

CORRECTED VERSION

PORT OF MELBOURNE SELECT COMMITTEE

Inquiry into the proposed lease of the port of Melbourne

Melbourne — 9 September 2015

Members

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Witness

Mr Robert Coode, executive president, Australian Peak Shippers Association.

The CHAIR — I declare open the Legislative Council Port of Melbourne Select Committee public hearing. This hearing is in relation to the inquiry into the proposed lease of the port of Melbourne. I ask that all mobile telephones now be turned off. I welcome Mr Robert Coode, the executive president of the Australian Peak Shippers Association. I thank the association for its submission and you for making yourself available to the committee this morning.

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of Legislative Council standing orders. Therefore the information you give today is protected by law. However, any comments made outside the precinct of the hearing may not be so protected. All evidence is being recorded and you will be provided with a proof version of the Hansard transcript in the next couple of days for any corrections.

We have allowed one hour for this session. I would invite you to make an opening statement or talk to your submission, and the committee will then proceed to questions.

Mr COODE — Thank you very much and good morning. I have some notes here and I would like to talk to our submission. APSA membership consists of 22 individual companies and two industry associations who in turn have a membership of 24 businesses, so in total we represent 46 businesses involved in shipping, predominantly exporting but a number of them are involved in importing as well. Our numbers include large entities moving anywhere between 25 000 and 100 000 TEUs annually, medium-sized companies moving somewhere between 5000 and 10 000 TEUs per annum and a number of small operations who move anything from a handful of containers up to 1000 per annum. In total these companies move in excess of 480 000 TEU equivalents per annum through Australia's major ports. For the port of Melbourne we represent the movement of just over 240 000 TEU equivalents on a per annum basis. Therefore our membership has a vested interest in the outcomes that emerge from this very important proposed legislation.

APSA and its members are not philosophically opposed to privatisation of the port but we assert that there should be adequate legislation surrounding the lease to protect those utilising the facility from price gouging now and into the future. It seems to us that there are three main areas where a monopoly port operator can increase pricing. One is rents for land occupied by stevedores and land on which ancillary operations are carried out by the service providers to shippers, both importers and exporters. These relate mainly to transporters, container packers and storage facilities as well as container yards. The second is port charges that are applied by the port to shipping lines for ship-based charges such as tonnage and pilotage, and cargo-based fees like wharfage. The third are new charges that the new port operator sees fit to introduce to cover infrastructure investment or to unbundle current service charges to separate them out and establish new fees and charges. These may be directed at the shipping lines, stevedores or the ancillary service operators, but the plain facts are that at the end of the day these charges will filter through the logistics chain with a cost plus factor added at each link in the chain until they reach the shippers, who are bringing up the rear.

The proposed regulation, as we see it, only covers port charges, which leaves it open for the port operator to set his own agenda on the pricing and the other two areas. We note that in recent weeks some sanity has prevailed in relation to terminal rents at West Swanson Dock where the government and DP World have reached agreement on a maximum increase capped at CPI until 2025. But we ask: what happens after that? Are there going to be uncontrolled increases, and if so, has thought been given to the consequences that it will have on the tenants, the other service providers, shippers and the effective downturn on the throughput at the port?

The majority of shippers exporting their goods are price takers not price setters, because they are exporting commodities — in effect raw materials — and most of the value adding is done by their customers. These are the facts. We are not whingeing about it, but additional costs imposed in the main have to be absorbed either wholly or partially.

There appears to be nothing in place to stop vertical integration by the incumbent if at a later date they see an opportunity to involve themselves, either directly or indirectly through acquisition, in the operations of service providers within the port precinct. Vertical integration would stifle competition and its benefits available to the shippers by forcing costs and condition on the incumbents whilst at the same time attempting to win their business away from them.

As it currently stands, the legislation calls on the minister of the day to firstly activate the Essential Services Commission to implement the regulatory regime if required, but there is little in the detail to tell us what triggers an investigation into any perceived misdemeanours. In addition, it appears that the ACCC will be excluded from any oversight of the lease agreements or otherwise that would enable them to test the veracity of any anticompetitive activities.

