

GeelongPort Pty Ltd
Exclusive Dealing Notification N92776
Supplementary Submission to ACCC

1. **Introduction**

- 1.1 This submission is made by GeelongPort Pty Ltd ("**GeelongPort**") in relation to queries raised by the Australian Competition & Consumer Commission (the "**ACCC**") concerning exclusive dealing notification N92776 (the "**Notification**") lodged by GeelongPort and in response to various objections to the Notification made by interested parties.
- 1.2 The submission is intended to supplement the submission of 19 February 2007 made by GeelongPort.

2. **Initial Observations**

- 2.1 The relevant enquiry is not to ask whether, as a result of being required to use the figee cranes at Lascelles's wharf when they are available, particular firms may be deprived of the opportunity to minimise their expenses (by using less efficient ship-based equipment at a lower personal cost) or disadvantaged in their efforts to profit from supplying services to Port users.
- 2.2 It is perhaps unsurprising that the submissions lodged by interested parties objecting to the Notification seek to reframe the debate in this fashion. However, that is neither permissible nor desirable.
- 2.3 Under section 93(3) of the *Trade Practices Act 1974 (Cth)* (the "**Act**"), the ACCC is clearly directed to allow the Notification to stand unless any benefit to the public that is likely to result from the proposed requirement that Port users use the figee cranes at Lascelles's wharf at the Port of Geelong (the "**Port**") when they are available would not outweigh the detriment to the public constituted by any lessening of competition that is likely to result from the proposed requirement.
- 2.4 The concept of "public benefit" in this context is a broad one and, relevantly, includes the achievement of the economic goals of efficiency and the best use of society's resources. See, eg, *Re 7-Eleven Stores Pty Ltd* (1994) ATPR 41-357.
- 2.5 The concept of "public benefit" also extends to:
- (a) economic development such as the encouragement of capital investment;
 - (b) fostering of business efficiency particularly where (as in the case of Ports) it is likely to result in improved international competitiveness; and
 - (c) steps to protect the environment.
- See *Re ACI Operations Pty Ltd* (1991) ATPR (Com) 50-108.
- 2.6 It is only detriments constituted by a lessening of competition that are relevant under section 93(3) of the Act. In this respect, the enquiry under section 93(3) of the Act is narrower than the similar enquiry under section 90(8). See, eg, *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004.
- 2.7 Depending on the circumstances, the ACCC may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of the scope of the defined market.

3. **Response to Objections Raised by Interested Parties**

Impact Fertilisers Australia

Assertion 1 - Geelong Port is the only feasible option for bulk fertiliser importers in the Geelong region.

- 3.1 The Port is not the only feasible option for bulk fertiliser importers.
- 3.2 Product is received in Geelong and is trucked to Melbourne based storage. This indicates a preference for vessel berthing in Geelong against a shorter transport solution by berthing at Melbourne. Some Geelong based customers (break bulk steel customers) berth vessels in Geelong and transport their cargo to Dandenong, located to the south east of Melbourne. The discharge method and cost for a vessel is but one element in a decision process to select a port of choice. Berthing and facility hire charges together with transport costs are other important considerations.
- 3.3 All of these matters support GeelongPort's proposition there is actual and potential competition between ports. See, also, the separate summary (below) on the issue of why there are real alternatives to Geelong.

Assertion 2 - Impact's last geared vessel grab discharged at a cost of \$5.15 per mt, whereas the quote to use the figee cranes was at a rate of \$7.16 per mt.

- 3.4 It must be clearly noted that GeelongPort did not provide a quote to Impact Fertilisers Australia ("**Impact**") to discharge this vessel. The vessel to which Impact refers was (namely, the Penguin Arrow) had a total cargo of in excess of 17,200 tonnes which was a shared cargo with other fertiliser importers. GeelongPort's tariff rate for the use of the figee crane for a cargo of this size is \$3.83 per mt.
- 3.5 There is no basis for Impact's assertion 2.
- 3.6 It should also be noted that, when there is a shared cargo with other fertilizer importers, then the figee rate charged is a function of the total tonnes of all customers on the ship *not* the lower individual customer tonnes. This charging structure ensures that all Port users share in the benefit of having fewer, larger tonne discharges which assist the overall productivity of the Port.
- 3.7 The key issue with the figee cranes is that they are far more productive and efficient than ship's gear which leads to a more productive Port. Thus, there is clearly a public benefit in ensuring that the figee cranes are utilised when available.

