



SELECT COMMITTEE ON THE GRAIN HANDLING INDUSTRY

18 July 2012

Dr Paul Kerin
Chief Executive Officer
Essential Services Commission of SA
GPO Box 2605
ADELAIDE SA 5001

Re: 2012 Ports Pricing and Access Review

INTRODUCTION

This submission is in response to ESCOSA's invitation to interested parties to provide comments on the Draft Report dealing with the 2012 Ports Pricing and Access Review, June 2012.

The Select Committee is due to report to Parliament on its findings on 5 September, 2012. The comments and issues raised in this submission should not be interpreted as representing final positions reached by the Select Committee. Any recommendations emanating from the findings of the Select Committee will be included in its report to Parliament. The submission is a reflection of submissions and comments provided to the Select Committee by various parties with a commercial interest in the grain handling industry in South Australia. The objective of this submission is to share these views with ESCOSA and to promote an informed debate on the issue of Ports Pricing and Access in South Australia.

There is no need for the submission to be treated as a confidential document.

DISCUSSION

1. Ports Price Review

ESCOSA's draft finding is that price monitoring is an appropriate form of price regulation and should be maintained for a further five years. This finding is based on the evidence available to ESCOSA that price movements have generally been in line with Consumer Price Index increases and there is strong evidence indicating an absence of any disputes or misuse of market power. On the basis of these factors the Draft Report concludes that the current system produces "*the greatest net benefit compared with all other price regulation options*". The fact that the ports operator is "*under threat of re-regulation*" together with the conclusion that the current price regulation (price monitoring) provides the greatest net benefit is said to justify the continuation of the current arrangements.

The Select Committee holds a concern that this position seems to be at odds with the pricing principles that are generally accepted as being essential for the operation of a competitive and efficient market. The fact that the operator can raise prices to cover CPI increases and cost increases arising from one-off factors such as increased infrastructure spending or an increase in wages, does not encourage the continual improvement of operations to contain costs or search for efficiencies in order to retain a competitive position. The essence of a

competitive market is that it should provide incentives that improve productivity and generally encourage optimum utilisation of infrastructure and other inputs. It is acknowledged that with only one port operator in South Australia a competitive market does not exist so price regulation is justified. In these circumstances the form of price regulation should be such that it provides incentives to encourage the operator to implement processes that reflect the commercial pressures encountered in a competitive market. The need to maximise return on assets and to invest in new assets in order to retain a competitive position should form part of the price regulation applied to the monopoly provider. There should also be consideration of continual improvement in operational methods to establish the basis for an efficient service. If this can only be achieved through formal regulation then there is a need to ensure the regulations provide appropriate incentives. Compensating the monopoly owner for wage increases, expenditure on new infrastructure and, increases in the CPI is not consistent with the concept of a competitive market that provides incentives to improve productivity.

The Select Committee has received submissions suggesting that there are instances where existing port facilities could be underutilised. It seems that there is little incentive for the operator to utilise the infrastructure which in turn places pressure on other ports while some facilities remain idle or do not operate at an optimum level. The operator does not appear to be under any commercial pressure to close under-utilised assets to improve overall productivity or to invest in new facilities. It is suggested that ESCOSA could give consideration to current utilisation of the existing infrastructure when reviewing the pricing methodology.

As a general comment the Select Committee would encourage ESCOSA to examine alternative monitoring of ports charges that do not rely solely on movements in CPI. The Select Committee does not have the resources to provide information to substantiate this observation but the above comments indicate there is a need to examine alternatives, including reference to appropriate indicators that are more appropriate to an industry that is based on large investments in infrastructure and the costs and risks that have to be managed in these circumstances.

2. Ports Access Regime

The observations of the Select Committee on the access regime as legislated in the *Maritime Services (Access) Act 2000* (the MSA Act) are similar to those in relation to pricing. The concept of "proclaimed ports" and the need for regulation of access to port services should be reviewed for its effectiveness and for consistency with laws and regulatory procedures that have been developed at a National level. There is a pressing requirement to revisit the South Australian legislation which may be imposing additional costs on industries, including the grain industry. The Select Committee agrees there is a possibility that Flinders Ports could misuse market power to its advantage. However, ESCOSA has concluded that there is no evidence of misuse of market power and there is a view that it would not be in the interests of Flinders Ports to exploit its position. There is always going to be a commercial consideration from all parties to move towards a position that suits everyone and in those circumstances the existence of a formal regulatory framework may be unnecessary.

The South Australian legislation should also be reviewed in light of access rules and regulations that are administered by the Australian Competition and Consumer Commission (ACCC) and the general role that it has in resolving issues arising from abuse of market power. The question of additional costs on South Australian industries and the benefits of the regulatory framework as a consequence of the current access regime should be examined. These issues have particular relevance to the wheat export industry in South Australia as the industry, at a national level, moves to full deregulation. In raising this point the Select Committee is aware of the certification of the state-based access regime to Part

111A of the *Competition and Consumer Act 2010* which applies for further ten years. The certification only applies to maritime services and in our understanding does not extend to the bulk handling facilities and the Outer Harbor bulk loader.

It is noted that the Commission still holds the view that the resolution of disputes would be simplified should the Commission be able to follow an informal "advice and directions" role. The recommendation in the 2007 Review was not acted upon by the Government. Would it be possible for the Commission to expand on the arguments in this section that also examines the merits of those arguments that run counter to the views of the Commission? The same comment applies to the proposal put forward by the Commission in its 2007 Review that a regulatory scheme having regard to the "whole of the grain supply chain" should be considered. This argument requires further public debate and is an issue that has been prominent in the hearings conducted by the Select Committee. The issue appears to take on further importance given the intention to move to full deregulation of the wheat export markets. There are pros and cons and the Select Committee is wary of increasing costs to the industry through more regulation but is also concerned that the full benefits of deregulation are less likely to be achieved in circumstances where a single owner/trader in the wheat export market has control over essential infrastructure.

SUMMARY

As a final comment, the Select Committee would like to see included in ESCOSA's Final Report a review of the continued relevance of the MSA Act, with reference to developments at the national level. The wheat export industry is expected to be fully deregulated by October 2014 and governed by a voluntary code of conduct covering access issues and general competition law, to be administered by the ACCC. The ESCOSA recommendations, if adopted, will extend beyond October 2014 and this appears to lead to a situation that duplicates roles and in doing so, adds to costs that may be imposed on the grain industry in South Australia.

The observations of the Select Committee point to a situation where the market and regulatory environment for port services will change in a significant way in the next few years, due to the extension of industry policies that have broad support in terms of their capacity to improve Australia's economic performance. In these circumstances the MSA Act is likely to become irrelevant and the existence of regulatory controls, no matter how "light touch" those regulations may be, run the risk of adding costs that reduce the State's competitiveness and achieve very little in terms of benefits for those South Australian industries that are reliant on port services. These factors need to be measured against the concerns that the Select Committee has heard from farmers and marketers in the grain industry regarding access to port and rail services and the costs involved. The general view as expressed by the grain industry is that further regulation is required because the owner/operator of the transport and handling services has a monopoly and is also able to compete as a grain trader.

The Final Report of ESCOSA's 2012 Ports Pricing and Access Review would benefit from the inclusion of a section on the overall regulatory framework that has been endorsed by the Australian Government for the wheat industry across Australia and the likely effects the extension of policy settings being adopted more broadly to improve performance of the Australian economy will have on the continued relevance of the MSA Act and the role of ESCOSA in administering Ports Pricing and Access.



**GEOFF BROCK
CHAIRMAN
SELECT COMMITTEE ON THE GRAIN HANDLING INDUSTRY**