The development of a second port in Victorian waters appears to have been pushed into the background. We see this as a dangerous notion because when the time comes — and it will — for a second deepwater port, the boat will have sailed and the state's position as no. 1 in terms of port movements will dissipate with the lack of pre-planning. Added to that is the proposition that the successful bidder for the lease of the Melbourne port will be entitled to compensation in the event of an impending need for a second port. Offering compensation will severely restrict competition between the ports by giving the incumbent an unfair advantage, not to mention the use of public money that could be directed to more urgent needs.

We are aware that the Treasurer intends to recover the PLF — sorry, the port licence fee — as an up-front lump sum for the life of the lease, estimated to be at around \$3.5 billion, from the successful bidder for the port. This generates an interest bill that the purchaser will have to pass on to his tenants, and in turn the tenants will pass it through the chain, again on a cost-plus basis, until it reaches the shippers. We say: why place this unnecessary burden on the port users? If the government needs to borrow to cover a shortfall, then it should be up-front about it. It is bad enough that the port users currently get slugged with this form of a tax without having to endure an interest bill on top of that.

APSA has already stated that it supports the philosophy of privatisation at the port, but not if it means that the cost of doing business through the port will escalate beyond fair and reasonable margins because regulation is inadequate. We recommend that the following be incorporated in the legislation: one, price-monitoring regimes be strengthened and expanded to give clarity to the intention to keep costs in check; two, remove the availability of compensation in the event of a second port being developed to cater for an increased volume of movement by exporters and importers; three, do away with the notion of insisting that the PLF be paid up-front for the life of the lease and therefore take the burden of additional interest being paid by port users. In fact we contend that when the Port of Melbourne Corporation disappears, the port licence fee would become non-existent under the current legislation.

Currently under the Port of Melbourne Corporation port users can avail themselves of a number of ancillary services — an example of that is the use of the port education centre — at no charge. There is a need to ensure that these services are retained at the current cost as they provide port users with advantages over users of other mainland ports around Australia.

Five, require parliamentary agreement to allow the lease to be extended beyond the stated 50-year term. Thank you.

The CHAIR — Thank you, Mr Coode. Thank you for your submission and opening statement. You have obviously canvassed a wide range of concerns that APSA has with the legislation. You highlighted at the end some changes that the association would like to see to the legislation, which cover some of the issues you raised in your submission. A couple that were not covered with your concluding comments relate to the issue of vertical integration and the scope of price controls, or regulation of prices. Does the association have a view on whether those two matters should be subject to regulation under the bill?

Mr COODE — Yes, we do, particularly with vertical integration. We see that as an issue that — how do I explain? Vertical integration could do a lot of damage to the integrity of the operation of the port. The intended incumbent certainly would have the opportunity to vertically integrate and get involved in the business of the port users. They would have a distinct advantage over the port users themselves and put them in a situation possibly of being uncompetitive. That then leads further down the track to possibly a monopoly, and that is the last thing, as shippers, that we want.

The CHAIR — You would like to see that specifically excluded by legislation, that vertical integration issue?

Mr COODE — We would like to see something in the legislation that takes the opportunity of vertical integration out of the system.

The CHAIR — Likewise, your concerns around the scope of pricing regulation, and you mentioned rents — —

Mr COODE — Yes.

The CHAIR — Obviously that is something that is not covered by the pricing regulation. Is it the association's view that rents and other costs should be subject to pricing regulation?

Mr COODE — Yes. In broad terms it is our view that there should be some regulation that covers the movement of pricing. In general terms things like rent increases at around about CPI we feel is fair and reasonable. We understand that prices are going to increase, but we are particularly concerned about if there is a lack of control on price increases, then price gouging will become predominant.

As I said in my presentation this morning, exporters, particularly out of this country, are not price setters, they are price takers. By the nature of the business they are in — they are in the commodity business — they do not produce value-added products; they basically sell overseas and their customers do the value-adding. We have a perception in this country about exports providing mightily to our GNP, and they do, but when you take it on the scale of the international export business, we are a bit like the flea on the backside of an elephant; we are very small. In fact in a lot of cases and in a lot of areas we are smaller than the exports that go out of New Zealand. We are not price setters, we are price takers.

The CHAIR — The ACCC chairman, Rod Sims, has publicly raised the issue that if the government seeks to maximise revenue from the sale up-front — and you talked about the port licence fee as well as the sale of the lease — that can be at the expense of the long-term interests of the port, its users and ultimately the Victorian economy and that there is a need to balance up-front revenue from the sale with the long-term interests of the asset. Is it the association's view that the government has got that balance right with the proposed legislation?