Assertion 3 - Shippers may charter a vessel with similar discharge rate capabilities as the figee cranes.

- 3.8 Overwhelmingly, the ships that visit the Port have luffing type ship's cranes that cannot compete with the shore based figee cranes for discharge rates. There are some exceptions but they rarely discharge bulk product in Geelong, as the figee cranes are used.

Assertion 4 - The cost of the vessel may already include the use of the vessels cranes (particularly as the vessel will be required to self discharge in other ports) and hence the hire of the figee cranes, while the ships cranes remain idle, is a double cost to the charterer

3.9 Ports provide infrastructure at a cost that must be recovered. Impact's argument is predicated on the notion that the Port should bear the cost of capital improvements/infrastructure that enhance efficiency and productivity but that individual Port users/cargo owners should have unrestricted freedom to pick and choose whether to make use of that infrastructure. This is clearly where the question of public benefit comes to the fore.

3.10 Any decision to use ship based equipment is ultimately referable to a desire to cut costs and thereby maximise profits. Whilst the decision not to use the more efficient figee cranes may be rational (and, indeed, desirable) from the point of view of the individual Port user, the decision to do so comes at the expense of other Port users. There are hidden or disguised costs.

3.11 The total of the assets that are made available in a Port are designed to attract support for the Port by making it efficient in terms of arrival, mooring, discharge, unmooring – in short turnaround time. The shorter period of time that a vessel is at anchor (or along side) the lower the cost to Port users for demurrage, berthing and stevedoring.

3.12 If the figee cranes are left idle while ship's gear is being used, then ultimately the cost of the cranes has to be borne by other Port users and this results in increased costs to those users.

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3.13 Moreover, as GeelongPort understands the position, vessels are chartered at a cost inclusive of all operating equipment, ie, the existence of the cranes whether utilised or not forms part of the base charter cost. Ships typically have multi-port discharges where the ships cranes will be used when shore based cranes are not available. The only additional cost to the charterer is the cost of grabs and hoppers at these ports. There is no double cost to the charterer as the ships gear is included in the charter party cost irrespective of whether the ships gear is used or not.

Assertion 5 - Vessels do not charge a sliding scale in terms of tonnage discharged

3.14 Impact is at no lesser or greater advantage than any other Port user required to use the figee cranes on account of the vessel owner not employing a sliding scale in terms of tonnage discharged. In using a figee crane in concert with other importers with shared tonnage, Impact enjoys the tariff rate (with applicable discount) as though the whole of the tonnes discharged were their own rather than just the tonnes they have taken.

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3.16 The fact that a ship's charter cost is inclusive of ship's gear, whether its used or not, is not the critical issue in this matter. All cargo owners face the same the scenario. The critical issue is the public interest in creating an environment which encourages Port operators to invest in appropriate infrastructure.

Assertion 6 - Providers of hoppers and grabs, normally used in the ships gear discharge process, may suffer significant economic loss as berth users are not permitted to hire their equipment. Some providers of these services have said they will remove their equipment from the port as it will be uneconomic for them to leave it at the port with no prospect of work. When the inevitable berth congestion occurs and/or the breakdown of the figee cranes occurs, (forcing a return to ships gear) will hoppers and grabs be available to receivers at reasonable expense?

- 3.17 This assertion is a false issue.
- 3.18 GeelongPort has no intention of denying cargo owners the right to hire hoppers and grabs from the supplier of their choice. The reality is that ship's gear will still be required to be used from time to time and self-discharge vessels will be completely unaffected by the Notification.
- 3.19 In the case of self-discharge vessels the providers of hoppers will be able to compete for the cargo owner's business as GeelongPort does not provide hoppers in such instances. GeelongPort is not aware of any threats by suppliers of grabs and hoppers to remove their equipment from the wharf. The total tonnes discharged by self discharge ship will remain fairly constant going forward and will continue to be available to third party hopper suppliers. The tonnes discharged by ship's gear in 05/06 were 30,886 tonnes and GeelongPort would envisage that this would be a typical figure going forward. The current supplier of grabs and hoppers was content to supply his equipment with this level of anticipated business and there would appear to be no credible reason to suppose that the supplier would go out of business in the years ahead.

Assertion 7 - Charter parties have many and varied discharge terms particular to vessel types and commercial freight arrangements. Matching proposed discharge rates with vessel owners discharge terms and in particular shed receival rates cannot be achieved when one is compelled to use figee cranes and their rate of discharge.

