



# ISO Limited

## Submission to the Productivity Commission: Inquiry into International Freight Transport Services

27 February 2012

### 1 Introduction

ISO Limited (ISO) welcomes the second opportunity to provide input to the Productivity Commission's inquiry into International Freight Transport Services. The Draft Report is a substantial document and the considered analysis is appreciated.

After reviewing the Draft Report, ISO endorses many of the Productivity Commission's (the Commission) findings and recommendations.

With regard to ports, where ISO is obviously most interested, some of the findings recommend further study, particularly to better understand the relationship between port ownership, governance and port efficiency. This is relevant for developing particular supply chain metrics, similar to the work of the Bureau of Infrastructure, Transport and Regional Economics (BITRE) in Australia.

While this is a good idea for understanding what efficiency in the port sector might look like, we think that more concrete recommendations can be made in two areas:

1. Ownership and governance arrangements
2. Labour relations

The Commission is inquiring into international freight transport policy at the request of the Government. We believe that this is a rare opportunity for the sector to look at the same data and the same problems, and to clearly communicate the regulatory improvements that are most required.

#### Outline of this submission

This submission, like ISO's previous submission, is focussed on how to improve efficiency in the port sector, particularly within ports. In this sense, this submission should be read alongside our previous submission.

This submission covers four areas, prompted by the findings and recommendations in the Commission's Draft report:

- § **Ownership and governance (Section 2)**—There is nothing in the current legislative arrangements (including the Local Government Act and the Port Companies Act) to provide sufficient commercial discipline on publicly owned ports, creating problems for rate payer communities to be confident that their port managers face enough commercial discipline to seek efficiencies
- § **Access and contestability (Section 3)**—ISO argues that scale shouldn't affect the process of contestability—even if the gains at stake are not substantial at a national level. Effective competition between ports should create the tension required for port service managers to seek out efficiency gains for their owners' and their region's businesses' benefit

- § **Labour relations (Section 4)**—Both worker productivity and safety are better delivered by devolving responsibility to those doing the work. For instance, ISO considers that workplace safety legislation is written with flexibility and responsiveness in mind, where teams can communicate with providers of capital and equipment—including safety equipment
- § **Information disclosure and monitoring (Section 5)**—Given the Commission’s concerns about performance, there should be ways for all stakeholders (Government, ratepayers, market participants, investors, and consumers) to monitor performance
- § **Appendix**—We summarise our responses the Commission’s specific findings, recommendations, and questions related to port services.

ISO firmly agrees with the Commission’s statement that “a more efficient and effective freight system can raise the prosperity of New Zealand’s businesses and workers and enhance consumers’ purchasing power”. When serious issues of ownership and governance, contestability, labour relations, and union rights are debated in the context of ports, there is a tendency to shy away from concrete proposals. ISO contends that these are all secondary to the chief policy goal: safe, efficient, flexible, and reliable freight handling.

## 2 Ownership and Governance

The Ports Companies Act 1988 does not provide sufficient commercial discipline on publicly owned ports, creating problems with:

- a) The ability for rate paying communities to be confident that their port managers face enough commercial discipline to seek efficiencies, and
- b) Competitive neutrality and distortions.

Council governance and political interference is a general problem which has been identified in Australia and Europe in relation to council-controlled and corporatised ports.<sup>1</sup> Ports are sometimes motivated by a number of non-commercial objectives. This is distracting for port managers, and leads to a confusion of priorities—not to mention a reduction in some ports’ drive for maintaining and improving efficiency.

ISO believes significant port efficiencies can be unlocked for New Zealand regions by decoupling the provision of contestable services from the setting of non-commercial objectives and other public policy goals. New Zealand ports with transparent capital structures, if combined with market observation of New Zealand performance indicators, will provide a better basis for assessing investment strategies.

### **Greater transparency in the objectives for owners**

It makes sense that returns to any investments in efficiency in port or related contestable services go to the businesses and ratepayer communities that enable them. It also seems clear that public policy should promote:

- § The efficient provision of publicly provided port services, and

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<sup>1</sup> Notteboom, T., and Winkelmann, W. (2001) Structural changes in logistics: How do port authorities face the challenges? *Maritime Policy and Management*, 28, 71-89

§ A public benefit test to justify the maintenance of any policy, governance arrangement, or management practise of publicly owned entities which could restrict competition.