Mr COODE — Not if they are trying to extract a port licence fee as an up-front fee. As I said in the presentation, over 50 years the port licence fee works out at something like \$3.5 billion, give or take. For somebody who wants to take over the lease of the port of Melbourne, that is a hell of a lot of money to produce up-front.

The CHAIR — On top of the purchase price.

Mr COODE — They are not going to have that sort of money in their back pocket; they are going to have to borrow it. If you borrow money, you pay interest on the money that you borrow. The incumbent is certainly not going to wear the cost of that interest. He is going to want to pass it on, and unfortunately the only people he can pass it on to are the users of the port. So at the end of the day that would mean that the users of the port are paying for the interest bill for the government to be able to fund its infrastructure programs, and we do not feel that that is fair and reasonable. Generally when the government borrows money to facilitate whatever it is that it wants to take on, the total of the community shares in the cost of that interest bill, but in this case it would be one sector.

The CHAIR — Thank you, Mr Coode.

Mr MULINO — Thanks for your submission, Mr Coode. I just wanted to focus on one of the issues that you have raised, which is the economic regulation moving forward and the way in which that might protect against undue increases in a range of charges. One of the recommendations that you just put on the table is that the price monitoring regime currently in place should be strengthened and expanded. We received a written submission from DTF in recent days and some verbal evidence from them yesterday and today we are going to hear from the ESC, and we understand that in the coming days we will receive a pricing order with some detail and some redactions probably of minor numbers here and there, but fundamentally it will outline the process. Our understanding is that the proposed pricing regime to be administered by the ESC will cover 86 per cent of current revenue — so a whole raft of charges broader than it currently covers — and also uses a methodology that is more robust than monitoring, that involves a building block method more akin to what utilities are currently subject to. Is that heading in the direction that you would like to see?

Mr COODE — Possibly. I guess the devil is in the detail, and we have not seen the detail yet. That is one of the things that is of concern to us with the whole exercise, that up until now we have not really seen any detailed

cost analysis or anything to tell us what, if any, restrictions there will be on the proposed incumbent's ability to be able to pass on costs or charge fees and all that sort of thing. I guess yes, it could be the way forward, but because I have not seen any detail yet — and I do not think anybody has — we would probably like another opportunity, once we have seen it, to make a submission.

The CHAIR — Likewise.

Mr MULINO — I just wanted to flag that we have had put on the table those broad principles and high-level characteristics of the proposed regime, but it would certainly be good, once we get that further documentation, to get your feedback on that, because from the sounds of it it is going to go some way towards addressing some of your high-level concerns.

Mr COODE — All we are trying to do is get in first and make sure that our members are not put in a situation where further down the track, and I am talking possibly past 50 years, all of a sudden they find themselves being belted around the ears with costs that are unreal.

Mr MULINO — Exactly. I think everybody on the committee supports that being a regime which industry can be comforted by. Again, I think there will be some detail coming forward in relation to the way potential new charges are dealt with. In relation to the 14 per cent of revenue that relates to rent — and that was one of the issues you raised — and the way in which that is dealt with, what is your view of the result that ended up being negotiated in relation to DP World?

Mr COODE — Broadly, it was a fair and reasonable outcome. Although from the point of view of the actual rent increase, I understand that they have now gone from two-year leases to a five-year lease, so that obviously gives them a little bit more stability in their planning. I understand that the new lease goes out to 2025, but what does it mean beyond then? What is in the pipeline beyond there? Are they still going to be charged at roughly CPI on rental increases? What will the new incumbent be allowed to do or charge beyond 2025 in the form of cost increases or additional new charges? I mean, that is seven, eight years down the track; it is not very long period of time. It does not give other facilities within the port area a lot of time to do forward planning.

Mr MULINO — My understanding is that the new DP World lease is a 50-year lease.

Mr COODE — Okay. I stand corrected.

Mr MULINO — Which would align with the longer term investment cycle.

The CHAIR — With rent reviews.

Mr MULINO — Yes.

Mr COODE — But the rental increase at CPI is out to 2025. What is beyond that?

Mr MULINO — There would be reviews, yes. But the duration of the new lease is longer.

Mr COODE — The lease is longer, yes.

