



2007 PORTS PRICE DETERMINATION FINAL PRICE DETERMINATION

October 2007

The Essential Services Commission of South Australia
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Public Information about the Commission's activities

Information about the role and activities of the Commission, including copies of latest reports and submissions, can be found on the Commission's website at www.escosa.sa.gov.au.

PART A: STATEMENT OF REASONS

The Essential Services Commission of South Australia (the Commission) is assigned regulatory obligations and powers in respect of ports through the *Maritime Services (Access) Act 2000* (the MSA Act), the *Essential Services Commission Act 2002* (the ESC Act) and the *Essential Services Commission Regulations 2004* (the ESC Regulations) made under the ESC Act.

The Commission makes this price determination in accordance with those obligations and powers. Specifically, the Commission makes this price determination under Sections 25 and 26 of the ESC Act, and Regulation 3 of the ESC Regulations.

This price determination revokes and replaces the Ports Price Determination that has been in effect since 31 October 2004. This determination takes effect on the date on which notice of its making is published in the *South Australian Government Gazette* and continues up to and including 30 October 2010.

This price determination establishes price monitoring as the form of regulation to apply to Essential Maritime Services from 31 October 2007 up to and including 30 October 2010.

The Commission's detailed reasons for making this price determination are explained in its 2007 Ports Price and Access Review – Final Report.¹ In the Final Report, the Commission considered whether or not Essential Maritime Services should continue to be subject to price regulation and, if they should, the appropriate form of the regulation. The Commission considered these questions having regard to the Commission's objectives under section 6 of the ESC Act and the factors specified in section 25(4) of the ESC Act.

The Commission's reasons are summarised below.

Market Structure

The Commission concluded that the structure of the market for Essential Maritime Services suggests that there is the potential for market power to exist. The Commission considered that the greatest potential for market power was in relation to the export of grain produced on the Eyre Peninsula. Here, Flinders Ports faces no direct competition, since farmers have little or no choice but to export via Port Lincoln or Thevenard.

No evidence of misuse of market power

Despite port operators having the potential to exercise market power, the Commission found no clear evidence that they have misused this power. The Commission reached this conclusion having regard to:

- ▲ Financial and operational information provided by Flinders Ports and AusBulk, which did not indicate that either were earning excessive returns from the

¹ The Final Report is available on the Commission's website at <http://www.escosa.sa.gov.au/webdata/resources/files/070706-PortsPriceAccessFinalReport1.pdf>.

provision of Essential Maritime Services, nor were there any abnormal trends that were of concern to the Commission;

- ▲ Movements in published prices during the current regulatory period. These movements have generally been in line with the change in CPI, with the exception of the introduction of a channel-deepening levy in 2006. This levy is charged against all grain and container vessels calling at Port Adelaide and provides a contribution towards the cost of the channel deepening at Outer Harbor. The deepening of the Outer Harbor channel has enabled larger vessels to enter the port without having to rely on tidal assistance;
- ▲ Benchmarking of port prices, as conducted by Meyrick and Associates on behalf of the Commission. This benchmarking analysis suggests that South Australian ports are generally more expensive compared to non-South Australian ports, but that greater economies of scale in other ports are likely to contribute to this difference rather than the exercise of market power; and
- ▲ Information provided by Flinders Ports regarding its negotiated contracts with users. This information suggests that port users have been successful in negotiating contracts below the published prices. The Commission has not been notified of any pricing disputes during the current regulatory period.

Conclusion

Based on the above findings, the Commission concluded that there was no justification for introducing more heavy-handed price regulation than currently existed. It found that the major benefit from price monitoring was that it provided transparency to access seekers through publication of the price list. While price monitoring is considered a relatively light-handed form of price regulation, the Commission acknowledged that it did impose some compliance costs on the port operators. However, the Commission concluded that these costs were outweighed by the benefits that price monitoring provides to port users and prospective port users.

The Commission will conduct and complete a further review of the price regulation of Essential Maritime Services prior to 30 October 2010, with a view to determining whether or not Essential Maritime Services should continue to be subject to price regulation (beyond 30 October 2010) and, if so, the appropriate form of the regulation. The Commission intends to coordinate this further review with its separate obligation, under Section 43 of the MSA Act, to conduct a review of the need to continue the Ports Access Regime beyond 30 October 2010.

PART B: PRICE DETERMINATION



PRICE DETERMINATION

This Price Determination in relation to ***Essential Maritime Services***

was made by the Commission on 26 October 2007

pursuant to Part 3 of the *Essential Services Commission Act 2002* and the *Essential Services Commission Regulations 2004*.

