

# CORRECTED VERSION

## PORT OF MELBOURNE SELECT COMMITTEE

### Inquiry into the proposed lease of the port of Melbourne

Melbourne — 9 September 2015

#### Members

Mr Gordon Rich-Phillips — Chair

Mr Daniel Mulino — Deputy Chair

Mr Greg Barber

Mr Damian Drum

Mr Craig Ondarchie

Mr James Purcell

Ms Harriet Shing

Ms Gayle Tierney

#### Staff

Secretary: Mr Keir Delaney

Research officer: Mr Anthony Walsh

#### Witnesses

Dr Tim Kuypers, general manager, regulation, and

Ms Lyndall Stoyles, group general counsel and company secretary, Patrick Asciano.

**The CHAIR** — I welcome Tim Kuypers, the general manager, regulation and Ms Lyndall Stoyles, the group general counsel and company secretary for Patrick Asciano.

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 any information you give today is protected by law. However, any comments you make outside the precincts of the hearing may not be so protected. All evidence being given today is being recorded by Hansard, and you will be provided with a proof version of the transcript for correction in the next couple of days.

We have allowed 1 hour for this session. I would invite you to make an opening statement if you wish, and the committee will then proceed to questions. Thank you for your time this morning.

**Dr KUYPERS** — I will start off with the opening statement. I appreciate the opportunity to get our views across to you guys. For those who are not familiar with Asciano, we are a major logistics company. Our main focus is on ports and rail. We are a top 50 ASX company, and we have got 8500 employees throughout Australia and New Zealand. We are actually the largest tenant of the port of Melbourne, and we basically use that to provide stevedoring and logistics services, so we are basically part of the cog that connects Victorian importers and exporters with the world.

We would like to get on record that we do support asset recycling and we do support the sale of the port of Melbourne, and we understand the importance to Victoria of the level crossing projects that will be part funded from the proceeds. However, I think, as Robert previously mentioned, and also a number of other players, we do have a few concerns about the way the privatisation is being proposed. I guess one thing to keep in mind is that the industry we operate in is capital intensive. It has long-term asset lives, and the decisions that we are making today can have significant implications into the future, so I think we always have to be cognisant of that when we are thinking about these issues.

So there are probably three main concerns that we have got with the proposal: one is competition and market power, one is the preclusion of the ACCC and then the third is the reported compensation payments. The first of those is competition and market power. I do not think there is much controversy about that the port of Melbourne has market power, and the ESC has identified that in previous reports that it has done. So what are we concerned about given that market power? First is monopoly pricing, and I think Robert mentioned there are three areas where the port could monopoly price: on rents, on port charges and on new charges.

There has been quite a bit of discussion already this morning about the DP rent and the agreement. Given certain laws, we are not privy to the details of that agreement, so we are just going based on reports, but we understand it was \$120 — that was the proposal — and that had an impact of DP estimated of \$80 per container passing through the port of Melbourne. As Robert mentioned earlier, we would see this as being passed on, so this would not be an impost on Asciano, but it would be passed down the supply chain.

Again, we appreciate that a more sensible deal has been done, but what we would like to point out is it is still quite a significant increase. Based on reports that we have seen, it is 125 per cent by 2023-ish, there is no protection from the introduction of new charges and there is also no protection from significant rental increases post the lease. So although we see it as a sensible step forward, we do not see it as the complete solution.

The second area sitting under market power is vertical integration. Our concern is that the privatised port operator may become vertically integrated, and if there are not appropriate regulations around that, then that could distort competition. The question that you asked earlier I think might be worth addressing. We would distinguish between organic growth and inorganic growth. I think you are right that if the privatised port operator said, 'Oh, I think we would like to buy Patrick, here's a bunch of money', then the ACCC would be all over that. I think if it was organic, so they would say, 'Okay, we actually want to get involved down the supply chain', and it was not an acquisition, then the ACCC could not look at that.

The reason we are a little sensitive about this is our experience in South Australia, but that is exactly what Flinders Ports have done. They have vertically integrated, and I guess we are living with some of the consequences of that now, whereby we are competing for the same customers that Flinders Ports are, but in order to do that we have to acquire services from Flinders Ports. There are some interesting approaches to

environmental legislation and other things like that from kind of, I guess, a standard monopolist's playbook. That is why we would raise the issue of vertical integration. To be clear, we are not saying no; we are saying it would need to have appropriate regulation, and we distinguish between organic and inorganic vertical integration.

I must fess up as well: I have not actually read the submission from yesterday, so my comments are based on what we know so far. We have worked with the ESC over a number of years. I, for my sins, have probably worked with them for about 10 years, both as an access seeker and as an access provider here in Victoria. We are very comfortable with the ESC — that they are a capable organisation and that they can deliver good, competitive outcomes. However, in order to do that we feel that the actual regulations that they are operating with have to be strong and have to be clear to enable them to do the job they need to do.