The CHAIR — But the rental is not.

Mr COODE — The rental is not. It is only set at CPI out to 2025.

Mr MULINO — Our understanding from the evidence yesterday is that the DTF is proposing a regulatory regime — and we will hear from the ESC today — that involves a building block kind of approach for the vast majority of revenue, but for the rental side it is seen that that would be too heavy-handed and that the mechanism that is currently in place, which is an independent expert to come in to negotiate where there is a disagreement, seems to be the standard practice for these kinds of rental arrangements around other ports, and on this occasion seems to have resulted in a reasonable outcome.

Mr COODE — I think sanity prevailed in the end. The original claim of somewhere around a 760 per cent increase was Noddyland stuff. Look, as I said before, the devil is in the detail and we have not seen the detail yet, but all we are doing is flagging these things so that if they have been missed, we need them picked up and

looked at. I am not saying necessarily we are right in our approach, but what we are saying is we want all these things looked at so that all bases are covered. Generally with these things you only get one shot of getting it right. To try and unravel something that has gone through Parliament is a hell of a lot more work.

Mr MULINO — Thank you, Mr Coode. I just say, as I think we did with one or two witnesses yesterday, once you see that document, I think the committee would appreciate hearing your feedback on that. Thank you.

Mr COODE — I am quite happy to give some feedback once we have seen the document.

The CHAIR — Thank you.

Mr BARBER — I understand you are at a disadvantage because the government wants this committee and this bill to race along really fast and has not actually been able to provide the kind of detail that you would want to see in order to answer some of these questions. So let me just ask you a more general one: the 250 000 TEU that your members are involved in, can you tell me what sort of products are going in and out in those, and also what you understand about the ultimate producers of those and their kind of margins and the impact of increased costs on them?

Mr COODE — As I said earlier, the majority of product in the containers going out are commodities. We are talking things like grains, horticulture, dairy, beef, paper — that is a broad spectrum — most of which, as I say, are commodity-type products. Basically a raw material is provided to a buyer overseas who will then take that product and add on to it before it puts it into the retail market. As far as margins are concerned, I am not privy to the exact margins these various industries are making, but I do know that world commodity prices are pretty much squeezed, and, as I said earlier on, exporters out of this country are price takers not price setters, mainly because the volume we are putting into the world market is reasonably small, so we sort of fly along on the coat-tails of the larger international exporters.

I guess like most businesses, nowadays it is not very easy to get a price increase on your goods, whether they be commodities or whether they be retail goods. So to keep your business afloat, keep the profit margins at a level that is sustainable, you look at the other side of the equation, and that is your costs — the cost of doing business. Most businesses nowadays, rather than go for a price increase, go to reduce their cost of doing business. I guess that is a fear that our members will have unless this privatisation of the port is regulated in a way that gives them some surety that they are not going to get blown out of the water with additional port costs and charges.

For exporters, the biggest part of their cost structure, apart from their production side of it, is the cost of getting the product into the port, through the port and on a boat overseas. Sea freight, your wharfages, your terminal handling charges all add up to be the major portion of your cost structure. So any substantial increase is going to have an adverse effect on them.

Mr BARBER — Which particular port fees and charges do your members pay directly?

Mr COODE — They do not pay any of them directly. They pay them all to the shipping lines. The port charges the shipping lines for having the vessel along side. The stevedores charge the shipping lines for the use of the terminal for loading the ships. Shipping lines charge the shippers for all of those costs plus the cost of freighting the goods overseas. We do not have a direct line for payment to any service provider other than the shipping lines. I may have mentioned it a couple times in my paper this morning. There is a chain. Every time an increase comes through that chain and it goes from one link to the other there is a cost-plus factor on it, because each link in the chain charges the next link for the cost of providing the services and the increase, so it is cost plus, cost plus, cost plus. At the end of the line is the shipper, and he cops the lot. He has no-one that he can pass it on to totally. He may be able to recover some of it, but certainly not all of it.

Mr BARBER — Are you able to tell me how much port-related cost a container attaches now?

Mr COODE — It varies depending on what type of container it is — whether it is a reefer, whether it is a dry, whether it is a 20-footer or whether it is a 40-footer. I think terminal handling charges just roughly at the moment sit somewhere around about \$400 a container. Wharfage on top of that is probably another \$40 or \$50, so it is a substantial cost fact.

