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Review of Victorian ports regulation: Draft report: April 2009

Shipping Australia appreciates the opportunity of responding to this draft report. SAL notes that the draft recommendations are that the appropriate form of regulation to apply to the “prescribed services” as defined under the draft recommendation, is a price monitoring framework broadly similar to the light-handed regulatory regime that currently applies, namely:

- Price monitoring of berth services in relation to container or motor vehicle cargoes at the ports of Melbourne (and Hastings if that becomes a port handling containers or motor vehicles)
- Price monitoring of shipping channel services in the Melbourne channels and Hastings if that becomes a port handling containers or motor vehicles), and
- Price monitoring of the shared channels supplemented by a negotiated – arbitrate access regime.

The Commission has also reached a preliminary conclusion that a more limited set of port services should be regulated, within a narrower number of ports and accordingly does not recommend that the regional ports of Geelong, Portland, the current activity at the Port of Hastings or berth services at the port of Melbourne for non-containerised cargo and non-motor vehicle cargoes should be subject to regulation.

Whilst Shipping Australia had initially recommended that the light-handed regulatory pricing regime that the ESC has used over the past five years should be continued for all Victorian ports previously regulated, we accept given the reasoning in the draft report, that the draft recommendations above are appropriate and should be implemented by the Victorian Government.

On page 15 of the report the Commission sets out its reasoning why it has reached a preliminary finding that the Port of Melbourne Corporation retains the potential to exercise substantial market power with respect to the provision of port services for containerised trade. Shipping Australia maintains its view expressed in its original submission and at the public hearing, that the Corporation is only subject to competitive pressures at the margins of its activities, important though that level of competition is but fully supports the reasoning by the Commission that gave rise to the preliminary finding the Corporation does have the potential to exercise substantial market power.

Similarly, the preliminary conclusion that the POMC will most likely retain its monopoly on port services for motor vehicles in the short to medium term also appears, to SAL, to be a valid conclusion.

SAL would like to emphasise that both in respect of containerised trade and the provision of port services for motor vehicles, shipping lines do not have the scope to constrain the pricing conduct of the POMC through the exercising of countervailing market power given the strong influence of the importers and exporters in Victoria to determine where shipping lines should call and having extensive influence on the provision of shipping services generally.

Shipping Australia was also interested in the debate initially on pages 18 and 20 of the report regarding asset valuation and the concept of profit. We agree that in carrying out its price monitoring role, the question will need to be established what the Commission understands to be a “commercial rate of return” which is consistent with a competitive market outcome. We fully agree with the comment on page 145 that “within a regulatory framework for infrastructure businesses possessing substantial market power, the use of methods of asset valuation based on future earnings would introduce circularity into the asset valuation process. Unlike a competitive market, where market prices are effectively exogenous, a firm with market power has the ability to determine prices and hence the asset values in such circumstances may be used to capitalise monopoly rents.” SAL fully agrees with this conclusion and supports the approach which is recommended in this draft report to be adopted by the Commission determining a “commercial rate of return”.

Shipping Australia commends the Commission on the development of such a comprehensive report and fully supports the draft recommendations. We would be happy to elaborate on any point we have made in this brief submission or to respond to any other requests for information which the Commission may have in relation to this matter.

Kind regards

Llew Russell AM
Chief Executive Officer