Submission To Queensland Transport Review Of Current Port Competition and Regulation in Queensland

October 2007

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Executive Summary

Asciano welcomes the opportunity to respond to the Review of Current Port Competition and Regulation in Queensland.

Asciano is one of Australia's largest infrastructure owners, with a primary focus on transport infrastructure, including ports and rail assets. Asciano is a public company listed on the Australian Stock Exchange and owns two key businesses Patrick and Pacific National.

Asciano's assets include four ocean container terminals, bulk export facilities, a significant range of stevedoring equipment and associated services, extensive rail operations and a highly skilled workforce.

Our key comments are as follows:

- There is little competitive pressure placed on the port corporations due to the limited competition between Queensland and interstate ports. The port corporations do display natural monopoly characteristics; however, Asciano's experience is that the wider objectives of the port corporations (eg volume growth) constrain their use of this monopoly power.
- Due to the port corporations' monopoly position, bargaining power is not balanced. To date, Asciano has been able to achieve acceptable outcomes from negotiations with the port corporations. It would appear that the shared objectives between the port and stevedores and the potential for the introduction of explicit regulation provide some level of protection against abuse of the ports' monopoly position.
- It is important that port corporations deal will their customers in an unbiased way. Asciano is concerned that the focus on introducing additional stevedores into ports does not lead to preferential treatment. It is crucial that new entrants are offered terms and conditions on a competitively neutral basis.
- Asciano is concerned that the returns to port authorities are appropriate and commensurate with other competitive components of the logistics industry. While nominally such returns appear to be reasonable, it is a concern that the accounting treatment of fixed assets such as frequent upward revaluation can lead to excessive returns.
- Stevedoring in Queensland, as elsewhere in Australia is highly competitive, and the current regulatory structure and ownership of ports does not impede competition between stevedores.
- The Queensland Government and its port authorities need to exercise care and appropriate strategic vision in pursuing the introduction of additional operators into ports as this may well be counter-productive. For example, the appointment of a third stevedore, Hutchison, as operator of the 11/12 berths at the Port of Brisbane may well increase competitive pressures but may also significantly reduce the capacity of the incumbent stevedores to invest. Given the small size of the port compared to other container ports, this is likely to have a significant impact on the economies of scale necessary for the operation of efficient ocean terminals. Asciano is not aware of any comprehensive economic analysis that has been undertaken to ensure that the policy bias towards increasing the numbers of operators does not negatively impact the viability of stevedoring in Brisbane. While it is appropriate that the port make opportunities available to any party wishing to participate in the stevedoring market, this needs to be done with an understanding of both the benefits and impacts that increased participation will bring.

- In Asciano's view, no elements of the operation of freight logistics chains as they connect to Queensland Ports are inconsistent with clauses 4.1 and 4.2 of the Competition and Infrastructure Reform Agreement.

The remainder of this submission is directed to responding to specific questions raised in the Discussion Paper. For ease of reference, the questions are presented at the beginning of each section.

Planning Processes

Port planning should, consistent with the efficient use of port infrastructure, facilitate the entry of new suppliers of port and related infrastructure services (COAG agreement 4.2a). Does the strategic port land model as used in Queensland assist in achieving that aim?

Please identify any areas where there is scope to streamline the current planning process including reducing regulatory requirements and ensuring consistency in the administration of strategic port land.

Asciano's experience is that the strategic planning processes conducted by the various port authorities, in general, are sensitive to port user requirements and represent an appropriate balance between the needs of stakeholders.

Issues relating to short term operational planning have been highlighted as areas where improvements can be made that have the potential to yield significant benefits. In particular this relates to the integration of planning activities with the coal supply chains in central Queensland. As an example of what can be achieved through such a process, the integration of operational and strategic plans in the NSW Hunter Valley between the logistics service providers yielded an initial 15% productivity improvement. The benefits continue to flow to all stakeholders through adopting a 'supply chain' approach in contrast to planning on a facility specific basis in isolation from other supply chain participants. Such an approach is based more on a recognition of the benefits of cooperation and coordination rather than through any regulatory imperative. In fact, Asciano would expect that any attempt to impose this approach through regulation would significantly reduce its effectiveness.

