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Committee Secretary
Legislative Council Select Committee
Parliament of Victoria
Parliament House
Victoria

By email to: LCSC@parliament.vic.gov.au

Submission to Select Committee Inquiry into the proposed lease of the Port of Melbourne as contemplated by the Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Bill 2015

Preamble

1. Shipping Australia Limited (SAL) is a peak shipowner association with 36 member lines and shipping agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international container trade and car trade as well as over 70 per cent of our break bulk and bulk trade. A number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees.

2. A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of ship-owners and shipping agents. SAL also provides secretariat services to the many liner companies and agencies that are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the Australian Competition and Consumer Act 2012. These agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades

Introduction

3. Shipping Australia Limited is pleased to make a submission to this inquiry.

4. SAL submits that the purpose of a port is to support trade by facilitating the efficient movement of cargo across the land sea interface at internationally competitive costs. Australian ports are already expensive, about 5 times more expensive than Malaysia, 4 times that of Singapore and surprisingly, twice as expensive as New Zealand. Port costs have a direct impact on costs of imports to consumers and the competitiveness of Australia's exports.

5. SAL is not philosophically opposed to privatisation of ports. In principle we would expect that a private operator can operate more efficiently with a reduced bureaucratic burden, be more agile in management and thus be more responsive to customer demands and changes in the economic climate, thus they should be able to operate at lower cost. A commercial enterprise, particularly if backed by superannuation funds as seems the current trend also has the ability to access commercial sources of funds for investments that improve the port, as long as they provide a return on that investment. On the other hand there is the enduring requirement for a commercial port to return profits to shareholders and executive bonuses are often linked to the size of that profit. This can disadvantage customer by providing an incentive to increase charges when an economic downturn reduces trade volumes.

6. Disappointingly, the recent processes of privatisation of other east coast Australian ports have led to significantly increased costs in some areas, so our members are wary. These costs have arisen from a variety of areas but they are generally related to:

- a. Government action to increase the sale value of the port but increasing land valuations / rents. This occurred in the Port of Brisbane prior to privatisation and was indicated by the initial demand for a 700 percent rental increase at Port of Melbourne. Increased rents flow on to increased costs in port services, stevedoring, lay down areas, empty container parks and the like.
- b. Government action to impose additional levies or charges on the port to ensure a continuing revenue stream following privatisation or to boost the up-front lump sum payment for the port if that revenue stream is to be forgone. The Melbourne Port Licence Fee (PLF) introduced in 2012 falls into this category as does the Port Logistics Charge introduced by the NSW Government at Botany shortly before the privatisation of that port. Assisted by the PLF, Port of Melbourne charges have risen approximately 54 percent since 2009, the highest rises of east Australian ports.
- c. Government actions within the privatisation deal to increase the 'sale price' by locking out future competition from the port. This occurred in NSW by bundling the sale of Port Botany and Port Kembla, thus preventing future competition between these two Sydney basin ports. Additionally there is a commercial-in-confidence condition requiring compensation to be paid to the purchaser of the Port Botany lease if a new container port is developed in the State and takes trade away from Port Botany (the details of this agreement are not public).
- d. Entrenching monopolies with inadequate price controls. Australia's major container ports are effective monopolies due to their geographical separation and lack of competitive interconnection. Uncontrolled monopolies always result in higher prices than free markets. The price differential between Australian and New Zealand is probably due to the strong competition between nearby ports in New Zealand. There seems little mechanism for price controls in the recent privatisations.
- e. Residual government port responsibilities having insufficient revenue stream but being required to be on-going and self-funding. Following privatisations a number of functions such as harbour master, vessel traffic control and sometimes pilotage and oil spill response remain with the State, however the overheads of providing these services have historically been subsidised by other port revenues

but no contribution for these ongoing services has been required from the private port owner. Following the privatisation of Port Botany the Port Authority of NSW raised navigation and pilotage services by 9.6 percent and claimed that there would be substantial future rises to meet their ongoing costs.

7. These experiences make our members wary of the privatisation process and we seek to influence the Victorian Government to avoid the mistakes made by other states and implement their privatisation with sufficient safeguards to ensure the future viability and competitiveness of the Port of Melbourne and the State of Victoria.

