2007 Ports Pricing and Access Review

Issues Paper

Flinders Ports Response
March 2007

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1.0 Introduction

The Essential Services Commission of South Australia (ESCOSA) has sought responses to its Issues Paper associated with the 2007 Ports Price and Access Review. The review to be undertaken by ESCOSA is to consider the ongoing need for regulation of port access and pricing. In particular, the review will consider two key questions:

- Should the ports access regime expire on 30 October 2007, or should it continue for a further 3 year period. If it is to continue, should it expand, contract, or otherwise be improved?

- Should price regulation of certain ports services expire on 30 October 2007, or should it continue for a further 3 year period? If it is to continue, what form of price regulation should be adopted?

ESCOSA in its 2004 report considered that there was the potential for misuse of market power in the provision of Regulated Services, albeit that there was no evidence of actual misuse of market power.

The findings made within the report led ESCOSA to the conclusion that it was appropriate for the access regime to continue, but that only light-handed regulation would be necessary to protect port users from the potential for misuse of market power. ESCOSA also took the view that price regulation should continue in the form of a price monitoring regime, which would provide port operators and users the ability to negotiate commercial arrangements.

Flinders Ports submitted detailed papers as part of the previous review process undertaken and expressed the following views:

1.1 Access Regime:

Flinders Ports' position was that:

- The Ports Access Regime provided a "safety net" for any genuinely aggrieved customer and hence it provided a mechanism to resolve disputes to ensure that the overall objectives of the Act were achieved.

- The Access Regime needed to recognize the long term time frame associated with port investment. Hence any claim made should be critically examined against the criteria for making an Award under the Act.

- The retention/inclusion of other Regulated but not Essential Maritime Services within the Regime did not add any significant value to the achievement of the objectives of the MSA Act.

1.2 Port Pricing:

In relation to Price Regulation, Flinders Ports highlighted that it needed flexibility in recovering its total costs across ports, cargoes and services. It also noted that it needed to be able to respond in commercial terms to proposals from its customers and to negotiate price/volume/service packages that meet the needs of both parties.

In its submission Flinders Ports concluded that:

- It does not have market power, i.e. the ability to operate independently of market constraints, in any part of its activities

- To the contrary, Flinders Ports faces, at the least, competitive tension, indirect competition and countervailing power and, in some areas, strong direct competition.

- The nature of its customers and other market conditions ensures that market power will not become reality.

- Flinders Ports pricing practices – and willingness to enter into pricing negotiations ensures satisfactory outcomes without the need for regulation.

- No evidence of abuse of market power has been presented; nor of economic costs arising from the existence of market power.

The submission concluded that if regulation was to continue:

- It should be confined to some degree of oversight of charges for services provided by means of bottleneck infrastructure facilities.

- Primary emphasis should be on commercial negotiations of charges.

- Flexibility should be provided for common costs to be recovered by whatever means prove to be convenient and effective.

- Scope should be provided for charges to be rebalanced and if desirable restructured over time.

Flinders Ports would propose that the comments made and position adopted within the previously submitted responses relating to both the Access Regime and Port Pricing are still valid today and supported by a further three years of activity. ESCOSA is requested to consider this paper as an extension of the previous papers submitted and consider the issues discussed in those papers in making their determination on the future direction of port regulation.

This paper has been divided into the three key areas raised by the ESCOSA Issues Paper:

1. Regulation of Ports 2004 – 2007
2. Key Issues
3. Competition and Industry Reform Agreement (CIRA)

Within each of these areas Flinders Ports comments on the issues raised by ESCOSA.

The conclusions reached by Flinders Ports are then outlined in the final section of the paper.

In summary these are that Flinders Ports:

1. Supports the retention of the Access Regime on the basis of the same light-handed approach that has been adopted since 2004.

2. Proposes that pricing regulation is not required but if retained would adopt the position in that the price monitoring regime should be maintained in its current form.

