiated prices (and may consider that an arbitrated outcome under the MSA Act may not provide better prices) is baseless and unsupported by any factual evidence. The presumption in circumstances where there are no disputes about the provision, terms and conditions, or price of Regulated Services or Essential Maritime Services must be that the parties are content with what they have commercially negotiated and the benefits of those price agreements clearly outweigh the costs of any regulatory review.
50. Flinders Ports also understands that users of Regulated Services or Essential Maritime Services have not complained to ESCOSA about the provision, terms and conditions, or price of Regulated Services or Essential Maritime Services at any time or as part of the Previous Reviews even though such complaints could be made on a confidential basis. If complaints had been made, ESCOSA presumably would have made comment on this in its Previous Reviews but this has not been the case.
51. The absence of disputes or complaints about the Regulated Services or Essential Maritime Services supports the view that Flinders Ports does not have (or at least has not exercised) unconstrained and enduring market power.

Absence of excessive profits and pricing trends

52. That Flinders Ports does not enjoy unconstrained and enduring market power in the markets for the Regulated Services is demonstrated by the lack of excessive profits derived from the provision of those services.
53. While Flinders Ports has the ability to negotiate prices for Regulated Services and Essential Maritime Services, it has not extracted any form of monopoly prices from access seekers. Price

increases have generally been in line with CPI or are based on actual cost increases.

54. The table below demonstrates these nominal year to year percentage increases for each of the Essential Maritime Services:

Regulated Service Charge (increases effective 1 July)	FY'18	FY'19	FY'20	FY'21	FY'22	5-Year Average (FY'18 to FY'22)
Cargo Services Charge	2.20%	2.50%	1.60%	2.50%	3.80%	2.52%
Harbour Services Charge - <i>Fixed Component</i>	3.30%	3.40%	3.20%	3.20%	3.50%	3.32%
Harbour Services Charge - <i>Variable Component</i>	2.00%	2.30%	1.30%	2.40%	1.20%	1.84%
Navigational Services Charge *	3.30%	3.50%	2.80%	3.60%	3.50%	3.34%
Pilotage Charge **	4.10%	4.20%	3.70%	3.60%	2.70%	3.66%

* *Navigation Services Charge includes standalone recovery specific to VTS Implementation*

** *Pilotage Charge includes standalone recovery specific to pilot boat replacement program*

55. In addition to the above, previous price benchmarking analysis demonstrates that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and price increases have been in line with CPI or are based on actual costs – this is likely to still be the case.
56. In its Previous Reviews, ESCOSA has not concluded that Flinders Ports' pricing of Essential Maritime Services has been excessive or of concern. Similarly, ESCOSA has also not indicated any concerns with the annual pricing reports submitted to it by Flinders Ports.

Other constraints

57. There are a number of other matters that constrain any market power that may be exercised by Flinders Ports in respect of the Regulated Services at the Proclaimed Ports.
58. For example, as a result of the global COVID-19 pandemic, global shipping companies have favoured trade to Asian countries characterised by high demand and high prices. This has resulted in significant constraints across shipping lines resulting in Flinders Ports having to compete against other major ports for business and/or being at the whim of the customer's economic drivers.
59. Similarly, Flinders Ports' operations at the Proclaimed Ports can be materially affected by domestic commodity markets. For example, if grain production is reduced in the eastern states of Australia, South Australian grain traders will transport product domestically rather than internationally through the Proclaimed Ports where there is an economic incentive to do so.

Conclusion

60. For the reasons above, there is real doubt as to whether access regulation should continue to apply to the Regulated Services:
- a) Flinders Ports is unlikely to hold unconstrained and enduring market power in the markets in which Regulated Services are provided; and
 - b) there has been no evidence of any exercise of market power by Flinders Ports since its commencement as the owner and operator of the Proclaimed Ports.

Dependent upstream and downstream markets are global and/or workably competitive

61. As discussed above, the access seekers that acquire the Regulated Services are large, sophisticated companies that compete in global shipping markets. They acquire Regulated Services many thousands of times each year without dispute or issue and transport a wide range of products (including bulk, break-bulk, containerised products grain, petroleum, cement, gypsum, iron ore, fertiliser, mineral concentrates, mineral sands, motor vehicles and project cargo) across the world for customers who also compete in global markets.
62. FPH does not compete in any of these markets.
63. Flinders Ports has the strong economic incentive to promote competition in dependent upstream and downstream markets which in turn will drive throughput resulting in greater revenues. Reducing competition will negatively impact revenue.
64. As the markets which are dependent on the markets for the Regulated Services are global in nature and/or workably competitive (i.e. shipping transport and commodity markets), there is real doubt as to whether access regulation should continue to apply to the Regulated Services.
65. Indeed, there is no evidence to suggest that any of these markets are not workably competitive or that the facilities providing the Regulated Services operate as a “bottleneck” to the promotion of competition in such markets.

Conclusion

66. For the reasons above, there is real doubt as to whether access regulation should continue to apply to the Regulated Services.

PART D: THE SA PORTS ACCESS REGIME IS APPROPRIATE AND EFFECTIVE

Overview

68. To the extent that access regulation should continue to apply to the Regulated Services, the SA Ports Access Regime as currently drafted, implemented and enforced is appropriate and effective because:
- a) there is ample evidence of the SA Ports Access Regime resulting in commercially negotiated resolutions;
 - b) many of those agreements have resulted in prices negotiated below published prices for Essential Maritime Services;
 - c) since Flinders Ports' commencement as the owner and operator of Proclaimed Ports in 2001, there have been no disputes from third parties about the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services (either directly raised with Flinders Ports or with ESCOSA under the MSA Act) or any submissions to ESCOSA as part of its Previous Reviews complaining about these issues;
 - d) Flinders Ports does not enjoy excessive profits from the provision of Regulated Services. Previous price benchmarking analysis and price increase trends demonstrate that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and have been in line with CPI or are based on actual costs – this likely to still be the case. ESCOSA has also not indicated any concerns with annual pricing reports submitted to it by Flinders Ports;
 - e) Flinders Ports has made a number of investments in the facilities that provide the Regulated Services over the last 20 years for the benefit of access seekers and the South Australian economy;
 - f) the SA Ports Access Regime continues to achieve the objectives of the MSA Act and the ESC Act;
 - g) the Treasurer on recommendation from the NCC recently certified the SA Ports Access Regime until 2031 under Part IIIA of the CCA; and
 - h) there are no other forms of access regulation that provide additional benefits to third parties that acquire Regulated Services but for less cost.
69. In the above circumstances, the SA Ports Access Regime should be extended for a further 5 years.

Commercially negotiated resolutions

70. There is ample evidence of Flinders Ports reaching commercially negotiated agreements with access seekers for the Regulated Services.
71. This is the very aim of negotiate/arbitrate access models, namely – to incentivise commercial agreement by having the threat of an arbitrated outcome but also having the option of arbitration where agreement cannot be reached.
72. This outcome alone clearly demonstrates that the SA Ports Access Regime is appropriate and effective.

Prices negotiated below published prices

73. In addition to reaching commercially negotiated agreements between Flinders Ports and access seekers, many of these agreements are made at prices below the published prices for Essential Maritime Services.
74. Over 60% of contracted cargo volume shipped by Flinders Ports are at prices below the prices published by Flinders Ports.