The landlord port model observed overseas, including in Australia, was not created by specific port reform—it was a by-product of public finance and general public sector reform. Whilst the focus on commercial objectives and independent governance has had a lot of profile for State Owned Enterprises (SOEs) in New Zealand, this has not occurred at the local government level. This is particularly evident for port ownership and efficiency.

The differences in ownership and governance relationships between other listed companies and SOEs and the lack of share trading weakens the potential performance impact of disclosure. We therefore endorse the Commission's recommendation to align the legislation, not only in terms of the objectives, but also the processes for how owners communicate their objectives to managers.

In 2010 the Government introduced a continuous disclosure regime for SOEs, modelled on the regime applying to publicly-listed companies.<sup>2</sup> If similarly applied to port companies owned by local government, this has the potential to improve their transparency and lead to improved financial performance.

While not perfect, these higher obligations on SOEs do signal a willingness of public owners to incentivise efficiency and openness. The current consideration of partial listing via mixed ownership has a number of greater benefits, which will be well-known to the Commission<sup>3</sup>.

This regime limits the potential for political interference in publicly-owned entities. It also levels the playing field for competing businesses, by promoting transparency and complementing fair tendering processes for contestable services.

This is not currently reflected in the governance arrangements at the local government level, and particularly for ports—although the developments in how Council-owned assets will be administered in the new 'Super-City' arrangement are positive.

### **Setting and communicating objectives could be much clearer for ports**

How objectives are communicated to boards must be clear and transparent, and what those objectives mean for management processes and service provision needs to be communicated back to owners.

Legislation, rather than specific instances of interference or multiple objectives, can have a far greater impact on longer-term management performance.<sup>4</sup> This is especially the case since publicly-owned entities and assets will always be directed in some material way that is intended to be in the interests of owners.

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<sup>2</sup> Press Statement by Hon Simon Power, 21 January 2010, available online at: <http://www.beehive.govt.nz/release/more-disclosure-soes> (last accessed 27 February 2012).

<sup>3</sup> A number of proposals by the Government and papers by Treasury, the Business Roundtable, and the New Zealand Institute for the Study of Competition and Regulation have traversed this area recently. A good discussion is provided by Talosaga, Heatley & Howell (2011) *Can continuous disclosure improve the performance of State-Owned Enterprises?* ISCR, available online here:

[http://www.iscr.co.nz/ff648.18373/18373\\_Continuous\\_disclosure\\_Final.pdf](http://www.iscr.co.nz/ff648.18373/18373_Continuous_disclosure_Final.pdf) (last accessed 23 February 2012).

<sup>4</sup> Everett, S. (2003) Corporatization: A legislative framework for port inefficiencies, *Maritime Policy and Management*, Volume 30, No.3, 211-219

When the Australian port reforms were contemplated and eventually implemented in Australia, port users demanded productivity and efficiency improvements, equitable and transparent accounting systems. Port reform under the Hilmer Reforms did not include a requirement to follow the landlord port model. Rather, this was the decision of the public owners, and their management—that port operations, when opened up to a competitive market, were either more efficiently (and more profitable for them as the owner) delivered by private firms, or by the incumbent operator through contestable contracts.

We provide a background to the Australian experience with port reform under the National Competition Policy in Box 2.1. While the Commission is likely to be familiar with the policy history, ISO wants to recognise that the development of the landlord model was not uniform at all ports, and came about as a result of owners looking closely at their assets according to some high-level efficiency principles based on contestability and net public benefits—rather than as a result of a one-size-fits-all approach.

Likewise, it may be unreasonable to dictate to local government that they partially list their ports and open up some or all of the ownership to private parties. However, we think that the Commission should use any scope it has to recommend more market exposure of port management decisions to ensure port services are opened up to competition, and contestable services are not cross subsidised by non-contestable services operated by the Port.

#### **Box 2.1: The Australian Experience**

The Hilmer Report's 1993 principal recommendations achieved substantial benefits for Australian port productivity.

These reforms aimed to:

- § Bring all commercial activity, regardless of legal form or ownership of the enterprise, into the 'real economy', where resources are allocated by easily discovered prices
- § Put to an end anomalies arising from the division of competition policy oversight central and local government and undemocratic shareholder representation
- § Establish a new regulatory regime to prevent enterprises that controlled an "essential facility" with natural monopoly characteristics from abusing their market power (an "access regime").

The reforms established a set of principles:

- § Legislative or regulatory impediments to competition should be subject to review to ensure the costs associated with reduced competition were exceeded by public benefits
- § Before engaging in commercial activity, state-owned entities should be subject to "competitive neutrality" requirements to address distortions to competition arising from their various policy privileges
- § Expand the role of advice to shareholders on inter-governmental dealing and governance arrangements of publicly-owned institutions.

