



Friday, 23 March, 2012

Dr Paul Kerin
Chief Executive Officer
Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

Attention: Peter Lim

Dear Sir

Submission to ESCOSA 2012 Ports Pricing and Access Review Issues Paper

Background

Asciano welcomes the opportunity to respond to the current Essential Services Commission of South Australia (ESCOSA) review of port pricing regime and port access regime in South Australia. This response is public.

Patrick, a subsidiary of Asciano, operates in the following port related activities at proclaimed ports in South Australia:

- general stevedoring activities at Port Adelaide;
- bulk stevedoring at Port Adelaide;
- port logistics activities at Port Adelaide; and
- port related activities for the automotive supply chain activities at Port Adelaide.

Patrick strongly supports the continuation of the current ports pricing and access regime for a further five year period beyond 30 October 2012. As outlined below Patrick also submit that some aspects of the current pricing and access regime should be strengthened or be otherwise extended in scope.

Overview of Ports Pricing and Access Review

Patrick understands that the review is considering the following issues:

- the need to continue the current ports pricing and access regime for a further five year period beyond 30 October 2012;
- the need to improve the effectiveness of the current regime; and
- the need to continue price regulation for essential maritime services for a further five year period beyond 30 October 2012, where these essential maritime services are:
 - services allowing for access of vessels to a proclaimed port;
 - services allowing use of port facilities for loading and unloading vessels at a proclaimed port; and
 - berths for vessels at a proclaimed port.

These services are currently covered by the navigation services charge, the harbour



services and mooring charge and the cargo services charge, which are monitored by ESCOSA.

Furthermore Patrick understand that the regulated services include berths, wharves and cargo loading and unloading areas and provisioning connections, but do not include the actual acts of loading, unloading and provisioning¹.

Patrick's Position

The current regulatory regime requires port operators to provide access and set prices for defined essential maritime services at proclaimed ports within a price monitoring framework. Overall Patrick believes that the regime has been adequate but it could be improved.

Need for a Further Five years of Ports Access and Pricing Regulation

Patrick strongly submits that there is sufficient need to continue the current ports pricing and access regime for a further five year period beyond 30 October 2012.

The 2007 ESCOSA ports access and pricing review recommended

- continuation of access regulation as there was potential for the exercise of market power; and
- continuation of the light handed price monitoring regime.

Patrick believes that since the 2007 review there has been no substantial change in either the market or regulatory environment which justifies either the lessening or discontinuation of the current ports access regime and pricing regime.

Flinders Ports currently have a monopoly position and Patrick believes that given this monopoly position an ongoing deterrent to the potential misuse of market power is required. The current access and pricing regime acts as such a deterrent, although this regime is, if anything, too favourable to Flinders Ports and Patrick believes the regime should be strengthened rather than diluted.

Patrick strongly believes that the benefits of ongoing access regulation and ongoing price monitoring substantially outweigh any costs associated with this regulation.

Patrick further submits that the access and pricing regime should have its effectiveness improved by extending it to include additional land side activities at Port Adelaide including:

- access to land based facilities at a price covered by the price monitoring framework; and
- access to rail sidings at Port Adelaide to allow Patrick to conduct its own loading and unloading of trains.

Need for an Additional Regulatory Focus on Ring Fencing

Flinders Ports were originally largely a landholder at the proclaimed ports but Flinders Ports

¹ ESCOSA, 2012, 2012 Ports Pricing and Access Review Issues Paper page 4



are now beginning to move into additional operational activities such as port logistic operations and stevedoring. As such Flinders Ports are supplying monopoly services to companies such as Patrick, while also competing with Patrick for business in port logistic and stevedoring activities. For example Patrick Flinders Ports are currently bidding for work from a current Patrick customer.

Given this vertical expansion by Flinders Ports Patrick strongly submits to ESCOSA that issues of vertical separation and ring-fencing should be considered in the continuing regulatory regime.

Third party access is only viable when the monopoly providing access deals with all parties, including related parties, equally. Any dealings between related parties must be at arms length on conditions which are no more favourable than the conditions offered to unrelated third parties.

Patrick's recent experience is that Flinders Ports are using operational processes and procedures, such as environmental controls, licensing and government approval issues, to disadvantage unrelated third parties using Flinders Ports' facilities as competitors or potential competitors to Flinders Ports.

Patrick notes that the ESCOSA issues paper does not discuss the issue of ring fencing and vertical separation. Patrick strongly submits that these issues should be considered and a strong ring fencing regime should be established such that Flinders Ports or its related parties are not advantaged by discriminatory access, discriminatory pricing, discriminatory information provision or discriminatory operational treatment.

Need for Access to Land Based Storage Facilities at a Regulated Price

Patrick submits that the access and pricing regime should be extended to include additional land side activities at Port Adelaide including access to land based facilities such as sheds and storage at a price covered by the price monitoring framework.

Patrick recognises that the pricing regime as per the ESC Act and MSA Act ESCOSA limit the scope of ESCOSA's pricing powers such that its price regulation function is largely limited to essential maritime services. However Patrick understands that essential maritime services are interpreted as including cargo loading areas, unloading areas and marshalling areas², and as such both the access regime and pricing regime should be extended to land based facilities used for storage.

ESCOSA recognise the importance of these land side storage services, stating³:

Whilst certain ports services such as at port facilities for storage, loading and unloading are not defined as a Regulated Services, they are captured within the definition of Maritime Services and could therefore be brought within the scope of the access regime by proclamation. The appropriateness of such action would depend on the potential for, or actual misuse of, market power by the service provider and the costs and benefits of imposing access regulation.

² ESCOSA, 2012, 2012 Ports Pricing and Access Review Issues Paper page 4

³ ESCOSA, 2012, 2012 Ports Pricing and Access Review Issues Paper page 26

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Patrick submits that port facilities used for storage be covered by the access regime and pricing regime. Patrick believes that there is scope for potential use of market power by Flinders Ports in relation to storage services.

Need for Access to Rail Sidings

Flinders Ports has recently constructed a new rail infrastructure at Port Adelaide and is controlling loading, unloading and pricing at this rail infrastructure in such a way that third parties are required to use Flinders Ports' facilities.

Patrick submits that third party access to rail sidings at Port Adelaide be required in order to allow Patrick (and other third parties) to conduct loading and unloading of trains, rather than pay Flinders ports for this service.

Patrick submits that the Flinders Port activity of unloading goods for trans-shipment at rail sidings located at proclaimed ports should:

- be covered by the access regime (such that third parties can load and unload trains); and
- be subject to price monitoring.

Patrick believes that there is scope for potential use of market power by Flinders Ports in relation to these train loading and unloading services.

Overall Patrick strongly supports the continuation of the current ports pricing and access regime for a further five year period beyond 30 October 2012. Patrick also submits that some aspects of the current pricing and access regime should be strengthened or be otherwise extended in scope. In particular these include:

- introduction of a strong ring fencing regime;
- extending regulated access and pricing to land based storage sites; and
- extending regulated access and pricing to rail sidings at the port.

If you wish to discuss this submission please contact me on (02) 8484 8056.

Yours faithfully,



Stuart Ronan
Manager, Access and Regulation