No disputes or complaints

75. Since Flinders Ports' commencement as the owner and operator of the Proclaimed Ports, there have been no disputes from access seekers regarding the provision, terms and conditions, or price of Regulated Services or Essential Maritime Services directly raised with Flinders Ports. In addition, there have been no disputes raised with ESCOSA regarding the price of Regulated Services or Essential Maritime Services under the provisions of the MSA Act.
76. Flinders Ports also understands that users of Regulated Services or Essential Maritime Services have not complained to ESCOSA about the provision, terms and conditions, or price of Regulated Services or Essential Maritime Services at any time or as part of the Previous Reviews even though such complaints could be made on a confidential basis. If complaints had been made, ESCOSA presumably would have made comment on this in its Previous Reviews but this has not been the case.
77. This evidence in combination with the substantial evidence of commercially negotiated access pricing outcomes between Flinders Ports and access seekers is telling and should not be dismissed.
78. The absence of disputes or complaints about the Regulated Services or Essential Maritime Services supports the view that the SA Ports Access Regime is appropriate and effective.

Absence of excessive profits and pricing trends

79. The lack of excessive profits derived from the provision of Regulated Service supports the view that the SA Ports Access Regime is appropriate and effective.
80. While Flinders Ports has the ability to negotiate prices for Regulated Services and Essential Maritime Services, it has not extracted any form of monopoly prices from access seekers. Price increases have generally been in line with CPI or are based on actual cost increases.
81. The table above at paragraph 54 demonstrates these nominal year to year percentage increases for each of the Essential Maritime Services.
82. In addition to the above, previous price benchmarking analysis demonstrates that increases in prices for Essential Maritime Services are consistent with increases in prices at other Australian ports and price increases have been in line with CPI or are based on actual costs - this likely to still be the case.
83. In its Previous Reviews, ESCOSA has not concluded that Flinders Ports' pricing of Essential Maritime Services has been excessive or of concern. ESCOSA has also not indicated any concerns with the annual pricing reports submitted to it by Flinders Ports.

Investments in facilities that provide the Regulated Services

84. Since privatisation of South Australian ports in 2001, Flinders Ports has made a number of significant investments in the facilities that provide the Regulated Services and ancillary facilities for the benefit of access seekers and the South Australian economy.
85. These investments amount to approximately \$450 million and include the following:
 - a) channel deepening and widening in Port Adelaide;
 - b) wharf remediation;
 - c) berth redevelopment;
 - d) infrastructure alterations;
 - e) investments in operating plant and equipment (i.e. pilot boats, gangways, etc.);
 - f) improvements to drainage;
 - g) improvements to security;
 - h) investment in Vessel Traffic Systems (VTS);
 - i) investments in technology, operating systems and cyber security;

j) enhancing biosecurity capabilities; and

k) fender and utilities upgrades.

86. These investments have enhanced the operational efficiency of the Proclaimed Ports which has resulted in increased competition in upstream and downstream markets.

87. For example, material investments into widening the shipping channel and extending the common user berths at Port Adelaide were critical in ensuring Flinders Ports could continue to compete with other major ports by enabling larger vessels to enter the channel and use the berths.

88. Flinders Ports will continue to make efficient investments in the facilities providing the Regulated Services to remain competitive in the market and to adjust to market changes over time.

89. In this respect, Flinders Ports proposes to invest approximately \$550 million over the next 20 years (around \$30 million per year) in facilities and infrastructure to maintain existing levels of trade at the Proclaimed Ports (i.e. so that they are not lost to other ports). These investments will include channel widening and dredging, improvement of berths and other improvements of port infrastructure including digital, cyber security and biosecurity upgrades.

90. The above investments and consequent promotion of competition are clear indicia that the SA Ports Access Regime is appropriate and effective.

Objectives of the MSA Act and the ESC Act

MSA Act

91. Section 3 of the MSA Act provides that:

The objects of this Act are –

(a) to provide access to maritime services on fair commercial terms; and

(b) to facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services; and

(c) to protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and

(d) to ensure that disputes about access are subject to an appropriate dispute resolution process.

92. The SA Ports Access Regime is appropriate and effective because it continues to achieve these objectives.

93. Firstly, as described above, there is clear evidence that Regulated Services are being provided on fair commercial terms. Agreements between Flinders Ports and users of the Regulated

Services continue to be reached by way of commercial negotiation. There have been no disputes or complaints about the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services made directly to Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA as part of its Previous Reviews.

94. Secondly, as noted above, Flinders Ports has made a number of significant and efficient investments in the facilities that provide the Regulated Services. This has resulted in increased capacity at Proclaimed Ports and ensures those facilities are being used and operated efficiently. The investments also enable Flinders Ports to remain competitive against other major ports.
95. Thirdly, the prices for Essential Maritime Services are fair and reasonable as evidenced by the absence of disputes or complaints, previous price benchmarking analysis, the lack of excessive profits by Flinders Ports, the findings of ESCOSA in Previous Reviews, the acceptance by ESCOSA of annual pricing reports provided to it by Flinders Ports and commercial agreements at prices below published prices for Essential Maritime Services. There is no evidence that the interests of users of Regulated Services are not being protected, that Regulated Services are not being provided efficiently or that there is an absence of, or a bottleneck to, competition.
96. Fourthly, the MSA Act sets out an appropriate dispute resolution process. The Treasurer on the recommendation from the NCC “certified” under Part IIIA of the CCA the dispute resolution process under the MSA Act as one that meets the relevant CPA Principles.

ESC Act

97. Section 6 of the ESC Act sets out the objectives of ESCOSA. It provides:

“In performing the Commission's functions, the Commission must –

(a) have as its primary objective protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and

(b) at the same time, have regard to the need to –

(i) promote competitive and fair market conduct; and

(ii) prevent misuse of monopoly or market power; and

(iii) facilitate entry into relevant markets; and

(iv) promote economic efficiency; and

(v) ensure consumers benefit from competition and efficiency; and

(vi) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and

(vii) promote consistency in regulation with other jurisdictions.”

98. The SA Ports Access Regime is appropriate and effective because it also continues to achieve these objectives.
99. There is no evidence or suggestion that the SA Ports Access Regime is not protecting the long term interests of South Australian consumers with respect to the price, quality and reliability of the Regulated Services.
100. Those services are largely being provided at prices below published prices for Essential Maritime Services which have been reached by commercial agreement between Flinders Ports and access seekers. There have been no disputes or complaints about the provision, terms and conditions, quality, reliability or pricing of Regulated Services or Essential Maritime Services made directly to Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA as part of its Previous Reviews
101. Flinders Ports is not obtaining excessive profits from the provision of Regulated Services as supported by previous price benchmarking, price increase trends, the findings in the Previous Reviews and the acceptance by ESCOSA of the annual pricing reports provided to it by Flinders Ports. Investments have led to increased capacity and competition.
102. In addition:
- a) the matters raised above support the view that the SA Ports Access Regime is promoting competitive and fair market conduct – there is no evidence to suggest otherwise;
 - b) even though there is real doubt as to whether Flinders Ports has unconstrained and enduring market power in relation to the Regulated Services, the operation of the SA Ports Access Regime provides additional constraints on the ability and incentive of Flinders Ports to engage in any misuse of market power. ESCOSA and the Treasurer on the recommendation from the NCC under Part IIIA of the CCA have made findings to this effect;
 - c) the SA Ports Access Regime clearly promotes productive, allocative and dynamic efficiency. Flinders Ports has sought to increase capacity for the least possible cost, it has sought to utilise capacity appropriately across the Proclaimed Ports and it has long term plans to continue to invest in the facilities that provide the Regulated Services;
 - d) users of Regulated Services or Essential Maritime Services and their customers continue to receive the benefits of competition and efficiency through lower prices and increased capacity and services;
 - e) the negotiate / arbitrate model and light-handed approach under the SA Ports Access