The Hilmer report was a breakthrough in mobilising attention and reform, and its recommendations were endorsed in their entirety by Federal and State Governments.

Public sector reform, and devolution of port governance from politicians to independent boards, occurred at a time that many public sector transport services were making substantial losses and absorbing substantial public funds.

Cross-subsidisation was also identified as a significant problem for seeing where efficiencies might be and for promoting competition and business fairness generally.

Source: Everett, S., and Robinson, R. (2006) *Port Reform: The Australian Experience, Devolution, Port Governance and Port Performance*, edited by Brookes, M.E., Cullinane, K., Elsevier

### **Areas where attention should be directed in legislation**

Elected representatives are tasked with providing maximum benefits for New Zealand tax- and rate-payers. To the extent that the public effectively becomes the capital investor, part of that benefit derives from earning a return on investment over the course of ownership.

Port customers are New Zealand shippers, namely the businesses, their owners, their financiers backing them with capital, and their employees rely on an efficient port sector. This is the case in each region linked to the domestic and global economy by a port. As an example, rather than targeting unreasonable dividend policies, port companies need to reinvest in key infrastructure.

There are several areas of discretion granted to boards to decide matters of critical importance to the port company as a portfolio of public assets (including significant landholdings with development potential) and to the community as a service provider:

- § How services are provided, such as by more or less contracting out of services
- § Profit retention, capital raising options, and particularly long-life capital expenditure strategies
- § Development decisions, such as the footprint of the port and how it is integrated with land based transport modes.

The Draft Report noted key processes that are approached differently in New Zealand ports:

- § **The communication of owner objectives to boards and port service managers**—These should attract scrutiny, if not from the electorate, then from the market. Listing may achieve this, but probably only partially
- § **The selection criteria of boards**—Boards should be fully independent, to isolate the setting of objectives from the drive for commercial efficiency.

## **3 Access and Contestability**

ISO believes the Commission has the evidence to recommend that port owners, which are mostly local government, explore improving productivity through more contestable arrangements. ISO agrees, however, that particular arrangements may not prove to be justified in every port—but disagrees that this is to do with scale. Contrary to finding 8.4 of the Draft report, ISO argues that scale shouldn't affect the process of contestability—even if the gains at stake are not substantial at a national level. Many smaller ports, such as Timaru, Picton and Nelson, have experienced significant increases in efficiencies when competition between service providers, in contestable services, has been introduced into the ports.

ISO wonders whether the reduced focus on contestability and negotiated access in the Commission's Draft Report recommendations is because the commissioners believe there are likely to be larger potential efficiencies available through other channels.

While this may be true for many ports, ports are not homogenous. It may be that some ports are already efficient. It is also the case that different service providers on ports already make substantial contributions, whether this is as the provider of capital equipment and maintenance support, or the interaction of service providers in delivering safe efficient and contestable services. However, as New Zealand is not a large country,

there is no reason why a service provider should not be discouraged from building efficiencies by operating throughout New Zealand. Utilising capabilities and scale in one port can assist other smaller ports in during peaks and troughs. ISO believes that this flexibility is more in the interests of New Zealand shippers. Currently, ISO personnel travel extensively throughout New Zealand every day to accommodate shipping schedules and customer requirements, to ensure skilled operators provide safe and efficient services to its customer base.

The attention given by local government to seeking out efficiencies and reinvesting returns to maintain long-life capital infrastructure is likely to be related to the openness of a port company to the contestable provision of port services, or an alternative contracting arrangement on port land. In this sense, the lack of contestability is a symptom, rather than a principal cause, of the types of problems the Commission is investigating in its freight inquiry.

ISO therefore agrees that efforts to improve the governance and administration of publicly-owned ports, as well as the monitoring of publicly-owned land and infrastructure assets, would be more effective—but nevertheless consistent—with more open access arrangements for contestable services.

### **Why contestability enhances efficiency**

The most easily achieved innovations are usually identified by those close to the action—not necessarily board directors or elected representatives. The most obvious innovations in ISO's experience have come from how teams work together and the ideas these teams generate. A diversified business operation can make the micro-level possibilities harder for managers to see.

Even if there is no change in the provider of particular port services, the process of contestability is always positive for the owner. Competitive tension causes service providers as managers to 'sharpen their pencils', and seek out efficiency gains for owners' and their region's businesses' benefit.

