

10 March 2021

Ms Julie-Anne Schafer  
President  
National Competition Council  
Level 17, Casselden  
2 Lonsdale Street  
MELBOURNE VIC 3000

Email: [info@ncc.gov.au](mailto:info@ncc.gov.au)

Dear Ms Schafer

**Re: Extension of certification of the South Australian Ports Access Regime**

I refer to the application of the Premier of South Australia, the Hon Steven Marshall MP, dated 22 January 2021 requesting that the National Competition Council (**Council**) recommend to the Commonwealth Minister that the certification of the South Australian ports access regime (**Access Regime**) as an “effective access regime” under Part IIIA of the *Competition and Consumer Act 2010 (Cth)* (**Act**) be extended for a further 10 years (**Application**).

As you know, Flinders Ports Pty Ltd (**Flinders Ports**) is the service provider of the infrastructure that is the subject of the Access Regime.

Flinders Ports has provided the Council with a submission in support of the Application and has now commenced reviewing the non-confidential submission lodged by Qube Ports Pty Ltd (**Qube**) dated 26 February 2021.

While Flinders Ports considers that Qube’s submission is entirely baseless and misleading and fails to address the legal test required for certification under the Act, it is virtually impossible for us to respond substantively to many of the critical allegations in Qube’s submission because they have all been designated as confidential in a confidential annexure. Flinders Ports accordingly has no real opportunity to respond to the very reasons on which Qube relies in alleging that the Access Regime is not an effective access regime under Part IIIA of the Act.

This is confounding because presumably some or all of the information in the confidential annexure is conduct engaged in by us which cannot, on any view, be confidential in respect of Flinders Ports.

I am concerned that if this information is not disclosed to us immediately, Flinders Ports will not be able to properly respond to Qube’s submission and will be subject to a regulatory process that lacks procedural fairness and natural justice.

In these circumstances, Flinders Ports requests that the Council immediately either:

- provide all of the information in the confidential annexure of the Qube submission to us; or
- assess what information in the confidential annexure of the Qube submission is genuinely confidential to Qube, make that material accessible to us on an “external counsel only” basis, and disclose the rest of the information in the annexure to us.

I would be happy to meet with the Council at any time during this process to discuss the Application, our submission, Qube's unfounded allegations and/or the above confidentiality issue.

I am also happy for this letter to be made available on the Council's website as part of the consultation process.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a trailing line extending to the right.

**Stewart Lammin**  
**Chief Executive Officer**