Concerns with the Bill

8. **The price regulation regime appears inadequate.** The regime basically reflects the current price monitoring of ESC. Last year, SAL's submission to the 2014 ESC Review of the Port of Melbourne Price Monitoring Regime emphasised that the price monitoring should be strengthened with "some regulatory levers in place to allow independent review and intervention if stakeholders are not satisfied that price increases exceeding CPI are sufficiently justified". While this was considered sufficient for a Government owned port where there was always the option of seeking Ministerial review, for a private monopoly port there must be a strong system of independent price review and control. At the port of Newcastle, navigation charges for coal ships were increased by more than 60 percent within a few months of privatisation and there was no price control mechanism preventing it. The Treasurer has stated that the price monitoring regime will be strengthened and that the full scope is to be included in the initial pricing order which at this stage is still under draft, not a public document and not available – thus the details and process lack transparency.

9. Clause 90 of the Bill specifically excludes the monitoring of leases /sub-leases. It is conceded that land rental agreements are commercial and will include conditions for settlement of disputes, independent review and the like. This is satisfactory for an ongoing lease but will not restrict unreasonable demands for increases when a lease expires. Once the port is privatised and there are price controls in some sectors and effective price monitoring covering others, but some sectors are excluded, then it is likely that price gouging could take place in those uncontrolled/unregulated areas. The scope of the price regulation should be extended to cover all areas of the port operations. It is acknowledged that the recent agreement on a long term lease and pricing arrangements between PoMC and DPW stevedores tends to take some heat out of this argument. The agreement provides for known price increases over the next 15 years, after that there will be 5 yearly rental reviews and an independent arbitration process is included. However there are many other areas of the port where such long term agreements do not exist.

10. The Government's statements of not increases to export container wharfage for 5 years and increases in other port services limited to CPI for 15 years are not reflected in the legislation. I am advised that these conditions will either be included in the IPO or in the lease agreement. It is acknowledged that the following information does appear on the Departmental web site:

"The Port of Melbourne Corporation has frozen prices on loaded international container export charges in 2015-16 and will progressively reduce export charges, by 2.5 per cent price annually for the four years thereafter" <http://www.dtf.vic.gov.au/Infrastructure-Delivery/Leasing-the-Port-of-Melbourne/Frequently-asked-questions#WhatarePortofMelbournescharges>

“The existing Essential Services Commission regulatory arrangements will be strengthened such that the leaseholder will set prices in accordance with clear and transparent pricing principles contained in a Pricing Order. The scope of regulated charges will be expanded to cover all trade charges for cargo and shipping movements. Property rents will continue to be set by contract.

A CPI price cap for at least 15 years will be monitored by the Essential Services Commission.” <http://www.dtf.vic.gov.au/Infrastructure-Delivery/Leasing-the-Port-of-Melbourne/Frequently-asked-questions#WhatarePortofMelbournescharges>

11. But again, at this stage no one has seen the IPO (which will become a public document I am assured) and the terms of the lease will probably remain commercial in confidence and not receive public scrutiny.

12. The IPO is an absolutely crucial document that should be carefully reviewed by the Select Committee before any recommendation is made to Parliament. Not only does it purport to contain essential detail of the privatisation process, but according to the Bill it is almost impossible to change once it has been put in place as it requires the agreement of all parties.

13. **Up-Front Capitalisation of Future PLF Revenue Stream.** Our members expressed concerns that the Treasurer’s stated intention to capitalise the Port Licence Fee as an up-front lump sum. It is clearly attractive to provide a massive cash injection (in the order of \$3.5bn) to the Victorian Government, but as the PLF is not hypothecated to port or freight development it can be used for any purpose. SAL members interpret this as essentially the Government taking a loan funded through the privatisation process. The port purchaser will have to finance this payment and recover the interest on this lump sum either by increasing charges to port users or reducing their purchase price for the port. They will also need to make a return on their investment for any premium they pay for the future potential earning power of the asset. The more the purchaser pays up front, the higher they will need to work their charges to meet their economic returns.

14. I have been advised by Morgan Stanley (advisers to the Government on the privatisation) that the Port Lessee will not be permitted to recover interest on the PLF (I can’t find any reference to this in the Bill) and therefore they will have to make allowance for the interest costs in their calculation as to what to offer as a premium in their bid for the port. If this is the case, then the Government is effectively taking a \$3.5bn loan and funding it by a reduced sale premium for the port. This is not something that Shipping Australia members are directly affected by.

