

4th February, 2004



TO Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

ATTENTION Mr. Lewis W. Owens
Chairperson

BY ABB Grain Ltd
123 – 130 South Terrace
ADELAIDE SA 5000

SUBMISSION

This response is to the Essential Services Commission of South Australia (“ESCOSA”) *“Ports Access Review : Discussion Paper”* 15th December 2003 (“Discussion Paper”).

INTRODUCTION

ABB Grain Ltd (“ABB”) is one of the Australia’s leading grain marketers and bulk grain exporters. Barley is the principle grain accumulated by ABB for which this company holds the South Australian statutory *single desk exports rights*. ABB markets to over 30 international destinations, including major markets in the Middle East, China and Japan. In the two year period 1 July 2000 through to 30 June 2002 for example, ABB exported over 3.3 million tonnes Barley (value A\$800 million) in 231 vessels through six Flinders Ports owned proclaimed South Australian ports¹ (Ardrossan excluded). In the absence of alternate *significant infrastructure facilities* and limited service providers, ABB is largely reliant on a restricted number of companies for the services enabling export of Barley within South Australia.

By way of background, there is a limited market for domestic Barley in South Australia compared to production (South Australia ranked as the largest state producer of Barley in Australia). In a bumper crop for example, South Australia grows more than 2 million tonnes Barley per annum but less than thirty percent can be directed towards domestic consumption. The surplus is exported principally by ABB through Grower pool arrangements.

Particularly due to the geographic remoteness of South Australia (ie : distance to the northern hemisphere markets), ABB is very conscious of being competitive and retaining hard won markets. *Quality* and *Customer focus* are critical to our company’s being and success. Also, ABB currently charters over 65% of vessels in its own right (on a “Cost and Freight basis”). Chartering of vessels provides supply flexibility as well as protecting market prices against sudden swings in ocean freight rates.

The export costs of Australian ports are a significant determinant in the competitive export of Australian commodities, including Barley. In this respect, it is important that supply chains [from (farm) “gate” to (overseas) “plate”] are optimized, costs constrained and efficiencies achieved. ABB (and others) do operate in an environment where there is potential for “... operators to misuse market power in a way that deprives port customers of sharing in the benefits of efficiencies in port operations” (p2, Ports Price Review Discussion Paper, 3^d November 2003). This is where the Ports Access Regime is critical in overcoming market imperfections and ensuring that supply chains are accessible on fair commercial terms.

¹ Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln and Thevenard.

2. HOW THE PORTS ACCESS REGIME WORKS

2.11 Other Design Features

Interested parties are welcome to comment on Ports Access Regime design issues.

- ABB is reconciled to the Ports Access Regime design as outlined in the Discussion Paper (pp 7-12).
- ABB acknowledges in bringing down an “Award”, the Essential Services Commission (“ESC”) shall correctly not take “ costs associated with losses arising from increased competition in upstream or downstream markets” into account (p10, Discussion Paper). ABB further notes that the ESC should also carefully scrutinize prices charged back to a cost basis devoid of any cross subsidization(s).

3 SHOULD THE PORTS ACCESS REGIME CONTINUE ?

3.2 The Assessment Task

Interested parties are invited to comment on ESCOSA’s initial position that the Ports Access Regime should continue for those Regulated Services that are also Essential Maritime Services.

- ABB supports ESCOSA’s position that the Ports Access Regime should continue for those Regulated Services that are also Essential Maritime Services.
- This was given ample address in former ABB (& others’) submissions made to ESCOSA.

3.4 Pilotage

Interested parties are invited to comment on the need for the regulation of pilotage under the Ports Access Regime – in particular addressing the seven assessment criteria.

1. Does the structure of the market for the Regulated Services suggest market power could exist ?

- Yes.

- ESCOSA has correctly identified the concentration of pilotage services to one player only in South Australia (Flinders Ports). ABB understands this situation extends beyond the grain industry to most vessels visiting South Australia (irrespective of type / commodity).

2. Is market power being misused or is the potential there for it to be misused ?

- ABB does not have evidence of market power being misused but does acknowledge that there still exists the potential there to. Such being the result of limited market alternatives.
- ABB cites as an example Flinders Ports alluding to a willingness to negotiate the Cargo Services Levy. Despite encouraging signs during ESCOSA's Ports Price Review process, Flinders Ports continue to show little (if any) tangible demonstrative efforts to date in this regard. We understand all bulk grain exporters continue to suffer \$1.50 / mt Cargo Services Levy.

3. Do customers have alternative sources ?

- Generally speaking no. Pilotage services are compulsory in South Australian ports. ESCOSA correctly alludes to the specialist skills required, overhead infrastructure, and limited number of qualified personnel in the market.
- As an alternative, ESCOSA could consider the implementation of an alternate pilotage accreditation or licensing process, but this would not be without its costs. There also remains the question of accessing alternatively qualified personnel. Given employment size, ABB is not uncomfortable with the structure of the current South Australian market for this type of Regulated Service.
- ABB could consider diverting shipments interstate. Except for marginal tonnage (eg. south-east grain to Portland), transport costs preclude pursuing this route.

