

Friday 20 July 2012

Dr Pat Walsh
Chairperson
Essential Services Commission of South Australia
GPO BOX 2605
ADELAIDE SA 5001

Dear Dr Walsh

Re: 2012 Ports Pricing and Access Review Draft Report

Thank you for providing the South Australian Freight Council the opportunity to comment on the 2012 Ports Pricing and Access Review Draft Report.

The SAFC is South Australia's peak, multi-modal freight and logistics industry group that advises both the Federal and State governments on industry-related issues, and is funded by both governments and industry. The SAFC represents road, rail, sea and air freight modes and operations, freight service users, and assists the industry on issues relating to freight logistics across all modes.

The SAFC understands ports are extremely complex environments, with many different market players, many of whom have conflicting interests. Consequently, the services that ports provide are complex and not understood by many. The SAFC commends the Commission on its efforts to date in ensuring the right balance is struck between the interests of the port authority, port users and the South Australian community.

The SAFC has provided an attachment overleaf which contains our response to the conclusions raised within the Draft Paper. As with previous reviews, we believe there is scope for the misuse of market power in terms of port pricing and access, however have not seen evidence that this potential power is being exercised. Therefore, SAFC supports the Commission's draft conclusions which state that the current light-handed access regime and price monitoring are achieving their objectives, and should continue in their current form for a further five-year period from 31 October 2012.

In drafting this response, the SAFC has been made aware of a couple of issues that are outside the scope of the ESCOSA review and recommend the Commission bring these issues up to the State Government for consideration. Further details on these issues can be found in the attachment following.

As usual, SAFC members respectfully request to be kept informed of developments with ports access and pricing, as this review, as they occur.

Should you wish to discuss this response, please contact me on the numbers listed below.

Sincerely

A handwritten signature in black ink, appearing to read 'Neil Murphy', with a large, sweeping flourish underneath.

Neil Murphy
Chief Executive Officer

Attachment 1

- **The structure for the market for Essential Maritime Service suggests that there is the potential for market power to exist.**
- **There is no evidence to suggest that port operators are earning excessive profits.**
- **There is no evidence to suggest that Essential Maritime Services charges over the current regulatory period are indicative of market power being exercised.**

As noted in our 2007 submission, the Council believes there is a potential for the misuse of market power, however we do not have evidence of any abuse of this market power.

- **Ports operators and ports users have been active in negotiating commercial arrangements over the current regulatory period.**

The Council is not aware of the commercial negotiations undertaken between port operators and their customers, so is unable to comment in this instance.

- **Price monitoring should continue for the next regulatory period on the basis that it produces the greatest net benefit compared with all other price regulation options.**
- **There is no evidence to suggest that a more intrusive form of price regulation is required.**
- **Comment on the appropriateness of continuing with the current approach of monitoring ports charges against movements in CPI. Should stakeholders believe that an alternative price monitoring approach is preferable, the Commission invites stakeholders to provide information to substantiate their positions.**

The SAFC believes that the more intrusive form of price regulation is unnecessary, and the current price monitoring scheme should continue for the next regulatory period, as it acts as a constraint on the potential exercise of monopoly power.

The SAFC commends the Commission on inviting proposals for alternative approaches to monitoring port charges in this paper. While the Council does not have a preference in terms of particular indices by which to monitor movements in ports charges, we respect the fact that as volumes grow and economies of scale become available, there is a potential for price increases that amount to less than the CPI, which could be assessed. Therefore, we believe that the Commission should

investigate both a long term and short term assessment of price vs. indices to assess the appropriateness of the various indices available. The Producers Price Index (PPI) was used in the Draft Report as an example of a potential alternative index, and while the Council recognises the PPI, with its set of indexes relating to specific relevant industries such as mining, may be more relevant to the shipping industry than the CPI, we would caution against using volatile indexes (Alan Kohler, <http://www.alankohler.com.au/graphs/ppi-and-cpi>) which may make it difficult for the port operator and users to forecast operational costs with a reasonable sense of certainty.

The Council will require further information on how the second option (monitoring port charges without reference to an index) would operate, and how/if the Commission proposes to ensure transparency throughout the process (eg. What information will the Commission require the port operator to submit? Will the Commission ensure this information is made available to users? etc), before making comment on whether it is a suitable option.

