

SOUTH AUSTRALIAN GOVERNMENT RESPONSE TO THE 2007 PORTS PRICING AND ACCESS REVIEW

4.2.1 Issues relating to whether or not regulation should continue

Is it still the case that there is the potential for misuse of market power, or is there evidence of actual misuse of market power in the provision of Regulated Services (which include bulk handling facilities) and Essential Maritime Services?

Proclaimed services covered by the access regime (navigation, pilotage, berths and bulk loading facilities) at each of South Australia's ports are undertaken by a single operator. Potential entrants to the market face a large barrier to entry in terms of capital costs and access to suitable sites and other infrastructure. Furthermore, the relatively small size of the South Australian market means that there is limited opportunity for competing services to enter the market. Land at ports, berths and facilities are all in limited supply and integral to efficient access to port facilities. All these factors mean there is virtually no competition within a port for these services.

In many respects the interests of the port operators, customers and the State are closely aligned. These include efficient utilisation of existing infrastructure, high throughput of cargo and investment in improved infrastructure. There is a strong commercial imperative for both parties to negotiate reasonable access arrangements to regulated port facilities. This is consistent with section 11 of the *Maritime Services (Access) Act, 2000*, as well as Part 2.2 of the Competition and Infrastructure Reform Agreement (CIRA) '... in the first instance, terms and conditions for third party access to services provided by means of significant infrastructure facilities should be on the basis of terms and conditions commercially agreed between the access seeker and operator of the infrastructure'.

However given the existing industry structure and the size of the market, there is potential for undue market power to be exercised that could unreasonably restrict third party access to a port. Potential changes to single desk arrangements for the marketing of bulk grain exports, add further to the case for the access regime to continue. In the absence of any information that the current access regime is restricting necessary infrastructure investment, or efficient utilisation of infrastructure, the South Australian Government is of the view that the access regime should continue to apply to the facilities currently covered.

***To what extent have negotiations for access to ports been unsuccessful?
Has the Commission's approach to price monitoring (refer section 3.2.1) been appropriate? Has it been useful? How do prices compare relative to other comparable ports in Australia?***

The ESCOSA 2006 Ports Pricing Monitoring Report indicates that South Australian port costs are higher than most of the other Australian ports included in the analysis. Further information is required to provide the context to explain these price differences. Future reports should, at a minimum, include detail on the total volume port calls and, if possible, some indication of the size of vessels utilising the nominated ports (this may involve matching the details of the vessels calling with a shipping registry, such as Lloyds Register).

The introduction of the channel-deepening levy following the dredging of the Outer Harbor channel has impacted on port costs, but has also resulted in significant efficiency gains. Such benefits were not reflected in the analysis, including the ability of Outer Harbor to accommodate larger and more efficient ships and operational benefits such as ship calls not being reliant on tidal assistance to enter the port. ESCOSA should further investigate these issues before coming to a decision on relative prices.

4.2.2 Costs and benefits of regulation

Are there net benefits associated with the current negotiate/arbitrate access regime?

Australia's Export Infrastructure¹ report has highlighted the potential for regulators to concentrate on specific objectives, particularly limiting charges by service providers, and not the core priority of promoting efficient operation of and investment in essential infrastructure services.

The complexity of port arrangements, such as at Dalrymple Bay, can result in protracted debates over the figures used in regulatory models. This can ultimately lead to uncertainty and significant delays to resolving access disputes.

Whilst the South Australian Government is not aware of any instances of the access regime causing impediments in investment in infrastructure development in South Australia, there would be significant merit in providing time-certainty to the process of resolving access disputes. For this reason, the South Australian Government recommends the implementation of the CIRA clause 2.6.

Are there net benefits in retaining price regulation (of any form)?

Port pricing regulation is currently applied to two private port operators that are bound to put returns to their shareholders as their first priority. Accordingly, there may be instances where port operator commercial interests do not coincide with the interests of their customers, or the State, and this can be reflected in prices charged.

Port operators have a strong commercial incentive to increase shipping services through their ports to maximise revenue and return on investment. Competitive prices play a role in attracting increased business, particularly when the economy is buoyant and port throughput is high. However, at ports with "captive" trades, high prices may return a greater profit to a port operator than seeking increased throughput by competitive pricing. Furthermore, in less buoyant times such as drought or economic downturn, prices may be set higher in an attempt to maintain port revenues, to the disadvantage of South Australian traders.

Accordingly, to minimise the risk of unduly elevated prices, the current price regulation of charges affecting shipping services should continue.

¹ Report to the Prime Minister by the Exports and Infrastructure Taskforce (2005)

4.2.3 Industry Developments

What are the possible implications for ports pricing and access should the AWB Ltd and ABB Grain single desks either be retained or deregulated?

For the bulk products covered by the access regime there is usually only very limited competition between ports as these products are usually loaded at the nearest suitable port. The relatively small size of the market and substantial investment required to establish alternative supply chains act as significant barriers for new entrants. There is some competition between South Australian ports operated by Flinders Ports and Ardrossan operated by ABB, albeit with all the bulk ship loaders at South Australian ports controlled by ABB. For bulk products from the southeast there is competition between the ports at Adelaide and Portland in Victoria.