3. Proposes that the Port Price Monitoring report be critically reviewed and restructured to more accurately reflect the pricing position between ports

4. Is of the view that the existing Port Access and Pricing Regime is generally consistent with the CIRA clause 2 requirements.

The ESCOSA Issues Paper also raises the matter of the certification of the Access Regime.

Flinders Ports notes that this obligation has been with the State since 2001 and it has for some time raised the need for the certification process to be finalised. This process is required to add a degree of certainty in relation to responsibility for the regulation of ports in South Australia. Flinders Ports' understanding is that without certification it is somewhat "open ended" in relation to providing a potential access seeker alternatives to consider if a dispute arose.

Flinders Ports would strongly encourage ESCOSA to act to ensure that the appropriate State Authority finalises the certification process well before 2010.

2.0 Regulation of Ports 2004 – 2007

Section 3 of the ESCOSA Issues Paper outlines the position adopted as a result of the previous review undertaken.

ESCOSA has highlighted its findings from the previous 2004 Access Review undertaken in which it considers that “there was the potential for misuse of market power in the provision of Regulated Services”.

ESCOSA qualified this position by indicating that there was no evidence of actual misuse of market power.

Flinders Ports takes the view that while the “perception” may exist that Flinders Ports has the potential to misuse market power, the “reality” is that the existing competitive market forces effectively provide a mechanism of “self regulation”. This is evident through the process of negotiation that Flinders Ports undertakes with all customers in determining the most appropriate package of pricing and services.

Flinders Ports has expressed this view in previous papers and continues to maintain this position – one that is also supported by the outcomes reported since the implementation of the regulation of the ports.

The position adopted by ESCOSA of a light handed approach supported by a price monitoring regime was supported by Flinders Ports at the time. Flinders Ports qualified this support by emphasising the view that the competitive market forces provided an effective mechanism to ensure all parties behaved in a responsible commercial manner but accepted the “safety net” provision provided by the Access Regime.

To support the price monitoring regulatory approach adopted, Price Monitoring Reports have been provided by ESCOSA over this last three year period. ESCOSA has qualified these reports indicating that they are not intended to be a detailed benchmarking exercise.

Flinders Ports has raised a number of concerns about the appropriateness of these report and the conclusions drawn from the comparisons undertaken between the various ports highlighted in the reports.

Flinders Ports has previously advised ESCOSA that simply taking a vessel cost comparison utilizing scheduled rates does not truly reflect the pricing behaviour of an individual port against the other ports included in the comparison tables presented.

Port pricing is a complex issue. Ports generally are fixed cost operations with high levels of capital investment and relatively fixed operating costs. Revenue on the other hand is variable and influenced by a number of economic and seasonal influences with the predominant driving factor being the volume of cargo handled through the port.

Simple economics dictates that cost (capital and operating) divided by volume will determine the rate per unit that is needed to ensure revenue is raised to a level that recovers those costs. Hence the fact that ESCOSA only compares a single voyage cost at a specific berth fails to recognise that the level of overall port costs required to be recovered from a given cargo charge will be influenced by what other trades and volumes are being handled by that port.

Using ports as an example of this issue. Comparing the port charges at a location like Port Lincoln which has a substantial berth facility with a high investment cost but used with volumes ranging between 1.5m to 1.9m tonnes per annum and vessels calls in the order of 126 per year with a port like Newcastle which is used to handle some 85.0m tonnes of cargo and recorded some 1,470 vessel calls in 2005/06 - does not provide a reasonable basis for the comparison of single commodity rates.

Using tug charges as another example. The relatively fixed cost of providing and operating a tug at each Australian port is anticipated to be very similar given the type and nature of the tug. Each port however has differing levels of vessel calls. The more shipping calls the lower will be the average charge required to recover the fixed costs associated with the services being provided.

In addition the comparison of port charges alone does not also take into account the offsetting land transport and other savings achieved, particularly in the case of the grain industry in South Australia, as a result of the large number of ports operated by Flinders Ports in the State. The more ports the lower the transport costs to the ports.