- 3.20 This assertion runs counter to the reasoning advanced in Impact's assertion number 3 (above).
- 3.21 Leaving that inconsistency aside, the gravamen of this assertion is that Impact lacks efficient transport and cargo storage areas to meet the efficiency of the Port's equipment (figee cranes) and that it should have unrestricted freedom to operate less efficiently by employing ship's gear.
- 3.22 It is not appropriate for GeelongPort to deliver a service level that is benchmarked against the lowest common denominator. If GeelongPort did so, the Port would be far less productive and efficient which is contrary to the public interest. It would also have the effect of penalising Port users that have invested in facilities to receive the product at the figee discharge rate. Should ships chartered by other Port users have to queue due to the fact other Port users have elected to choose a less efficient unloading process then this will lead to those Port users suffering increased demurrage cost.
- 3.23 It is manifestly in the public interest that the Port have a mandate to implement the most efficient available system so as to ensure that ships are turned around in the shortest possible time.

Assertion 8 - Shed receival rates vary considerably and a shed capable of receiving 4000 mt per day will be awash with product by the figee cranes, potentially resulting in large truck and stevedore waiting time costs for the receiver.

- 3.24 This assertion is underpinned by the notion that the consequences of one Port user's inefficiency should be transferred to others. In GeelongPort's submission, these matters are in Impact's hands. If Impact has chosen inefficient storage facilities and transport providers then that choice (and its attendant costs) should not be transferred to other Port users through higher

figee crane costs. The latter results from reduced use of the equipment by those cargo owners who insist on using ship's gear when figee cranes are available, but left idle.

Assertion 9 - We can see very little environmental difference between a figee grab passing the ships rail into a hopper and ships grab passing the ships rail into a hopper, whilst stevedores operates appropriately.

3.25 See separate comments.

Assertion 10 - The figee cranes compete with ships gear. The market not Geelong Ports should determine their use. IFA [ie, Impact] will on most occasions use the figee cranes, however we see many other instances when the discharge cost, vessel charter conditions, shed receival conditions etc will be such that for us to be compelled to use the figee crane will result in much higher costs.

3.26 In essence, Impact do not wish to see any restrictions on their freedom to pick and choose whether to make use of the figee crane because circumstances may arise, from time, where they can cut costs by using ship discharge equipment. As noted, this freedom comes at a cost to other Port users.

3.27 The figee cranes are as an integral part of the Port's infrastructure just as the wharves themselves. The cranes are in place at the request of Port users as a pre condition to providing efficient services. The increased efficiency results in reduced cost through quicker turnaround of vessels (demurrage), fewer stevedoring hours and reduced berthing charges.

3.28 It should also be noted that some form of shore side bulk unloading equipment has been in place at Lascelles Wharf for over twenty (20) years and been accepted and utilised by all customers in preference to ship's gear.

Assertion 11 - If the capability for vessel grab discharge is lost, by approval of this submission, there will be no competitive cap on what Geelong Port can charge for the shore based grab discharge.

3.29 GeelongPort has demonstrated a responsible approach to pricing in the past and remains under a price monitoring regime by the Essential Service Commission. In their latest report dated February 2007, the ESC state that " ... *Port charges increased by approximately 2.0% from 1 July 2005, which represented a decrease of approximately 0.4% in real terms. The new port charges applying since 1 July 2006 represents an average increase of approximately 2.6% or approximately minus 4% in real terms.*"

3.30 See, also, separate comments below.

Assertion 12 - Geelong Port has provided IFA a "Proposed Procedure for Future Figee Crane Use at Lascelles Wharf". This procedure outlines how GP will force port users to use the figee cranes at the convenience of GP and revert (force users) to ships gear subject to the approval of GP at the discretion of GP. This is unacceptable to IFA.

3.31 GeelongPort's proposed procedure for the use of figee cranes is directed towards optimising their use, which is the basis of the Notification. There is scope and certainty of continuing operation built into the procedure that permits use of ship's gear when Figee cranes are not available due to the figee cranes being used or on account of breakdown. There is no question of "convenience" for Geelong Port in the procedures, but rather the optimisation of their use to ensure the Port runs as efficiently as possible for all Port customers.