For South Australia, there are additional regulatory changes that will impact on the export of bulk products. A barley exporting Bill is currently being considered that would remove the single desk arrangements for the export of bulk South Australian barley by ABB, opening up the market to other exporters. Together with the uncertainty about the future of the AWB single desk arrangement for the export of Australian wheat, this could change the landscape for export of bulk grain.

Given the limited competition within and between ports and the servicing of these ports by single operators, there is potential for the undue exercise of market power in the absence of the access regime.

There will be a continued need for suitable access to infrastructure at bulk handling facilities to efficiently handle all bulk products, particularly in view of the expected growth in mining in South Australia.

How has competition between ports for container volumes developed? To what extent does Flinders Ports hold market power in providing container facilities?

It is important to note the dual markets in which container stevedores operate. Container stevedores (and port authorities) compete for ship calls and importers/exporters. The Port of Adelaide faces strong competition from Melbourne for containerised goods, with more limited competition from Fremantle and Sydney.

Important considerations for traders in selecting port/services include total transit time, cost, reliability, frequency and quality of shipping services. Shippers will select the services that best meet their unique tradeoffs between these factors. To a large extent, shippers are selecting shipping services – rather than stevedores. This suggests that shipping lines are the key customers of stevedores.

Competition between ports also exists for the attraction and retention of shipping services. Shipping lines consider a number of price and non-price factors when deciding on their ports of call.

Is the existing ports access regime capable of dealing with an expansion in mineral developments in South Australia?

Given the uncertainty about developments in the grain export industry and potential impacts on the export of other bulk products, developments at bulk handling facilities will need to be monitored. Currently the access regime applies to bulk ship loaders other than those at the new Outer Harbor grain terminal. In practice, the loader in itself is not of practical use to a potential bulk exporter, without access to storage and handling facilities and stevedoring services to utilise the loader.

If monitoring identifies access issues at the bulk handling facilities, further consideration may need to be given to facilitating third party access to handling and storage facilities.

4.2.4 Other factors

Have there been any developments over the current regulatory period that should be taken into account when reviewing the need for continued regulation?

In the absence of specific local differences, to provide certainty to exporters, port operators and terminal operators across all South Australian facilities, the access regime should be applied uniformly across all bulk ports covered by the regime.

The current facilities covering berths and bulk handling do not include the new grain terminal under construction at the Outer Harbor. The South Australian Government supports a more simplified and consistent approach to third party access by extending the coverage of the access regime to the new grain terminal.

Currently there are slight inconsistencies across ports with vessel access and pilotage at Ardrossan covered, but harbourage and the ship loaders at the port not covered by the regime. Consideration should therefore be given to ensuring the access regime is applied consistently at all ports/berths/facilities covered by the regime.

Are there likely to be any developments over the next regulatory period that should also be taken into account?

As discussed earlier in this response, the expected deregulation of the export barley market and uncertainty surrounding the future of AWB Ltd should be taken into account by ESCOSA during its inquiry.

Are there any region specific or cargo specific issues that are relevant to the review?

The minerals and resources sector is experiencing strong growth, particularly in the northwest of South Australia. A number of new resource developments are in their early stages of planning and access to appropriate port related infrastructure is emerging as an important issue for the industry.

In many instances, mineral products rely on a suitable port of exit being relatively close to the mine site to minimise transport costs. Typically, deep water ports, appropriate loading facilities, sufficient space and efficient land-based links are needed by the industry.

As mineral export proposals are developed, it may be necessary to examine the need to extend coverage of the access regime to facilitate use of port facilities. The SA Government will monitor developments in this area.

4.4.1 Reason to change the current form of regulation

The Commission invites comments on the issues addressed above, and any other issues that the stakeholder considers necessary for the Commission to address in deciding on the most appropriate form of price regulation that should apply for the next period.

The South Australian Government supports the price monitoring approach taken by ESCOSA over the previous three year period, and believes this approach should continue, as it has a low compliance cost for the port operator and provides pricing transparency for users of the port.

4.5 Clause 2 of the CIRA

Are there any aspects of the access and pricing regimes that are inconsistent with the CIRA clause 2 requirements (clauses 2.1, 2.2, 2.3, 2.4 and 2.6)?

In principle, the price and access regimes in place in South Australia are consistent with the CIRA, subject to the inclusion of an objects clause and the decision-making timeframes (and associated 'stop the clock' provisions) contained in clause 2.6.

The South Australian Government believes that these changes will provide a greater degree of industry confidence in the access regime, resulting in industry being able to make more informed decisions regarding investment in infrastructure.

South Australian Government Position:

The South Australian Government supports:

1. Continuation of price regulation in its current form;
2. Continuation of the access regime with amendments consistent with the Government's obligations under the CIRA;
3. Consistent application of the access regime across all proclaimed ports and facilities including to the new grain terminal at Outer Harbor;
4. Ongoing monitoring of industry developments to establish whether there is a need to extend the access regime to cover additional services and/or facilities to facilitate growth in South Australia's exports.