ESCOSA asks the question in its Issues paper, using the comparison provided in Table 3.1 and 3.2 , “if the greater than CPI price increase reflects any misuse of market power by Flinders Ports”.

This question highlights that the outcomes of the Monitoring Report in it’s current format are misleading. The ECSOSA report highlights that the “so called” increase in Essential Maritime Services charges is related to the introduction of the channel deepening grain levy. This levy was negotiated “up front” with port users and no works were undertaken on the project until the key grain port users were satisfied that he project was justified and that they had formally agreed to the levy proposal.

To suggest that the impact of this charge is a use of market power is strongly refuted.

In fact the introduction of the levy arrangement (which provides a vastly improved service level and quality) is a case study in how Flinders Ports undertakes it’s commercial pricing agreement and how, left unregulated (the levy itself is not part of the regulated environment), the current market forces ensure that an appropriate outcome is achieved.

These opinions have been previously expressed to ESCOSA and Flinders Ports requests that, should the Price Monitoring Report continue, it be critically reviewed and the contents restructured to ensure that a more meaningful analysis of port pricing outcomes across the proposed “benchmarking” group of ports/products can be considered.

3.0 Key Issues

3.1 Market power

ESCOSA highlights a number of factors within it's Issues Paper that may limit the ability of a port operator to misuse market power, including:

- The extent of competition for port services through the existence of alternatives.
- Low barriers to entry or the threat of new entry if prices are set above competitive levels.
- The extent of countervailing bargaining power.
- The extent to which port charges comprise the total cargo volume.

The Issues Paper notes that the position adopted by ESCOSA was that as Flinders Port operates the majority of grain ports, including the only two grain ports on the Eyre Peninsula ports that Flinders Ports holds substantial degree of market power.

ESCOSA also reports "that despite this no disputes have been notified to the Commission during the current triennial cycle. In addition price monitoring of Essential Maritime Services has not shown any significant variation in process over the period (other than related to the Port Adelaide Channel Deepening Levy)."

ESCOSA concludes that both these observations might suggest that there has not been any misuse of market power.

Flinders Ports would take a more positive view of this outcome. As previously stated Flinders Ports is subject to a number of "competitive pressures" and these combined with an objective of long term financial stability ensures that Flinders Port behaves in a responsible commercial manner when dealing with customers.

As indicated by ESCOSA there have been no disputes notified over the past three years. During this time Flinders Ports has been involved in a number of pricing discussions with customers and each has been resolved through the commercial negotiation process.

Flinders Ports seeks to achieve sustainable returns for its shareholders and hence it is in the interest of the organisation to ensure that it takes into account a number of factors when determining an appropriate pricing model for use of a port facility. These include, capital investment made or additional capital required, level of services required and the impact on operating costs, the volume of trade and the associated shipping activity and the period over which the provision of services is required.

An appropriate review of these factors with each specific customer enables a long term pricing strategy to be developed and subsequently agreed with customers.

Flinders Ports believes that regulation, if continued, should support this process not hinder it.

In relation to the question of relative comparable prices in other Australian Ports. Flinders Ports believes (as outlined in the comments provided in relation to the Price Monitoring reports) that comparing a schedule of charges between ports does not provide a meaningful comparison and certainly should not be a leading indicator as to whether a port is exercising ”market power”.

Port Pricing is the outcome of history, the cost of providing services, customers' ability to pay, acceptability of the trading community and political factors. In addition the volume of cargo traded through a port has a major determining impact on the level of rates charged for specific cargoes given the relatively fixed cost structures inherent in most ports.

To ensure that the right outcome is achieved, one that satisfies both the port operator and the customer, requires a degree of flexibility and commercial sensitivity, evident in practice but difficult to achieve in the context of a mandated regulatory structure.