### **Aiming for competitive neutrality**

The problem that many Australian port users/shippers identified in the lead up to the Hilmer reforms was that efficient or otherwise profitable parts of the port were cross-subsidising loss-making activities. Democratically elected representatives were able to appeal to different groups, for instance by promising specific jobs, rather than general benefits to the entire economy.

The allocation of shared costs and determining an appropriate rate of return are well-known issues that arise when considering the full costs incurred in public investments. Port companies have the opportunity to leverage resources and provide some services within the port at a lower cost than might be incurred by private investors, although at the detriment of overall profitability.

Competitive neutrality requires that publicly-owned firms do not acquire a significant competitive advantage or disadvantage solely by virtue of public ownership or control. This means that in the role of policy maker, central and local government should promote equal and efficient competition between public and private firms through non-discriminatory procurement and pricing. Competitive neutrality does not require a port, for instance, to invalidate competitive advantages that arise from factors such as scale, unique skills, location or customer loyalty.

Competitive neutrality should also not necessarily apply to all government activities. Budget-funded service delivery functions that do not distinguish between the purchaser

and provider of the service (such as education, health, or social housing services) may not be appropriate as contestable markets. However, significant public investments in contestable markets such as ports and the services offered within the port should be subject to competitive neutrality requirements, particularly where managers come up with pricing strategies that impact the business community and the shippers using the port.

Competitive neutrality improves outcomes for taxpayers by ensuring value for money from public investment. By rewarding more efficient providers, the competitive process ensures that ratepayers' money is focused on commercial activities that are provided safely and efficiently. This benefits consumers, as efficiencies and cost reductions driven by the competitive process are reflected in lower prices.

Competitive neutrality will deliver benefits (in the long-term) to ratepayers, shippers, and freight service consumers:

§ **Benefits to ratepayers**—Ratepayers could be made better off by paying a more efficient provider, rather than subsidising losses. The removal of underpricing will encourage more economically efficient outcomes, enabling the council to achieve the best value for ratepayer's money. The result might be a lower overall cost to ratepayers, or the capacity to spend the subsidies that would otherwise be paid in other areas.

§ **Benefits to New Zealand shippers and freight service consumers**—competitively neutral pricing will encourage providers at different levels of the supply chain to search for the potential for greater price and service efficiencies. This could stimulate greater demand from businesses and shippers—particularly in export-oriented regions.

Some might argue that requiring competitive neutrality might cause higher costs for operators and consumers because they lose the benefit of what is claimed to be below-cost pricing of the port services. However, to the extent that this subsidy is allocated from a fixed council or port company budget (which also provides subsidies for inefficient services) the result will be lower subsidies, in areas that are not appropriate contestable markets, (and a need for correspondingly higher charges) elsewhere.

Over the long-run, consumers will suffer from the reduced incentives on all providers (both of port services and elsewhere in the freight supply chain) to improve service safety, quality and pricing. For this reason, predatory pricing is an offence in New Zealand under section 36 of the Commerce Act, which prevents firms with a substantial degree of market power from pricing below cost in order to thwart the competitive process.

## **4 Labour Relations**

ISO endorses the Commission's identification of potential for microeconomic reform in ports, as well as the alternative corporate governance aspects discussed above. We have some particular examples of how the current regulatory framework specifically limits competition, and has led to inefficient practices becoming "bottom lines" in negotiations.

We also address the request for more information about work practices being inefficient and contrary to the interests of worker safety.

**Out-dated work practices will not achieve efficiency gains.**

We stand by our previous submission on this topic. Inflexible labour practices and certain union activities remains an obstacle to future productivity improvements in New

Zealand port services. What is needed is a labour relations framework where innovation and flexibility are encouraged.

Some workers may feel threatened because the current business models in some ports do not value flexibility and that any gains made will be captured by port managers or they feel may be at the expense of their safety. Industrial disputes arise where the companies are trying to embrace the flexible model and certain parties do not want to align to the way the industry is changing. It is important that where the companies involved are publicly owned the Government should not intervene. Rather the parties involved should work through the issues in order to reach acceptable terms for both parties.

ISO advocates that this increase in flexible hours can be managed effectively. Our experience and that of our employees is that these concerns are unfounded. If consultative management practices and safe operating procedures are adopted, specifically targeting efficiency and worker/employee flexibility, workers concerns can be alleviated in our experience.