There are a few improvements we would like to see in the regulatory regime that we have seen. The first one would be to include rental charges in the cap. As I understand it, because that is sitting in the legislation, the detail that is going to come out will not include rental charges in the cap, so that will stand, even with the detail coming out. One of the ways I think about it is one of those kids toys where you have certain things that pop up, you bash one down and up it pops somewhere else.

**Mr ONDARCHIE** — Like Parliament.

**Dr KUYPERS** — So we recognise that 86 per cent of the revenues are covered by the regulation. How strong that is is not clear from the legislation, but you guys are saying, 'It's quite strong, and it's going to be tough', but that then leaves the 40 per cent. If you are a monopolist, what are you going to do? You are going to say, 'We can't monopoly price over there; we're going to monopoly price over here'. Our concern is that it will be us that will be monopoly priced against, and for the end customers, if you like — for Robert's members — he does not care whether it is coming through the wharfage charge or it is coming as a result of the stevedoring charge going up.

**The CHAIR** — The result is the same.

**Dr KUYPERS** — The impact on him will still be the same. That is really the reason why we think it needs to be included. We also think — and again we would have to look at the detail — in the legislation there was no comfort around what the regulation would be, the transparency. If you like, there was a menu of options that could be chosen from, so we would be interested to see that detail — this would be for the 86 per cent. Then having some controls around the vertical integration that we have mentioned would be the other improvement that we would be looking for. I guess that is the end of the comments on the competition and market power.

In terms of ACCC oversight, we have been involved in a number of port privatisations throughout the country but also in Melbourne as well. The ACCC has been intimately involved in most of them. For example, with the automotive terminal here in Victoria that MIRRAT acquired, the ACCC was intimately involved in that, and ended up with the ACCC having an undertaking presented to it by MIRRAT.

We would see there is an important role for the ACCC to play. We know that some members of the committee are concerned around the timing and delay that might be caused as a result of ACCC involvement, but our experience has been that the ACCC can work to extremely tight time frames and is able to turn these sorts of reviews around. It would not be a particularly new issue for the ACCC, given that they have been involved in these other privatisations elsewhere. That is another area where we think there should be improvement.

Then finally in terms of restriction on competition between the ports, or the compensation, again we are operating on what we know, so we do not actually know the details of what we are talking about. Our concern is that in the future I think everyone agrees there will be a point at which another port is needed, that the incentives that are in place for the government of the day would not in effect carry the monopoly on longer than it should be and that if we were able to have competing ports in Victoria, that would benefit the economy.

One way of thinking that maybe has not come up so far is that I think are part of the terms of reference are around balancing — balancing the revenue that the government gets now versus the long-term benefits for Victoria. I would question what would the value of this be to the purchaser. If you are looking at the time frame that we are looking at — we are talking 30 or 40 years, whatever your estimate might be — we are talking a long time in the future. These guys are hard-nosed. They are sitting here now saying, 'What is the value of that

to me in 40 years time?'. I do not know; I have not done the numbers, but I would guess it would not be that large. Then you balance that up against, 'Okay, what would the incentive be, and what could the impact be on Victoria?'. I guess what we are saying is maybe that is not worth it, and you need to look at what is the actual dollar value that the government would benefit now versus the impact that you get later on?

I think that is all we wanted to say to start with, but I will maybe just reiterate that we are supportive of the privatisation, but we believe that those changes that we have outlined need to be made. We do not think that those changes would in any way impact timing and would have minimal impact on the value of the sale, so we think they are reasonably simple changes that are achievable.

**The CHAIR** — Thank you for your the opening statement. That has been very helpful in highlighting some of your key concerns. These are issues that we have been hearing over the last day and half, particularly from the logistics industry. There is a common thread to those concerns. One issue that has not been broadly canvassed — I would be interested in your views, having spoken about concerns over vertical integration — is the issue of lateral integration. Do you have concerns around the prospect of the operators of Botany or Brisbane also being the operators of Melbourne? Is that also a monopoly issue for a company like Asciano?

**Ms STOYLES** — It is a concern. It is something that we probably have not seen as much of. We were probably expecting with the first rounds of privatisation in Brisbane to see more commonality between bidders for different ports. I think with Sydney there was some interest from some of the Brisbane owners in Sydney, but we have not actually seen it yet. Given that we are making 20-year decisions — because of the capital intensity of our business we are not making 5-year decisions, we make 20-year-plus decisions — that is something that is certainly on our horizon. We are comfortable operating in a system where there is that scrutiny from the ACCC and to back ourselves to compete within any system that is properly scrutinised by the ACCC.