Interfert

Objections

Assertion 1 - Interfert would be forced into using the figee cranes instead of either ships gear or self discharging vessels no matter what the cost

- 3.32 This is incorrect.
- 3.33 Self discharge vessels are totally unaffected by the Notification. They may continue to discharge exactly as they have in the past.
- 3.34 The use of figee cranes in preference to ship's gear (by ships other than self discharge vessels) is the conduct which is the subject of the Notification.
- 3.35 The statement "no matter what the cost" is ill-informed as there are established tariff charges in place, the procedures for use of the figee cranes provides adequate scope and certainty of operation and address clearly the circumstances where ship's gear can be used.

Assertion 2 - If the proposal is approved there is no provision for competition and as such Geelong Port's could increase costs without notice and without scrutiny

- 3.36 See above under the response to Impact's assertion number 11.

Assertion 3 - Currently, if there are three vessels occupying berths at Lascelles Wharf, one ship has to use ships gear or wait for the figee crane to become available. Should the proposal be approved, the last vessel to arrive will incur substantial demurrage costs awaiting availability of the figee cranes and the non ability to use ship gear

- 3.37 This comment is incorrect. In the circumstance raised in this comment by Interfert, the vessel could use ship's gear because the requirement to use the figee cranes only applies to the extent that they are available for use.
- 3.38 It is also most unlikely that three vessels would be along side at the same time to discharge fertiliser or other bulk products. If three bulk vessels were to require berthing at the same time, one would be required to wait as only berths 2 and 3 can be safely used for the discharge of bulk products.
- 3.39 The whole idea of the requirement for use of figee cranes when available is to ensure that the scenario identified by Interfert does not occur. Figee cranes provide for a faster turn around of vessels, therefore reducing their time at berth and reducing the risk of vessel queuing.
- 3.40 In addition, GeelongPort have a berth hire charge that is hours based so the quicker the Port turns vessels around the less revenue GeelongPort makes. So, by being more productive, the Port actually loses revenue.

Interfert's comments in respect of benefits claimed by GeelongPort

Comment 1 - We agree the figee cranes reduces unloading times at the berth, however, the cranes are not always available to all customers when berth congestion occurs and as such other means of discharge have to be instituted (e.g. ship's gear) or incur substantial increased costs

- 3.41 As is made clear in the Notification, the requirement to use the figee cranes only applies to the extent that they are available for use
- 3.42 It is noteworthy that Interfert agree that the figee cranes discharge at a quicker rate than ships' gear.

Comment 2 - The figee cranes use clam shell grabs to discharge vessels as do conventional bulk carriers ships gear and as such the environmental impact of dust created by the drop into the wharf hopper is almost the same in both cases. When a self discharge vessel is in use the dust is dependant on the distance of drop from the discharge arm to the hopper which is controlled by the stevedore to minimise impact on the environment

- 3.43 See environmental comments (below). The use of self-discharge vessels is not changed in any respect by the Notification and thus there is no environmental change from present operations in respect of those vessels.

Comment 3 - Investment in the port should not be dependant upon limiting the use of the wharf to users who are forced into using equipment over which they have little cost control

- 3.44 This comment is at the heart of the public interest question. In the interests of efficiency and productivity Geelong Port has invested in wharves and other infrastructure requirements and the figee cranes are definitely included in the latter. It is neither reasonable nor in the public interest for GeelongPort to pass on costs to those committed users of the figee cranes for those who wish to pick and choose.
- 3.45 Nor is it in the public interest to drive efficiency and productivity down by allowing Port users to engage in whatever inefficient practice they choose when that choice impacts on the Port as a whole and other fertiliser/bulk product cargo owners in particular.
- 3.46 In reference to Incitec Pivot Limited, they are not an affected party as they have a three year contract to use the figee cranes which includes an arrangement to use ship's gear for certain products up to 4 shipments per year.