ISO employees are represented by the Amalgamated Stevedores Union, a union independent of the CTU and ITF and are covered by a Collective Employment Agreement (CEA) under the Employment Relations Act (ERA)

This CEA, among other things, places emphasis on safe flexible work practices and employees, both permanent & casual, benefit from market rates of pay and the advancement for skills learned and experience gained. This covers both local Port work and travelling throughout New Zealand for management of peaks and troughs at other ports, on an “as and when required” basis with the employee being able to turn work down or accept it to accommodate family life. Freedom of choice exists for the company to engage personnel in the framework that delivers flexibility for its customers, while delivering guaranteed incomes for its permanent personnel and opportunities for advancement in training, skill level and employment status to permanent to its casuals.

The CTU and ITF affiliated unions claim that this transfer of skilled operators between ports, is at the expense of local people fulfilling these roles. However this is common practice among stevedores and in nearly every instance, ISO experiences, it is due to the surges in shipping and the inability to sustain consistent work for personnel necessary to meet the peak skill demand.

Alongside this CEA sits guidelines agreed with the ASU surrounding minimum notice and maximum days worked to ensure adequate rest is given to the employees under this arrangement. This allows ISO as a service provider to service its customers’ needs and provide the employees with an acceptable work life balance and a market based income for skills learned and experience gained. Accordingly ISO has a very low staff turnover ratio and one of the best safety and productivity records on the New Zealand Waterfront.

#### **Box 4.1: How Flexibility is Valued under ISO's CEA**

The following excerpt outlines this flexibility of ISO's workforce.

- § Regular Hourly Associate [RHA]; an Associate employed on either a rostered or an "as required" basis, but subject to a minimum guarantee or retainer as outlined in the Associate's IEA, and, except where otherwise agreed with the ASU with a preference for on-going work. Preference for ongoing work does not mean an exclusive right to all work, only a first call on on-going work subject to some reasonable flexibility to enable the company to meet safety requirements and/or to maintain service levels, which may necessitate the need to rest or stand down an RHA on rare occasions.
- § Casual Associate; an Associate engaged and paid by the hour on an "as and when required" basis pursuant to an individual casual employment agreement for each job with no guarantee as to the period of engagement or of any subsequent engagement(s).
- § Should the basis of employment change, this will be confirmed in new individual terms as agreed.
- § The nature of employment reflects the 24/7 nature of our stevedoring, marshalling, warehousing and transport operations which have varying workloads and patterns. For salaried and RHA's it is an agreed condition of your employment that your availability to work varying hours or days is understood and accepted.
- § The company accepts that the 24/7 nature of the industry and the sometimes erratic nature of shipping outside of our control can have an impact on an employee's quality of life. Therefore the company proposes that a working party of ASU and company representatives meet in 2010 with the objective of finding fair and reasonable guidelines for dealing with workforce allocations.

Source: ISO Collective Employment Agreement

#### **Legislative change in labour relations**

ISO has in its previous submission identified examples of conflicts where legal rights were infringed upon and common law remedies were inadequate. Evidence exists of economic harm and reduced competition occurring in the port sector due to the behaviour of certain CTU affiliated unions, supported by local and overseas associations, such as the CTU and the ITF to the detriment of introducing safe, efficient and flexible practices into the New Zealand ports. These CTU affiliated unions are in direct competition to the union representing ISO personnel, the Amalgamated Stevedores Union (a non CTU affiliated union), and are behaving like businesses without regard for New Zealand competition law.

Furthermore these CTU affiliated unions breach their own ILO conventions that they so strongly argue to uphold, namely the freedom of association and the rights of individual workers to organise themselves and choose the association to whom they would wish to belong.

Specific due diligence and investigation by the Productivity Commission, with the power to gather evidence of harm should be undertaken of past and present incidents to determine the most effective and appropriate recommendations for legislative reform.

#### **Unions do not have a monopoly on worker safety**

Previously, in the nineteenth century, large, centrally organised workplaces, unions were advocates for worker rights and ensuring workplace safety. We now work in a twenty-first century environment of "risk-based" regulation, where those in charge of an activity are responsible for identifying hazards, communicating, and establishing processes for

managing risks. Rather than being successful due to unions' perceived independence from management, the previous safeguards for workers' welfare became an efficient way of organising workers, communicating instructions, as well as monitoring risks. Responsibilities for administering safety reflected the devolution of responsibility for risk management to workers and supervisors themselves—unions previously were the main link to management and therefore the main method for identifying safe working procedures and capital expenditure on safer equipment.