The CHAIR — Just to be clear on that, you are talking about a standard 20-foot dry container?

Mr COODE — Yes. I stand to be corrected, but it is in that range.

The CHAIR — Thank you.

Mr PURCELL — Thank you Mr Coode. You started your presentation by saying that your association supports the lease of the port.

Mr COODE — No, I said we are not philosophically opposed to the privatisation of the port.

Mr PURCELL — Right. Can you tell me why you support it?

Mr COODE — We are not philosophically opposed to the privatisation of the port. We do not care whether it is handled by the Port of Melbourne Corporation or the government decides it is going to privatise it.

Mr PURCELL — You are saying you do not oppose it, not necessarily that you do not support it.

Mr COODE — We do not oppose it. We do not necessarily agree with it, but we are not opposing it.

Mr PURCELL — All right. Because most of your comment was around if it is leased, everything needs to be regulated. Without putting words into your mouth — how it is operated, how the fees are charged — everything had to be regulated. We were not going to let the new operator have the option of doing very much except run the port the way currently is.

Mr COODE — I think we are looking for some safety nets in there that will discourage price gouging. If it means that you have got to regulate it from A to Z, then that is what we want. But as I said earlier on, there is very little detail in what is open to the new port operator in the way of charges and things that he can do. The devil is in the detail. If we see the detail, then maybe we will be more assured that things will work out. But at this stage because the detail is very scant, we are raising the flag on all issues.

Mr ONDARCHIE — Thank you, Robert. I think you are right — the devil is in the detail. While you are calling for the detail, the government is calling, ‘Show me the money’. It sounds like this is a proposal about today’s deal and not about the long-term economic future of this state, based on what you are telling us this morning. As you rightly say, this is a very competitive industry. The margins are getting skinnier. The cost of doing business is the only line you have right now, because you cannot pass on those costs to your customers necessarily. Tell me: given there is a substantial impost on the cost of getting your members’ product to market, if there is a monopoly business running the port that gets to set its own charges, what is the likely impact on exports out of Victoria, and therefore the impact on jobs?

Mr COODE — The likely impact could take two or three directions. One would be that there are a substantial number of exporters using the port of Melbourne to move their product through that are situated along the Murray or along the South Australian border, and they would certainly look seriously at moving product through either Port Botany or going to Flinders Port if it became marginal. There are other businesses in far South Gippsland which could move product to Port Botany just as easily as they could move it to Melbourne. So if we are not careful, one of the consequences would be that Melbourne would no longer be the premier port moving product in out of Australia. The other solution maybe for our members would be to reduce the amount of product they are exporting and either reduce the size of their business or look closer at the local market.

Mr ONDARCHIE — If they are looking to reduce their cost line, it could have an impact on employment too.

Mr COODE — Exactly right. A lot of Victorian companies that are exporting are regionally based, and they have a marked effect on the economies of regional towns, both large and small. If they go out of business, then jobs disappear.

Ms SHING — Thank you, Robert, for your presentation and also for answering the questions from the committee that we have had to date. I would like to ask you, given the comments you have made about the devil being in the detail as far as everything from regulation to pricing orders and engagement in rent transactions is concerned, have you read the DTF submission that was provided to the committee and is publicly available?

Mr COODE — No.

Ms SHING — You haven't?

The CHAIR — In fairness it was only published yesterday.

Ms SHING — Okay, that is fine. Just for your information, that is a document of some 60 pages that goes into significant detail around the economic regulatory framework and rationale that underpins various components of the proposed transaction. To that end, I would be interested to add to what has already been proposed by the committee that if you want to get back to us after you have had a look at that detail, as well as the pricing order and various bits and pieces, and put a position in response to that to us, then that would be very useful.

Mr COODE — Yes.

Ms SHING — Noting that you have talked about the need to retain premier status for the port of Melbourne and the views you have expressed about not being opposed to privatisation provided that competitive edge remains in place, can I ask you to reflect a little to the committee on the export discount to contest Riverina trade, for example, and an initiative such as the Murray Basin rail freight investments that are going to, where this transaction does go ahead, provide enormous support to the way in which goods are brought to market.

Mr COODE — It is my understanding that the rail issue out of the Murray-Darling Basin is aimed more at the port of Portland. I may be wrong there.