Regime continues to ensure the Regulated Services can be provided efficiently and promotes the incentive for Flinders Ports to make long term investments (which it has plans to do, namely approximately \$550 million over the next 20 years); and

- f) the SA Ports Access Regime promotes consistency in regulation with other jurisdictions by meeting the CPA Principles. This has been endorsed by the Treasurer on recommendation from the NCC in its recent certification of the SA Ports Access Regime under Part IIIA of the CCA.

Certification of the SA Ports Access Regime under Part IIIA of the CCA

103. In 2021, the NCC certified the SA Ports Access Regime for a period of 10 years under Part IIIA of the CCA.

104. Certification of the SA Ports Access Regime as an effective access regime by an independent regulatory body provides a strong confirmation that the regime operates appropriately and effectively.

105. In fact, the Treasurer on recommendation from the NCC found that the SA Ports Access Regime:

- a) satisfies the objects of Part IIIA of the CCA namely, to:

(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and

(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.

- b) contains adequate mechanisms for reviewing the right to negotiate access to Regulated Services ensuring that existing contractual rights under an access agreement or award are preserved;
- c) encourages parties to enter into commercial negotiations to reach agreement on the terms and conditions of access to Regulated Services and establishes an appropriate balance between the interests of Flinders Ports, access seekers and interested third parties;
- d) contains appropriate and effective dispute resolution provisions;
- e) requires Flinders Ports to use all reasonable endeavours to accommodate the requirements of access seekers in relation to Regulated Services; and
- f) adequately addresses situations of preventing or hindering access to Regulated

Services.

There are no other forms of access regulation in relation to Regulated Services that provide additional benefits at less cost

106. The SA Ports Access Regime has been operating appropriately and effectively for over 20 years. It provides regulatory certainty and is enforced by a regulator that is appropriately familiar with the Regulated Services and economic considerations relevant to South Australia. All of this contributes to economically efficient decision making by all stakeholders.
107. There have been no disputes regarding the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services raised directly with Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA under Previous Reviews.
108. On the contrary, Flinders Ports continues to reach agreements with access seekers to Regulated Services and Essential Maritime Services by way of commercial negotiation, in many instances at prices below the prices published by Flinders Ports. Flinders Ports does not obtain excessive profits from the provision of Regulated Services as supported by previous price benchmarking, price increase trends, the findings in the Previous Reviews and the acceptance by ESCOSA of annual pricing reports provided to it by Flinders Ports. It has made significant investments in the facilities that provide the Regulated Services, increasing capacity and competition at the Proclaimed Ports.
109. There is no evidence that other forms of access regulation will provide benefits over and above those provided by the SA Ports Access Regime while incurring the same or less cost. On the contrary, it is well recognised that the National Access Regime can result in substantial costs, regulatory uncertainty and a chilling of incentives to make future investments. The Pilbara Railways matter and more recent Port of Newcastle case provide strong examples of these concerns.

Conclusion

110. For the reasons above, the SA Ports Access Regime as currently drafted, implemented and enforced is appropriate and effective. It should be extended for a further 5 years.

PART E: THE SA PORTS PRICING REGIME IS APPROPRIATE AND EFFECTIVE

Overview

111. On the basis that pricing regulation is necessary, the SA Ports Pricing Regime as currently drafted, implemented and enforced is appropriate and effective because:
- a) it contains appropriate forms of pricing regulation;
 - b) it continues to achieve the objectives of the MSA Act and the ESC Act;
 - c) more intrusive forms of pricing regulation will result in substantial costs with no additional benefits; and
 - d) current price comparison methodologies are reasonable and appropriate.
112. In the above circumstances, the SA Ports Pricing Regime should be extended for a further 5 years.

Appropriate pricing mechanisms

113. As recognised in ESCOSA's 2017 Review, the SA Ports Pricing Regime contains a number of pricing mechanisms that incentivise Flinders Ports and access seekers to reach commercial agreement on prices for Essential Maritime Services and that ensure those prices are transparent and not excessive.
114. The SA Ports Pricing Regime includes:
- a) an appropriate negotiate / arbitrate model for parties to reach commercial agreements on the terms and conditions of access to the Regulated Services including price. The Treasurer on recommendation from the NCC recently found that this model satisfied the relevant CPA Principles;
 - b) pricing principles which can be taken into account in any arbitration;
 - c) provisions requiring Flinders Ports to provide price-related information to access seekers;
 - d) maintaining and publishing a schedule of prices and developing and publishing a Price Information Kit; and
 - e) the ability of ESCOSA to publish pricing guidelines and make price determinations.

Objectives of the MSA Act and the ESC Act

MSA Act

115. As noted above, section 3 of the MSA Act provides that:

The objects of this Act are –

(a) to provide access to maritime services on fair commercial terms; and

(b) to facilitate competitive markets in the provision of maritime services through the promotion of the economically efficient use and operation of, and investment in, those services; and

(c) to protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and

(d) to ensure that disputes about access are subject to an appropriate dispute resolution process.

116. The SA Ports Pricing Regime is appropriate and effective because it continues to achieve these objectives.

117. Firstly, as described above, there is clear evidence that Essential Maritime Services are being provided on fair commercial terms. Agreements between Flinders Ports and access seekers to Regulated Services or Essential Maritime Services continue to be reached by way of commercial negotiation. There have been no disputes or complaints about the provision, terms and conditions or prices of these services made directly to Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA as part of its Previous Reviews.

118. Secondly, the prices for Essential Maritime Services are fair and reasonable as evidenced by the absence of disputes or complaints, previous price benchmarking analysis, the lack of excessive profits by Flinders Ports, price increase trends, findings in Previous Reviews, the acceptance by ESCOSA of annual pricing reports provided to it by Flinders Ports and commercial agreements at prices below published prices for Essential Maritime Services.

119. There is no evidence that the interests of users of Essential Maritime Services are not being protected, that Essential Maritime Services are not being provided efficiently or that there is an absence of, or a bottleneck to, competition.

ESC Act

120. Section 6 of the ESC Act sets out the objectives of ESCOSA. It provides:

"In performing the Commission's functions, the Commission must –

(a) have as its primary objective protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and

(b) at the same time, have regard to the need to –

(i) promote competitive and fair market conduct; and

(ii) prevent misuse of monopoly or market power; and

(iii) facilitate entry into relevant markets; and

(iv) promote economic efficiency; and

(v) ensure consumers benefit from competition and efficiency; and

(vi) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and

(vii) promote consistency in regulation with other jurisdictions.”

