

27 June 2014

Our ref: C/14/8482

The Hon Robert Clark MP
Minister for Finance
Level 26, 121 Exhibition Street
Melbourne VIC 3000

Dear Minister

FINAL REPORT – ESC REVIEW OF VICTORIAN PORTS REGULATION JUNE 2014

I am writing to provide you with the Essential Services Commission's (the Commission) Final Report — Review of Victorian Ports Regulation, June 2014.

Under section 53 of the *Port Management Act 1995*, the Commission is required to conduct and complete an inquiry (referred to as a review) every five years to make a recommendation to the Minister administering the *Essential Services Commission Act 2001* as to whether or not prescribed port services are to be subject to price regulation and the form of that price regulation.

Summary of the proposed monitoring regime

In summary, the Commission recommends that the current prescribed port services continue to be subject to price regulation via a light-handed monitoring regime. The purpose of the monitoring regime is to identify the exercise of the Port of Melbourne Corporation's (PoMC) substantial market power in relation to prescribed port services.

The key elements of the recommended monitoring regime are:

- o a self-reporting regime — whereby PoMC will publicly publish its prices for prescribed services and a small set of indicators on price, profitability and service quality annually on its website. Reporting on such indicators is consistent with other light-handed ports monitoring regimes in Australia.
- o PoMC to prepare a Pricing Policy Statement (PPS) at the start of each regulatory period (every five years) which sets out how PoMC will set prices for port services. The PPS would be published on PoMC's website. The requirement for a PPS was supported by stakeholders and the Commission considers that the PPS is an important means of providing greater pricing transparency.
- o a complaints notification requirement — which will enable port customers and users to bring any matters of significant concern regarding the provision of PoMC's services or pricing to the Commission's attention. The complaints notification requirement would not give the Commission any role in complaints investigation or dispute resolution — rather, it would assist the Commission to stay informed about emerging issues of concern at the port and form a view about the appropriate nature of economic regulation in future reviews.

- PoMC to provide an annual summary of stakeholder views and outcomes to the Commission in relation to PoMC's consultation processes in relation to its prescribed services. This should pose no added regulatory burden as the Commission understands PoMC already collects and reports this information internally. This recommendation will enable the Commission to better understand the nature of the consultation undertaken by PoMC with port customers and users and provide context for the Commission's assessment of market power issues during the next regulatory period.

The Commission's proposed price monitoring framework represents a reduction in the regulatory burden for PoMC as they are no longer required to submit detailed financial and business information to the Commission every year in the form of regulatory accounts. Rather, there is greater reliance on PoMC to publicly self-report information that is of most relevance to port users and customers.

At the same time, a number of 'safety nets' exist in the form of a complaints notification requirement and annual reporting of stakeholder consultation outcomes which will serve to alert the Commission to any systemic issues at the port. Combined with the legislated five yearly independent public reviews of port pricing, the proposed monitoring regime provides clarity in relation to how prescribed port services will be regulated regardless of future ownership arrangements at the Port of Melbourne.

The detail regarding our findings and recommendations are set out in the Executive Summary of the final report.

Release of Final Report

In accordance with the section 45(5) of the *Essential Services Commission Act 2001* (the Act) the Minister for Finance (the Minister) is required to cause a copy of the Final Report to be laid before each House of the Parliament within 7 sitting days of the House after receiving the Final Report.

The Act states that the Minister must, after the Final Report has been laid before each House of the Parliament, or if the Parliament is not sitting, within 30 days after receiving a final report, ensure that a copy of the Final Report is available for public inspection.

Next Steps

Following the Victorian Government's response to the Commission's recommendations, the Commission will develop and implement a new price monitoring determination (the regulatory instrument that gives effect to the monitoring regime) and any other matters raised by the Government in its response. There is no specified timeline regarding the Government's response.

If you would like to discuss the recommendations or if your office requires a briefing, please do not hesitate to contact me directly on 9032 1316 or Dominic L'Huillier, Senior Regulatory Manager (Ports, Rail, Taxis & Towing) of the Commission's transport branch on 9032 1365.

Yours sincerely



Dr Ron Ben-David
Chairperson