

File: 3-2-5

10 February 2009

Michael Cunningham
Regulatory Program Manger, Industry Sectors
Essential Services Commission
Level 2, 35 Spring Street
Melbourne, VIC 3000

Dear Michael

Review of Victorian Ports Regulation

Port of Portland Pty. Ltd. (PoPL) welcomes the opportunity to participate in the Essential Services Commission's (ESC) review into the Victorian Ports Regulation that exists under the Port Services Act 1995 (PSA).

We have perused the Issues Paper issued by the ESC in January 2009 and to complement our comments below we attach a document outlining our response to the issues raised in Section 5 of the Issues Paper.

PoPL's view on future Victorian Ports regulation

PoPL supports the ESC retaining the current regulation of price monitoring of "prescribed services". This light-handed approach to regulation appears adequate as, to our knowledge, there have been no recorded instances of complaints against port pricing.

The compliance requirements do add costs to the business but these are acceptable.

PoPL would accept complete deregulation. It opposes increased regulation.

PoPL's view on the Channel Access Regime

PoPL does not support the establishment of a Channel Access Regime.

PoPL will attend the Melbourne public hearing on 3 March 2009 and invites the ESC to visit the Port of Portland before finalising its draft report in April.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Gracias', with a large circular flourish at the beginning and a long horizontal stroke extending to the right.

Peter Gracias
Business Development Manager

enc.

**ESSENTIAL
SERVICES
COMMISSION**

**PORT REGULATION
REVIEW 2009**

**RESPONSE TO
ISSUES PAPER**



10 FEBRUARY 2009

ESC Query	PoPL response
Commission's Proposed Approach	
Is the Commission's proposed approach of focussing on whether the benefits of regulation exceed the costs appropriate? Is its proposed approach to assessing these benefits and costs appropriate?	Yes.
Is the Commission's emphasis on the question of market power and its approach to assessing market power appropriate?	Yes.
Has the Commission adequately identified the alternative forms of regulation? Are the principles proposed by the Commission for assessing the form of regulation appropriate?	Yes.
Key Questions to be Addressed in the Review	
Should the existing prescribed services continue to be subject to regulation? Berth services? Channel services?	Neutral. PoPL supports the current level of regulation. PoPL does not support greater regulation as necessary.
To which Victorian ports should regulation continue to apply?	To all Victorian ports, else abolish regulation for all.
If any services should continue to be regulated, what form of price regulation should apply? For example, should price monitoring continue, or should there be price controls or some other form of price regulation? If so, what form of price regulation?	PoPL supports the continuance of the current light-handed approach to regulation through the price monitoring regime. However, PoPL would accept complete deregulation. PoPL opposes price controls or greater regulation as being detrimental to continued port investment.

<p>Are some channels "monopoly bottleneck facilities"? For example, are the Shared Channels at the entrance of Port Phillip Bay facilities of this kind? Should any of the Victorian shipping channels be subject to the channel access regime?</p>	<p>It is PoPL's view that the entrance to Port Phillip Bay is the only channel in Victoria that could be considered as appropriate to be subject to a channel access regime. However, PoPL does not support this from a policy position.</p>
<p>Does the existence of a price monitoring regime make the channel access regime unnecessary? If so, which is preferred? Should access regulation apply to berth services?</p>	<p>PoPL is unable to see a connection between price monitoring and a channel access regime. PoPL opposes access regulation to berth services.</p>
<p>Would the access regime for shipping channels meet the requirements for certification as an effective access regime?</p>	<p>No comment.</p>
<p>Market Power and Market Developments</p>	
<p>Is there substantial market power in the provision of any berth services? Does PoMC continue to enjoy substantial market power in vehicle and container trade? Have the core trades of the regional ports (dry bulk and general cargoes) remained contestable?</p>	<p>The core trades of regional ports are contestable – the loss of grain volumes from Port of Portland (pre-drought years), the import of paper pulp and the export of mineral sands and aluminium in containers through the Port of Melbourne are instances where competing supply chains are in play.</p>
<p>Is there substantial market power in the provision of any channel services?</p>	<p>Not at Port of Portland. PoPL has no issues involving access to its channels.</p>
<p>Has the structure of the market for port services changed in material respects since the previous review? Has competition between ports increased or decreased for any types of cargoes?</p>	<p>Competition between ports has increased. For example, the increased use of containers for bulk trades.</p>