The reason governments have adopted “risk-based” methods to regulate dangerous industries (including gas infrastructure, maritime, and aviation sectors), is because operations are getting larger and more complex, which makes traditional oversight harder and costlier. To maintain standards, regulators have responded by putting the obligation on operator's managing safety—the employer is then responsible to, and may be certified by, a regulator (such as the Department of Labour), rather than each individual activity conducted within the operation.

But moving costs from the Government to business is not why “risk-based” regulations, such as having audited Workplace Safety Management Practices, have been implemented around the world. Making businesses themselves responsible for monitoring safety, while reducing costs, does not “outsource” responsibility for worker safety—it recognises that worker safety should be directed toward those best-placed to actually improve practise and promote a safety culture.

This is “risk-based” because the consequences of not being up to standard are significant, and should be enough of a deterrent to compel safer behaviour and encourage better organisational communications.

Responsibility rests with the employer. It is they that are liable should anything go wrong.

It is for the above reasons ISO disputes that casualisation of the workforce lowers safety. A permanent workforce is no guarantee that they will be a safer workforce. Provided an employee has the required, recognised skills to undertake a task safely, a person's employment status does not determine their skill level. A skilled and trained casual employee working on the waterfront is no different to a locum surgeon or nurse working at a medical practice for a short period of time.

Where the focus needs to be placed, is on whether a company has systems in place to accurately and effectively show that the employees undertaking a task or position have the appropriate qualifications and training. There is currently in existence adequate legislation and liability for such breaches of safety.

### **Unions and ports face multiple objectives**

Just as directors and managers can face multiple incentives in the administration of port companies (depending on how councils influence the setting of their objectives), unions aim for outcomes for members beyond just safety improvements. These incentives can come into conflict, for instance, when a labour saving device or innovative operation might reduce accidents by limiting the exposure of workers to dangerous activities or an overarching policy that may result in workplace redundancies but a far safer place, such as workplace drug testing.

One of the more concerning aspects of large port operations with integrated provision of port services is that while it may be easier to manage the total operation, it is harder to monitor the individual activities being conducted. More contestable wharves mean a greater number of service providers operating in close proximity. What this requires is a closer relationship between multiple operations controlling various hazards in a multi

operator setting. It is therefore more likely that those workers most directly affected will have someone responsible for safety within their own operation. Clearer accountability for safety being put on the operations supervisor or team leader, in ISO's experience, is a more effective method of getting waterside workers operating safely and efficiently, when supported by Standard Operating Procedures, training and discipline.

## **5 Information Disclosure and Monitoring**

The focus on economic value-add (EVA) in the Draft Report is welcomed. The Draft Report finds that the performance of New Zealand ports is varied across regions, citing a number of different potential causes.

### **Supply-chain efficiency data should be collected and analysed**

ISO considers that minor reform of the organisational arrangements for monitoring competition levels at a locally owned infrastructure could be justified. A much stronger case is made in the report for monitoring certain performance metrics. ISO considers that, in comparison to the potential combination of ratepayer apathy, monopoly rents and over-investment, transparency of port operations is worth pursuing.

Potential efficiencies could be more readily identified in New Zealand ports, with more straight forward reporting, particularly with clearer public monitoring of performance and more transparent port administration. Looking only at EBITDA in New Zealand ports is a misleading indicator of the overall performance of council-owned port companies—a supply-chain efficiency perspective, following the approach of BITRE in Australia, should, however, identify to port rate payer communities how their assets are faring relative to useful benchmarks, and reinforce the sorts of administrative disciplines promoted elsewhere in this submission.

An example of the sort of information that could be developed for better productivity comparisons is in how different cargoes are measured. For example, Gross Load Rate (GLR) per hour expressed in tonnes would be an example of how the Productivity Commission may recommend that New Zealand measure the port productivity outside of containers.

### **Information might cost, but we think it is worth it**

Whether comparing minor transparency measures, corporate restructures or privatisation of assets, there should be a careful focus on the impact of red tape to ensure a robust evaluation of both commercial and public benefits. New Zealand has established many institutions to monitor, provide oversight, or exert control over several services, as recommended by affected parties or the Government. These have had varied success in creating certain environments for investing in very long-life investments like ports. When capital commitments are lumpy, risks of compliance costs and contention about key indicators are of greater consequence.