- **Access regulation should continue to apply for those Regulated Services that are also Essential Maritime Services.**
- **The structures for the markets for Regulated Services that are not Essential Maritime Services suggest that there is the potential for market power to exist.**
- **The access regime provided for under Part 3 of the MSA Act should continue.**
- **Any consideration to expand the access regime to cover towage services is a separate matter for the South Australian Government.**

The SAFC supports the Commission's conclusion that access regulation should continue to apply for those Regulated Services that are also Essential Maritime Services as there is a potential for market power to exist. The Council believes that ensuring that an access regime has sufficient coverage over the supply chain is an important aspect to supporting competition. Some SAFC members have expressed concerns over various issues pertaining to access to pilots and tugs, which may require the extension of the access regime to cover these services. Whilst we understand that there are no constraints on entry into the SA towage market, due to market size, there is effectively a monopoly covering the provision of tug services in SA ports. Consequently there is potential for monopolistic activities in this market, but again SAFC has not received any evidence in this regard. Nonetheless, SAFC suggests that the Commission bring these issues to the attention of the South Australian Government for their consideration.

- **The Commission recommends that the South Australian Government consider undertaking a broader review of the South Australian grain supply chain.**

The Council has no evidence of any significant issues in the grain supply chain that would warrant investigation by the Commission or the State Government.

We also wish to bring to the attention of the Commission that the industry will be transitioning towards deregulation with the expiration of the *Wheat Export Marketing Act* (2008) in 2014, and therefore any proposal to review the grain supply chain in South Australia would be premature at this time.

- **The rail siding at Inner Harbour Berth 29 is subject to access regulations under the SA rail access regime, set out under Parts 3-8 of the ROA Act.**
- **The Commission considers that there should be no impediments to ports users accessing information in respect to individual cost components of a bundled service.**
- **There are no persuasive arguments to suggest that the provision of loading and unloading services at the intermodal rail facility at Berth 29 should be subject to access regulation.**
- **There are no persuasive arguments to suggest that the provision of non-grain at-ports storage facilities should be subject to access regulation.**
- **Any consideration to expand the access regime to cover new ports is a separate matter that will be dealt with on a case-by-case basis by the South Australian Government.**

On the basis of the information provided to SAFC through the Draft Report, and the Commission's conclusion that there is no evidence of misuse of market power, the existing regulatory approach recommended by the Commission seems appropriate.

The SAFC supports the Commission's conclusions that there are no persuasive arguments to suggest that loading and unloading services at the intermodal rail facility at Berth 29, and the provision of non-grain at-ports storage facilities should be subject to access regulation, as from the evidence provided, there does not appear to be an actual misuse of market power by the provider of services and facilities.

Nonetheless, SAFC believes that there is potential for misuse of market power which should continue to be monitored by the Commission, and appropriate action taken if and when required.

The SAFC agrees that the expansion of the access regime to cover new ports is a matter for consideration by the South Australian Government, however in order to mitigate the risk of the new ports being subjected by declaration under the provisions of the National Access Regime (due to the absence of access regulation under South Australian legislation), we believe the Commission should bring this matter to the South Australian Government's attention at the earliest opportunity. Whilst SAFC

acknowledges that there will likely be difficulties with extending the access regime to the indentured ports in SA, SAFC contends that in the event any access regimes are extended to new ports that consideration be given to ensuring coverage of all ports, including those not presently covered by the Commission.

- **There are no impediments to negotiating access to ports infrastructure, due to the current regulatory framework.**
- **The negotiate process set out in Part 3 of the MSA Act is adequate for facilitating commercial negotiation of access.**
- **The information requirements set out under Part 3 of the MSA Act and Guideline No. 1 are adequate for facilitating the negotiation of access.**
- **The conciliation/arbitration process set out in Part 3 of the MSA Act is adequate for resolving access disputes.**
- **There is no evidence to suggest that Flinders Ports is disadvantaging competition through the use of operational processes and procedures.**
- **There is no evidence to suggest that a more intrusive form of ring-fencing arrangement is required.**

The SAFC has not received feedback from its members on the matter between Asciano and Flinders Ports therefore is not in a position to provide informed comment. We believe that the current negotiate-arbitrate regime provides net benefits in that the process is more likely to arrive at an agreed outcome through mutual understanding and agreement. The arbitration aspect of the access regime also acts as an incentive to the port authority to ensure that competitive and fair rates are set for access. The Council notes that two of our members made submissions to the Issues Paper, outlining their experience with the negotiate-arbitrate regime. SAFC does not believe that a more intrusive form of regulation is necessary at this time.