

FREMANTLE PORTS – RESPONSE TO ISSUES PAPER

COAG REVIEW OF WESTERN AUSTRALIAN PORTS

A review of the need for the regulation of significant ports in Western Australia and of competition in the provision of ports services at those ports is currently underway consistent with the terms of the Competition and Reform Agreement (CIRA) signed by COAG in February 2006.

The review is being undertaken by the Allen Consulting Group under the guidance of a Steering Committee chaired by the Department of Planning and Infrastructure. An Issues Paper has been prepared as the first stage of the review and stakeholders have been invited to provide submissions on issues relevant to the review as identified in the Issues Paper.

Significant Ports in Western Australia selected to be considered as part of the review include Fremantle (Inner and Outer Harbours but excluding smaller import facilities such as the Kwinana Bulk Jetty and Kwinana Bulk Terminal). Other ports included in the review as representative of ports in Western Australia are Port Hedland and Esperance.

Fremantle Ports has considered the matters raised in the Issues Paper and wishes to provide the following comments in relation to Fremantle's Inner Harbour operations.

The Need for Economic Regulation

Clause 4.1 of CIRA stipulates that 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.

In keeping with the general principles of access regulations, regulation of access is justified by the need to promote or support competition in upstream or downstream markets. Regulation for this purpose is only considered necessary if the regulated entity is integrated into those markets.

Fremantle Ports is not integrated into any of the upstream or downstream markets relevant to the operations of the Inner Harbour and has no interest in doing anything to restrict competition in those markets. Indeed, in order to build its own market, it has an incentive to encourage new entry and hence competition in those markets.

Fremantle Port actively markets its Inner Harbour facilities to attract new shipping lines and new exports which adds to competition in upstream and downstream markets.

In terms of market power, Fremantle Ports would submit that there are many checks and balances and commercial forces in place that act to prevent misuse of market power in cases where market power may exist.

These matters are alluded to in the Issues Paper and include things such as ;

- The lack of incentive to do so. Fremantle Ports is not required or encouraged to maximise profits but is required to earn a minimum rate or return on the written down optimised replacement value of its assets.
- The power of shipping lines to ensure that they obtain a reasonable price for services provided which they will always compare with prices obtained at other ports and exert pressure on ports to be competitive if they want to retain the visits.
- Contestability that exists in the provision of most services provided in the port.
- Checks and Balances in place such as the requirement to include pricing policies in Statements of Corporate Intent and Strategic Development Plans which require Government endorsement.
- The publishing of port pricing in Government publications such as Waterline.

Consistent with CIRA principles, economic regulation of a port should not be considered unless it can be clearly demonstrated that it is needed to promote competition in upstream or downstream markets or to prevent misuse of market power. Unless it can be clearly demonstrated that one or other of these very specific circumstances pertain, then the CIRA agreement implies that the port should **not** be subject to economic regulation.

Competition in the Provision of Port and Related Infrastructure Services

As indicated in the Issues Paper, the general principle underpinning Clause 4.2 of the CIRA is that competition should be allowed in the provision of port services and related infrastructure facility services, unless the benefits of restricting competition outweigh the costs to the community.

Specifically, Clause 4.2 (a) requires that port planning should facilitate the entry of new suppliers of port and related infrastructure services consistent with the efficient use of port infrastructure.

As the Strategic Manager of the Port of Fremantle, Fremantle Ports has ensured that its planning over a number of years has made provision for, and indeed encouraged, the entry of new suppliers of port and related infrastructure services. In some cases the investment required has meant that long lease terms are justified (as with the container terminals), but several years prior to the expiry of the existing container terminal leases current planning is to advertise the lease and assess the proposals received. Moreover existing planning in the Outer Harbour is making provision for the calling of expressions of interest for the new container terminal area for which the substructure is proposed to be completed in 2015. This would allow for a third container terminal operator for the Port as has been provided for in Brisbane should this be the option which best facilitates trade. It is of relevance that the Port of Brisbane after appointing a third container terminal operator has recently renewed the term of one of the existing operators without going to tender, and this presumably was in the interest of facilitating trade through encouraging investment by the existing operator as well as by the new operator. In that regard the issue of serial contestability has to be weighed against the underlying objective of facilitating trade and providing for adequate investment going forward.

Another example is the non-exclusive licence arrangements which apply for towage services in the port and any towage operator is free to apply for and obtain a towage licence subject to meeting basic safety, environmental and other operational requirements.

Also as indicated in the Issues Paper, Fremantle Ports provides a number of common user berths in the Inner Harbour where the shipping lines using those berths are free to engage any stevedoring company they desire to work at those berths providing that the company has entered into a Common User stevedoring agreement with the port. Such agreements set out basic safety, environmental and operational requirements.

The above examples illustrate how Fremantle Ports' planning makes provision for the entry of new suppliers of significant port services. It is planned that the same arrangements would apply to any new facilities owned by Fremantle Ports.

Also, consistent with Clause 4.2 (b) of CIRA, where third party access is provided to port facilities for the provision of port services such as towage or stevedoring, such access is provided on a competitively neutral and equitable basis. This is achieved by the use of standard licences and operating agreements.

Clause 4.2 (c) of CIRA indicates that port charters should include guidance to seek a commercial return while not exploiting monopoly powers. Again, as alluded to in the Issues Paper this guidance is provided by the Port Authorities Act and Government Policy on the rate of return for ports which requires a return of assets of between 5% and 8%. This policy is considered to limit any potential exploitation of monopoly powers. It is relevant that a report in 2007 by the Planning and Transport and Research Centre (PATREC) on the Performance of Western Australian Ports came to the same conclusion that ports were not exploiting monopoly powers.

Clause 4.2 (d) of CIRA requires that conflicts of interest between port owners, operators or service providers that are a result of the existence of vertically integrated structures be addressed on a case by case basis. It is not considered that any such vertically integrated structures exist in the case of Inner Harbour port operations in Fremantle.

**Fremantle Ports
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