Ms SHING — Portland, Geelong and Melbourne, as well as southern New South Wales and South Australia.

Mr COODE — Rail is a good option for moving product from regional areas into the ports. Unfortunately at the moment it is not such a good option, because we cannot get the rail alongside the ships. The rail comes into Melbourne, and then we have another handling operation to move it off the rail onto trucks and onto the wharf; so if we are going to do this restructure of the rail, let us do it properly and get the rail alongside the ships. Do that and there would be some good savings in freight costs and it would also help with the carbon footprint, so there are positives but we have got to do it properly. We are only doing half the job at the moment; we have got to do the full job.

Ms SHING — On the nature of the proposed transaction and the duration in particular of the lease, what is your view about a 40-year lease versus a 50-year lease as it is set out in the bill?

Mr COODE — I am not really worried whether it is 40 years or 50 years.

Mr DRUM — Seventy.

Mr ONDARCHIE — Seventy.

Ms SHING — It is a 50-year lease.

Mr MULINO — It is a 50-year lease.

The CHAIR — Order!

Mr COODE — You are talking about the lease for the new incumbent?

Mr MULINO — Yes.

Ms SHING — The duration of the lease.

Mr COODE — Whether it is 40 years or 50 years?

Ms SHING — Yes.

Mr COODE — I am not really worried whether it is 40 or 50 years.

Ms SHING — Thank you very much. Finally, I just want to ask about what the export discount will do in terms of the capacity for exporters to get the best possible deal that they are looking for. The port will have differential pricing over the next four years. There is a price freeze on for 2016–17 and a 2.5 per cent discount for the four years thereafter. What is your view on that export discount?

Mr COODE — The price freeze is only on wharfage, as I understand it.

Ms SHING — There will be differential pricing over the next four years that applies to the export discount.

Mr COODE — But what exactly is it on?

Ms SHING — Sorry?

Mr COODE — What part of the export cost is the discount on?

Ms SHING — That is on boxes.

Mr COODE — Containers?

Ms SHING — Yes.

The CHAIR — What element of that?

Mr COODE — Yes, but you get charged wharfage on a container, you get charged a terminal handling charge.

Ms SHING — On international containers.

Mr COODE — It does not matter. On an international container there are various components: there are four or five different charges. Is the discount on all of them? From my understanding it is only on the wharfage.

Ms SHING — It is my understanding it is on part of the total, so what is your view on that?

Mr COODE — The terminal handling charge is \$400 a box, the wharfage is \$50 a box and you are going to give us a 2.5 per cent discount on the \$50. It does not mean anything.

Mr ONDARCHIE — Don't spend it all at once, Robert.

Mr MULINO — Chair, enough editorialising.

The CHAIR — Order!

Mr COODE — If the 2.5 per cent discount was on the terminal handling charge, then that would be a more significant saving than the 2.5 per cent on the wharfage which is only a \$50 charge.

Ms SHING — Is that a stevedore charge?

Mr COODE — Yes.

Ms SHING — All right, thank you very much.

Mr DRUM — Mr Coode, one of your recommendations is that the lease proceed without compensation once the second port is required. Everybody is in agreement that well within the lifetime of the lease we are going to need a second port. Could you run us through how you see it working when we need a new port, without compensation.

Mr COODE — It is inevitable that we are going to need a second port, simply by the fact that port of Melbourne is restricted. It cannot grow any bigger than it is.

Mr DRUM — Everybody is in agreement here.

Mr COODE — The second thing is whether we build a second port at Hastings or we have it at Bay West. That debate has still got to be sorted out. We need a deepwater port; we know that. Because we are privatising the port of Melbourne, then I would assume that the second port would be private enterprise as well. On that basis we would be looking for competition between the two ports.

If the government offers compensation to the incumbent in the port of Melbourne because they are going to set up a second port, then we feel that that is going to restrict competition, because it has given the incumbent a head start on the second port. What we are saying is that we do not feel that there should be any compensation. The incumbent would know up-front that at some stage during the life of the lease of the port of Melbourne he is going to be faced with some competition. So why offer him compensation?

Mr DRUM — Yes. That is fine. You also predominantly represent the exporters from Victoria, and from the Riverina and so forth. These potential increases in costs of working through the port are going to apply just as readily to importers, aren't they?

Mr COODE — Yes.