Flinders Ports contends that it does not exercise Market Power and that the countervailing pressures that have been identified are real and ensure that the pricing outcomes determined through the negotiation process are fair and reasonable to each party.

3.2 Costs and Benefits or Regulation

As indicated previously Flinders Ports accept that the Access Regime provides a “safety net” to any genuinely aggrieved customer.

The cost of regulation to Flinders Ports is not unsubstantial given the requirements that the regimes place on the organization through the preparation of annual Regulatory Accounts, the quarterly reporting obligations and the additional resources consumed addressing issues raised through the current price monitoring reporting process.

Flinders Ports questions whether there is a real net benefit with the current regime and ask ESCOSA to examine this issue when considering the future regulatory environment proposed.

In addition the current requirement to review both the Access and Pricing Regimes on a three year basis should also be reviewed. Flinders Ports would encourage ESCOSA to consider a longer period (5 year minimum) between future review processes. This will reduce the administrative burden on all interested port stakeholders.

3.3 Industry Developments

3.3.1 Grain

The Cargo Services Charge associated with the Grain Industry has remained static for some 20 plus years. This position is largely a result of the political environment that existed prior to the privatization of the South Australian ports and the result of the initial pricing determination made at the time of the sale of the ports.

Flinders Ports has considered a number of alternative options for the Grain Industry and to date these have not been fully explored with the Industry due to a number of factors.

As has been identified in previous responses provided by Flinders Ports and recognized by ESCOSA the South Australian Grain Industry enjoys the luxury of the availability of some seven ports (six owned and operated by Flinders Ports) for the export of grain products. Given the average size of the South Australian crop (5 year average of some 5.0m tones) this represents a significant cost overhead on the port operator and a significant advantage in relation to farm gate to port transport costs to the farmer.

In addition it should be recognized that many of the grain industries secondary storage sites are located adjacent to rail and hence makes transport of grain to interstate locations an available option. Flinders Ports is of the view that this option has been utilised over the past two years and particularly during the recent drought periods encountered by the Eastern States.

Flinders Ports would contend that the same pricing principles that apply generally with other customers are appropriate to the Grain Industry.

This principle was applied in negotiating the channel deepening levy and as a result a suitable commercial outcome was achieved to the satisfaction of the industry and the port operator.

The potential removal of the single desk is anticipated to result in additional exporters of grain. To some degree this situation currently exists with several "niche" exporters already utilizing port facilities for the export of specific grain products. It is therefore anticipated that these exporters will grow in size as other new players will enter the market. The change to the single desk approach may also open up the opportunity for growers located in the contestable catchment areas to sell into areas outside the State.

Irrespective Flinders Ports would contend that the same approach as currently adopted to the negotiation of pricing/services packages will be applied.

3.3.2 Containers

Flinders Ports strongly disagree with the position taken by ESCOSA in its Issues Paper where it stated “There is no direct competition within Port Adelaide for container facilities”.

It is irrelevant to the issue of direct competition within the container market that there exists only one shipping related container facility located within Port Adelaide

The market for the container trade is very broad. Flinders Ports competes not only with other Australian ports like Melbourne and Fremantle for those shipping services that operate within this trade sector, but with other port within the region and around the globe.

As outlined in our previous papers, almost all major container services now operate on a fixed day weekly port call schedule. This requires that the total round trip (ie involving all ports called in the specific service rotation) for each individual vessel operating within that service must be completed within a strictly defined time period. Therefore the number of ports at which the ship within the service can call within that period is strictly limited. The decision to therefore call at Port Adelaide implies a decision not to call at other ports (either in Australia or other countries such as Malaysia or New Zealand) and vice versa. In making these port call scheduling decisions a vessel operator will consider a number of factor including, container volume levels (ie the number of container exchanges) available at the port and the costs (including port charges) associated with the particular port call.

In addition the Port of Melbourne continues to aggressively market itself in South Australia. Container intermodal rail yards operate in several locations within or in proximity to Port Adelaide and hence the rail network between Adelaide and Melbourne continues to be utilized by the Port of Melbourne and service providers operating within this port to impact on the container volumes in Port Adelaide.