121. The SA Ports Pricing Regime is appropriate and effective because it also continues to achieve these objectives.
122. There is no evidence or suggestion that the SA Ports Pricing Regime is not protecting the long term interests of South Australian consumers with respect to the price, quality and reliability of the Regulated Services and essential Maritime Services.
123. Those services are being provided at prices below published prices for Essential Maritime Services which have been reached by commercial agreement between Flinders Ports and access seekers. There have been no disputes or complaints about the provision, terms and conditions or prices of these services made directly to Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA as part of its Previous Reviews.
124. Flinders Ports is not obtaining excessive profits from the provision of Essential Maritime Services as supported by previous price benchmarking, price increase trends, findings in Previous Reviews and the acceptance by ESCOSA of annual pricing reports provided to it by Flinders Ports.
125. In addition:
- a) the matters raised above support the view that the SA Ports Pricing Regime is promoting competitive and fair market conduct – there is no evidence to suggest otherwise;
 - b) access seekers and their customers continue to receive the benefits of competition and efficiency through lower prices and increased capacity and services;
 - c) the negotiate / arbitrate model and light-handed approach under the SA Ports Access Regime continues to ensure the Essential Maritime Services can be provided efficiently and promotes the incentive for Flinders Ports to make long term investments; and

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- d) the SA Ports Pricing Regime promotes consistency in regulation with other jurisdictions by meeting the CPA Principles.

There are no other forms of pricing regulation that provide additional benefits at less cost

126. The SA Ports Pricing Regime has been operating appropriately and effectively for over 20 years. It provides regulatory certainty and is enforced by a regulator that is appropriately familiar with Essential Maritime Services and economic considerations relevant to South Australia. All of this contributes to economically efficient decision making by all stakeholders.
127. There have been no disputes regarding the provision, terms and conditions or pricing of Regulated Services or Essential Maritime Services raised directly with Flinders Ports, to ESCOSA under the MSA Act or to ESCOSA under Previous Reviews.
128. On the contrary, Flinders Ports continues to reach agreements with access seekers to Regulated Services and Essential Maritime Services by way of commercial negotiation, in many instances at prices below the prices published by Flinders Ports. Flinders Ports does not obtain excessive profits from the provision of Regulated Services as supported by previous price benchmarking, price increase trends, the findings in the Previous Reviews and the acceptance by ESCOSA of annual pricing reports provided to it by Flinders Ports. It has made significant investments in the facilities that provide the Regulated Services, increasing capacity and competition at the Proclaimed Ports.
129. There is no evidence that other forms of access regulation will provide benefits over and above those provided by the SA Ports Access Regime while incurring the same or less cost. On the contrary, it is well recognised that the National Access Regime can result in substantial costs, regulatory uncertainty and a chilling of incentives to make future investments. The Pilbara Railways matter and more recent Port of Newcastle case provide strong examples of these concerns.

Comparative pricing methodologies

130. In 2017, ESCOSA made the price determination under the MSA Act that prices for Essential Maritime Services at the Proclaimed Ports would continue to be regulated via a price monitoring and price publication framework.
131. A price monitoring framework is designed to scrutinise movements in prices in order to assess whether these movements are indicative of an exercise of market power. If prices rise materially faster than costs, this may be considered a strong indicator that market power is being exercised.
132. The assessment of the reasonableness of price increases must therefore have consideration of the range of quantitative and qualitative factors that impact the actual costs of providing the

Essential Maritime Services in accordance with the requirements and expectations of users.

133. Flinders Ports has adopted and applied the general principle that price movements should reflect the underlying movement in the actual costs of providing the Essential Maritime Services (increases or decreases) and are reasonable if consistent with what would have been expected in a workably competitive market (i.e. of an arm's length third party providing the Essential Maritime Services).
134. As a result of this methodology, the price increases applied by Flinders Ports for the Essential Maritime Services strike a balance, and are weighted appropriately, between those generic costs that tend to change broadly in line with broader macroeconomic indices and those idiosyncratic costs that relate specifically to the particular circumstances in which Flinders Ports provides the Essential Maritime Services.
135. ESCOSA has agreed with this methodology when requesting that Flinders Ports explain its price increases for Essential Maritime Services and there is no reason or compelling evidence that this approach should be changed.

Conclusion

136. For the reasons above, the SA Ports Pricing Regime as currently drafted, implemented and enforced is appropriate and effective and should be extended for a further 5 years.

ANNEXURE A

COMPETING INTRASTATE PORTS

Whyalla Port (SIMEC Mining)

1. Whyalla Port is located in the Upper Spencer Gulf with the potential to service a number of mining and agricultural regions in South Australia. Indeed, Whyalla Port is more proximate to many of these regions than Flinders Ports' Proclaimed Ports.
2. While Whyalla Port has traditionally provided exclusive port services similar to the Regulated Services to its owner SIMEC Mining (formerly Arrium and OneSteel), it has now commenced providing services to third parties. In June 2020, SIMEC Mining entered arrangements to export copper concentrate for OZ Minerals from its Carrapateena mine in South Australia for three years.¹⁸
3. Significantly, Flinders Ports actively sought to win this contract for OZ Minerals but lost to SIMEC Mining at Whyalla.
4. It has been reported that SIMEC Mining has said that "*the opening of SIMEC's ports to third parties had become a key advantage to exporting product*"¹⁹ and that:

*"...our port is open business, and the last few years have demonstrated that through the number and variety of trials we've undertaken."*²⁰

5. As part of this expansion to accommodate third-party usage, SIMEC Mining has made significant investments in the port, having installed two mobile harbour cranes at the port as of 2020.²¹
6. Following the installation of a second mobile harbour crane, Qube Bulk Director, Todd Emmert shared his view that Whyalla is the '*most logical port to service South Australia's mining industry*',²² and that:

*"With two mobile harbour cranes, this port rivals the service levels that are currently available in Adelaide. Economic port operations, combined with the very significant cost savings that can be achieved by reducing the distance required to rail or haul products, makes Whyalla a local choice for miners who want to build and deliver robust and economic supply chains."*²³

¹⁸ Government of South Australia – Department for Trade and Investment, 'OZ Minerals Signs Whyalla Copper Export Deal', 16 June 2020 <https://dti.sa.gov.au/articles/ozminerals-signs-whyalla-copper-export-deal>.

¹⁹ Australian Mining, 'OZ Minerals Inks Export Deal with Whyalla Port', 17 June 2020 <https://www.australianmining.com.au/news/oz-minerals-inks-export-deal-with-whyalla-port/>.

²⁰ SIMEC, 'Whyalla Port Opportunities Increasing', 16 June 2020 <http://www.simec.com/news/whyalla-port-opportunities-increasing/>.

²¹ SIMEC, 'SIMEC's Whyalla Port Doubles Handling Capacity', 3 September 2020 <http://www.simec.com/news/simec-s-whyalla-port-doubles-handling-capacity/>.

²² SIMEC, 'SIMEC's Whyalla Port Doubles Handling Capacity' 3 September 2020 <http://www.simec.com/news/simec-s-whyalla-port-doubles-handling-capacity/>.

²³ SIMEC, 'SIMEC's Whyalla Port Doubles Handling Capacity' 3 September 2020 <http://www.simec.com/news/simec-s-whyalla-port-doubles-handling-capacity/>.