Mr DRUM — So effectively everything that Victorians use that comes in, everything that we look at now — phones, microphones, jars, cars and everything we use has the potential — not just a few, not just 20, 30 or 40 businesses that actually export, but everybody that uses any imported commodity will also face those same increases.

Mr COODE — Yes. Importers will be treated exactly the same as exporters. They will share in any cost increases that are applied across the board.

Mr DRUM — It is also — just as an aside, Ms Shing mentioned the Murray Basin rail project — a \$440 million taxpayer investment to produce about a \$14-a-tonne benefit for the farmers in their wheat prices; that \$14 a tonne has the capacity to be eaten up if this deal is not done correctly.

Mr COODE — Yes, pretty quickly it will disappear.

Mr DRUM — Thank you.

Ms TIERNEY — Good morning, Robert. I am just wondering what your association's view is exactly on the capacity issue of the port of Melbourne. The committee has received a variety of views as to whether it is 5.2, right through to 8 million TEUs, so we would like your views. I will start with that first.

Mr COODE — To be honest, we are not sure what the capacity of Melbourne is. The experts cannot agree on what it is, so I do not know how we are expected to know what the capacity is going to be. We know it is between 5.2 and 8. whatever it is they said, but we do not know when we are going to reach that.

What we do say is, 'Don't leave it until we get to that stage and then decide that we need a second port'. We should be looking at that now and deciding, 'Okay, we know we are going to need a second port within the next 50 years; we do not know exactly when we want it; let us start the planning now'.

Ms TIERNEY — Have any of the experts in the field, when it comes to capacity, initiated engagement or contact with your association on this issue?

Mr COODE — No, not that I am aware of.

Ms TIERNEY — Moving on to a different issue, I think Mr Drum raised it in terms of the second port, and we all know that Hastings and Bay West have been out there, what is your view in relation to Infrastructure Victoria actually being the body that examines a proposal on where the second port might go, in an attempt to try to take the politics out of infrastructure spend?

Mr COODE — The first question would be: how independent is independent Infrastructure Victoria going to be? Who is going to make up that committee? Given that it is independent, then I think that it would give us a good lead-in to look at where the second port should be, how it should be structured and when it should be developed.

Ms TIERNEY — So you would agree any attempt to try to take the politics out of these sorts of questions is a good thing?

Mr COODE — Yes, good luck with that! Sorry, I am cynical.

Ms TIERNEY — In terms of that, clearly the situation at the moment is not the optimum. If there is an alternative that attempts in a very serious way and a genuine way to try to take some of the politics, if not most of the politics, out of it, then it must be a good thing.

Mr COODE — Yes. Seriously, there is a need for somebody to lead the charge, but that has got to be independent and if it is Infrastructure Victoria and it is properly set up, then it will get our support.

The CHAIR — Mr Coode we have around 10 minutes for some further questions. I would like to take you back to a couple of other matters, or open up generally to the rest of the committee. You touched briefly on the DP World rent negotiation, and as you know, DP World had a rent of around \$16 per square metre; the Port of Melbourne proposal was to raise it to \$120 per square metre consistent with the VICT terminal, and ultimately land at around something that will end up being \$40 or \$45 a metre, with that CPI escalation that you spoke about earlier.

We discussed this yesterday with Treasury and with the Port of Melbourne Corporation, and it was evident that while those negotiations were taking place, Treasury was in the room representing the shareholder, being the Victorian government, and, as you said, ‘sanity prevailed’ with that negotiation. Obviously this was in the context of a lot of public interest around the port of Melbourne. It was in the context of legislation coming to Parliament about the sale, and indeed miraculously that negotiation was resolved the day before the legislation reached the upper house. Do you have confidence that in the absence of DTF being in the room representing the shareholder, in the absence of a government shareholder for the port of Melbourne, in the absence of the public scrutiny that surrounded the DP World negotiations, that sanity would prevail in the future with a private monopoly operator seeking to increase rents in the same way?

Mr COODE — Do you want my cynical answer? No. I was asked before about privatisation and why it was that we wanted regulation surrounding that, and that is one of the main reasons why we are not opposed to privatisation but we want to see some form of regulation that ensures that there is no price gouge.

The CHAIR — Such as going from \$16 to \$120?