Equitable Access & Competition

Are there aspects of port operations in Queensland which need to be addressed to ensure equitable third party access to infrastructure and services?

Where applicable, provide examples of any issues arising in the significant ports in Queensland where access has not been or was perceived not to be, provided in a competitively neutral manner.

Is there potential for increasing competition in the provision of port and related infrastructure facility services?

Asciano's experience is that the port corporations have been active in trying to facilitate access to their ports. The recent announcement of a third stevedore, Hutchison, to operate at the Port of Brisbane demonstrates that there is no structural impediment to the entry of new participants. However, what is unclear is whether there is sufficient understanding of the difference between the facilitation of access and the positive encouragement of additional participation. It is imperative that access to the ports be on a competitively neutral basis or Government will run the risk of distorting the market through intervention. This will almost certainly have consequences for all operators.

In some instances, where ports are operating substantially as a component of single supply chains, eg the central Queensland coal ports, it may even be detrimental for competing terminals to operate. As such, one needs to carefully analyse the benefits derived from competition compared to the additional complexity in supply chains that is concomitant with additional terminals.

This is not to say that multiple terminals or additional participation will necessarily be a bad outcome, but the ability of port terminals to compete is constrained by the complexities of their supply chains and their economies of scale. Therefore a simplistic view that numerical participation is equivalent to effective competition will not necessarily result in positive benefits to the economy. Even though there are some instances of multiple coal terminals in Queensland ports, eg Gladstone and Hay Point, these have not given rise to competition, nor were they intended to so do.

The nature of port activities such as stevedoring or the operation of bulk terminals is such that they are capital intensive and the assets have long lives. In addition, there are significant economies of scale. For example a container operation requires investment in equipment such as gantry cranes and large storage areas that would be uneconomical to operate on a small scale. These circumstances mean that there will only ever be a small number of stevedores or terminal operators able to compete effectively in any one port.

The addition of a third stevedore to the Port of Brisbane will mean that each will be competing for a share of a what is already a relatively small market with a current throughput of 800,000 TEU.[1] For example the other major Australian ports of Sydney (1.6 million TEU) and Melbourne (2 million TEU) at twice the throughput are currently only serviced by two stevedores. The introduction of an additional operator into Brisbane threatens the economies of scale inherent in ocean terminals. As far as Asciano is aware, there has been no clear analysis of the economic impact with regard to investment by the stevedores and their on-going commercial viability compared to the unquantified benefits that will arise from the additional competition.

Therefore, while it is important that third party access is provided on an equitable basis, any attempt to bias the regulatory environment towards seeking additional market participation for its own sake is likely to reduce port efficiency and risk a loss of investment. Past experience has demonstrated that stevedores will not invest in the long term assets necessary for sustained productive efficiency where they face significant uncertainty as to their future business. This in term leads to a reduction of efficiency of the port and the consequential impacts on cost, time and reputation - key concerns for the efficiency of trade.

A further issue that requires consideration is that it is vital that the terms and conditions offered to both incumbent and new operators are competitively neutral. While there has been no indication to date that new entrants will necessarily be advantaged, this remains a concern to the existing market participants, particularly where there is a policy bias towards the encouragement of new players rather than a policy of facilitation of access to opportunity available to all parties on an equal basis.

Assuming there is the potential to increase competition, will this be sufficient to ensure port authorities earn commercial returns that are consistent with those that would apply in a competitive market?

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[1] Twenty-foot equivalent units. This is a standard container size and allows comparative statistics to be used on a consistent basis. Twenty feet is equivalent to 6.1m in length.

Please provide examples where this could be achieved.

Do you consider there would be benefit to introducing price monitoring for port authorities as a first step where price regulation may be required?

Does the threat of regulation act to constrain any market power?

Are the pricing principles utilised by the significant ports covered by this review sufficient to ensure that port authorities pricing mechanisms do not result in price discrimination, cross subsidisation or any other anti-competitive results? Can you provide examples where the pricing principles:

- *Achieve the desired outcome; or*
- *Do not achieve the desired outcome.*

Would guidance in the commercial charters for port authorities be sufficient to ensure they earn a commercial rate of return while not exploiting any monopoly powers?