Where we get concerned, because of the uncertainties over what is going to happen in the next 20 years, is when the ACCC is cut out of that process. It is an unusual situation for us, because we generally do not invite a lot of regulatory scrutiny into our business, but we do think that there should be some basic level of scrutiny. I guess in the instance with Victoria, we cannot see any reason why the privatised port operator, or anything to do with the privatisation, should be treated any differently from the way ordinary private players are treated in Australia, and that is with ACCC scrutiny.

**The CHAIR** — So you would like to see clause 69, which excludes ACCC effectively — —

**Ms STOYLES** — Removed. From our perspective, to be clear on clause 69, we cannot quite understand the purpose or the regulatory or policy justification for a clause like that. Our position would be to go back to the fundamental position that any operator in Australia should be treated in the same way as any private operator. Even if there had been a prior government-owned monopolist, we think once they are privatised, they should be treated in the same way as any private operator.

**The CHAIR** — On the issue of lateral integration, when the commonwealth government privatised the major commonwealth airports in the mid-1990s, one of the provisions of the Airports Act was to preclude the operator of Sydney Airport also becoming the operator of Melbourne Airport. Would you see merit in that type of provision in the ports legislation — so the operator of Botany could not be the operator of the port of Melbourne?

**Ms STOYLES** — From our perspective, provided there was the appropriate ACCC scrutiny and the ACCC had clear powers to scrutinise any transaction like that, that would probably give us the comfort that we need. I think the airlines have been subjected to more intrusive regulation. In addition to those particular provisions, there is also a provision in the Brisbane legislation which precludes vertical integration beyond 5 per cent. That has been a more intensive type of regulation, which I think can work. But, generally speaking, we would not argue for really intrusive regulation, as long as there was the appropriate ACCC scrutiny.

**Dr KUYPERS** — I think that is right. The other thing just about the ACCC scrutiny would be the ACCC would be looking at everything, including the ESC regime. They would say, 'What's the impact of this transaction, given that you've got this regulatory regime?'. As Lyndall says, we are not quite sure what benefit it delivers for Victorians to exclude that.

**The CHAIR** — The issue touched on in your concluding statement related to the question of essentially the balance between the up-front revenue to government, long-term interests of the asset, supply chain and ultimately the Victorian economy. In that context, does Asciano have a view on the government's proposal to capitalise the port licence fee, bring forward the 50 years' worth of revenue from the port licence fee as a capital amount upfront, which is provided for in the legislation?

**Dr KUYPERS** — I do not think we have, really.

**Ms STOYLES** — No, I do not think we have a view on it.

**Mr MULINO** — Thanks very much for your evidence. I am going to ask some questions in relation to the proposed pricing regime and the compensation regime. I just wanted to check, have you had a chance to have a look yet at the DTF submission?

**Dr KUYPERS** — No.

**Ms STOYLES** — No.

**Mr MULINO** — Sorry, I missed that. I just wanted to clarify that, because I might put to you a couple of things in that, but also to flag, as I did with the previous witness, that there are probably going to be a couple of additional bits of information.

**Dr KUYPERS** — Sure.

**Ms STOYLES** — We look forward to seeing them.

**Mr MULINO** — I would be keen to get your feedback right now on the comments I will put to you that DTF has already put to us, but also further down the track on the additional information. What we have at the moment is a price monitoring regime, as you know, which applies to certain services. What we know from the DTF submission that is being proposed is to move to an independent administration, a building-block approach that will apply to 86 per cent of current charges, based upon efficient costs. That is obviously more akin to what we are used to seeing with utilities; it is a very well established, rigorous approach. I just wanted to get your response. Would you see that as an improvement on what we currently have?

**Dr KUYPERS** — Yes, we would see that as an improvement. But again, just to reference back to my earlier comments, that covers 86 per cent and not the 14 per cent. In a sense the tighter you get on the 86, the more pressure is on the 14. That is where our concern lies. I guess we were hoping that the regime would come out and be strong and be a lot more than monitoring. I think that is definitely what is required, so we would welcome that. But again, I think the gap to us is the 14 per cent.

**Mr MULINO** — On the 86 per cent, you are supportive of that approach. Also in the bill, clause 90(1)(v) I think makes reference to new charges being captured by whatever it is that is going to be regulated by the ESC. I think that should provide some comfort.

**Dr KUYPERS** — Will that be new charges on stevedores as well, then? Is that new charges in the 14 per cent or just new charges in the 86 per cent?

**Mr MULINO** — That is my understanding. This is something that, again, we can clarify when we get the additional information, but I just wanted to flag that.

**Dr KUYPERS** — Okay. We will look at that.

**Ms STOYLES** — I think the way we understood that was that those new charges would capture any new charges that were associated with wharfage, pilotage and the sort of thing that was captured in the 86 per cent but would not capture anything that we say falls within the 14 per cent.