Lucky Bay (T-Ports)

7. Lucky Bay Port is located on the Spencer Gulf, approximately 110km from Whyalla and approximately 180km from Port Lincoln. Lucky Bay specialises in grain storage and export, with expansive silos and bunkers able to store over 500,000 tonnes of grain, and a transshipment vessel loading capacity of up to 13,800 tonnes per day.²⁴
8. Lucky Bay was the first grain export port in Australia to make use of a transshipment vessel, the MV Lucky Eyre, to load grain onto vessels, eliminating the need for major jetty structures and other port infrastructure at Lucky Bay.²⁵ T-Ports has claimed that its use of a transshipment vessel at Lucky Bay provides it with a competitive advantage over other ports in South Australia with land-based loading facilities as it operates with lower capex and reduced FOB ('free on board') costs.²⁶
9. Lucky Bay underwent a harbour expansion project in 2014 to increase its grain loading and unloading capacity, and has designed competitive and efficient handling facilities including a dual hopper which can discharge 1000 tonnes of grain per hour.²⁷
10. In August 2021, T-Ports announced that it was expanding its grain storage facilities at nearby Lock and Kimba to accommodate increasing grain throughput.²⁸ T-Ports has also announced that it is looking to use its new 24,000 tonne-capacity silo storage to diversify into importing fertiliser, and provide solutions for the export of other commodities.²⁹ T-Ports has stated that it is well-positioned to expand Lucky Bay into exporting mineral products, livestock and container freight through its existing transshipment vessels.³⁰
11. Lucky Bay itself states that it directly competes with Flinders Ports as the only other grain export facility on the Eyre Peninsula claiming that it has achieved better prices for grain growers.³¹
12. Flinders Ports agrees that Regulated Services at its Proclaimed Ports for grain exports compete with services provided at Lucky Bay. Each tonne of grain shipped from Lucky Bay would otherwise be shipped by Flinders Ports.

Wallaroo (T-Ports)

13. T-Ports' proposed port at Wallaroo is located 158km northwest of Adelaide on the opposite side of the Spencer Gulf to Lucky Bay and adjacent to Flinders Ports' port at Wallaroo.

²⁴ T-Ports, 'Lucky Bay', <https://tports.com/lucky-bay/>.

²⁵ T-Ports, 'Lucky Bay', <https://tports.com/lucky-bay/>.

²⁶ T-Ports, <https://www.facebook.com/TPortsAus/>, 19 January 2021.

²⁷ T-Ports, 'Lucky Bay', <https://tports.com/lucky-bay/>.

²⁸ T-Ports, 'T-Ports' Expansion Continues with New Kimba Bunker Site and Additional Storage at Lock' 6 August 2021 <https://tports.com/t-ports-expansion-continues-with-new-kimba-bunker-site-and-additional-storage-at-lock/>.

²⁹ T-Ports, "Lucky Bay", <https://tports.com/lucky-bay/>.

³⁰ T-Ports, "Commodities" <https://tports.com/commodities/>.

³¹ T-Ports, "T-Ports receives first grain delivery into Kimba site, welcomes marketing competition" 8 November 2021 <https://tports.com/t-ports-receives-first-grain-delivery-into-kimba-site-welcomes-marketing-competition/>.

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14. On 8 January 2022, T-Ports officially commenced its development of a grain port at Wallaroo.³² T-Ports CEO Kieran Carvill stated that:

*"The port at Wallaroo is the logical next step in the T-Ports journey and we're excited to see the opportunities for Yorke Peninsula growers after witnessing the significant returns delivered to Eyre Peninsula growers this past harvest... We're looking forward to offering competition for growers in the Yorke Peninsula and Mid North regions and delivering supply chain savings."*³³

15. The Minister for Primary Industries and Regional Development, David Basham also stated that *"the new port has been in planning for a long time and to see construction starting is a fantastic milestone"*.³⁴
16. This new grain port at Wallaroo is expected to be ready to receive grain in time for the 2022/23 harvest. Once operational, T-Ports' Wallaroo grain port will be in a position to compete directly for grain exports with Flinders Ports' established port facility at Wallaroo.
17. Indeed, Flinders Ports is considering whether to make considerable investments at Wallaroo port to compete with T-Ports to maintain existing trade. Without these investments, it is likely that all grain exports will move to T-Ports and Flinders Ports' operation may become unviable. This demonstrates there is significant competition from T-Ports' proposal at Wallaroo.

Cape Hardy (Iron Road, Macquarie)

18. Cape Hardy is located on the Spencer Gulf about 80km northeast of Port Lincoln, and approximately 200km southwest of Whyalla. The proposal by Iron Road is for the construction of a multi-commodity and multi-user deepwater port,³⁵ as well as a 150km rail line to service significant iron ore deposits near the town of Wudinna.³⁶
19. In October 2020, Macquarie Capital signed a joint development agreement with Iron Road and Eyre Peninsula Co-operative Bulk Handling Limited for the Cape Hardy Stage 1 port project.³⁷ It is expected that operations at Cape Hardy will begin in early 2023.³⁸
20. Stage 1 of the Cape Hardy development will consist of a 900 metre wharf capable of handling Panamax vessels often used for large-volume grain exports. The proposed site for Cape Hardy also has 1100 hectares of land available for other export industries such as green hydrogen,

³² T-Ports, 'T-Ports Wallaroo Port Project Development Officially Launched', 8 January 2022 <https://tports.com/t-ports-wallaroo-port-project-development-officially-launched/>.

³³ T-Ports, 'T-Ports Wallaroo Port Project Development Officially Launched', 8 January 2022 <https://tports.com/t-ports-wallaroo-port-project-development-officially-launched/>.

³⁴ T-Ports, 'T-Ports Wallaroo Port Project Development Officially Launched', 8 January 2022 <https://tports.com/t-ports-wallaroo-port-project-development-officially-launched/>.

³⁵ Grain Central, 'Macquarie Joins Iron Road on EP Cape Hardy Port Project', 9 October 2020, <https://www.graincentral.com/logistics/macquarie-joins-iron-road-on-ep-cape-hardy-port-project/>.

³⁶ Plan SA, 'Cape Hardy – Deep-Sea Port', https://plan.sa.gov.au/state_snapshot/development_activity/major_projects/majors/cape_hardy_iron_road_deep-sea_port.

³⁷ Grain Central, 'Macquarie Joins Iron Road on EP Cape Hardy Port Project', 9 October 2020, <https://www.graincentral.com/logistics/macquarie-joins-iron-road-on-ep-cape-hardy-port-project/>.

³⁸ Grain Central, 'Macquarie Joins Iron Road on EP Cape Hardy Port Project', 9 October 2020, <https://www.graincentral.com/logistics/macquarie-joins-iron-road-on-ep-cape-hardy-port-project/>.

mining and agriculture.