As ports authorities are, in the main, natural monopolies, their ability to price to achieve commercial returns is not constrained by competition. Constraints on pricing arise through the wider objectives of the authorities and the potential for more intrusive, explicit regulation. It is instructive that the only significant private port manager in Queensland, BBI at Dalrymple Bay, is subject to price regulation through an undertaking with the Queensland Competition Authority. Port users such as Asciano have found that government owned ports generally attempt to adopt pricing which is designed to achieve the maximisation of volume through the port, rather than seeking to maximise short term profits per se. This objective is well matched to that of terminal operators, end-users and the State itself. However, this leaves stevedores vulnerable to the ports' understanding of the logistics market and the ability of stevedores to absorb or pass on port costs. Such understanding will necessarily be incomplete and this leaves stevedores at risk of a port authority seeking to extract prices that challenge the on-going viability of stevedores.

Asciano is concerned that the returns to port authorities remain appropriate and commensurate with the other competitive components of the logistics industry. While nominally such returns appear to be reasonable, it is a concern that the accounting treatment of fixed assets such as frequent upward revaluation can lead to excessive returns. The majority of assets owned by the port are of either long lived or non-depreciable nature. It is therefore important that an appropriate valuation approach is taken when setting target rates of return and that inappropriate or ill-suited methodologies are not adopted that result in increased dollar outcomes while remaining apparently reasonable in percentage terms. For example the revaluation of port land in line with residential or CBD price increases may not be an accurate reflection of the real value of the land in its use as a port. This is a notoriously difficult issue to deal with as the valuation can be determined on the basis of a circular argument – the land value increases as the revenues supporting that valuation increase. For a monopoly service provider there is no market that places a curb on such increases, only the exit of customers from the captive market. As stevedores have long lived fixed assets, the barriers to exit are large and therefore, in the extreme case, it is open to the port to cause its customers to operate at a loss while being unable to exit the market.

Given Asciano's experience, what is important is that port authorities continue to see their role as economic enablers for the State rather than purely commercial businesses in their own right and that their financial returns are informed by this objective. It would be helpful to see such objectives enshrined within the charters for the port authorities, although typically the charters are already framed with such an objective in mind. It would also be helpful for the port authorities to be more transparent in their valuation methodologies so that stakeholders have a better understanding of their impact on pricing.

The ports, as significant infrastructure, are already subject to potential declaration under Part IIIA of the Trade Practices Act, and are also potentially subject to declaration under the Queensland Competition Authority Act. Asciano would expect that the potential to be subject to external regulation would serve to adequately constrain the pricing practices of a port authority in the circumstances where the authority is also subject to other pressures, such as the need to facilitate trade (as is the current position of the government managed ports). Asciano does not see any need to introduce any additional regulation of Queensland ports at this time.

Do you have concerns regarding potential conflicts of interest in relation to vertically integrated structures or port authorities exercising their regulatory powers, which should be addressed on a case by case basis with a view to facilitating competition? Are you able to provide examples?

Is it necessary to promote/improve competition in upstream and/or downstream markets for any of the significant ports in Queensland which are covered by this review?

Asciano does not have any such concerns. It is notable that Asciano has good relationships with the port authorities and it would be expected that any concerns regarding conflict of interest would be adequately addressed by the relevant authority without the need for external intervention.

With regard to the promotion of upstream/downstream competition, please see the comments earlier in this section.

Issues Specific To Certain Ports

Gladstone

Does CQPA's operational structure provide the expected competitive outcomes?

Is there sufficient separation of CQPA's "commercial" operations from its core role as a port authority at the Port of Gladstone?

Are there clear benefits to Port users from CQPA's operating structure?

Asciano does not have any concerns that the CQPA unfairly discriminates in favour of its own terminal operations. Asciano is satisfied that operational decisions are made on appropriate criteria based on the safe operation of the port, and that there is no systematic bias in favour of CQPA's own operations.

Asciano is not in a position to comment on whether the ownership of terminals at Gladstone is of benefit to any particular party, nor whether this represents the most efficient management structure for the port. From Asciano's perspective, the management structure does not negatively impact on third party operations.

Weipa

Do the current arrangements in Weipa provide for the equitable treatment of existing and future port users and stakeholders?

Asciano does not have experience with respect to operations at Weipa.