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Michael Cunningham
Manager Rail, Ports and Grain
Essential Services Commission
Via Email

Dear Michael,

Thank you for allowing Alcoa the opportunity to make a submission in response to the draft report on the Review of Victorian Ports Regulation.

Our review of the document has lead to considerable concerns with respect to the outcomes it is likely to deliver. Regulators need to ensure that all critical infrastructure owned by private monopoly providers (including port related activities) are provided at reasonable rates to ensure that Australia remains competitive in the international markets we conduct business in. It would be naive to expect that commercial port operators would not take advantage of an unregulated market to artificially inflate rates to a level just under the next best alternative.

Alcoa has had some experience with monopolistic service / infrastructure providers and this has invariably lead, in our view, to non competitive behavior and, at times, attempts to realize rates of return well above commercially accepted norms. As you are aware, the current practice in Victoria has been to take a light handed approach to regulation with a price monitoring regime in place to provide some protection for the captive users of Victorian ports. This is already a relaxation from the previously prescriptive regime and has resulted in Alcoa having received claims for price increases from Victorian ports that were far in excess of any reasonable escalation mechanisms.

In Western Australia, the principle ports are all government owned and as such have a defacto regulatory regime with the ability to appeal to Government if an impasse is reached in commercial negotiations. In reality this final "umpires" decision does not typically need to be sought as the knowledge of availability of this option will usually result in a negotiated outcome. In our view this is s superior model as it allows for the development and expansion of commercial projects without the fear of later unilateral actions undermining the viability of such projects.

It is noted that the Commission has stated that "*The commission has observed that the cost of domestic land transport is such that the substitutability between container ports in* *relation to handling international cargos is relatively low… This observation means that land transport does not provide an effective competitive constraint on the market power of the port of Melbourne for domestic transport of containers"* This statement was made in the context of justifying the continuation of economic regulation of PoMC in relation to container trades for a further five years. It is difficult to understand this approach from the Commission when dealing with container trades that would typically have a relatively high cargo value per tonne carried and yet not see the same logic extended to bulk and break bulk trades where the larger volumes and lower values should exaggerate this impact. As an example, the ability of Alcoa to use road based transport to enable it to discharge bulk alumina at any port other than those immediately adjacent to its smelting operations is nonexistent.

The cost factors alone would preclude this option however the impact on the wider community due to the massive increase in road based movements of dry commodities such as alumina and ingot if these were forced onto the public roads over a far greater distance to facilitate substitution would have a detrimental effect on the quality of life for Victorian's living on or near or using the access routes required.

The Commission's preliminary conclusion that no Victorian port has market power for the provision of port services for bulk cargos is, in our view, flawed. It assumes that active competition and a scope for new entry in the provision of port services, exists and that long term contracts provide for some form of countervailing market power.

Given the cost of new port infrastructure, and the need for suitable locations to site such infrastructure, the barriers to entry for new ports to compete for existing business are prohibitively high

Any active rivalry for the provision of port services is highly dependent on the origin or destination location of the bulk commodity in question. That is to say that the above mentioned land based logistics costs associated with transporting the commodity to or from the port will have a far greater impact on the decision on port service provider than port service rates. This then enables port service providers to exploit the geographic constraints to impose opportunistic rates that can be set at any point up to just short of the freight margin for land transport to an alternate port.

The final statement in relation to bulk cargo port services that "*the use of long term contracts for bulk cargo port services provides an opportunity for users to exercise some degree of countervailing market power."* takes a simplistic view to the commercial realities of negotiating such an agreement. It does not address the fundamental issue of providing a mechanism to control the market power of a monopoly provider. The barriers discussed above will always place the cargo owner at a significant disadvantage and will force either a sub-economic outcome or result in the loss of the business altogether from Victoria and Australia's economy.

In summary, Alcoa is struggling to understand how the Essential Services Commission could believe that some form of regulation is not required for monopoly port services in all Victorian ports given the potential impact on business, employment and the community in Victoria.

Please feel free to contact the undersigned if you wish to discuss or clarify any points raised above.

Yours sincerely

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