21. Stage 2 will feature further works so that Cape Hardy will be the only port in South Australia (and the only port between Esperance and Port Kembla) capable of accommodating Capesize vessels, the largest style of dry cargo ships which are used to ship coal and ore.³⁹
22. Cape Hardy is receiving specific attention for its development, with a funding commitment from the Federal Government of \$25 million, and has been flagged by Infrastructure Australia as a potential site to be integrated into the Australian National Rail Network, which would enable the port to service southern and central regional Australia.⁴⁰
23. In addition to investment by the Federal Government and private investors, its proximity to mineral projects (such as iron ore at Wudinna) and its projected capacity to receive Capesize vessels, Cape Hardy will compete vigorously with Regulated Services provided by Flinders Ports at Port Lincoln.

Port Spencer (Peninsula Ports)

24. Port Spencer is the site of a proposed deepwater multi-commodity export port project valued at \$230 million along Spencer Gulf on the Eyre Peninsula, about 70km northeast of Port Lincoln.⁴¹ The site was purchased by Peninsula Ports in 2019, and the project received development approval from the South Australian Government in August 2020.
25. The proposal currently comprises the development of wharf structures with ship loading systems, grain storage facilities and handling systems, and a road transport access route.⁴² It was originally announced as a grain-only port, but in December 2020 Peninsula Ports acquired 283 hectares of adjacent land to allow for future development for the export of other commodities.⁴³
26. Peninsula Ports CEO Greg Walters explained that:

*"We are able to deliver the current port with the land that we've got but we saw this as an opportunity to expand in the future and pick up additional commodities. The ability of Port Spencer to become a multi-commodity, multi-user would increase South Australia's export capacity to key markets and provide a significant economic boost to the region creating more local jobs."*⁴⁴

³⁹ Grain Central, 'Macquarie Joins Iron Road on EP Cape Hardy Port Project', 9 October 2020, <https://www.graincentral.com/logistics/macquarie-joins-iron-road-on-ep-cape-hardy-port-project/>.

⁴⁰ Grain Central, 'Macquarie Joins Iron Road on EP Cape Hardy Port Project', 9 October 2020, <https://www.graincentral.com/logistics/macquarie-joins-iron-road-on-ep-cape-hardy-port-project/>.

⁴¹ Port Lincoln Times, 'Peninsula Ports Reaffirms Multi-Commodity Commitment with Land Purchase', 14 December 2020 <https://www.portlincolntimes.com.au/story/7054453/more-land-for-port-spencer-project/>.

⁴² Plan SA, 'Port Spencer – Grain Export Facility' https://plan.sa.gov.au/state_snapshot/development_activity/major_projects/majors/port_spencer_deep_water_port_facility.

⁴³ Port Lincoln Times, 'Peninsula Ports Reaffirms Multi-Commodity Commitment with Land Purchase', 14 December 2020 <https://www.portlincolntimes.com.au/story/7054453/more-land-for-port-spencer-project/>.

⁴⁴ Port Lincoln Times, 'Peninsula Ports Reaffirms Multi-Commodity Commitment with Land Purchase', 14 December 2020 <https://www.portlincolntimes.com.au/story/7054453/more-land-for-port-spencer-project/>.

Port Bonython (SA Government)

27. Port Bonython, approximately 16km east of Whyalla, is the location of a government-owned deepwater port in the Upper Spencer Gulf.
28. It has an existing 2.4km wharf which the SA Government currently leases to Santos for exporting hydrocarbons products. Port Bonython also has a gas fractionation plant, a diesel storage facility and 2000 hectares of available land with access to local renewable energy zones.⁴⁵
29. In May 2021, the SA Government invited expressions of interest to develop land at Port Bonython as part of a plan to transform Port Bonython into an export hub for green and blue hydrogen as part of the National Hydrogen Strategy to generate \$11 billion by 2050 for the national hydrogen industry.⁴⁶ Treasurer Rob Lucas stated that EOIs would be rated on their ability to contribute to Port Bonython as a multi-user, export-focused precinct.⁴⁷
30. Port Bonython represents a real competitive threat to Regulated Services provided at Proclaimed Ports by Flinders Ports.

Port Playford (Port Augusta Operations)

31. Port Playford is a proposed port to be developed by Port Augusta Operations (**PAO**), a related entity of CU River Mining Australia Pty Ltd which currently exports iron ore through Port Adelaide.
32. Expected to be operational by late 2022, Port Playford will include upgraded existing facilities, as well as the development of new infrastructure and facilities to accommodate exports of iron ore from South Australian mines.⁴⁸ It will be built on the site of the Northern Power Station, a coal powered plant which was closed in 2016.⁴⁹
33. PAO has indicated that it will invest over \$100 million to revitalise the existing assets at Port Augusta, which is anticipated to unlock \$160 million of existing assets.⁵⁰ Construction was set to commence in mid-2021 but appears to be delayed.⁵¹

⁴⁵ Renewables Now, 'South Australian Picks Port Bonython Hydrogen Export Proposals', 1 November 2021 <https://renewablesnow.com/news/south-australia-picks-port-bonython-hydrogen-export-proposals-759267/>.

⁴⁶ Premier of South Australia, 'Future Jobs Pipeline as Expressions of Interest Sought to Develop SA's Port Bonython', 18 May 2021 <https://www.premier.sa.gov.au/news/media-releases/news/future-jobs-pipeline-as-expressions-of-interest-sought-to-develop-sas-port-bonython>.

⁴⁷ Premier of South Australia, 'Future Jobs Pipeline as Expressions of Interest Sought to Develop SA's Port Bonython', 18 May 2021 <https://www.premier.sa.gov.au/news/media-releases/news/future-jobs-pipeline-as-expressions-of-interest-sought-to-develop-sas-port-bonython>.

⁴⁸ Port Augusta Operations, 'Port Playford', <https://www.portplayford.com/port-playford/>.

⁴⁹ ABC News, 'Port Augusta a step closer to having a port after Government green lights development', 19 January 2021 <https://www.abc.net.au/news/2021-01-19/port-augusta-port-development-approved/13067472>.

⁵⁰ Premier of South Australia, 'State Government Development Application Approval Paves Way for Port Playford', 19 January 2021 <https://www.premier.sa.gov.au/news/media-releases/news/state-government-development-application-approval-paves-way-for-port-playford>.

⁵¹ Premier of South Australia, 'State Government Development Application Approval Paves Way for Port Playford', 19 January 2021 <https://www.premier.sa.gov.au/news/media-releases/news/state-government-development-application-approval-paves-way-for-port-playford>.

34. Port Playford enjoys existing rail access, and will tranship ore from a newly-developed wharf onto larger cargo ships.

35. PAO Managing Director Shaun Shan has stated that:

*"Stage 1 of this project has already received more demand enquiries than its proposed capacity, which is fantastic news for our company and South Australia. The development strongly aligns with key state, regional and local development directions and will unlock significant economic benefit within Port Augusta and across regional South Australia".*⁵²

⁵² Premier of South Australia, "State Government Development Application Approval Paves Way for Port Playford", 19 January 2021 <https://www.premier.sa.gov.au/news/media-releases/news/state-government-development-application-approval-paves-way-for-port-playford>.