15. **Compensation regime lacks transparency and creates a disincentive for timely port development.** The Government has indicated that a compensation regime will be included for the port operator until the Port of Melbourne reaches capacity. There is no transparency on this arrangement, there are differing opinions of port capacity ranging between 5.2 million TEU to around 8 million TEU (various reviews dating back to 2005). The Treasurer has recently stated that he expects the port capacity to be agreed with the purchaser in the range between 6.5 and 7.5 million TEU. However, the Bill simply enables the Government to pay compensation, it does not provide the details of the amount, and there is no statement of the port capacity at which this will commence – presumably such detail will be included in a commercial-in-confidence lease agreement and the people of Victoria will never know.

16. Such arrangements eliminate the possibility of future port competition, lock in long term monopoly pricing for the port operator. SAL is also concerned that such a compensation regime will be a disincentive for any Government to invest, in a timely manner in the necessary infrastructure to support a future deep-water port (be it Hastings, bay west or another option).

17. The Treasurer has stated that there will be no restriction on a commercial operator commencing competing container port operations, however this is clearly unrealistic without at least Government investment and state planning support for road /rail and intermodal connection developments. It is not clear whether the Government encouraging or assisting the operation of another, potentially competing Victorian container port, such as Portland for example, will trigger any compensation payments. This should not occur.

18. **Lease extension conditions not subject to Parliamentary oversight.** The term of the Lease is stated as 50 years, but the Bill enables any Government to exercise an extension for a further 20 years at any time. Such a possible extension exacerbates our concerns expressed at the previous paragraphs and leaves it open to being used for political advantage.

19. **No long term plan to accommodate larger ships means Melbourne is the limiting factor for Australia.** The Port of Melbourne is limited in the size of ships it can handle by Port Phillip Heads, the Yarra River depth, Westgate Bridge and the Swanson swinging basin. Current limitations are length of Max 320m, draught 14m (though 14.6 has been achieved) and 50.2m air draught (Westgate Bridge). SAL is advised that special safety cases may enable larger ships to be brought into the port but this will introduce significant tidal limitations and require larger ships to be specifically loaded or ballasted in order to visit Melbourne. Such restrictions are contrary to efficient trade.

20. Five major container ship operators from within SAL membership have indicated that without the limitations of Port of Melbourne, ships exceeding 8,000 TEU would be visiting Australia within 5 years. Therefore, within that timeframe Melbourne will be either limiting the size of ships visiting east coast ports or losing sea trade to other ports and encouraging hubbing or land bridging from Sydney or Brisbane. Either of these scenarios is counter to efficient trade.

Conclusion / Recommendations

21. Shipping Australia Limited does not want to see a port privatisation which increases prices out of step with world trends or restricts the development of a new deep-water port in time to meet emerging demands. A monopoly private port needs effective price controls on all monopoly services including any proposal to introduce new charges. There are some aspects of the Bill which provide better outcomes for shipping that we have seen in other east coast port privatisations, however there are many areas that could be improved and SAL recommends that the Select Committee consider recommending amendments that:

- a. Strengthen, expand the scope and clarify the price monitoring regime to provide effective price control of all aspects of the monopoly private port throughout the full term of the lease,
- b. Provide full transparency of the details of the initial Pricing Order, at least to the Parliament before a final decision is taken on the Bill,

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- c. Provide transparency of the compensation regime, its extent and its consequences, or consider replacing it with an incentive for the Port Lessee to participate in the development of a future deep-water port,
 - d. Allow a timely development path for Victoria that accommodates ships larger than those currently able to efficiently use the Port of Melbourne without penalty and within reasonable timescales. A future deep-water port needs to be available, with the supporting land-side connection infrastructure, by the time that trade and ship size developments make that an economic necessity,
 - e. Review the provision for and financial consequence of bringing forward 50 years of the PLF and or at least make it clear that the lessee cannot recover interest on any PLF pre-payment through increased charges to users,
 - f. Seek assurance that ongoing government essential services to the port are sufficiently funded from existing revenues or by an identified contribution from the private operator and will not lead to unexpected user increases, and
 - g. A requirement for parliamentary agreement to extend the term of the lease past 50 years.

Authorised by:
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