**Mr MULINO** — With the 14 per cent, the rent, what I understand is being proposed is that there be a building-block approach for areas that are clearly natural monopolies — have the characteristics of a natural monopoly — and with rental arrangements, which one might argue whether they have those characteristics, that current arrangements where there is an independent arbitrator in the case of disputes would continue; as they

have when the port was in public hands, they would continue. But that is basically what has occurred at all of the other major ports, both pre and post-lease. I just wanted to ask: what was your position in relation to the other major ports that were leased in Australia? Did you, when those ports were being leased, argue that there should be a more heavy-handed form of regulation?

**Ms STOYLES** — Yes.

**Dr KUYPERS** — Just to start with, we cannot go anywhere else. If we want to be a stevedore, we cannot go and acquire land in the CBD and do what we do. We have to have port land to do what we do. To us, it is a clear monopoly. To us, one of the lessons coming out of the 700 per cent increase is, although we have landed in an okay-ish spot, there is a whole bunch of, as I have mentioned before, political pressure and other pressure around that has delivered that outcome. What we are talking about is having those lease protections without that political pressure, with the data point that the Port of Melbourne thought, given those lease provisions, they could actually push through a 700 per cent-plus increase. To us, we are nervous around the strength of those, and then also that we do not actually get any protection post the lease. To us they are all issues, and then just to reiterate what Lyndall said, whilst we may not be wholly successful, given the outcome, we did make the same arguments in the other privatisations in terms of more regulation.

**Mr MULINO** — You did?

**Ms STOYLES** — We did, yes.

**Dr KUYPERS** — And we made a number of confidential submissions to the ACCC.

**Mr MULINO** — But it is fair to say you broadly thought it was a sensible outcome where DP World ended up, given that independent party coming in and — —

**Ms STOYLES** — I have just a couple of things on that. So in terms of the other port privatisations, we did make submissions — Tim and I had made the submissions in both Brisbane and Sydney. It is a well-worn path. We were not successful in getting the type of scrutiny we were looking for. We had parallel conversations with the ACCC, and it had raised similar concerns about that. It is a space in which, I think, there is potential for further development on the national level as well. We have not had a bad experience in Brisbane. In fact the only significant increase in Brisbane that we had was in the lead-up to privatisation; post privatisation the extent of the increase has sort of flatlined.

In Sydney we had quite a different approach, so we are in quite a different position in Sydney. At the time New South Wales was looking to privatise the port, we had an unsigned lease with an option over a piece of land in Sydney, and that created a degree of uncertainty for the New South Wales government. The port corporation, we think, acted extremely well and constructively, and we had extensive and very constructive negotiations with them. We agreed on a regime. They had invested significantly, and we agreed to invest significantly. We have just finished a capex program there of over \$400 million that we have invested in return for tenure, but it is also quite a regimented way in which the rent is struck, which gives us the certainty during the tenure of the lease that you cannot increase it in the way that we have seen in Melbourne.

So there is a degree of comfort in Brisbane, because of the behaviour of the Brisbane ports. The very different structure of our lease in Sydney has given us that comfort to invest in Brisbane and Sydney, but the experience in Melbourne has just set alarm bells off with the experience we have watched with DP over the last year.

**Mr MULINO** — I want to get onto compensation briefly, but it would be good to get your reactions, once you have had a chance to look at the detail around the proposed regime and also the pricing order. In relation to the compensation regime, there has been a lot of commentary around this, and again I think it would be good to get your comments on, I think, the five or six pages of detail here in relation to how that will operate. It is proposed to be quite narrow. I think everybody agrees that at some point we are going to need a second port, but over the coming decade or two it is quite likely that incremental expansion in capacity is likely to be lower cost for our economy at port of Melbourne than at a greenfields site. What we want is an arrangement where there are aligned interests and where the lease operator has incentives to expand the port of Melbourne in such a way that it gets to a sensible capacity before a second container port is built from scratch. Would you be supportive of that broad approach?

**Dr KUYPERS** — Yes, I think that all makes sense.

**Mr MULINO** — If a threshold were set at a level that was sensible, that aligned with a level of capacity for the port and that made sense, and basically what the state said was, ‘We will reserve the right to choose where a second port is and to start developing it, but we will not start operating it until the port of Melbourne reaches that sensible point’, because it will be the lowest cost point for incremental expansion. If the clause were basically narrowly defined such that that was all that the state said that it would not do, that would in a sense give the state the strategic flexibility it needed while providing the incentive for the new lessee.