Bruce Stevens Bulk Commodities

- 3.47 Bruce Stevens Bulk Commodities ("**BSBC**") claims to be a material competitor to GeelongPort and claims to be engaged in unloading services.
- 3.48 In fact, GeelongPort does not compete with BSBC at any level. BSBC's claim to be engaged in unloading services is not correct. BSBC is in fact an equipment supplier and nothing more. It does not provide stevedoring services or any logistical services to cargo owners to assist in the discharge and removal from the Port of cargo.
- 3.49 BSBC are one of three grab suppliers to the Port, the other two being Bulk Cargo Services ("**BCS**") and the ship itself.
- 3.50 There are three suppliers of hoppers being, BSBC, BCS and IPL. BCS is aware of the Notification and has not raised any objection so far as Geelong Port is aware.
- 3.51 Providers of grabs and hoppers will still be able to provide their services and it is expected that annual tonnes via ships gear and self discharge vessels will remain at 05/06 levels. Self discharge vessels are not impacted by the Notification and represented 82% of the tonnage that went through third party hoppers during 05/06.
- 3.52 The Notification will effectively impact on 18% of the tonnes going through third party hoppers which is not a substantial adverse effect on competition as these tonnes will remain available for open competition by hopper suppliers.
- 3.53 The business of BSBC is essentially unaffected by the Notification as there will continue to be a requirement for the supply of grabs and hoppers to service that product that is discharged using ship's gear. BSBC has supplied equipment, as it points out, "*long before Toll Transport Pty Ltd... entered the port of Geelong*".

- 3.54 The use of figee cranes has always been in conjunction with the use of ship's gear, but only recently has there been evidence of a deliberate shift to ship's gear away from the figee cranes by a few fertiliser importers. The historical use of ship's gear is likely to continue and the procedures for the use of Figee cranes makes it clear that ship's gear has a place in the efficient operation of the Port.
- 3.55 BSBC claims that GeelongPort proposes to provide access to Lascelles wharf "... *on the condition that potential port users use GeelongPort's Figee cranes...*". This statement is incorrect as borne out in the responses to ACCC questions to Toll GeelongPort of 21 February 2007.
- 3.56 BSBC's claim that it "... *provides an identical service to customers at the Port ... although not using Figee cranes...*" is incorrect. BSBC does not own or operate any wharves or storage sheds. BSBC does not provide any cranes, figee or otherwise, to Port users. The photographs BSBC provides its submission and refers to show the use of ship's cranes. BSBC are simply one of three grab and hopper equipment suppliers to the Port. GeelongPort's hoppers and grabs are only provided in conjunction with its figee cranes. The argument of the cargo owners is their desire to have an unrestricted freedom to chose between ship's gear and figee cranes not whether GeelongPort or BSBC supplies the hoppers or grabs.
- 3.57 BSBC claims that GeelongPort utilises the services of BSBC when they have a problem with their figee cranes. This is not correct. GeelongPort does not engage the services of BSBC, but Port users or stevedores may do so from time to time. Again, BSBC are simply one of three equipment supplies from whom customers can hire equipment.
- 3.58 BSBC refer to the undertaking given to the ACCC in May 1999 and again in July 1999 and claim the proposed application by Toll GeelongPort "... *appears to be in contravention of these undertakings*".
- 3.59 BSBC appear to have incorrectly set out the relevant provision of the undertaking they rely upon, but nevertheless they are still incorrect. GeelongPort is not seeking to prevent BSBC or any other party from "... *having access to berths, cargo marshalling areas, navigational control services, access runs within the port of Geelong and amenity services ... for the purpose of its business.*"
- 3.60 In fact Geelong Port is not seeking to limit the services that BSBC is able to provide at all. The Notification concerns only the operation of the figee crane and seeks only to limit the use of ship's gear by cargo owners when the figee cranes are available.
- 3.61 BSBC claims that for the Lascelles Wharf to run efficiently customers must be able to chose how cargo is unloaded, irrespective of whether it is inefficient or not. If this approach were to be adopted, it would result in the decision of a single Port user impacting on the efficiency of another, which would reduce the overall efficiency of the Port. For the reasons already articulated, this outcome is not in the public interest.
- 3.62 BSBC claims that ships gear can discharge at the same rate as figee cranes if three or four systems are used. This is just not practicable, efficient or cost effective. The use of four ship's cranes, particularly with the four attendant hoppers on the ground, would present serious safety concerns that GeelongPort would be reluctant to consider. There is little doubt that there would not be sufficient labour to accommodate the operation of four ship's cranes particularly when other vessels were in port for discharge or loading. If a break bulk vessel or log ship were along side at the same time there is no doubt that insufficient labour would be available.
- The cost of four stevedore crews, four hoppers and four grabs would be substantially more than the figee cranes

- It not being safe as the number of hoppers on the wharf would preclude the safe and efficient operation of the trucks.
- Ship's masters would not allow the practice to occur due to risk of collision between ships' cranes.
- There is not enough labour to work that many cranes at the one time when other ships are in Port.