Evaluating the performance of different regulatory or policy frameworks is very difficult, as the counterfactual is elusive—the Commission noted that port regulation is different around the world. We believe the gains are there to be achieved, having observed the benefits of competition in a few ports—including Tauranga. Like the Commission, we have observed the opacity that results from not having consistent comparators. This information has a significant public benefit, due to the reliance placed on intermodal freight links for New Zealand businesses and consumers, and creating a framework for assessing the data could bolster all of the potential drivers identified by the Commission in the draft report—so long as compliance with administrative processes is evaluated beforehand and applied flexibly to achieve the desired result.

## Appendix A

**Table: ISO Responses to Specific Findings and Recommendations in the Draft Report**

Commission Reference	Finding or Recommendation	Agree/Disagree/Comment
<b>Ownership and Governance Arrangements</b>		
R. 10.1	The objectives of council-owned port and airport companies should be brought into line with the objectives for state-owned enterprises; i.e., to be as profitable and efficient as comparable businesses that are privately owned.	<b>Agree</b> , but the issue is also the process of governance and the transparency of communications between owners, boards, and managers.
R. 10.2	To maintain the separation between wider council objectives and the commercial objectives of port and airport companies, elected representatives and council staff should be precluded from being a director of council-owned port and airport companies. All relevant legislation should embody this provision.	<b>Agree.</b>
R. 10.6	To improve the efficiency of ports, councils should consider increasing the degree of private ownership in them. Councils should evaluate whether they can still achieve important community aims with lower ownership stakes.	<b>Agree.</b> Mixed ownership and exposure to market scrutiny of management performance is a more responsive influencer of investment direction and on-going port service administration. A requirement for partial listing and greater transparency of port operations could also be useful, although would be a second-best alternative.
R. 10.7	Councils—in particular those with interests in ports occupying large blocks of central city waterfront land—should consider landlord port models in which land ownership is separated from port operations. This may be an efficient mechanism for maintaining control over port land use while benefiting from the efficiency improvements resulting from increased private involvement in port operations.	<b>Agree</b> , but recognise that this is a decision for owners. Barriers to consideration of alternative operating models should be removed.

F. 10.2	The Port Companies Act sets the principal objective of every port company as being to operate as a 'successful business'. However, that objective is unclear. In the case of majority council ownership it may be supplemented with the objectives of a port company's owners.	<b>Agree.</b> Democratically elected representatives appeal to different groups by promising <u>specific</u> jobs, rather than general benefits to the entire economy.
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### Contestability of services

F. 8.4	Contestability of stevedoring and marshalling is only occurring at some ports. Provided there is sufficient scale, greater contestability at other ports would improve incentives for innovation in stevedoring and marshalling at these ports.	<b>Agree</b> , but scale is should not be the determinative of potential for contestability and innovation. Many smaller ports, such as Timaru, Picton and Nelson, have experienced significant increases in efficiency when competition between service providers has been introduced. While larger ports may yield larger gains, the process of contestability and continued commitment to performance can have wider benefits and can lead to more flexible use of scarce resources, for instance by utilising demand peaks and troughs at different ports effectively.
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### Labour Relations

R. 6.1	The Government should review whether existing legislation is sufficient to effectively regulate barriers to competition that arise as a result of union activity.	<b>Strongly agree.</b> See ISO's previous submission and other communications on this issue.
F. 6.1	The demand for port services is highly variable, driven by the arrival of ships for loading and unloading. Ports face a challenge in managing their capacity to meet those variable demands for service. Those challenges relate to both optimising investment in capital equipment that may be idle for extended periods between ships, and managing access to labour to meet variable workloads.	<b>Agree.</b> ISO recognises the relationship with contestability and flexibility of port service resources in achieving responsive and efficient deployment of capital and labour through demand peaks and troughs.
F. 6.2	By and large, collective agreements and individual employment agreements do not codify restrictive work practices. There are several possible reasons as to why restrictive practices may remain, including weak governance arrangements for ports and unions; entrenched cultures; and significant negotiation leverage of organised labour arising from a number of factors, including common law support for 'customary	<b>Agree.</b> In contrast, ISO's collective agreement explicitly recognises the value that port service users, and therefore managers, place on flexibility. The arrangements with employees do not need to result in disadvantage, and can fully reflect the greater time commitments and contributions of workers.