**Dr KUYPERS** — We agreed with your initial statement, saying that, ‘Yes, it makes sense that you increment the port of Melbourne capacity’, but there will come a point where that does not make sense. So it is not just a matter of, ‘Do you have the space? Can you get the big ships in?’. It is also how you operate on the landside, how efficient that is and the more stacking you get and inefficiency. It is a bit of a black art to know when that point is, so in effect we are almost saying that we will know now that in 2045 that is the point that we think it makes economic sense to have another port, when really we do not know that. We do not know what kind of technology there will be. In effect, we are making that call now. I go back to the comment I made earlier, which was — and I have not read it, but you are saying to me that it is quite narrow now. So I go back and say, ‘Well, if it is narrow, what is the benefit to the purchaser of that compensation payment?’. If it is not that much, what are we giving up to get that little extra bit of revenue? Is it worth the fact that we would not prevent having that port competition, having that second port invested at the right time, because the government of the future does not have those incentives?

**Mr MULINO** — The argument, it seems to me, comes down to setting the threshold at a level that is sensible. Given the uncertainty you allude to, nobody can know exactly what that number is going to be, but I think the rationale seems to be that you want to provide some certainty against a risk that is unhedgeable in a sense and to do so in a way that also provides the state with flexibility.

**Ms STOYLES** — Just to add to that, we recognise that the state needs to provide something to bidders so that they can bid for something and have certainty over what they are bidding for. The concern for us is more about, ‘Well, if that’s the case and that’s the reality that Victoria faces at the moment in order to get the privatisation off the ground, the balance is to ensure that there is appropriate regulation to constrain that market power’. That is the balance we are trying to find.

**Mr BARBER** — Just to clear something up, there is no way that you would be participating in any group that might bid for the port at all?

**Ms STOYLES** — No.

**Mr BARBER** — No? Thank you. Just in terms of issues of landside efficiency and throughput, which does go to this question of when we need a second port, are there certain investments that you, the port or a future port operator might like to make in order to improve that?

**Ms STOYLES** — I think there are probably two broad buckets. This is something that for any one stevedore or group of stevedores to do, it probably has to make sense to be done in conjunction with the port. It would include the investments that can be made in terms of cranes and technology actually within our leased area, which we are currently undertaking in other states, or we have completed in other states. Then, secondly, there is the whole logistical operation that sits around the back of the port, and there are certainly ways to improve the efficiency of the current operations in Melbourne. There is good land in Melbourne, and we have access to good land in Melbourne, but I think with the right sort of negotiations with the Port of Melbourne, there is certainly a lot of room for improvement to move things in and out more quickly and to do that with less actual moves.

**Mr BARBER** — So, for instance?

**Ms STOYLES** — So, for instance, it might be to close off part of the roads around there and to better align the logistics, like the transport logistics facilities that sit behind the terminal, to connect them up with each of the terminals so each terminal has a good depth behind it so they can move containers into and out of the terminal without actually having to go on roads. I do not have the detailed plans in front of me, but that sort of thing would involve road closures and things like that to better use that space. The other way which is key for us

given our interest in rail is to better align how the rail facilities work into and out of the on-site stevedoring facilities in Melbourne, and there is lots of scope to work that in.

**Mr BARBER** — We are hearing later from Salta, which has a proposal to do that. That proposal is not going ahead at the moment, despite there being money in the budget for it, but are you an alternative provider of something like that, or would you just like to see that happen so you can make use of it?

**Ms STOYLES** — I am not completely across the whole Salta proposal. I know that there is something that they are putting in place. But we are certainly an alternative provider of railroad and any of that container management in and around the port.

**Dr KUYPERS** — I think it is a port shuttle proposal, and we do operate those services elsewhere.

**Mr BARBER** — The Port of Melbourne has this port development plan, as you know, and the government is telling us that the new private operator will also have a port development plan which the state of Victoria will continue to participate in, and that is how we are going to stay in there and keep our interests going in investment in the port. I suppose maybe it does not make any difference from your point of view whether it is a private or a public operator, but — —

**Ms STOYLES** — We are probably ambivalent as to whether or not it is a private or a public operator in terms of ownership, but in terms of how they make decisions, as long as there is that appropriate regulatory scrutiny, or it is open to have appropriate regulatory scrutiny, over those decisions, that is what we are concerned about ensuring — so if we have an alternative proposal, it would be considered, and if it was in the best interests of the port, it would be considered in that context.

**Mr BARBER** — Yes, but I am thinking about the investment side of it. They have their pricing orders and all the rest of it, but in terms of the investment decision, if these people pay too much, for example — it has been known to happen — then it is harder and harder for them to justify certain types of investments if they are not achieving the now inflated rate of return that they are supposed to be getting back. So it seems to me the only mechanism that the state has really got in the future is this port land, and I do not even know if what is in the last port plan is really being delivered anyway. Some of it is not, from your point of view.