Mr COODE — We are asking government to protect one of its biggest assets, and that is a combination of the port of Melbourne and the importers and exporters that use that facility. Give them a chance to at least operate on an even keel with their competitors overseas.

The CHAIR — Just on that point, my final question is: clause 69 of the bill provides a carve out from the commonwealth competition act, which the ACCC oversees, and provides a carve out from the competition code, effectively exempting this transaction and things that follow from ACCC oversight. Is your association comfortable with that — that this will be exempt?

Mr COODE — No. I think we said in our submission that in effect there is a need for the ACCC to be able to have oversight on the transactions to make sure that there is nothing happening in an anticompetitive way.

Ms SHING — Can I just pick up on something that directly follows on from the Chair’s question about the ACCC and the carve out? Are you aware that the general mergers clearance would apply from the ACCC in the context of vertical integration in the transactions for stevedores in the event that that is part of a big consortia’s applying?

Mr COODE — Sorry, exactly what you mean by that?

Ms SHING — ACCC regulatory oversight does in fact apply.

Mr COODE — Yes, but if the ACCC are stymied from doing an oversight, then they cannot stop vertical integration.

Ms SHING — There is a mergers clearance process that is required from the ACCC in the event that that does occur.

Mr COODE — Are you saying to me that, in the case where it is possible that vertical integration may happen, the ACCC can step in on one hand — —

Ms SHING — There is a mergers clearance process that is required.

Mr COODE — But on the other hand, they cannot look at any anticompetitive issues?

Ms SHING — Save for the way in which the federal system regulates compensation payments and other elements of that transaction.

Mr COODE — What you are telling me is with vertical integration the ACCC can step in, but when it comes to anticompetitive issues they cannot.

Ms SHING — The transaction in fact prohibits it from occurring in any event.

Mr COODE — Anticompetitiveness?

Ms SHING — No. It is in the context of the way in which compensation payments are negotiated and the way in which the federal framework prohibits that from occurring and the way in which the mergers clearances will operate under the auspices of the ACCC, in the event that, for example, vertical integration occurs.

Mr COODE — That is fine if the ACCC can do that. What we are saying is that when it comes to anticompetitiveness, they are not allowed to get involved. We want the ACCC to be able to oversee the whole box and dice to make sure that (a) there is no vertical integration, which will cause anticompetitiveness, and that (b) they are able to look at any anticompetitive activities that are occurring.

Mr MULINO — I have a brief question. There has been a bit of discussion about cost pressures and that certain charges are going to be passed on and ultimately that will get to the consumer. Again, this subject to you having a look at more detail. There is, as Ms Shing said, the DTF submission which contains some pages on the pricing regime, but there is also going to be quite a lot of detail in the next few days. I would be very interested in your take on that. I want to get your general reflection on: if the pricing regime is stronger than the current one, that should put downward pressure on those costs that are being pushed through over the longer run, relative to the current regime and relative to regimes in other states. Already my understanding is that many would say we have a strong regime relative to other states, but if we are strengthening the regime, that should be putting downward pressure on those costs that you have alluded to.

Mr COODE — That is fine if we are, but, again, we do not know.

Ms SHING — That is where reading the DTF figures will help.

Mr MULINO — There has been allusion from some of the questions about cost being passed on and so forth. I just want to clarify that that regime, if it is stronger, will put downward pressure on those costs.

Mr COODE — At the end of the day costs are going to be passed on. Whether they are this high or this low, they are going to be passed on. Very few businesses will not do that. They may absorb part of cost, but they will not absorb all of it. They cannot. They have to pass it on. Until we see what the audits say, I am only speculating. I go back to saying that the devil is in the detail. When we can look at the detail, we can probably give you a more definitive answer on that.

The CHAIR — Mr Coode, thank you very much for your time this morning. The committee appreciates the association's submission and your attendance and evidence this morning. As was indicated earlier, if you would like to express any view on the government's submission, which has now been published, and make any further submission, we would also welcome that input.

Mr COODE — Okay. Is there a time frame on further submissions?

The CHAIR — We are seeking them as quickly as possible. The formal deadline is 11 September, which you obviously met with your substantive submission, but if you are able to provide any comment as soon as you

can, because obviously the committee works on a fairly tight time frame, that input would be appreciated. Thank you for your time this morning.

Mr COODE — Thank you for the invitation to be allowed to present here today.

Witness withdrew.

