



# 2014 Victorian Ports Review

Review of current regulatory framework

June 2, 2014

TRIM REF:

# Purpose of 2014 Review

- The Commission must conduct a review and make recommendations to the Minister for Finance on:
  - whether the prescribed port services should continue to be subject to price regulation, and if so
  - the form of that price regulation
- 2014 Review undertaken in context of existing legislative, regulatory and ownership arrangements – focus on prescribed services provided by Port of Melbourne (PoMC)

# Current prescribed services

- I. Provision of channels for use by shipping in Port of Melbourne, including shared channels
- II. Provision of berths, buoys or dolphins in connection with berthing of vessels carrying container or motor vehicle cargoes at Port of Melbourne
- III. Provision of short term storage or cargo marshalling facilities in connection with loading or unloading of vessels carrying container or motor vehicle cargoes at the Port of Melbourne

# Current regulatory framework

- Price monitoring regime given effect through the **Price Monitoring Determination** for Victorian Ports 2010
- A light-handed form of economic regulation – the Commission monitors prices, service quality and profitability of the prescribed services at the PoMC
- The Commission has no power to set prices or direct the PoMC to charge prices

# Commission's approach to 2014 Review

- **First**, determine extent of market power held by PoMC
  - Then assess available evidence to ascertain whether PoMC has exercised that market power
- **Second**, determine what (if any) form of economic regulation should apply – including assessing the existing regulatory framework against following criteria:
  - Transparency
  - Effectiveness
  - Proportionality
  - Accountability
- **Third**, propose a new regulatory framework (if any)
  - Make recommendations regarding the regulation of prescribed services and, if regulation is to apply, the necessary details

# Market power assessment approach

- Existence of market power examined in relation to PoMC's prescribed services having regard to:
  - the existence of barriers to entry to the relevant defined service markets
  - whether there is competition between PoMC and other major Australian ports
  - whether countervailing power exists in relation to port users

# Market power findings

| Channels   | Containers   | Motor vehicles   |
|--|--|--|
| <p>PoMC has significant market power due to:</p> <ul style="list-style-type: none"><li>• physical, operational and regulatory barriers to entry</li><li>• lack of competition from other ports</li><li>• lack of countervailing power given importance of calls at Port of Melbourne</li></ul> <p>For shared channels, PoMC's incentive to discriminate is limited by lack of competition for majority of trades</p> | <p>PoMC has significant market power due to:</p> <ul style="list-style-type: none"><li>• high barriers to entry</li><li>• limited scope for competition from other ports</li><li>• lack of countervailing market power held by its customers</li></ul> | <p>PoMC has significant market power due to:</p> <ul style="list-style-type: none"><li>• limited scope for competition from other ports</li><li>• locational advantage of the port as a point of entry into the broader Melbourne market for motor vehicles</li></ul> <p>New market entry is unlikely in short to medium term due to proposed increase in capacity at PoMC</p> |

# Assessment of PoMC's performance & draft recommendation

## Nature of regulatory problem

- There is potential for PoMC to misuse substantial market power with associated adverse consequences for economic efficiency
- As a result, there is a case for economic regulation
- However, form of regulation needs to reflect extent to which PoMC has actually exercised its substantial market power

## Available evidence on exercise of market power

- Price movements have generally been in excess of CPI growth
- But not substantially so, introduction of the Port Licence Fee excepted.
- Reported service quality outcomes have been stable or improved
- Reported profitability does not appear to have been excessive

The Commission's draft recommendation is that the current prescribed services continue to be subject to economic regulation



# Assessment of current framework

## Transparency

- Improve by providing greater clarity regarding objectives and operation of the framework and by focussing more on self-reporting regime

## Effectiveness

- Current framework is likely to have contributed to the finding that PoMC has not misused its substantial market power
- There is no evidence to warrant a more heavy-handed form of regulation being applied to PoMC at this time

## Proportionality

- Scope for reduction in regulatory burden imposed on PoMC while still maintaining the effectiveness of the price monitoring form of regulation
- Lessen PoMC's reporting requirements to Commission

## Accountability

- Move to self-reporting of output-based key performance indicators to enhance PoMC's accountability
- KPIs for pricing, service quality and profitability of prescribed services

# Proposed amendments to current regulatory framework

| Current framework  | Proposed new framework   |
|--|--|
| Prescribed services in the Port Management Act   | Retain existing prescribed services  |
| No objectives for price monitoring regime  | Include objectives of price monitoring regime  |
| PoMC must publish annual Reference Tariff schedule   | Retain this obligation – plus publish weighted average annual changes in wharfage and channel fees   |
| PoMC must prepare Pricing Policy Statement   | Retain this obligation – plus streamline pricing principles & improve clarity of PPS, including underlying basis of prescribed service prices  |
| Disjointed publication of financial, price, & service quality information in relation to prescribed services   | PoMC to publish annually reference tariff information, two service quality indicators & RoR information on prescribed services   |
| No complaints notification process administered by PoMC  | Complaints notification process involving PoMC, Users & Commission – PoMC to investigate complaints by Users & advise Commission of complaint & response to it, Users may also notify Commission |
| No reporting to Commission on consultation outcomes  | PoMC to provide annual summary of outcomes of its stakeholder consultation in relation to prescribed services to Commission  |
| PoMC submits annual regulatory reports in relation to prescribed services to Commission – range of audited & detailed financial, price, volume & service quality information | PoMC no longer required to provide annual regulatory accounts to the Commission  |

# Details of proposed framework

## Objectives of regime

- Expose exercise of substantial market power by PoMC, including engaging in monopoly pricing
- Enable Commission, port users & customers & other stakeholders to be informed about prices & performance associated with provision of prescribed services

## Pricing

- Clearly distinguish between prescribed & non-prescribed service wharfage & channel fees in tariff schedule
- One set of pricing principles in Pricing Principles Statement
- Explanation of underlying cost basis of wharfage & channel fees, including Port Licence Fee recovery

## Service quality

- % of vessels delayed (berth not available)
- % of users reporting satisfaction in customer surveys

## Profitability

- Rate of return earned on prescribed services

## Consultation with port users

- PoMC to provide annual summary of outcomes of all its stakeholder consultations to Commission

## Complaints notification

- Not a complaint investigation or dispute resolution role for Commission
- Assist Commission to stay informed about emerging issues of concern at port
- Commission to record complaints & provide relevant commentary in its Annual Report

# Key Messages

- Sought to significantly reduce the regulatory burden
  - removing the requirement for detailed regulatory accounts (output based reporting rather than input based)
  - greater reliance on self-reporting by PoMC
- Identify a limited set of indicators most relevant to port users and monitoring
- Light handed regime - consistent with other Australian port monitoring regimes
- Independent economic regulation with reviews every 5 years to monitor market power issues

# Next steps

- Public submissions on Draft Report due by 6 June 2014
- Final Report with Commission's recommendations will be provided to Minister for Finance by 30 June 2014
- New Price Monitoring Determination to be developed by Commission following Government response to Final Report

## **Further information:**

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