	arrangements' that makes changing work practices more difficult.	
F. 6.3	There is evidence to suggest that unions have used their influence to limit competition among port service providers.	<b>Strongly agree.</b>
F. 6.4	Impediments to competition in the provision of port services can reduce the efficiency and long-term viability of New Zealand ports and undermine broader competition policies and legislation.	<b>Strongly agree.</b>
Q. 6.1	To what extent are the work practices identified during consultation restrictive in nature and not in the long-term interest of the efficiency of the international freight transport services system? What evidence is there that these practices are, or are not, necessary to ensure desired outcomes, such as with respect to worker safety?	<p>Previously identified instances of union interference and intimidation have been provided. This can result in shippers seeking other ports and communities being held hostage by the unwillingness of unions to seek a common goal with port owners and local businesses. Distribution of efficiency gains can be agreed only after all the relevant parties are prepared to make them happen.</p> <p>Unions do not have a monopoly on being responsible for safety, and claims to this effect are in contrast to health and safety legislation. The process of contestability actually enhances safety by causing managers to take a closer look at operations and focus on how their teams communicate.</p>
Q. 6.2	To what extent do the factors identified by the Commission in the course of its investigations explain the continuation of restrictive work practices? To what degree are the factors identified valid and complete?	CTU affiliated unions are in direct competition with other, non-CTU affiliated unions, such as the union representing ISO personnel, and are behaving like businesses without regard for New Zealand competition law.

### Information Disclosure and Monitoring

R. 10.3	In the interests of improved reporting and transparency, and the efficient use of capital in the freight transport system, EVA figures for port companies should be regularly published and reviewed, including disaggregated data for significant business segments.	<b>Agree</b> , particularly with regard to producing and publishing disaggregated data.
R. 10.4	A collective monitoring function should be established for port companies, to create independent information on comparative	<b>Agree</b> , so long as costs of supporting or complying with information requirements are not prohibitive.

	performance of ports for owners to consider – further strengthening ownership disciplines and optimal port performance.	
F. 3.6	The six port companies analysed by the Commission recorded mostly negative Economic-Value Added from 2008 to 2011, although there was a trend to less negative figures. This suggests that the port companies have not recovered their cost of capital.	<b>Agree</b> , although it is difficult to see which services are profitable and which are not, as there is a significant potential for cross-subsidisation of intra-port services when delivered by the port operator.
F. 8.3	The Commission’s EVA analysis poses questions about how well ports use capital resources. The potential impediments to efficient investment and innovation at these ports discussed in this report are ownership and governance arrangements for ports, investment planning processes, and the effects of the Resource Management Act.	<b>Agree.</b>
F. 9.3	Leadership models for infrastructure planning need to be based on high-quality information. Leadership in an uncertain environment creates high risks for the leader. Governments should be wary of calls for it to assume the normal commercial risk of other parties.	<b>Agree.</b> There are also insufficient incentives for port owners to exercise the ordinary levels of control that would be observed in privately owned or publicly traded companies.

### General Findings

F. 8.1	New Zealand businesses have little influence over the level of investment and innovation by the international shipping lines visiting New Zealand, but New Zealand ports may have a role in enabling more efficient ships to service New Zealand.	<b>Agree.</b> Better information and benchmarking with other ports and port service operators could be a catalyst for ports accepting this role.
F. 8.2	Except in specialised bulk shipping, coastal shipping struggles to earn returns on investment. This is partly a consequence of government subsidies to rail.	<b>Agree.</b>
F. 9.8	An immediate move to supporting bigger container ships would appear to have high risks and uncertain benefits for New Zealand. These conditions favour an incremental approach in which ports make investments in small stages in response to evolving freight demand and changes in container ship deployment. As well as reducing risk, staged investment reduces the need for explicit centralised strategic planning.	<b>Agree</b> , the ability for ports to invest without cannibalising each other’s demand could be better managed and would result in less waste of ratepayer funds.

F. 9.9	While larger container ships servicing one or more New Zealand hub ports would lower voyage operating costs, it is unclear whether these cost savings will be transferred to shippers, or whether the reduced competition between ports (and shipping lines) would result in higher port charges and shipping fees.	<b>Agree</b> , but higher charges are a separate risk that should be dealt after a consideration of profitability. Any transfers from users to port owners or shippers can be addressed once efficient investment has taken place. They should not prohibit more efficient arrangements that use resources flexibly and strategically, taking into account all of the complementary or substitutable freight options in New Zealand.
F. 9.10	The domestic hub-and-spoke model required to service bigger container ships would likely lead to reduced freight costs for some shippers and cost increases for others. These uneven effects make it difficult to determine whether shippers, as a whole, will be better or worse off in a bigger ship scenario.	<b>Agree</b> , but a clear consideration of the risks and challenges would be possible with a continued focus on supply-chain efficiency metrics.

Key:

R	Recommendation
F	Finding
Q	Question