Studies undertaken as part of the economic justification for the deepening of the Port Adelaide outer channel indicated that currently some 70 – 80,000 containers (TEU’s) associated with South Australia arrive from or leave for Melbourne via rail. To put this in context, this figure accounts for some 35% of the South Australian market.

The reality of the existing situation is that Flinders Ports faces competition in relation to attracting shipping services to call Adelaide and for container importers and exporters to utilise Adelaide as their preferred port of loading/discharge. The reality therefore is that container importers and exporters have viable and existing alternatives and this market pressure continues to ensure that Flinders Ports cannot and does not exercise market power in providing container port facilities.

3.3.3 Minerals

South Australia has experienced a large increase in mining related activity over the past several years.

Are the South Australian Ports capable of dealing with the anticipated expansion in mineral development and the export of these commodities?

It is Flinders Ports' view that while the ports are well positioned to support the shipping/port service requirements of these trades, some level of investment on specific infrastructure (storage, loading and integrated logistics services) will be required to support the specific requirements of this industry sector.

Flinders Ports has been involved in a number of discussions with potential mining industry exporters to determine the requirements of the industry in relation to both access to and the facilities and service required at the various ports being considered by the industry.

The initial assessment by Flinders Ports is that the existing port infrastructure provides a suitable base for the provision of the port services required. However it has been recognized that additional investment in infrastructure associated with the storage, handling and the efficient movement of cargo to and from ports will need to be undertaken. Flinders Ports is currently in discussion to varying levels with a number of entities associated with the Mining Industry to ensure that the development of the required infrastructure not only meets the Industry needs but is also economically justifiable.

The discussions held to date support the position adopted by Flinders Ports in relation to the overall regulatory framework which is that the port operator and its customer are in the best position to resolve the issue of the port services/pricing package moving forward. The process followed by Flinders Ports involves the assessment of the customers needs through the development of operating, logistics and infrastructure requirement plans. Financial modeling is then undertaken, incorporating all aspects of the port users overall requirement, including capital cost, volume expectations, time frames and risks associated with the trade. Initial pricing models are then developed and presented to the customer for discussion and negotiation. Once agreed the arrangements are formalised to provide on-going certainty to both parties.

To date this business model has resulted in the formal agreement of a Port Infrastructure/Services/Pricing arrangement with one customer and the process is well advanced with several others.

It should also be noted that whilst ESCOSA has identified the shortcomings of the Tarcoola to Darwin rail in relation to the movement of containers, the rail is ideally positioned to provide an alternative transport/port solution to a number of mining interests located in the north of the State. In fact Flinders Ports has recently been involved with a competitive tender process which incorporated an alternative bid from the Port of Darwin (utilising the rail link to Darwin) for the provision of port and logistic services to one mining entity.

In addition competition / competitive pressure is also experienced in South Australia with mining companies discussing the potential option of utilizing the non-regulated ports in South Australia of Whyalla and Port Bonython, in addition to Portland in Victoria. Flinders Ports also noted with interest recently the release of a tender by the State for a consulting brief associated with the potential development of a Greenfield port development in the proximity of Port Bonython.

The competitive process and these potential alternative options again highlight the fact that there are a number of countervailing pressures on Flinders Ports' ability to exercise "market power" in negotiating new pricing/access arrangement with potential new Mining Industry port users. .

3.3.4 Other Factors

The overall trade volumes experienced over the past three years reflect the mature nature of the industry in South Australia. Trade volumes, across all ports operated by Flinders Ports, have over the past three years equated to 17.236m tonnes (2003/04), 17.120m tonnes (2004/05) and 17.424m tonnes in the 2005/06 financial year.

While there have been movements within specific cargo categories such as, fluctuating grain volumes associated with the variable seasonal conditions experienced and some level of container growth, the overall volume of trade has remained relatively static over this period.