4. Is competitive entry possible ?

- There are barriers to entry inclusive :-
 - Legislative requirements;
 - Limited market size; and
 - Specialist knowledge cum limited number of South Australian qualified personnel.

ABB is reconciled to continuance of Flinders Ports being the only player providing pilotage services within South Australia; certainly for the foreseeable future.

- ABB further understands that the provision of pilotage services by Flinders Ports is an ongoing condition as part of the former Ports Corp SA sale process.
- 5. *Does the answer vary between proclaimed ports and between the goods being moved ?***
- No.
 - However, pilotage rates and requirements may vary between proclaimed ports (eg. ship size). ABB understands pilotage charges are typically based on ship's gross registered tonnage (GRT) or net registered tonnage (NRT), not on commodities a vessel may carry.
- 6. *Are the above Regulated Services of sufficient importance to the South Australian economy to warrant economic efficiency concerns ?***
- From the perspective that pilotage is compulsory for all commercial ships visiting South Australia, ABB would argue regulation is warranted from an economic perspective. Should pilotage services be inaccessible or not up to a required standard, there could be significant secondary ramifications², which could potentially undermine South Australia's export trade.
 - Basis 723 Dry Bulk cargo vessels visiting South Australia during the 2003 calendar year, pilotage represents in excess of \$2.5 M direct cost to the state's trade. When added to South Australia's other export trade (eg. container, general cargo, liquid bulk, livestock, vehicle carriers, etc), total pilotage encumbrances becomes more significant.
 - Export costs are critical in ABB being internationally competitive and generating Grower returns. Pilotage is one part of the total equation. Particularly when there is scope for market power abuse, it is important to be able to address all parts of the *supply chain* (particularly in driving for efficiencies), rather than having certain key elements escape access on fair commercial terms.
- 7. *Is the Ports Access Regime appropriate – is it able to fix the above matters or will it impose excessive additional costs and risks ?***
- ABB believes appropriate Ports Access Regime promulgated by ESCOSA (pp 7-12, Discussion Paper) will capably be able to address pilotage access issues. Although it is noted the regime has yet to be tested.

² These could range from say Despatch / Demurrage costs most likely (eg. pilots tardy availability on presentation of vessels) to more extreme cases of actual ship diversion to alternative port(s).

- ABB presumes and has not seen evidence to the contrary, that ESCOSA will implement a light handed approach similar to that recommended to the South Australian Government in its Ports Price Review Summary 3rd November 2003. As such, exposure to excessive additional costs and risks are likely to be minimized.

3.5 Shiploaders

Interested parties are invited to comment on the need for the regulation of shiploaders under the Ports Access Regime – in particular addressing the seven assessment criteria.

1. *Does the structure of the market for the Regulated Services suggest market power could exist ?*

- Yes.
- ESCOSA has correctly identified the concentration of shiploading services to one player only in South Australia (AusBulk) within the grain industry. This is in respect of the six proclaimed ports. Ardrossan is not currently used for the loading of grain vessels.

2. *Is market power being misused or is the potential there for it to be misused ?*

- ABB did have reason for concern in bringing a matter for judicial judgment 2001. This matter has since been resolved.
- ABB also brings to ESCOSA's attention AusBulk's conflict of interest being both a bulk handler and a marketer of grain.
- Finally ABB does note the concentration of market power and limited alternatives.

3. *Do customers have alternative sources ?*

- Generally speaking no.
- For the export of South Australian grain ABB limits itself to the six proclaimed ports operated by AusBulk. For certain tonnage ABB can redirect border tonnage / vessels into Victoria (eg. south-east to Portland). However such tonnage is marginal and insignificant compared to the total quantum.
- Ardrossan is not currently used for the loading of grain vessels.
- Landbringing tonnage interstate is not an economic alternative.

- ESCOSA also correctly alludes to a flaw in the current Ports Access Regime whereby :-
 - regulation only encompasses infrastructure formerly belonging to the Department of Marine & Harbours. The extent of the infrastructure and the services provided from same vary with each of the six proclaimed ports; and
 - secondly, should a port operator construct alternate infrastructure, then services provided for same would escape the Ports Access Regime.

4. *Is competitive entry possible ?*

- There are shiploading barriers to entry inclusive :-
 - Legislative requirements;
 - Geographics (limited deep-water draft alternate locations);
 - Supply chain specifics (eg. transport routes connecting grain stored in up-country silo to berths);
 - Limited market size;
 - Infrastructure costs ; and
 - Socio-political and current market participant(s) interplay.
- 2001 / 2002 AWB & ABB endeavored to explore developing a new port (Port Stanvac). Although prima facie economically attractive, progress was halted due to political pressures.
- ABB understands another corporate is currently considering potential development of a port at Myponie Point. However ABB understands aforementioned handicaps are again stalling development (?) progress.

