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**17 March 2021**

By email: info@ncc.gov.au; Richard.york@acc.gov.au; Kathryn.wood@acc.gov.au

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

Copy to Mr Richard York  
Kathryn Wood

Dear Ms Schafer

**Application for certification of the South Australian ports access regime - submission by Qube Ports Pty Ltd**

We act for Qube Ports Pty Ltd (**Qube**) and refer to:

- the application of the Premier of South Australia dated 22 January 2021 requesting re-certification of the South Australian ports access regime (**Application**);
- the submission made by Qube to the National Competition Council (**NCC**) dated 26 February 2021 opposing the Application (**Qube Submission**); and
- a supplementary submission filed by Flinders Ports Pty Ltd (**Flinders Ports**) dated 10 March 2021 (**Flinders Supplementary Submission**).

In short, the Flinders Supplementary Submission makes a number of statements to the effect that it is “*virtually impossible*” for Flinders Ports to engage meaningfully with the issues raised in the detailed (25-page) Qube submission, without also being provided access to the short confidential annexure.

In this regard, we note that Qube’s public submission is more than twice the length and detail of the access regime itself and more than ten times longer than the submission made in this process by Flinders Ports. Yet Flinders Ports appears to suggest that Qube has not provided adequate public detail or transparency.

As the NCC is aware from our client’s submission, Qube’s concerns regarding the South Australian ports access regime are clear and credible and based on the obvious structural failings of the South

Australian ports access regime, given the vertically integrated (and almost unregulated) nature of Flinders Ports as the private operator of all of the seven key port facilities in South Australia.

Flinders Ports suggests that maintaining the current regulatory framework will “*preserve Flinders’ Ports confidence in continuing to invest in key projects*”. No doubt this is correct, given the freedom which the regime offers for Flinders Ports to engage in discriminatory and monopoly conduct, and leverage investment in port infrastructure into its activities related and contestable markets, at the expense of investment and competition by others in the South Australian port supply chain.

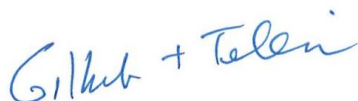
The various assertions in the Flinders Supplementary Submission are groundless, made without evidence, and have been addressed in the Qube Submission. Qube submits that they offer the NCC no assistance or evidence upon which to find that the South Australian port access regime is effective.

Despite objecting to the basis of the Flinders Supplementary Submission, Qube notes that in order to assist the NCC process, Qube is prepared to facilitate disclosure of Confidential Appendix A by the NCC to Flinders Ports, subject to appropriate confidentiality arrangements being agreed. In doing so, our client notes that it is not engaged in proceedings under section 46 and the evident structural failings of the regime are not dependent upon it establishing the factual examples set out in the Confidential Appendix – the examples are provided only to demonstrate the real and continuing practical “day to day” problems caused by the inadequacy of the regime.

We would welcome the opportunity to discuss with the NCC some practical arrangements to facilitate provision of the Confidential Annexure A to Flinders Ports.

This letter may be published as part of the NCC process.

Yours sincerely

A handwritten signature in blue ink that reads 'Gilbert + Tobin'.

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