**Ms STOYLES** — Some of it is not, I think.

**Mr PURCELL** — The way I hear it, it sounds like most want the private operator for efficiency purposes and the public operator for pricing purposes. It just seems like we want to get the efficiencies out of having some independent business run it but we want to keep the pricing level that the government has had in the past or put enough restrictions on it to stop that. If we look at monopoly pricing, just for my education: the Port of Melbourne is a monopoly in Victoria, but it is not a monopoly in Australia.

**Ms STOYLES** — Correct.

**Mr PURCELL** — Is there a level at pricing that you actually go and look at Port Botany or some of the others?

**Ms STOYLES** — Absolutely. Over the last year with the announcement about the increase of 700 or 800 per cent or whatever it is for DP a lot of that work was done, and there is certainly freight, particularly in that Riverina area overlapping New South Wales and Victoria, where a lot of that freight can actually just as easily go to Sydney as it can to Melbourne, and there has been some contest over the years between Sydney and Melbourne to attract that freight to each of their respective ports. The short answer is that for some proportion of freight — and I think we estimated roughly about 20 per cent of the freight that currently goes into Melbourne — could go to Sydney with the level of increases that we saw which were proposed by Melbourne. It was that significant shift of the extra \$80 a box which increased the number that could go to Sydney quite easily. We have not done the detail to know whether or not it is higher than that, but there is some proportion — not all of it, but some proportion.

**Dr KUYPERS** — I think there will always be some captive freight, if you like, that will always make sense just because of the transport costs to go from Melbourne. I think that is what underpins the ESC's view that the port of Melbourne is a monopoly.



**Mr PURCELL** — Would the proposed inland rail change those economics? If we are talking about running an inland rail through Brisbane and then an offshoot into Port Botany, would that change those economics somewhat?

**Dr KUYPERS** — I think it might change the size of that pool, perhaps, that could go elsewhere, but I would not have thought, given the other transport costs that it would incur, that it would prevent — —

**Mr PURCELL** — So it could change that 20 per cent into 30 or something?

**Dr KUYPERS** — Yes.

**Ms STOYLES** — Yes, and there is certainly tinkering. Two things: tinkering around making the internal inland supply chains more efficient can increase that percentage of contestable freight, and the other way you would increase that percentage of contestable freight is by making one port significantly more expensive than any other port. It will never be perfect, though.

**Mr ONDARCHIE** — Tim and Lyndall, I just want to get your views about rent reviews. I will use DPW and the Port of Melbourne as an example of a completed rent review where the starting point was \$16, the position put on the table was \$120 and I think they settled for something a lot lower than that. What was interesting in this negotiation between the Port of Melbourne Corporation and DPW was that the Department of Treasury and Finance told us they were in the room providing some advice to the Port of Melbourne as a shareholder. I am a shareholder of some organisations, and those organisations never bring me into the room to negotiate deals on their behalf, so I found that quite curious. Interestingly enough it happened around the time that the government was trying to get its bill through the house. Call me cynical, but it sounded very coincidental to me that — —

**Mr MULINO** — Is that a question?

**Ms SHING** — Is this an op-ed, or where are you going?

**Mr ONDARCHIE** — In saying that, give us your views about a private operator and their capacity to negotiate unregulated charges, rent charges, with you and what your view is about that, given you might not have the might of DTF hanging over your shoulder trying to support you.

**Dr KUYPERS** — I think that highlights one of our concerns. I think there are two points. One, outside of lease there would be no protection whatsoever, but inside a lease there is the protection of the process that you described. I am an economist by trade, if you call that a trade, and I earn my living with regulation, and so I am a bit biased against these processes. I am much more attracted to the process that was described earlier around asset valuation and building blocks and doing things sensibly, whereas — and I am going to be a bit unfair in my characterisation — you seem to get a few property experts together, they look at what Bob paid down the street and then they have an arm wrestle and they come out with an answer. That is an unfair characterisation, but it is a much less rigorous process. I think your comments around the impact of Treasury being involved are probably accurate in that there are other pressures to bear at the moment that brought that sensible deal to a conclusion. Our concerns are around the actual process that sits in the lease but also we would lose that protection, if you like, once we have all moved on to other things.

**Mr ONDARCHIE** — Given that it is a monopoly business and they have pretty well got you, you cannot really pack up your cranes and put them in the boot of a car and head off, can you?

**Ms STOYLES** — No.

**Mr ONDARCHIE** — So what is the risk to Patrick's through this?

**Dr KUYPERS** — Well, it is probably less to us and more to the end customers that you heard from initially. You get some rough ideas from the 700 per cent increase. Then that translates to \$80 a box and that is the impact on the importers and exporters. So to us it is not. We would be passing that through, and the impact would be further down the chain.

