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Dr Ron Ben-David
Chair
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

Dear Dr Ben-David

STATUTORY REVIEW OF PORT PRICING REGULATION: ADDITIONAL MATTERS

Under Section 53 of the *Port Services Act 1995*, the Commission is required to inquire into the regulation of pricing at Victorian ports every five years. The next report is due in June 2009. In addition to the matters set out in Section 53 of that Act, under the powers vested in me by Section 41 of the *Essential Services Commission Act* 2001 (the Act), I am referring related matters to the Commission for inclusion in that inquiry.

As required under Section 41(1A) of the Act, I have consulted with the Minister for Roads and Ports on this matter.

In addition to the statutory requirement to report on whether or not prescribed port services should be subject to price regulation and, if so, the form of that regulation, there are some obligations arising from the Council of Australian Governments (CoAG) Agreements that should be considered in the context of this review.

As part of Victoria's obligations arising from the Competition and Infrastructure Reform Agreement (CIRA), signed at the CoAG meeting of 10 February 2006, Victoria agreed to review the economic and planning regulation of significant ports to ensure the regulation is consistent with the principles agreed in the CIRA. I would like to remind the Commission of the statement of principles relating to port regulation as agreed in clauses 4.1 and 4.2 of the CIRA. I have attached a copy of these clauses for your information.

Clause 2.9 of the CIRA requires that all parties to the CIRA submit their state-based third party access regimes to the National Competition Council (NCC) for certification by the end of 2010. Victoria indicated it intended to submit the Channels Access Regime to the NCC in 2009. Each regime will need to be reviewed prior to submission to the NCC.

It would be preferable for the Commission to review the Channels Access Regime at the same time as it undertakes the ports pricing review.

Therefore, in addition to inquiring into the matters outlined in section 53 of the *Port Services Act*, I am referring the following additional matters to the Commission:

- in making recommendations about the regulation of Victorian ports, including pricing and access regulation the Commission should have regard to the principles outlined in clauses 4.1 and 4.2 of the CIRA;
- the Commission is to assess whether the Channels Access Regime is necessary in order to ensure competition or competitive tension in upstream and/or downstream markets;
- if it considers there is a net benefit from continuing the Victorian Channels Access Regime, the Commission should assess whether the regime in its current form is able to be certified by the NCC, or if not, assess what changes would render it able to be certified; and
- the Commission should take particular note of recent amendments to the *Essential Services Commission Act*, in particular, the insertion of Part 3A and the implications of this for the design and assessment of access regimes.

If you or your staff would like any further information, please contact Ms Geraldine Anthony, Senior Economist, Department of Treasury and Finance, on 9651 5587.

Yours sincerely

TIM HOLDING MP
Minister for Finance, WorkCover
and the Transport Accident Commission

Competition and Infrastructure Reform Agreement

Port competition and regulation

4.1. The Parties agree that:

a. ports should only be subject to economic regulation where a clear need for it exists in the promotion of competition in upstream or downstream markets or to prevent the misuse of market power; and

b. where a Party decides that economic regulation of significant ports is warranted, it should conform to a consistent national approach based on the following principles:

i. wherever possible, third party access to services provided by means of ports and related infrastructure facilities should be on the basis of terms and conditions agreed between the operator of the facility and the person seeking access;

ii. where possible, commercial outcomes should be promoted by establishing competitive market frameworks that allow competition in and entry to port and related infrastructure services, including stevedoring, in preference to economic regulation;

iii. where regulatory oversight of prices is warranted pursuant to clause 2.3, this should be undertaken by an independent body which publishes relevant information; and

iv. where access regimes are required, and to maximise consistency, those regimes should be certified in accordance with the *Trade Practices Act 1974* and the Competition Principles Agreement.

4.2. The Parties agree to allow for competition in the provision of port and related infrastructure facility services, unless a transparent public review by the relevant Party indicates that the benefits of restricting competition outweigh the costs to the community, including through the implementation of the following:

a. port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services;

b. where third party access to port facilities is provided, that access should be provided on a competitively neutral basis;

c. Commercial charters for port authorities should include guidance to seek a commercial return while not exploiting monopoly powers; and

d. any conflicts of interest between port owners, operators or service providers as a result of vertically integrated structures should be addressed by the relevant Party on a case by case basis with a view to facilitating competition.