ANNEXURE B

COMPETING INTERSTATE PORTS

Port of Melbourne (Private Consortium)

1. The Port of Melbourne is Australia's busiest container port and a competitor to Port Adelaide due to its scale and relative geographical proximity as a major port.⁵³
2. In 2016, a 50-year, \$9.7 billion lease of the Port of Melbourne was awarded by the Victorian Government to a private consortium made up of Future Fund, QIC, OMERS and Global Infrastructure Partners.⁵⁴ Since this lease commenced, the Port operates under a regulatory framework overseen by the Essential Services Commission of Victoria which outlines how fees and tariffs are set; however, unlike Flinders Ports, the Port of Melbourne is not subject to access regulation.⁵⁵
3. In 2018, the Port of Melbourne released its 2050 Port Development Strategy which will see it invest \$1.5 billion in developments to increase the Port's capacity.⁵⁶ In September 2021, the Port of Melbourne announced plans to expand the Webb Dock East to accommodate both a greater number of ships, as well as larger vessels, to berth at the port.⁵⁷
4. From 2021 to 2025, the majority of the Port's expenditure will be on these four projects:⁵⁸
 - a) improved rail efficiencies, promoting competition in rail and providing infrastructure to enable increased rail mode share;
 - b) remediation activities to maintain and improve operation efficiencies;
 - c) expanding existing docks to accommodate both larger vessels and a greater volume of vessels and Webb Dock East and Swanson Dock; and
 - d) dredging activities, in line with the Port's obligations to maintain channel depths to accommodate larger vessels.
5. Port of Melbourne CEO Brendan Bourke has stated in relation to the Webb Dock East expansion that:

⁵³ *ACCC v NSW Ports* [2021] FCA 720 (29 June 2021), 761-762.

⁵⁴ Global Infrastructure Investor Association, 'Port of Melbourne' <https://giia.net/case-studies/port-of-melbourne/>.

⁵⁵ Port of Melbourne, '2050 Port Development Strategy – 2020 Edition', page 4 <https://www.portofmelbourne.com/wp-content/uploads/PoM-PDS-2020-Edition-For-Publication.pdf>.

⁵⁶ Global Infrastructure Investor Association, 'Port of Melbourne' <https://giia.net/case-studies/port-of-melbourne/>.

⁵⁷ Infrastructure Magazine, 'Port of Melbourne to Extend Webb Dock East Berth', 7 September 2021 <https://infrastructuremagazine.com.au/2021/09/07/port-of-melbourne-to-extend-webb-dock-east-berth/>,

⁵⁸ Port of Melbourne, '2021 Industry Update', April 2021, Slide 31, <https://www.portofmelbourne.com/wp-content/uploads/Port-of-Melbourne-2021-Industry-presentation.pdf>.

"Restoring operating capacity and achieving greater efficiency at the terminal will help to drive down costs across the port-related supply chain for trade activity into and out of Melbourne, which accounts for more than one-third of the nation's container trade ... In delivering this project we are responding directly to industry changes and the deployment of larger container vessels into the Australian market." ⁵⁹

6. The 2050 Port Development Strategy also includes the development of the following additional projects by 2035:⁶⁰
- a) expanding the Webb Dock East container terminal;
 - b) developing a new Webb Dock North container terminal (to be expanded further by 2050);
 - c) integrating the Port with the former Melbourne Wholesale Market Site in nearby Dynon;
 - d) developing land at 221 Whitehall Street; and
 - e) developing new liquid bulk capacity.
7. The Port of Melbourne considers that Port Adelaide, as well as other interstate ports in NSW (namely, Port Botany and Port Kembla), compete with it for contestable trade. In its 2020 Container Logistics Chain Study, the Port of Melbourne identified a large portion of South Australia as being within its catchment area, including the locations of each of the Proclaimed Ports.⁶¹
8. In its submissions to the Essential Services Commission of Victoria in 2009, the Port of Melbourne acknowledged that Port Adelaide represents a competitive constraint on its pricing and service offering:⁶²

"The reality for PoMC is that cannot discriminate in price/service between "captive" and "contestable" trade and winning contestable trade is an important focus for PoMC (up to 30% of trade is highly contestable). Trade from Sunraysia, Riverina and South Australia is all contestable to other ports such as Port Adelaide, Port Botany and Port Kembla (bulk cargo).

PoMC has invested in offices in Griffith, Adelaide, and Hobart reflecting the need to continually invest in trade and business development to secure and grow throughput for the port of Melbourne. This is in direct competition to other ports.

Much of what PoMC does and how it behaves is explained by a fundamental pro-competitive driver to influence trade flows precisely because it has no power over captive volume: in other words, the essence of competitive behaviour – offering a better value proposition to win customers."

⁵⁹ Infrastructure Magazine, 'Port of Melbourne to Extend Webb Dock East Berth', 7 September 2021

<https://infrastructuremagazine.com.au/2021/09/07/port-of-melbourne-to-extend-webb-dock-east-berth/>.

⁶⁰ Port of Melbourne, '2050 Port Development Strategy Consultation Summary Report', October 2020, page 4, <https://www.portofmelbourne.com/wp-content/uploads/POM-PDS-Stakeholder-Engagement-Report-Final-for-Publication.pdf>.

⁶¹ Port of Melbourne, "Port of Melbourne Container Logistics Chain Study", July 2021, page 14.

⁶² Port of Melbourne, "Port of Melbourne Corporation – Response to the ESC Ports Regulation Review Issues Paper", February 2009, pages 22-23 <https://www.esc.vic.gov.au/sites/default/files/submissions/ad70b1ab-6337-4bf0-8022-399728ec76ce.pdf>.

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9. Flinders Ports has observed substitution between Port Adelaide and Melbourne, utilising both road and rail transport options. Flinders Ports expects these substitutions to become more frequent once dedicated Adelaide-Melbourne rail services resume.
 10. Flinders Ports' internal documents analyse competitive dynamics with Port of Melbourne as follows:
 - a) 2020/21 saw an increasing number of US-bound containers departing from Melbourne rather than Port Adelaide;
 - b) Many shippers are now choosing to send cargo by road or rail to/from Melbourne rather than stop at Adelaide to avoid potential delays; and
 - c) Three rail providers have had discussions in relation to recommencing dedicated Adelaide-Melbourne rail services to meet this demand.
 11. It is not uncommon for potential Flinders Ports' customers to send goods to Melbourne rather than Adelaide for shipment, if the rail transport costs are lower than the cost of transport to Flinders Ports' facilities. Even when Melbourne is geographically further from the source location, customers will take advantage of discounted rail transport offered by rail operators when returning otherwise empty trains to their point of origin. Such port substitutions occur irrespective of differences in port usage costs. This is because these costs represent a small proportion of the overall cost in the supply chain, with production and rail transport costs being much higher.
 12. The long-term investment in infrastructure assets and capabilities in Port Melbourne referred to above will ensure that it continues to be a viable alternative and competitive constraint to Port Adelaide.

Geelong Port (SAS Trustee Corporation and LINX Cargo Care Group)

13. Geelong Port is the largest bulk cargo port in Victoria⁶³ and Victoria's second-largest port, annually receiving 600 vessels and approximately 12 million tonnes of cargo.⁶⁴ It is currently the subject of a sale process from SAS Trustee Corporation and LINX Cargo Care Group to Palisade and Spirit Super.
14. In August 2013, the City of Greater Geelong entered into a partnership with Geelong Port and other parties to develop the Geelong Port and Land Freight Infrastructure Plan, the goal of which is to develop the Port of Geelong into the premier bulk and break bulk port in South East

⁶³ Geelong Port, 'Geelong Port unveils new brand and new strategy for Port's future', 26 July 2017 <https://geelongport.com.au/news/geelongport-unveils-new-brand-and-new-strategy-for-ports-future>.