3.63 The last page of BSBC's submission asserts that BSBC is being barred from supplying unloading services. This is simply wrong. As GeelongPort has outlined above, BSBC do not supply unloading services, just equipment hire.

4. **Matters raised by ACCC**

Number of Port users potentially affected by the conduct

- 4.1 Details of users of Lascelles's Wharf at Geelong Port were provided in table 1 attached to the submissions provided to the ACCC on 19 February 2007.
- 4.2 The parties that Geelong Port believes are likely to be affected by the conduct, in the sense that they may have to adjust their operations, were identified in the Form G lodged with the Notification.

The likely situation in the absence of the conduct

- 4.3 GeelongPort appreciates that the ACCC, in seeking to establish whether the conduct under scrutiny results or is likely to result in net public benefit, must consider the circumstances which are likely to prevail in the absence of such conduct (*G & M Stephens Cartage Contractors Pty Ltd on behalf of the Members of the Concrete Carters Association (Vic) [1977] ATPR ¶40-042* at 17,453).
- 4.4 As noted above, there has been evidence of a deliberate shift to ship's gear away from the figee cranes by a few fertiliser importers in recent times. In the absence of an ability on the part of the Port to require Port users to use the figee cranes at Lascelles wharf when they are available, it is expected that the approximate tonnage discharged by ship's gear in FY 06/07 will be 7% and this in a drought effected year (an increase of 3 fold on the FY 05/06).
- 4.5 As is apparent from the submissions made by objectors, any decision to use ship based equipment is referrable to a personal desire to cut costs and thereby maximise profits. Whilst the decision not to use the more efficient figee cranes may be rational (and, indeed, desirable) from the point of view of the individual Port user, the decision to do so comes at the expense of other Port users. There is a hidden cost in the form of efficiency losses.
- 4.6 If the trend to ship's gear continued in FY 07/08 the impact would be up to 20% of all tonnes. This is clearly unacceptable and will have an impact on the Port's efficiency.
- 4.7 It is our view that if the trend outlined in 4.6 above was to continue, then the ultimate outcome will be the decommissioning of the Figee crane system. In addition to the obvious Port productivity impacts, the ability to unload ungeared, significantly larger bulk ships (panamax vessels) would be lost to not only Geelong Port, but also Victoria.

Concerns by interested parties that conduct will result in increases in costs, rather than reductions

- 4.8 See comments above.

- 4.9 There has been no suggestion by those Port users objecting to the notification that the present charge for use of figee cranes is high or uneconomic. Generally speaking, Port users have been content to use the figee cranes.
- 4.10 The recent exception lies in customers who have sought to use ship based equipment. As noted above, whilst the decision to cut costs by refraining from using the more efficient figee cranes may be rational (and, indeed, desirable) from the point of view of the individual Port user, the decision to do so comes at the expense of other Port users. There is a hidden cost in the form of efficiency losses.
- 4.11 As previously advised to the ACCC, there are no plans to increase charges for use of the figee cranes if the notification were to be allowed to stand. In future years, it is expected that increases in charges for use of the figee cranes will simply reflect cost increases.
- 4.12 GeelongPort notes that Port users may lodge complaints to the ACCC if any untoward conduct should emerge and the notification may be revoked by the ACCC.
- 4.13 GeelongPort is happy to give an undertaking that the figee crane rates will not be increased by more than CPI for the next three years.

**The extent to which port users have real alternatives to Geelong Port
(Confidential)**

4.14

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Impact of the notified conduct on alternative suppliers of ship discharge equipment at Lascelles Wharf

- 4.16 As noted above, providers of grabs and hoppers will still be able to provide their services and it is expected that annual tonnes via ships gear and self discharge vessels will remain at 05/06 levels. Self discharge vessels are not impacted by the Notification and represented 82% of the tonnes that went through third party hoppers during 05/06.
- 4.17 The Notification will effectively impact on 18% of the tonnes going through third party hoppers which is not a substantial adverse effect on competition as these tonnes will remain available for open competition by hopper suppliers.