Ship call numbers across the seven ports have also been relatively stable with total calls in each year equating to:

- 2003/04 - 1,742
- 2004/05 - 1,706
- 2005/06 - 1,745

These statistics indicate that the existing market is stable and this in many ways is reflective of the outcomes experienced and reported by ESCOSA over the past three years of the regulatory regime.

As Flinders Ports has stated previously, it needs flexibility in recovering its total costs across ports, cargoes and services. It therefore needs to be able to respond in commercial terms to proposals from its customers and to negotiate price/volume/service packages that meet the needs of both parties.

Flinders Ports therefore contends that the existing port services / pricing model adopted by the organisation, which has matured and developed over time in an environment of competitive tension, has served port customers well. Flinders Ports view is that this model will continue to apply to both the existing customer base and potential new entrants (such as the mining industry), with the same positive outcomes.

As such it is recommended that ESCOSA critically review the outcomes achieved over the past three years and that these outcomes be a used as significant driving factors in the determination of the pricing and access regime proposed for the next three years.

3.4 Form of Price Regulation

ESCOSA in its Issues paper outlines the various forms of Price Regulation that could be available assuming that price regulation continues.

ESCOSA has listed a number of outcome measures which it has used as a base to assess the success or otherwise of the current regime. Flinders Ports provides the following comments of these measures:

- **Change in Published Prices**

  To date the charges made have been relatively consistent with CPI increases with the exception of the grain cargo charge and Pilotage.

  In the case of Pilotage detailed consultation occurred with the industry prior to implementing the change and it was implemented over a 3 year period.

  The grain charge has been subject to comment elsewhere in this paper.

  Flinders Ports has demonstrated a fair and reasonable approach to it's price increases over the period being reviewed and these increases are supported by increasing costs and the extension of services required to be delivered.

- **Negotiated Outcomes**

  Flinders Ports, like any commercial enterprise adopts a degree of flexibility in relation to its pricing policy and generally rewards long-term customers based on the extent of use of the facilities and services provided.

  These agreements are confidential between the port operator and it's customers and would expect that ESCOSA respects that confidentiality.

  It should be noted however that a large number of existing agreements have been reviewed and revised during the past three years and each has been settled to the mutual satisfaction of each party.

- **Annual Profitability**

Flinders Ports argues that this is not a truly effective measure to be applied in assessing whether the form of regulation is appropriate. Given the relatively fixed cost nature of the port business, the seasonal fluctuations experienced with certain cargo trades could lead to inappropriate short term conclusions being reached from an analysis of this measure

Therefore while annual returns may be of interest to a regulator it should only be used as an indicative guide and not as a leading indicator.

- **Compliance Costs**

  Under the existing regulatory arrangements compliance costs are relatively high. Flinders Ports stresses that as regulatory costs are passed through to the end customer ESCOSA needs to consider this factor when determining its future model.

- **Number of Disputes**

  Flinders Ports takes the position that this is the ultimate indicator of how effective the existing relationship is between the port operator it's customers.

  Flinders Ports view is that the fact that there have been no disputes identified is the result of the pricing approach adopted by Flinders Ports in response to the commercial pressures placed on it by its customers.

- **Number of Access Seekers**

  As indicated, the existing port industry is at a high level of maturity within the state and hence the level of new Access Seekers has in the past been low. While the level of potential new users of existing port infrastructure is anticipated to increase, the additional specific requirements of these users will require a level of additional investment. Hence it is anticipated that the existing approach adopted by Flinders Ports will provide potential port users with an appropriate mechanism to negotiate both a service and pricing package that meets their needs.

The outcomes experienced over the past three years leads Flinders Ports to conclude that if pricing regulation is to continue then the only form of regulation that should be adopted is a light handed one.

4.0 Competition and Industry Reform Agreement

The ESCOSA Issues Paper includes an additional component requesting comment on the level of consistency of the Access and Pricing Regimes currently in place with that of the CIRA Clause 2 requirements.

