

23 November 2010

Submissions – SA Ports
National Competition Council
GPO Box 250
MELBOURNE VIC 3001

By email: saports@ncc.gov.au

Attn: Ms Natalie Naylor

Dear Ms Naylor,

Thank you for your email of 20 October inviting Ports Australia to make a submission addressing an application made by the Premier of South Australia, the Hon Mike Rann MP, under s 44 M of the *Trade Practices Act 1974 (Cth)* for the certification of the South Australian Ports Access Regime established under the *Maritime Services (Access) Act 2000 (SA)*

Ports Australia - Representation

Ports Australia is the peak industry body representing all port corporations, both publicly and privately owned, at the national level. Our website is at www.portsaustralia.com.au. Ports Australia is a constituted company limited by guarantee, with a Board of Directors comprising the CEOs of ten member port corporations.

The Ports Australia Position

Ports Australia supports the application for certification of the Access Regime. Our support is based on a number of grounds:

(a) The regime has endured

Stakeholders in the maritime industry operating in South Australia are now well accustomed to the regime and appear to us to accept that it is tried and tested. It has now been in place since 2001 and has the attributes of being simple and transparent, as well as delivering fairness to the various parties involved.

(b) It meets COAG criteria

The Access Regime is, in our view, consistent with the principles and requirements articulated in the COAG Competition Principles Agreement. COAG has further recognised through the Competition and Infrastructure Reform Agreement (CIRA) that State based competition regimes are the best vehicle to regulate State infrastructure and to achieve consistency such regimes should be certified.

(c) The benefits of a Single Access Regime

Certification will deliver certainty to stakeholders in that they will plan and operate under the rules of a single regulator. This is not only consistent with good regulatory practice it avoids a situation where, in the event that both the Access Regime and the Declaration Process under the TPA are applied then inconsistencies as well as uncertainty and delay

are almost assured. It means that the rights of all stakeholders remain the same in not being (potentially) subject to the arbitration of separate sets of rules and that compliance costs can be managed with a greater degree of certainty.

We further observe that, in any event, Clause 6(2) of the CPA provides that third party access regimes established by Part 111A of the TPA are not intended to apply to services covered by a State or Territory based access regime.

Duration of Certification

Ports Australia notes that investments made by port corporations and other port service providers are “lumpy” by their very nature. The provision of a single additional facility whether it be a new berth, terminal, channel and so on brings with it large quantum leaps in the provision of capacity. These infrastructure investments are very strategic and typically are built to a life of 50 years or longer.

Accordingly it is our contention that certification should be provided for a period of no less than 10 years and ideally for a longer period as regulatory certainty is a necessary ingredient to instilling confidence that these types of investments can be made within settings that remain predictable for the longer term.

Thank you for the opportunity to comment on this important matter.



David Anderson
CEO
Ports Australia

