



BRUCE STEVENS BULK COMMODITIES PTY.LTD.

GRAB/HOPPER HIRE & CARGO SUPERINTENDENTS

A.B.N. 16 053 566 331

27th September 2007.

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
P.O. Box 1199
Dickson ACT 2602.

Dear Sir / Madam

Response to Submission by Geelong Port's Pty Ltd ("GeelongPort") to Draft notice prepared by ACCC (the "Draft Notice") in relation to Exclusive Dealing Notification N92776 (the "Notification")

1. INTRODUCTION

1.1 Bruce Stevens Bulk Commodities Pty Ltd (**BSBC**) affirms all previous submissions made by it in relation to the Notification. BSBC does not wish to address each and every item that has been revisited by GeelongPort in its most recent submissions, suffice to indicate that it does not agree with many of the facts asserted by GeelongPort, and repeats the allegations of fact made in previous submissions made to the ACCC by BSBC on 5 March 2007, 3 April 2007, 19 April 2007, 27 April 2007 and 22 June 2007.. If there are any incorrect assumptions or facts contained in the Draft Notice (which is denied), BSBC asserts that these do not and should not interfere with the conclusions drawn by the ACCC in the Draft Notice.

2. SUBMISSIONS

2.1 Definition of "Market"

BSBC agrees with the ACCC's definition of the market as the provision of bulk cargo unloading equipment at the Port of Geelong. BSBC does not accept the definition of the market that is put forward in GeelongPort's Submissions and Dr Fallon's report.

Even if GeelongPort's wider definition of the market is correct (which is contrary to BSBC's views), BSBC does not accept that the Notified Conduct on such a market is trivial. Should the Notified Conduct be approved by the ACCC, it would set a precedent for other ports in Australia which would, in turn, create port based monopolies that lead to a substantial lessening of competition.

2.2 The "Notified Conduct"

GeelongPort's submissions state that a more precise description of GeelongPort's proposed conduct (the "**Notified Conduct**") is that GeelongPort proposes to require potential users of the port who unload dry bulk cargoes at Lascelles wharf from *non-self discharging vessels* to use figee cranes (as opposed to ship based cranes) *when available* (see paragraph 3.3 of the GeelongPort Submissions)

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Even if GeelongPort's description of the Notified Conduct is accepted (which is contrary to BSBC views) the Notified Conduct will still have a detrimental impact on port efficiency, restrict customer's right to choose the method of discharge that best suits their needs (and at a competitive price) and impose a significant barrier to suppliers of Lascelles Wharf. This is because customers from non-discharging vessels will still be required to use figee cranes and will only be entitled to use other services when the figee cranes are not available.

2.3 Proposed Undertakings by GeelongPort

GeelongPort is prepared to give the following undertakings should the ACCC approve the Notified Conduct (see paragraph 13 of the GeelongPort Submissions).
GeelongPort

- (a) will not increase its figee crane 'rack rates' by more than the consumer price index for at least 3 years;
- (b) will use its best endeavours to ensure that a supply of hoppers and grabs is always available at Lascelles Wharf; and
- (c) will modify its figee crane operating procedures so that port users may unload one hold of a vessel with a figee crane and another hold of a vessel with ship-based cranes if only one figee crane is available, and subject only to those cases where safety, environmental considerations or operational constraints prevent this.

The need for these undertakings only arises because the Notified Conduct lessens competition, restricts the supply of services to port users, and gives control to Geelong port to determine operating procedures (exclusively) on the port. All of these are anti competitive and none are for the public benefit. They confirm that GeelongPort will exclusively control "rack rates", the supply of hoppers and grabs, and all operating procedures.

In any event BSBC does not accept that these undertakings adequately deal with the negative effects of the Notified Conduct identified in the Draft Notice and previous submissions made by BSBC. In particular, BSBC submits that the Notified Conduct will still result in a substantial lessening of competition and continue to reduce efficiency and customer choice at Lascelles Wharf.

3. CONCLUSION

BSBC submits that the Notified Conduct will have a detrimental effect on competition, and is not in the public interest. BSBC supports the conclusions contained in the Draft Notice and continues to oppose the Notification.


Bruce Stevens
Managing Director