These requirements are listed in the Terms of Reference attached to the ESCOSA paper.

Flinders Ports makes the following comments:

Clause 2.1

Flinders Ports endorses the position that the existing model would appear to be simpler than other models in existence around the country and hence in our view provides a benchmark regime for consideration by others.

Clause 2.2

The principles outlined within this clause are fundamental to normal business practice and hence should be a pre-eminent condition within any regulatory model proposed. The existing ESCOSA model supports this position.

Clause 2.3

As outlined in this paper Price Monitoring should only be considered when a reliable basis for this monitoring can be determined. The existing price Monitoring reports provided by ESCOSA are in line with the principle outlined within this clause but in our view are not as effective as they could be as not all factors are taken into account.

Clause 2.4

The principles as outlined with clause 2.4 are generally consistent with the ESCOSA model.

Clause 2.6

Placing a specific time frame on any regulatory decision adds an appropriate discipline to the process. This principle is consistent with the approach adopted by the ESCOSA model.

Overall Flinders Ports proposes that the existing approach adopted by ESCOSA is consistent with the principles outlined in Clause 2.

5.0 Summary

The objects of the MSA Act are to provide access:

- To maritime services on fair commercial term, and
- To facilitate competitive markets in the provision of maritime service; and
- To protect the interests of users of essential maritime services by ensuring that regulated prices are fair and reasonable having regard to the level of competition in, and efficiency of, the regulated industry; and
- To ensure disputes about access are subject to an appropriate resolution process.

How has regulation supported these objects over the past three years?

The past three years has seen a major upgrade of port facilities within the seven ports operated by Flinders Ports. The level of expenditure committed to the development of new port facilities including the Deepened Outer Harbor Shipping Channel, the new Grain Berth and Berth Pocket at Outer Harbor, and the upgrade of facilities at Port Giles and Wallaroo has been in the order of $80.0m over this time. Flinders Ports continues to plan for the future and further capital expansion of port and related facilities is proposed over the next few years.

During this period trade volumes have generally been maintained at a consistent level, with grain levels impacted by seasonal conditions, containers volume growth showing a steady increase and generally other trades maintaining minimum levels of growth.

We have also seen an environment of increasing costs associated with such factors as implementation of the DOTARS Security requirements and increasing interest rate pressure with several increases in the base rate over this period.

We have also seen the emergence of new mining trades and the potential for these trades to use port operated by Flinders Ports or other non-proclaimed South Australian or interstate ports or alternatively rail as a means of dealing with their port selection /transport solution outcomes.

Overlaying this level of activity over the past three years Flinders Ports has engaged in pricing discussions with all of its customers through the annual process of advising of the increase in the scheduled rates to be applied in addition to the negotiation of new or the renewal of existing specific pricing packages.

As outlined in the ESCOSA Issues Paper during this period there has been no Access or Pricing disputes raised with ESCOSA.

Flinders Ports argues that this outcome reflects the working of a truly competitive market where the long term objectives of the port operator and the countervailing market pressures exercised by port users generate the appropriate level of competitive tension to ensure that a “win win” outcome is achieved.

Has regulation provided that “big stick” threat in the background to ensure that this process is maintained and the outcomes achieved fair and reasonable?

Flinders Ports takes the position that it does not, but accepts the view that it does provide a “safety net” provision for port users to utilize if they genuinely feel aggrieved.

In summary therefore Flinders Ports:

1. Supports the retention of the Access Regime on the basis of the same light-handed approach that has been adopted since 2004.

2. Proposes that pricing regulation is not required but if it is to be retained, would adopt the position in that the price monitoring regime should be retained in its current form.

3. Proposes that the Port Price Monitoring report be critically reviewed and restructured to more accurately reflect the pricing position between ports

4. Is of the view that the existing Port Access and Pricing Regime is generally consistent with the CIRA clause 2 requirements.