**Mr ONDARCHIE** — To consumers?

**Dr KUYPERS** — Importers, exporters, consumers; yes.

**Ms SHING** — We are grateful for your submission and for answering the questions of the committee today. I would like to explore the issue of rent in a little more detail and pick up on what Mr Ondarchie has already flagged around the context of a negotiated outcome with DP World earlier. Have you requested discussions with the Port of Melbourne Corporation in relation to its rent?

**Ms STOYLES** — Yes.

**Ms SHING** — And what has been the upshot of that?

**Ms STOYLES** — They have not progressed yet, but I understand people have been on leave, so no doubt they will progress.

**Ms SHING** — But there is a preparedness to have those conversations?

**Ms STOYLES** — From our side, absolutely.

**Ms SHING** — We heard evidence yesterday from the CEO, Nick Easy, of the Port of Melbourne Corporation that the negotiations with DP World that involved views being provided by the Department of Treasury and Finance as part of the Port of Melbourne's overall decision that it took in its own interests were part of business as usual. What would you say to that?

**Ms STOYLES** — Sorry, could you repeat the question?

**Ms SHING** — That the negotiations between the Port of Melbourne and DP World that resulted in the outcome that they did were part of business as usual?

**Ms STOYLES** — I do not really have any comment. They may have been, they may. I am not sure.

**Ms SHING** — In terms of the comments that Mr Ondarchie has made about not being able to just pick up your cranes and move somewhere else as a part of the circumstances in which you operate, is rent regulated in other jurisdictions around Australia?

**Ms STOYLES** — In port space, no, although the best example, which was the example I was mentioning before, the example that gives us the comfort to spend a lot of money and invest in facilities, is the New South Wales example, where we have constraints. It is not just a market review that can be affected by different views and property valuers' different views on market rents. So it is tied to throughput, it is tied to performance. There is a whole extremely complicated model that sits behind it, which we were terrified of at first, to be frank, but it has actually worked extremely well.

**Ms SHING** — In the context of that economic regulatory framework, and noting that New South Wales — and you will see this in the DTF submission — has a light-handed price monitoring regime, does it then follow that a more rigorous regulatory framework would in fact, if it were to apply in Victoria, be a greater source of comfort for you around those issues that you have raised?

**Ms STOYLES** — If it covers the parts that affect our business, yes.

**Ms SHING** — Is the arrangement in Sydney a contractually based arrangement?

**Ms STOYLES** — It is. It is unusual. It is unique, and it is working well, yes. So we would have argued for the same thing, but it has actually proven to work well.

**Ms SHING** — The only other thing I would like to touch on, and again this is something you might address when you come back to looking at the DTF submission and any further materials you might provide to the committee, is the prohibition on vertical integration, and that is on the leaseholder or any sort of controlling entity, being a prohibited port operator. Do you have any views in relation to that being part of an expressed position from the government around stevedores not being permitted to bid in the transaction?

**Dr KUYPERS** — I think that goes to the timing issue, so that solves the issue now.

**Ms STOYLES** — Yes, but not for the future.

**Dr KUYPERS** — But it does not solve it in future once the port process has gone through and the businesses decisions that they make. Then it goes to the point that you made earlier about ACCC having oversight if a transaction is involved. We would say they would not have oversight if there was no transaction involved and it was organic.

**Ms SHING** — So it does not capture the situation that we have seen in South Australia?

**Dr KUYPERS** — No.

**Ms SHING** — Which would operate under a different regulatory framework to the much more rigorous one that is proposed here in the bill?

**Ms STOYLES** — There is nothing that actually operates to regulate, to prevent, what has happened in South Australia, so we see that as a gap in the national regulation as well as any state regulation.

**Mr DRUM** — Thank you for coming in and presenting. Going back to your very first point about the competition and market power issues that you have, would it be fair to suggest that these issues in this sphere are mainly based around the private monopoly going forward and the compensation that is then supporting that monopoly?

**Ms STOYLES** — That is correct.

**Mr DRUM** — In that light, can you explain some of these potential new charges, because both yourselves and the peak shippers association have raised this concern, that whilst 86 per cent of charges are port charges and then there are the other charges that are unregulated. Then only just recently we have heard the phrase ‘new charges’. Is that something that has happened around the world, where opportunistic leaseholders have been able to say, ‘Righto, we’re now introducing a new maintenance fee or a new capital investment levy’? Can you give me example of some of these potential new charges that we might have to be aware of?

**Dr KUYPERS** — I think the one that comes first to mind is there was an infrastructure charge in Brisbane that was levied; is that right? I do not actually know much of the detail on that, do you?

