

14 August 2012

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

Attention: Peter Lim

Public Version

Dear Dr Kerin

Submission to ESCOSA 2012 Ports Pricing and Access Review

We were recently contacted by ESCOSA stating that new information provided by Flinders Ports may sway the Commission's final conclusion on whether the rail siding at Port Adelaide falls under the South Australian rail access regime.

The Flinders Ports submission to the Commission's Draft Report disagreed with the Commission's draft conclusion that the rail siding at Port Adelaide Berth 29 is covered by the rail access regime. Flinders argued that this siding falls within the definition of a "freight terminal" and hence is not subject to access regulation, pursuant to the proclamation made by the South Australian Governor under section 7 of the *Railways (Operations and Access) Act 1997* (Gazette 7.5.1998, p2116).

If the Commission is to change its position on this key issue then Asciano's view remains that as set out in our letter to the Commission of 23 March 2012, prior to the Commission's advice that the rail siding fell under the rail access regime.

Asciano's position is that the lack of regulation over the siding is a key gap in the regulatory regime. Flinders Ports is a vertically integrated provider of a monopoly service, that Patrick has no viable equivalent alternative to using.

As a result we concluded,

"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."*

Interestingly, in rather intemperate language Flinders Ports commented on this issue in its submission to the draft decision noting that

"Whilst Flinders Ports has an incentive to attract sufficient activity through the



*facility to support the investment made, it also has the right to protect its investment from use by "free-riding" downstream competitors."*ⁱⁱ

These comments indicate that Flinders Ports intends to consciously treat access providers differently, and presumably less favourably, than its own related businesses.

This is of considerable concern to Patrick where it is competing directly with Flinders Ports for work from customers wishing to ship product through Berth 29. *{Confidential Information Removed}*. Patrick and its customers are unable to discard using the rail siding at Berth 29 due to the weight limits associated with public road haulage.

What Patrick is seeking is not "free riding" but as in all regulated regimes that Flinders Ports receives an appropriate return on its investment and is not through its vertically integrated position and ownership of monopoly assets able to prevent competition.

If you wish to discuss this submission feel free to contact me on 03 9248 7274.

Kind Regards

A handwritten signature in blue ink, reading "Tim Kuypers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr Tim Kuypers
Group General Manager Safety, Access and Regulation

ⁱ Asciano submission to ESCOSA 23/3/12

ⁱⁱ Flinders Ports Submission to ESCOSA 20/7/12