5. *Does the answer vary between proclaimed ports and between the goods being moved ?*

- No, refer answer above whereby ABB is limited to the six proclaimed ports where AusBulk has shiploading facilities.
- There are port specifics influencing certain ships to different ports. In the advent of larger sized ship-buildings, accessing deeper draft ports will become more important.

6. *Are the above Regulated Services of sufficient importance to the South Australian economy to warrant economic efficiency concerns ?*

- Yes. ABB understands ESCOSA is familiar with or can access shiploading costs both within and outside South Australia.

- In order for our company to maintain its international competitive position, it is important to generate downward pressures on supply chain costs of which shiploading encumbrances form a major part thereof. It is also imperative that ABB be able to access and utilise all elements of the supply chain on fair commercial terms.

7. Is the Ports Access Regime appropriate – is it able to fix the above matters or will it impose excessive additional costs and risks ?

- ABB believes appropriate Ports Access Regime promulgated by ESCOSA (pp 7-12, Discussion Paper) will capably be able to shiploading address access issues. Although it is noted the regime has yet to be tested.
- ABB as previously noted in former ESCOSA submissions, South Australia total / mt grain exporting costs are markedly higher than Western Australia and Victoria / NSW. ABB has already alluded to sensitivities to export costs being critical in being internationally competitive and generating Grower pool returns. Shiploading is one part of the total equation. Particularly when there is scope for market power abuse, it is important to be able to address all parts of the *supply chain* (particularly in driving for efficiencies), rather than having certain key elements escape access on fair commercial terms.
- ABB presumes and has not seen evidence to the contrary, that ESCOSA will implement a light handed approach similar to that recommended to the South Australian Government in its ports price Review Summary 3rd November 2003. As such, exposure to excessive additional costs and risks are minimized.
- However, ABB does note that the Ports Access review only relates to one element of terminal shiploading processes (ie : that which relates to infrastructure formerly owned by the Department of Marine & Harbours). To have real and consistent effect, ABB supports expanding regulation to all port shiploading significant infrastructure facilities.

3.6 Land

Interested parties are invited to comment on the need for the regulation of access to land under the Ports Access Regime – in particular addressing the seven assessment criteria.

1. Does the structure of the market for the Regulated Services suggest market power could exist ?

- Prima facie yes. Arguably and for example, Flinders Ports and AusBulk are in privileged positions in generating land use compatible or biased to their own interests.
- 2. *Is market power being misused or is the potential there for it to be misused ?***
- ABB does not have evidence to suggest market power is being misused or to fully appreciate the potential for misuse.
 - It is important to note that land in connection with regulated facilities (ie, adjacent to births, shiploaders and the like) is limited. Review of access on fair and commercial terms needs to be done on a case-by-case basis.
- 3. *Do customers have alternative sources ?***
- Generally speaking, the opportunities for alternate land use and securing land are limited. It is important in such cases that access is able to be secured on fair commercial terms.
- 4. *Is competitive entry possible ?***
- There are barriers to entry prime being limited opportunities. Refer comments above re shiploading.
- 6. *Does the answer vary between proclaimed ports and between the goods being moved ?***
- Land development / access is port specific. Also, potential use of that land and interconnectivity with other maritime services may vary on a case-by-case basis.
- 6. *Are the above Regulated Services of sufficient importance to the South Australian economy to warrant economic efficiency concerns ?***
- Potentially yes.
 - Cases vary but if interested parties are denied access on fair commercial terms, such could have significant secondary socio-economic impact, augment already existing market power and / or deprive the state with lost opportunity.
- 7. *Is the Ports Access Regime appropriate – is it able to fix the above matters or will it impose excessive additional costs and risks ?***

- ABB believes appropriate Ports Access Regime promulgated by ESCOSA (pp 7-12, Discussion Paper) will capably be able to shiploading address access issues. Although it is noted the regime has yet to be tested.
- ABB is of the opinion that the Ports Access Regime promulgated by ESCOSA (pages 7-12 of the Discussion Paper) will be able to capably address land access issues. ABB presumes and has not seen evidence to the contrary, that ESCOSA will implement a light handed approach similar to that recommended to the South Australian Government in its ports price Review Summary 3rd November 2003. As such, exposure to excessive additional costs and risks are minimized.

SUMMARY

- ABB recommends the Ports Access Regime (ie : Part 3 of the Maritime Services (Access) Act 2000) continuing for a further three years from 31st October 2004.
- This includes the Ports Access Regime encompassing :-
 - Essential Maritime Services;
 - Pilotage Services;
 - Shiploading; and
 - Land in connection with other Regulated and / or Maritime Services.
- To be more encompassing and consistent³, ABB supports extending the Ports Access Regime to all terminal facilities beyond that which was formerly owned by the Department of Marine & Harbours.

³ cf : In Victoria where only certain Geelong and Portland significant infrastructure facilities fall under the auspices of Ports Access Regulation of the Victorian Essential Services Commission.