



11 August 2014

Ms Isolde Goggin

Chairperson

The Competition Authority

14 Parnell Square

Dublin 1

### **Competition in the Irish ports sector**

Dear Ms Goggin,

As you may be aware I recently presented a Memorandum for the Information of the Government outlining the progress to date in relation to the implementation of recommendations contained in the Authority's *Competition in the Irish ports sector* market study.

Once again my Department would like to thank the Authority for its on-going assistance in relation to various issues and reiterate its view that the report provided a timely, comprehensive and objective overview of competitive conditions in the Irish ports sector.

The primary purpose of this letter is to reflect on the current position in relation to the report's recommendations which may help frame later official level discussions.

#### **The response of the sector**

The Authority's report was broadly welcomed by the commercial ports sector. There were two sector specific recommendations, Recommendation 1 – Leasing and licensing of Dublin LoLo terminals and Recommendation 2 – Stevedoring licensing.

In relation to Recommendation 1, Dublin Port Company published its finalised *Franchise Review* on 30 May and I know the Authority has examined the final document within the context of its recommendation. Officials can discuss any observations the Authority might have on the *Franchise Review*; however, it is important to emphasise that all issues relating to the lease of lands within ports are a statutory function of the directors of the company and not one in which I as Minister have any role. As noted in the Memorandum the impact of the recently adopted *Directive on the award of concession contracts (2014/23/EU)* and the proposed *Regulation establishing a framework on market access to port services and*

*financial transparency of ports* (COM2013/296) on this particular recommendation also requires consideration.

In relation to Recommendation 2 – Stevedoring licensing, there are two aspects to the sector's response on this issue. The first is the responses received to date by the Department and any observations the Authority might have thereon, while the second is the potential impact of the proposed *Regulation establishing a framework on market access to port services and financial transparency of ports* (COM2013/296) which is expanded upon below. Again, I think it important to emphasise that the provision of services and the management and operation of a company's harbour are all statutory functions of the port companies and not areas for which I as Minister have any role. However, I think that developments at a European legislative level may help to largely address the Authority's concerns.

As the statutory body responsible for enforcing competition law in Ireland I believe the Authority is best placed to assess the sector's response on these issues and to engage as required directly with the sector to ensure a satisfactory implementation of the published recommendations.

### **Proposed Regulation on market access to port services**

My Department recently circulated to stakeholders an updated RIA relating to the proposed *Regulation establishing a framework on market access to port services and financial transparency of ports* and I thank the Authority for its speedy response on the matter. The purpose of that circulation was to highlight recent developments during on-going Member State negotiations and to seek views thereon. A key emerging issue is the potential that individual Member States may now have the option to apply the market access provisions of the proposed Regulation to include cargo-handling. This is a very interesting development as it potentially provides a legislative basis to Recommendation 2 and may impact on Recommendation 1 also. Of course the proposed Regulation generally also provides a legislative basis to intra-port competition generally which, in addition to the other measures identified in the Memorandum, addresses Recommendation 4 also.

The issue will require on-going bilateral consideration over the coming months and the Department will continue to keep the Authority informed of developments, as well as consulting with other relevant stakeholders, as negotiations continue.

### **Port closure and amalgamation**

I note the Authority's suggestion in respect of Recommendation 3 that a transparent notification procedure be agreed between the Department and the Authority in respect of any potential future port mergers or amalgamations. As has been previously stated and indeed acknowledged by the Authority, my Department has always consulted with the Authority on any proposed structural interventions in the ownership or governance of the sector. The Department is happy to agree a procedure whilst mindful of the need to avoid creating unnecessary administrative or regulatory burdens to what would appear to be an effective working relationship already.

## **Strategic Review of Rosslare Europort**

In February 2014 Government noted the outcome of a Strategic Review of Rosslare Europort. The final report is considered commercially sensitive and therefore publication was not possible and circulation of the report has been restricted to those members of the Steering Group and the Government.

However, in light of the potential interplay between that report and the themes of your market study of the sector generally, my Department will arrange for a copy of the final report to be made available for the Authority's consideration and any observations the Authority might have on the report are of course welcome.

The implementation of the review's recommendations is a commercial matter for Iarnród Éireann and my Department's Public Transport Division is liaising with them on the matter.

### **Data collection and port performance measures**

National Ports Policy commits toward introducing a number of improvements in the area of data collection and port performance measurement in the period out to 2018. As you can appreciate, while work programme planning in the area has now commenced, it is at a very early stage of development. My Department is happy to liaise with the Authority during this development to ensure that any observations the Authority might have are incorporated as appropriate.

Once again I would like to thank the Authority for its work in this very important area and commit to my Department's continued co-operation in enhancing the competitive environment of our commercial ports sector.

Yours sincerely

A handwritten signature in black ink, reading "Paschal Donohoe". The signature is written in a cursive style with a horizontal line under the name.

Paschal Donohoe T.D.

Minister for Transport, Tourism and Sport