



SELECT COMMITTEE ON THE GRAIN HANDLING INDUSTRY

15 March 2012

2012 Ports Pricing and Access Review
Essential Services Commission of SA
GPO Box 2605
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Submission

INTRODUCTION

The Commission is aware of the current inquiry into the Grain Handling Industry that is being undertaken by a Select Committee of the Parliament. Many of the issues to be covered by ESCOSA's 2012 Review of Ports Pricing and Access are central to the Grain Handling Industry. The Select Committee is keen to ensure that its findings and recommendations are not lost in the formal processes that ESCOSA is required to follow and which may result in a lost opportunity to improve the access and pricing regimes that will apply from 31 October, 2012. It is for this reason that the Select Committee is making a submission to the Review. The Review also provides an opportunity for the Select Committee to inform ESCOSA of relevant issues that have come to its attention and to have those issues examined through ESCOSA's processes.

The Select Committee is yet to determine its findings and the main objective is to share information with ESCOSA for the purpose of ensuring the key issues are thoroughly covered thereby improving the analysis of issues that could form the basis for legislative changes. The views expressed in this submission should not be taken as representing the findings of the Select Committee and are simply a reflection of evidence that has been provided by various sectors of the grain industry.

DISCUSSION

The role of ESCOSA in regulating the pricing and access regime for South Australian ports is contained in the Maritime Services (Access) Act, 2000. The objectives of the MSA Act are:

- *To provide access to maritime services on fair commercial terms;*
- *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 service;*
- *To promote 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*

- *To ensure that disputes about access are subject to an appropriate dispute resolution process.*

These are fine objectives and, as noted in your Issues Paper, they are not a list of factors that you must have regard to when exercising your functions. Nevertheless, they do indicate the intended purpose of the legislation.

The MSA Act has now been operative for some ten years, a sufficient time to assess its effectiveness. In that time there have been changes to the regulation of access to essential services at a National level and changes to regulation of significant industries (in this instance our interest is in the deregulation of wheat exporting arrangements), which indicate that there may be an argument for reviewing the South Australian legislation. The Select Committee would encourage ESCOSA to include as part of its review, an analysis of the MSA Act with specific comments on the continued relevance of the Act and with recommendations, where appropriate, for changes that could improve the overall efficiency of ports in South Australia.

The role of ESCOSA as defined under the ESC Act appears to be comprehensive and provides ESCOSA with sufficient leeway to question the relevance of current processes. The Committee would wish to see an open and frank analysis of the current legislation and of ESCOSA's role in administering the MSA Act.

1. Market power

The current regulations are premised on the assumption that *"ports exhibit natural monopoly characteristics since it will not be economically feasible to duplicate ports infrastructure facilities to meet market demand."* (ESCOSA Issues Paper, p.10).

The Committee is interested in seeing a thorough critique of the concept of monopoly power as it applies to port services in South Australia. The counter arguments to the current legislation could be that the policies and procedures are simply protecting a monopoly and discouraging other interested parties from entering the South Australian market. The "light handed" regulation of prices as described in the Issues Paper seems quite reasonable, however, it could be argued that it is a soft option for the current operator who is not subject to competition and is not under any pressure to seek improvements that will provide a more cost effective service. It could be the case that price regulation acts as a disincentive for improved services to be offered by Flinders Ports and may also discourage other service providers from entering the South Australian market.

The regulated services provided by Viterra and covered by the pricing and access regimes appear to require specific consideration. The deregulation of wheat exporting has changed the circumstances in the grain handling industry and there is emerging evidence of new entrants into the market who may challenge Viterra's position. The Committee often hears the view that Viterra "controls the ports (and rail) access" so there is no opportunity for competitors. If this is the case then it appears that the current access arrangements are failing in that they allow a monopoly to exercise discriminatory behaviour. The assessment of this whole issue would benefit from a thorough examination by ESCOSA.

2. Is there a net benefit to regulation?

The Committee's interest is in the future of the grain handling industry in South Australia. The recent decisions of the Commonwealth Government as announced on 23 September, 2011 represent a clear commitment to deregulation of wheat exporting arrangements. It is evident that significant changes are already taking place in the industry. The Committee

would welcome ESCOSA's analysis of the effects of the changes in wheat exporting markets on the regulatory framework for Ports access and pricing in South Australia.

Is the South Australian position conducive to facilitating a responsive framework that will encourage the grain handling industry to introduce changes to provide the basis for a viable grain industry in South Australia?

The Committee notes that the SA Ports access regime has been certified by the Commonwealth Minister as "an effective access regime". The consequence of an access regime specific to South Australia is that the regime cannot be declared under the provisions of the National Access Regime or made subject to an access undertaking to the ACCC. The issue to be considered is whether or not this places South Australia at some disadvantage or incurs additional costs that discourage investment in South Australia. The Committee asks that ESCOSA include an assessment of this issue as part of its wider assessment of the effectiveness of existing arrangements. Is there a need for South Australia to continue with a separate access regime or is it the case that the National Access Regime can address the issues covered in the South Australian legislation?

3. Other factors

Regulation of the whole of the grain supply chain was suggested as a possibility in ESCOSA's 2007 Review. While acknowledging that ESCOSA's role is limited to services provided at the ports, the Committee encourages ESCOSA to further examine this issue with a view to including recommendations for changes that have the capacity to improve the efficiency of the grain supply chain in South Australia and open up opportunities for investment in new infrastructure.

Of particular interest to the Committee are the effect of regulations that currently exist in South Australia on possible investment in new ports (e.g. the Sheep Hill proposal for Eyre Peninsula) and the construction of port facilities to meet the demands of expansion of the mining industry. Will ESCOSA have a role in regulating access and pricing at new ports? Or, is it the case that these matters can be covered by the National Access Regime? There is a widely held view that further investment is only viable if it can meet the needs of both mining and grain handling. ESCOSA's assessment of these matters would provide a valuable input to consideration of possible changes to current legislation.

SUMMARY

The Select Committee recognises that these are complex issues. It is not possible in a submission of this kind to delve into all of the detail. Much of the detail and associated administration of the access regime is best understood by those who have to work within the rules and in this regard it is beyond the capacity of the Select Committee to comment on specific operational issues. The purpose of this submission is to inform ESCOSA of the issues that have come before the Select Committee and to encourage a thorough examination of those issues. The objective is to establish a sound legislative basis for an efficient grain handling industry that can best serve the economic and social interests of South Australia.



**GEOFF BROCK MP
CHAIRMAN
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