

**To: Utilities Commission of the Northern Territory**

**Re: 2023 Review of the Port Access and Pricing Regime – Issues Paper**

**3 February 2023**

## Introduction

AMEC appreciates the opportunity to provide industry consultation on the 2023 Review of the Port Access and Pricing Regime – Issues Paper produced by the Utilities Commission of the Northern Territory (the Commission). AMEC has provided continued feedback to the Commission previously in the 2018 review of Port Access and Pricing as well as the 2022-25 Prescribed Port Services Price Determination and DPO's draft access policy 2022.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national peak industry body representing over 540 mining and mineral exploration companies across Australia. With over 30 member companies based in and around the Northern Territory. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,00 people. In 2020/21 Industry generated a record high \$301 billion in mining exports, invested \$3.2 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$39.3 billion in royalties and taxes.

## General Remarks

The mining industry provides substantial economic value to the Northern Territory (the Territory) every year and is vital in growing the economy. The Territory Economic Reconstruction Commission (TERC) report released in 2020 outlined the goal of growing the Territory's economy to \$40 billion by 2030 and to achieve this, ten new operational mines will need to be developed. To help facilitate this development, port access and pricing will be crucial to ensure production at these mines reach their intended markets.

The main area of concern for AMEC and its members are greater transparency in regard to DPO's financial statements. Previously, AMEC has recommended the implementation of weighted average cost of capital (WACC) into the Commission's annual price monitoring reports. This would help discern whether Darwin Port Operations Pty Ltd (DPO) is enforcing excessive pricing due to its market power. Further focus regarding the negotiate/arbitrate framework should be put into place for

greater fit for purpose regulation. Overall, greater transparency and efficiency in port access and pricing will create more economic opportunities for the Territory.

### **What majors changes (recent or future) in the ports sector may alter the balance between the benefits and costs of the port access and pricing regime?**

Within the next ten years the Territory should see the development of new and emerging mines. This increase in demand for port access will be crucial to exporting the natural resources of the Territory bringing in millions of dollars of revenue for the local community. However, as stated in section 2.18, a monopoly provider's (DPO) access and pricing regime can potentially reduce investment and innovation in upstream and downstream industries.

It is crucial that DPO is effectively regulated to allow for greater certainty, compliance and protections for port users. The administrative and compliance costs will be outweighed by the potential investment opportunities that arise from easier and more affordable port access agreements.

While AMEC is accepting of the 'light handed' approach with the current port access and pricing regime regulation, the Commission needs to remain wary of the potential for non-compliance and the affects this will have on the wider community of the Territory.

### **What uncertainty and consequences arise, if any, from the absence of a legislative definition of 'materiality' and 'non-compliance'?**

AMEC believes that by not clearly defining 'materiality' and 'non-compliance' in the PM Act or Regulations it leaves both topics open to interpretation. This could potentially have a range of unforeseen circumstances that would be detrimental to not only the mining and mineral exploration industry but any industry that relies on the port for revenue.

To avoid any unintended consequences AMEC recommends that materiality and non-compliance are clearly defined in the PM Act or Regulations.

### **Are there any barriers faced by port users in notifying the Commission of instances of non-compliance? If yes, what are they?**

As stated in section 3.4, the current PM Act and Regulations do not have a specific provision to allow another entity such as a port user to report a material breach, equally, there is no provision preventing such a report. There needs to be further clarification around this for port users to remove any potential barriers that they feel as though may stop them from notifying the Commission of instance of non-compliance.

### **Are there any information barriers that impede successful negotiation of access arrangements between port users and the private port operator? If so, what information would be needed to address the imbalance?**

AMEC suggests that the Utilities Commission of the Northern Territory should produce and share further guidance material to help companies navigate the negotiate/arbitrate framework which is suggested as the most effective form of price monitoring in the absence of market competition.

### **How effective is price monitoring as a means of ascertaining whether DPO's pricing practices comply with the access and pricing principle?**

In the absence of competition at the port, price monitoring regulation is a second-best substitute. Though it is important that when in the case of no competition appropriate regulation is in place to act on and constrain pricing of the port owner (DPO) such as a price monitoring regime. Though, price monitoring is an effective method of transparency and addressing user and public concern regarding pricing, the ACCC has suggested it is a poor form of regulation.<sup>1</sup>

AMEC recommends that the Commission readdresses the recommendations from the 2018 Review regarding negotiate/arbitrate framework. The recommendation regarding the provision of financial information to enable an access seeker to assess whether prices are consistent with the access and pricing principles, should be reassessed, as it would provide greater clarity and transparency for port user when negotiation port access with DPO.

### **Is there additional evidence or information (e.g., the WACC) that should be available to the Commission to enable evaluation of whether the form of price monitoring needs to change? What would be the benefits and costs of requiring such information?**

AMEC sees no other addition evidence or information that should be available that would help the Commission in evaluating the price monitoring. The previously mentioned weighted average cost of capital should assist the commission greatly in identifying if excessive pricing is occurring.

### **What would be the benefits and costs of applying an efficiency dividend or other tools to incentivise DPO to undertake efficient investments and operation of prescribed activities?**

Due to the lack of competition at the Port of Darwin, DPO has less incentive currently to invest in efficiency of operations/prescribed activities. Which could potentially lead to an increase in costs for the port users. By implementing an efficiency dividend model for DPO, port users should over time see a decrease in the overall costs of operation/prescribed activities.

The potential cost of implementing an efficiency dividend may be an increase in the current pricing as DPO passes on the cost of new investment to the port users. AMEC recommends that robust regulation is in place to negate this before implementing an efficiency dividend.

### **What would be the benefits and risk associated with extending the maximum timeframe a price determination can be in effect from three to five years?**

AMEC sees no issues with raising the maximum timeframe a price determination can be in effect from three to five years. As this does not restrict the ability of the Commission to at its discretion put a shorter determination in place, rather than the full five year period. One potential benefit of increasing the timeframe is greater certainty for port users and DPO as stated in the 2023 Review document.

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<sup>1</sup> [Ports: What measure of regulation | ACCC](#)

### **What other matters require consideration as part of the 2023 Review of the port access and pricing regime?**

The Commission should be careful not to implement any arrangements that limit the potential for future competition in the Northern Territory Port industry. Privatisation is often a benefit to the economy; however, it is important that it does not hinder any possible future competition.

### **Concluding Remarks**

AMEC appreciates the opportunity to provide industry feedback to the Utilities Commission of the Northern Territory regarding port access and pricing regime and look forward to further consultation on the draft report in 2023.

#### **For further information contact:**

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