Affix Commission Common Seal Here

1. **Preliminary**

Authority

- 1.1 This price **determination** is made pursuant to the powers of the **Commission** under Part 3 of the *Essential Services Commission Act 2002* and the *Essential Services Commission Regulations 2004*.

Period of Operation

- 1.2 This **determination** has effect from the date on which notice of its making is published in the *South Australian Government Gazette*, up to and including 30 October 2010.

Purpose and Application

- 1.3 This **determination** regulates conditions relating to prices for **essential maritime services** provided by a **regulated service provider** during the period starting on the date on which notice of its making is published in the *South Australian Government Gazette*, up to and including 30 October 2010.
- 1.4 This **determination** binds a **regulated service provider** operating at a **proclaimed port**.

Revocation of Previous Pricing Determination

- 1.5 This **determination** revokes and replaces the previous ports pricing determination made by the Commission pursuant to Part 3 of the *Essential Services Commission Act 2002* and the *Essential Services Commission Regulations 2004* and which took effect from 31 October 2004.

Interpretation

- 1.6 Words appearing in bold like **this** are defined in Appendix 1 of this **determination**.
- 1.7 This **determination** must be interpreted in accordance with the rules set out in Appendix 2.

2. **Price Determination**

Published Prices

- 2.1 This **determination** requires a **regulated service provider** to set and publish on a readily accessible part of its website a comprehensive list of prices for the provision of **essential maritime services** for the period in which this **determination** has effect.
- 2.2 A **regulated service provider** must provide a copy of the list of prices to the **Commission** within 10 **business days** of the list of prices being set and published.
- 2.3 A **regulated service provider** and a customer may reach agreement for the provision of **essential maritime services** at a price that differs from the price published in accordance with clauses 2.1 – 2.2.

Excluded Assets

- 2.4 A **regulated service provider** is not entitled to make or publish a price increase to recover the construction and/or ongoing maintenance costs of an **excluded asset**.

Price Monitoring

- 2.5 The **Commission** may, during the period of this determination:
- 2.5.1 monitor the prices charged for the provision of **essential maritime services** by a **regulated service provider**,
 - 2.5.2 publish reports on prices charged for **essential maritime services** by a **regulated service provider**, and
 - 2.5.3 monitor and publish reports on matters relating to prices charged for **essential maritime services** by a **regulated service provider**.

Reporting Requirements

- 2.6 A **regulated service provider** must inform the **Commission** of any changes to its published prices by providing a copy of the changed list of prices to the **Commission** within 10 **business days** of the changed list of prices being set and published.
- 2.7 A **regulated service provider** must inform, and give relevant details to, the **Commission** of any agreements reached under clause 2.3 during each financial year of the period in which this **determination** has effect, no later than three (3) months after the end of that financial year.
- 2.8 A **regulated service provider** must make available to the **Commission** any information relating to prices that is reasonably requested by the **Commission**.

Appendix 1 – Definitions

“Commission” means the Essential Services Commission, a body corporate established pursuant to section 4 of the *Essential Services Commission Act 2002*.

“business day” means a day on which banks are open for general banking business in Adelaide, other than a Saturday, or a Sunday.

“determination” means this price determination made by the Commission pursuant to Part 3 of the *Essential Services Commission Act 2002* and Regulation 3 of the *Essential Service Commission Regulations 2004*.

“essential maritime services” has the same meaning as is given to that term in the *Maritime Services (Access) Act 2000*.

“excluded asset” means the assets established or extended by a **regulated service provider** pursuant to binding commitments in the Capital Expenditure and Maintenance Deeds for Port Adelaide, Port Giles and Port of Wallaroo:

- (a) channel dredging and upgrade of the wharf facilities at Port Giles to accommodate panamax vessels;
- (b) upgrade of the wharf facilities at Wallaroo to accommodate the partial loading of panamax vessels; and
- (c) dredging of the Outer Harbour channel to accommodate panamax bulk grain vessels, dredging of a new berth pocket and development of a new 300 metre grain wharf.

“proclaimed port” has the same meaning as is given to that term in the *Maritime Services (Access) Act 2000*.

“regulated service provider” means a person who carries on a business of providing essential maritime services at a proclaimed port.

Appendix 2 – Rules of Interpretation

In this determination, unless the context otherwise requires:

1. Headings and footnotes are for convenience or information only and do not affect the interpretation of this price determination.
2. Words importing the singular include the plural and vice versa.
3. An expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
4. A reference to a clause or appendix is to a clause or appendix of this price determination.
5. A reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute.
6. A reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document.
7. A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
8. Other parts of speech and grammatical forms of a word or phrase defined in this price determination have a corresponding meaning.