5 April 2018

Svitzer - Submission on the Access and Pricing Regime Issues Paper

Submission to Questions	
Issue 3: **Exemption of services provided under lease**	*Q 3a Is the application of regulation 12(2) too wide in allowing the port operator to lease prescribed services, and thus potentially setting these services outside of the regime?* Yes, the application of regulation 12(2) is too wide in allowing the port operator to lease prescribed services and therefore avoid complying with the crucial protection for port users provided by the access and pricing regime. There is no good reason why form should triumph over substance and allow the access and pricing regime to be avoided simply by including the relevant services in a lease rather than some other document. *Q 3b: Are there any effective alternatives?* An effective alternative would be for regulation 12(2) to be removed. In this way, all services would be subject to the same regulatory regime – whether included in a lease or not. There appears to be no compelling reason why the inclusion of a service in a lease should be treated differently to the provision of that service under any other form of document. To allow regulation 12(2) to remain in its current form simply encourages the private port operator to bundle all services which might otherwise be prescribed services into a lease so as to avoid the application of the access and pricing regime.

Issue 4: Regulated services	*Q 4a: Is it necessary to regulate all of the current prescribed services?* It remains necessary to regulate all of the current prescribed services. *Q 4b: Are there any services not currently prescribed that should be?* Those services referred to in regulation 12(3) as being outside the access and price monitoring regime should be included within it. To not adopt this approach simply encourages the private port operator to bundle prescribed services with those non-prescribed services specified in regulation 12(3).
Issue 5: Price monitoring	*Q 5: Is price monitoring alone a sufficient form of price regulation?* Price monitoring alone is not a sufficient form of price regulation. Whilst the access and pricing regime provides some level of safeguard against unfair differentiation, it does not provide any safeguard whatsoever against wholesale price increases by the private port operator imposed across all port users. This has been the experience in other Australian privatised ports and should not be permitted to occur in the Port of Darwin.
Issue 6: Threat of regulatory intervention	*Q 6a: Should arbitration be included in the PM Act or Regulations rather than the port operator's access policy?* Arbitration should be included in the PM Act or Regulations rather than the port operator's access policy. Matters concerning the price and terms of access are too important to be left to the access policy of the private port operator. In addition, once included in such access.