



**BC Ferry Commission
MEMORANDUM 37**

To: Mr. Rob Clarke
Executive Vice President and
Chief Financial Officer, BCFS

From: Martin Crilly
BC Ferry Commissioner
Sheldon Stoilen
Deputy BC Ferry Commissioner

Date: July 19, 2010

**Section 45.1 of the Coastal Ferry Act:
Regulation of Unfair Competitive Advantage**

As you are aware, section 45.1 of the Coastal Ferry Act came into force on June 24, 2010.

The Commission has held brief discussions with some stakeholders (three ferry operators including BC Ferries, and one trucking company), at their initiative and without prejudice to any future decisions of the Commission, to listen to their views, and understand the nature of their business as background to their concerns, in light of the amended Act.

Finding: Competitive Service

The drop trailer service offered by BC Ferries on its major route group is substantially similar to services being provided by Seaspan Coastal Intermodal Company and Van Isle Barge Services Limited. Those companies provide drop trailer services across Georgia Strait between terminals near to those of BC Ferries. They are sufficiently near that the Commission considers that BC Ferries' drop trailer service to be in competition with Seaspan and Van Isle.

Accordingly the Commission finds that BC Ferries' drop trailer service on its major routes across Georgia Strait is a competitive service as defined in Section 1 of the Coastal Ferry Act.

Request for Information

Given the above finding, the Commission must make certain determinations under section 45.1 of the Act. To enable the Commission to make those determinations, BC Ferries is hereby requested to do the following:

- 1) Provide full details of the scope of the company's drop trailer business, its marketing plan and tariff structure for such business. Details on existing contracts together with any pricing incentives should also be provided.
- 2) State, with supporting evidence, whether or not the company considers itself to be pricing its drop trailer service below the direct costs and an appropriate portion of the indirect costs associated with it;
- 3) State, with reasons and supporting data, whether or not the company considers itself to have an unfair competitive advantage resulting from (a) use of, access to or ownership of vessels or terminals that are or have been owned by the government or a government body within the meaning of the Financial Administration Act, (b) any tax exemption, or (c) any subsidy.

Next Steps

The Commission understands that all participants in the drop trailer market are experiencing uncertainty while the Commission considers its approach, and undertakes to make the necessary determinations promptly. Accordingly BC Ferries is requested to provide the above information as soon as possible but no later than August 31.

Through the BC Bid web site the Commission has given notice that it intends, on an urgent basis, to engage PricewaterhouseCoopers LLP as advisors on interpretation and implementation of Section 45.1 of the Act. It is expected that the advisors will be formally engaged on or about July 23, 2010.

The Commission will be keeping BC Ferries, other stakeholders and interested members of the public informed of its activities under Section 45.1 of the Act. This will be done through e-mail updates and announcements under the "What's New" page of the Commission web site.