

22 November 2010

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

Emailed to: saports@ncc.gov.au

Dear Sir, Madam

RE: Application for Certification of South Australian Ports Access Regime

I refer to the recent email regarding the application from the Premier of South Australia for certification of the South Australian Ports Access Regime (“Access Regime”) as established under the Maritime Services (Access) Act 2000 (SA).

Flinders Ports supports the application for certification of the Access Regime established under the Maritime Services (Access) Act 2000 (“Access Regime”).

The Access Regime has been in place since 2001 and is open, transparent and well understood within the South Australian maritime industry. It is also well balanced, simple and has been referred to previously as a benchmark for maritime access regimes in Australia. Flinders Ports would also support the view that the Access Regime meets the requirements of the Council of Australian Governments’ Competition Principles Agreement (“CPA”).

The benefit of certification is that it will provide greater certainty to access seekers, users and providers of maritime services in that these stakeholders will be regulated under and subject to only one access regime. This greater regulatory certainty has many benefits for access seekers, users and service providers of maritime services, such as:

1. the method of processing and issues to be considered in all applications will be consistent under the Access Regime, as opposed to the inconsistencies that are likely to arise if both the Access Regime and Declaration (under Trade Practices legislation) processes are applicable.
2. the rights that users and access seekers have under the Access Regime should not differ from other users and access seekers who are able to obtain rights through arbitration under a Declaration.
3. the potential decreased administrative and compliance costs for service providers.

Flinders Ports notes that the CPA specifies an intended purpose that State based regimes have been the primary and preferred way of regulating access to State infrastructure. Further, under Clause 6(2) of the CPA the third party access regime established by Part IIIA of the Trade Practices Act 1974 (Cth) (TPA) was not intended to cover a service provided by means of a facility where a State or Territory access regime covers a facility.

This approach was confirmed by the Competition and Infrastructure Reform Agreement (CIRA) between the Commonwealth, the States and Territories which continued the fundamental approach that State regimes were to be the primary method of regulating State infrastructure and that to achieve a more consistent approach each State and Territory access regime should be certified.

Flinders Ports has committed substantial capital over the past 9 years associated with the development of and upgrades to the ports that it operates within South Australia. The Access Regime as managed by ESCOSA has supported this development by providing an appropriate regulatory framework which is well accepted and understood by users.

Flinders Ports would recommend that the NCC support the request made by the South Australian Government in relation to the certification of the Access Regime. Flinders Ports would also propose that the certification period be at least 10 years and would request that a longer period be considered given the long term nature of the infrastructure being developed and the direct relationship that pricing (and the level of certainty of the pricing structure put in place) has with the type of port infrastructure development being undertaken.

Yours sincerely



Mark Travers
Chief Financial Officer / Company Secretary