**Ms STOYLES** — I am not sure if it was in Brisbane. The example I was thinking of was perhaps the potential for that to happen. Going back to one of the questions from earlier in the day, with any new investment — and this is probably a difference between a government-owned port operator and a privatised port operator — if a privatised port operator had not generated the returns that it was looking for through the privatisation process and wanted to invest and seek a return from those particular investments, there is nothing to constrain it from doing so. In terms of rejigging the land area behind the port or the rail system or whatever those facilities are that support the port, it could do it, in a way — spend the money and charge the users for those services, and there is nothing to constrain that from happening. We are an Australia and New Zealand-based business, so we have had not had experience elsewhere in the world, but we have seen in other regulated network industries, like telecommunications, electricity and other industries, this sort of thing happening. As far as we are aware, it has not happened to any really significant degree, but there has been tinkering around the edges with small charges here and there.

**Mr DRUM** — As you described yourself, as the interface between the people of Australia and the produce that they bring in and send out, can you just give me your understanding, your vision and your practical thoughts looking forward as to how this new port or a second port would effectively manifest itself? If we propel ourselves 25 years into the future and we have put planning in place and we have settled on a venue which is a deepwater port, what scale do we build this new port to?

**Ms STOYLES** — That is a very good question, and I think the answer is: whatever we answer here today will be wrong.

**Mr DRUM** — It needs to be bigger?

**Ms STOYLES** — I think that when we are looking at any sort of forecasting and when you are making those decisions over 20 years, there are so many factors in how you calculate that slight variation in any of those

factors significantly changes what the volumes are going to be and over what period you will need them. From our estimates, we are thinking it will be at least 20 years before that significant additional capacity is required by a new port. We certainly agree with the comments that there is a lot that can be done within and around the port of Melbourne before we actually get there.

The other thing with those sorts of decisions to actually get to the new port, there is one complication for Melbourne and then there is a general complication for any capital city. The one complication for Melbourne that may mean it happens sooner rather than later is the problems with the air draught under the West Gate Bridge. Our customers are telling us they want to bring post-Panamax vessels sooner rather than later. We do not know if that means next year or in 5 years or 10 years, but we certainly think it is probably within that five-year period. Depending on the volumes and within which they come, that will drive that move to needing further capacity on the other side of the West Gate Bridge. I think the other factor that is relevant to determining when that additional capacity is needed and where it is needed is the inland transport links and sorting them out, because it has to go between where the goods need to go and the port.

**Ms TIERNEY** — Tim and Lyndall, again my question is about capacity and whether you are prepared to actually give a figure in terms of the number of million TEUs that you think will be capacity for the port of Melbourne.

**Dr KUYPERS** — As Lyndall says, we will be wrong, but we are looking at I think about 6.5. That is the total based on some of the work that we have been doing, and that is with additional work with a second stage of Webb Dock, which would add about 1.5 million, and then also maybe another half a million at Swanson Dock with some further investments there. But again, as we said before, it is a bit of a black art in that you are balancing off the efficiency of the landside versus the quayside. That is kind of the ballpark area that our thinking is at.

**Ms TIERNEY** — Yesterday we heard evidence from Victoria University and another stakeholder who indicated to us on the issue of compensation that that can easily be got around or removed and also that the issue about the timing of when the port of Melbourne reaches capacity in terms of a seamless integration into dealing with growth can simply be dealt with by allowing the new lessee of the port of Melbourne first option for the second port. Do you have a comment on that?

**Dr KUYPERS** — They would get around compensation payments, but I am not sure it would deliver the best outcome for Victoria. If you look at the Sydney Airport situation where they have first dibs on the second airport, I would not necessarily think it was a sensible way to go.

**Mr PURCELL** — We keep talking about a second port. Traditionally ports have started up the river, moved down a bit and then moved further down. Do you believe there would be a second port, or would there be a new port?

**Ms STOYLES** — Do you mean — —

**Mr PURCELL** — The question is: would the port of Melbourne be closed, and would there be a new one that handled 20 000, 50 000 or whatever?

**Ms STOYLES** — I agree with how you have described the trend, that it tends to move out. Given the congestion around capital cities and where freight needs to go to and from, the trend would be to move it out. Fremantle has its own issues. Melbourne, with the height of the West Gate Bridge, does present some particular issues, and perhaps that puts a life around the port of Melbourne in the way that Brisbane and Sydney do not have, so it could happen. I would not even hazard a guess as to when that would happen. The other example is that where you live in a more densely populated community you can do things like raising bridges. Clearly that is not something we would contemplate in Australia, but it is obviously contemplated in the US.

**The CHAIR** — Thank you both for your evidence this morning on behalf of Patrick Asciano. It has obviously been particularly valuable to the committee. I am not aware whether Patrick's have submitted a written submission.

**Dr KUYPERS** — We will be.

**The CHAIR** — Excellent. Thank you very much, and thank you for your time this morning.

**Witnesses withdrew.**