⁶⁴ Geelong Port, 'About' <https://geelongport.com.au/about/>.

Australia by 2050.⁶⁵ This plan identified that Geelong Port required shipping channels and berths deep and wide enough to accommodate ever-larger vessels.⁶⁶

15. In July 2017, Geelong Port announced its new strategy, with Geelong Port CEO Brett Winter stating that:⁶⁷

“Geelong Port provides an opportunity for port customers to integrate their operations locally and take advantage of the benefits Geelong has to offer...”

Geelong Port currently has land available to help drive these growth opportunities. We have capacity at Corio Quay and Lascelles Wharf that would give port users the excellent connectivity Geelong offers, including excellent access via road, rail, sea or air and a well-developed transport network with fast and efficient connectivity between Victoria’s two largest cities and beyond.”

16. In its 2018 Port Development Strategy, Geelong Port assessed its land and port infrastructure requirements to remain competitive over the short (< 5 years), medium (5-15 years), and long (15-30 years) term periods. Overall, Geelong Port assessed that while it generally has existing capacity to accommodate trade growth in terms of land access, berth size and berth capacity, it will need to invest in enlarging some berths, wharf maintenance and channel deepening projects to meet expected demand.⁶⁸

Port of Newcastle

17. Flinders Ports contests certain trade with the Port of Newcastle.
18. CBH Resources Limited (**CBH**) is a significant producer of silver, lead and zinc, with one of its key mines, known as Rasp Mine, located in Broken Hill, NSW.
19. CBH currently sends zinc concentrates by rail to the Port of Newcastle rather than any of the Proclaimed Ports.⁶⁹
20. Rasp Mine is located over 1100km west of the Port of Newcastle, but only 400km northeast of Port Pirie. CBH could send zinc concentrates to Port Pirie where Flinders Ports could provide Regulated Services for CBH to export zinc concentrates rather than the Port of Newcastle.
21. That CBH continues to send products by rail to the Port of Newcastle for export, rather than the more proximate port solutions offered by Flinders Ports demonstrates that the Port of Newcastle

⁶⁵ City of Greater Geelong, 'Geelong Port and Land Freight Infrastructure Plan', (last updated 21 December 2021) <https://www.geelongaustralia.com.au/strategicplanning/documents/item/8d06715d363ea38.aspx#:~:text=The%20plan%20outlines%20a%20vision,growth%20and%20new%20job%20creation.>

⁶⁶ 'Geelong Port-City 2050 – Final Report' page 14, <https://www.geelongaustralia.com.au/common/Public/Documents/8d06715d363ea38-Geelong%20Port%20and%20Land%20Freight%20Infrastructure%20Plan.pdf>.

⁶⁷ Geelong Port, 'Geelong Port unveils new brand and new strategy for Port's future', 26 July 2017' <https://geelongport.com.au/news/geelongport-unveils-new-brand-and-new-strategy-for-ports-future.>

⁶⁸ 'Port of Geelong – Port Development Strategy 2018', pages 26-35 <https://vrca.vic.gov.au/wp-content/uploads/2019/08/2018-Geelong-Port-Development-Strategy.pdf>.

⁶⁹ CBH Resources Limited, 'Rasp Mine' <https://www.cbhresources.com.au/operations/rasp-mine/>.

provides a competitive alternative for some commodities.

Port of Portland

22. The Port of Portland is located in south-western Victoria, approximately 360km from Melbourne and 570km from Port Adelaide. Portland is Victoria's only naturally-deep deepwater port and primarily handles bulk cargoes such as forestry products, grain, aluminium products, mineral sands, fertiliser, wind turbines and livestock.⁷⁰
23. The Port of Portland is connected via national road and railway networks, and specialises in the export of bulk commodities including agriculture, forestry and minerals.⁷¹ It is the largest export port of sustainable hardwood chips in the world, and has annual throughput volumes of about 7.5 million tonnes per year.⁷²

Port of Darwin (Landbridge Group)

24. Flinders Ports has directly competed against Port of Darwin for volumes in the past and is likely to do so in the future in certain circumstances.
25. In 2012, Flinders Ports signed an MOU with South Australian iron ore producer IMX Resources to provide port services at Port Pirie.⁷³ IMX Resources was otherwise taking advantage of competitive back-haul railway transport prices to export product from Port of Darwin.
26. Flinders Ports however was able to successfully win IMX Resources as a customer due to its investments in the supply chain and work to establish innovative containerised iron ore storage and loading facilities at Port Adelaide.⁷⁴
27. Similarly, Flinders Ports lost the OZ Minerals (Oxiana) tender to Darwin, which meant concentrates were exported from its Prominent Hill mine to the Port of Darwin.
28. After the successful operation with IMX Resources, Flinders Ports approached OZ Minerals with an innovative patented solution that offered superior environmental control and management of airborne dust.
29. Flinders Ports subsequently reached a commercial agreement with OZ Minerals to move cargo through Port Adelaide but it was required to invest in other infrastructure in the supply chain to facilitate transport of product to the port.

⁷⁰ Port of Portland, 'Celebrating 60 Years' <https://www.portofportland.com.au/celebrating-60-years-of-a-modern-port/>.

⁷¹ Port of Portland, 'About the Port', <https://www.portofportland.com.au/about/port-profile/about-the-port/>.

⁷² Port of Portland, 'About the Port', <https://www.portofportland.com.au/about/port-profile/about-the-port/>.

⁷³ IMX Resources, 'IMX Resources Signs MOU with Flinders Ports', 16 August 2012
https://indianaresources.com.au/_content/documents/1218.pdf.

⁷⁴ Proactive Investors, 'IMX Resources signs MOU with Flinders Ports for Snaefell Magnetite Project'
<https://www.proactiveinvestors.com.au/companies/news/39267/deltex-medical-groups-cardioq-product-selected-for-us-research-program>.

ANNEXURE C

PRODUCT COMPETITION FROM COMPETITOR PORTS

Port	Containerised Products	Grain	Petroleum and gas	Limestone	Cement	Gypsum	Iron Ore	Fertiliser	Mineral Concentrates	Mineral Sands	Motor Vehicles	Project Cargo
Flinders Ports												
Klein Point				X								
Port Adelaide	MX	X	M	M	MX		X	M	MX	X	M	MX
Port Giles		X										
Port Lincoln		X	M					M				
Port Pirie		X							MX			MX
Thevenard		X				X				X		
Wallaroo		X						M				
Competing ports												
Cape Hardy		Y				Y	Y	Y	Y	Y		Y
Lucky Bay		Y										
Port Bonython			Y									
Port Playford							Y	Y	Y	Y		Y
Port Spencer		Y										
Wallaroo (T-Ports)		Y										
Whyalla					Y		Y		Y			Y
Melbourne	Y										Y	
Geelong		Y								Y		Y
Newcastle									Y	Y		Y
Portland		Y								Y		
Darwin							Y	Y	Y			

M represents Import

X represents Export

Y represents port currently competes or is likely to compete for this commodity within the next 5 years