Environmental impacts of the conduct

- 4.18 In GeelongPort's submission, in assessing the environmental impacts of figee crane use, it is necessary to look at the complete system not just the crane component.
- 4.19 GeelongPort utilizes grabs that fully contain the product being discharged. Typically the grabs that have been used over the last 5 years at the Port on the ships gear are open or partially open grabs. These grabs do not fully contain the product so when a larger bite of the product is taken than the grab has capacity for, then the excess product is squeezed out the top spilling onto the ships deck, into the water and onto the wharf.. Ship's grabs utilized on ships cranes can be fully closed but this has not been our experience at the Port to date.
- 4.20 There is another key environmental point to note. When trucks are overloaded due to inaccurate discharge (hoppers other than GeelongPort's hoppers are not equipped with weight sensors) they then, after having been across the Port's weighbridge, have to tip off product onto the wharf to ensure they are not overloaded when they leave the Port.
- 4.21 GeelongPort has recently fitted load cells to each of its hoppers. These cells ensure that "exact" tonnages are discharged from the hopper to the truck each time. Prior to this system being fitted, trucks were frequently overloaded and had to "tip product off" onto the wharf creating environmental issues.
- 4.22 By way of contrast, third party hoppers rely on guess work resulting in frequent overloading of trucks.
- 4.23 BSBC mention that a weight platform can be provided. This was trialled once and proved unsuccessful and has not been used since. So, the load cell system, fitted to the Fige crane hoppers, remains the most accurate methodology of loading trucks and consequently minimising environmental impacts.
- 4.24 GeelongPort maintains that the size of its hoppers, the mode of discharge and the load weighing cell system on the hoppers allows GeelongPort to reduce the dust on discharge into

the hoppers as the system makes it easier to leave a soft bed of product in the hopper onto which the next load of product is dumped, this produces less dust than dropping product directly onto the steel walls of the hopper.

- 4.25 When cement clinker is discharged using the figee cranes, a dust extraction system is fitted around the hopper – basically a series of containers, tarpaulins and a dust extraction unit. This system was trialled using a BSBC hopper but, due to the cumbersome nature of the hoppers, especially when moving them, was found to be unsuccessful. The system works far more efficiently on the GeelongPort hopper system.
- 4.26 It is also to be noted that there is only one dust extraction system available and it is now only attached to GeelongPort's Figee crane and hopper arrangement.

5. Concluding Remarks

- 5.1 The net public benefit test is plainly satisfied.
- 5.2 The Port has demonstrated the productivity/efficiency advantages of the figee cranes over ship's gear in its submission to the ACCC dated 19 February 2007.
- 5.3 Impact / Interfert / BSBC have, in one way or another, all conceded that the figee cranes are more efficient. As such, it appears to be common ground that the proposed requirement to use the figee cranes at Lascelles wharf when they are available can be expected to increase the operational efficiency of the Port.
- 5.4 The shorter period of time that a vessel is at anchor (or along side) the lower the cost to Port users for demurrage, berthing and stevedoring.
- 5.5 The proposed requirement to use the figee cranes at Lascelles wharf when they are available will also encourage capital investment by allowing the Port to recover its capital and operating costs. By way of contrast, allowing use of ship-based equipment will result in funds that might be utilised to sustain investment in Australian port facilities flowing to overseas based ship-owners.
- 5.6 In Geelong Port's submission, the proposed requirement to use figee cranes at Lascelles's wharf when available will have only a slight impact (if any) on competition for the following reasons:
- (a) the proposed requirement will not have the effect of denying access to GeelongPort for any Port user;
 - (b) any Port user wishing to avoid the proposed requirement for personal financial gain will retain the option of discharging its load at other Ports (see above);
 - (c) the requirement will not have the effect of denying access to GeelongPort for any alternative suppliers of ship discharge equipment. On the contrary, there will remain a requirement for ship discharge equipment when the figee cranes are unavailable for use; and
 - (d) the requirement will only impact on alternative suppliers of ship discharge equipment at Lascelles Wharf if and to the extent that the figee cranes are available for use and are not being utilised.
- 5.7 With respect, it would be erroneous of the ACCC to equate a slight impact (if any) on competition with public detriment in the relevant sense. As has been noted, the very existence of the authorisation and notification procedures points to the recognition that there may be

circumstances in which business conduct associated with a lessening of competition may have value to society. That proposition is true in this case.

- 5.8 In this case, the detriment arising from the requirement to use figee cranes when available is essentially private.
- 5.9 GeelongPort submits that the ACCC should conclude that in, all the circumstances, the public benefit of the proposed requirement to use the figee cranes at Lascelles wharf when they are available is likely to outweigh any public detriment.