<p>To what extent has the pricing behaviour of the ports been constrained by competition between ports, or countervailing power of shipping lines?</p>	<p>Quite significantly – ports are mindful of the need to offer competitive prices to ensure lowest cost supply chains in order to retain existing trades and attract new business. Shipping lines wield considerable countervailing power as a reduction in port calls is a significant loss of revenue for ports.</p>
<p>What changes have there been in cross ownership and control of ports or port terminals, and what influence has this had on the degree of competition in port services?</p>	<p>For Port of Portland, there has been no change in ownership since the last review in 2004.</p>
<p>Have any changes occurred in the logistics chain to affect competition in the ports sector?</p>	<p>Yes, especially with the provision of rail services for grain in Victoria.</p>
<p>How has the level of seaborne trade changed since the last review? What are the future prospects for growth? How does this affect competition between the ports, if at all? How does it affect their market power?</p>	<p>While international seaborne trade has grown, PoPL volumes have fallen. The recent and continuing global financial crisis will severely impact on growth in the short to medium term. PoPL is seeking new volumes to improve returns. The blue gum harvest will be contested by Geelong and Adelaide.</p>

Benefits and Costs of Regulation	
<p>What compliance costs have been imposed on port providers by the price monitoring regime? Have the compliance costs been unduly high? Are they commensurate with the extent of market power and with the potential economic cost of the abuse of that market power?</p>	<p>PoPL's compliance costs as a result of the price monitoring regime have been incremental. We have been pragmatic in our record keeping, incorporating the prescribed services within our management accounting system, such that each prescribed service is treated as a separate cost centre that we use for management purposes as well as ESC reporting.</p>
<p>Has the presence of the regime affected the decisions of port service providers in terms of investment or port planning?</p>	<p>Not currently.</p>
<p>Does the price monitoring regime inhibit commercial flexibility in price negotiations?</p>	<p>Not currently.</p>
<p>What potential is there for future increased competition in port services? Would this potential be impeded by the presence of the price monitoring regime?</p>	<p>There is a high potential for future increased competition in port services – we have already seen this occurring in the grain and mineral sands trades and this is a real threat in the timber trade as well. We do not consider the current light-handed price monitoring regime would impede this potential.</p>
<p>Do the social benefits of the current regulatory regime exceed the social costs (i.e. the combined costs to all parties including long-term costs)?</p>	<p>No comment.</p>

Adequacy of the Existing Framework	
Have the ports exercised market power with respect to any trades over the last three years since price monitoring was introduced?	No.
If so, does this warrant the re-imposition of price controls? And should these controls apply to certain ports or services, or more broadly to prescribed port services?	No.
Has PoMC complied with the pricing principles? Has it complied with its Pricing Policy Statement?	No comment.
Have there been issues of competitive non-neutrality (one port user advantaged over another)?	No.
Does the regime provide an appropriate level of transparency? Has the price monitoring regime provided effective protection against undesirable forms of price discrimination?	Yes. The timelines of the annual Price Monitoring Report needs improvement.
Are the additional compliance and disclosure requirements for PoMC (i.e. the pricing principles and the Pricing Policy Statement) appropriate?	No comment.
Is the Commission's approach to complaint handling appropriate?	Yes, as far as PoPL is aware.
Are the prescribed services defined adequately?	Yes.
Are asset revaluations a legitimate basis for raising prices within the ports price monitoring framework? What principles should guide asset valuation for pricing purposes?	Yes – especially when you consider the ever increasing replacement cost of port assets. Any revaluation must take into account replacement cost of assets.