

5 August 2016

Director
Adjudication Branch
Australian Competition and Consumer Commission
Canberra ACT 2601

Your ref: 60424

By email: adjudication@acc.gov.au

Dear Sir / Madam

Substantive application for authorisation: A91545 – Port of Townsville – Submission

We refer to the ACCC's 13 July 2016 interested party consultation on the abovementioned application.

We welcome the opportunity to make a submission in relation to the substantive application for authorisation relating to exclusive dealing notifications N99117 and N99118.

In summary, and consistent with the arguments presented in our submission dated 22 July 2016 on the interim application, we are not supportive of the application, for the reasons described below.

To be clear, we recognise the logic of a joint procurement process and licencing of the port of Townsville however, joint licencing of Townsville with the 3 low-volume ports (Cairns, Lucinda and Mourilyan) will diminish competition and remove a number of important public benefits, which are described below.

There is locally-specific precedent and evidence to support:

- non-exclusivity in the ports of Cairns, Lucinda and Mourilyan, and
- exclusive licencing of towage services in the port of Townsville.

There is no compelling evidence to support exclusive licencing of low-volume, narrow customer-base ports such as Cairns, Lucinda and Mourilyan.

Evidence from other low-volume, narrow customer-base ports in Queensland, demonstrates that non-exclusivity promotes competitive tensions and enhances public benefits, including increasing employment and trade.

This approach (exclusive licence for Townsville and non-exclusivity for the other 3 ports) is consistent with the recent and comparable ACCC decision and review¹ relating to Gladstone port. Gladstone Port Corporation jointly manages 3 ports; Gladstone (a regional, high-volume, multi-customer port) and Bundaberg and Rockhampton (both low-volume, narrow customer-base ports). In this directly comparable case, towage services for Gladstone are exclusively licenced, while Bundaberg and Rockhampton are non-exclusive. This approach (described as the "Gladstone Model") has delivered clear and measurable benefits for the customers and communities of all 3 ports.

Gladstone Port Corporation is a Queensland Government-owned corporation (GoC), like the current applicants (Port of Townsville Limited and Far North Queensland Ports Corporation Limited).

¹ ACCC (2012) *Statement of Reasons in respect of the ACCC's review of a notification lodged by Gladstone Port Corporation*. Notification No. N93770. 27 June 2012.

A joint licence for all 4 ports will reduce competition - now and into the future

It has been argued by the applicant² that removing the option of one joint (collective) licence for all 4 ports may reduce competitive bids from larger towage service operators. We refute this argument. The only such large towage operators are the incumbent providers (Svitzer and Smit Lamnalco), which together exert an overwhelming dominance of the Australian port towage market³.

Both incumbent providers have made it publically known that they intend to compete for these ports. These providers are European-based, multi-national companies. Therefore, a simple, pragmatic appraisal of the market and the 4 ports that are the subject of this application indicates there is no likelihood that the larger towage service operators will not compete. The incumbent providers will compete for these ports, even when the option of one joint exclusive licence covering all 4 ports, is removed.

The last decade has witnessed a series of strategic “buy-outs” by the two largest multi-national providers (Svitzer and Smit Lamnalco) that has resulted in the consolidation of the harbour towage market. As an example with specific relevance for this submission, Queensland has approximately 12 ports and these two multi-national companies control the towage services in 9 of the 12 ports (refer Table 1).

Table 1. Queensland ports and the associated towage service provision as at August 2016.

Queensland ports	Tug owners	Tug operator
Weipa	Smit	Smit
Mourilyan	Svitzer	Svitzer
Cairns	Svitzer	Svitzer
Lucinda	Svitzer	Svitzer
Townsville	Smit	Smit
Abbot Point	Svitzer	Svitzer
Mackay	Smit	Smit
Hay Point	BHP and Mitsubishi	Rivtow/partnerships
Rockhampton	Pacific Tug	WBSS*
Gladstone	Smit	Smit
Bundaberg	Pacific Tug	WBSS*
Brisbane	Svitzer & Smit	Svitzer & Smit

* WBSS = Wide Bay Shipping Services, a subsidiary of Pacific Tug

A decision to commit to the foreign multi-national companies across all 4 ports until 2024 will exhaust competition from local companies and therefore the existence of future competition will be dependent upon new entries to the market. Other than the Pacific Tug, we are unaware of any examples of new entries to the Australian towage market for over a decade and there are no current prospects of this changing. Awarding one joint licence for all 4 ports risks reinforcing this trend.

The *Gladstone Model* provides a current and compelling example of the public benefits from maintaining non-exclusivity in low-volume ports. Due to the “open competition policy” in the low-volume ports of Bundaberg and Rockhampton, Pacific Tug (through its subsidiary, Wide Bay Shipping Service) was able to enter these ports and compete with the long-term incumbent (Svitzer). Since 2014, the cost of towage to port customers has halved and this has contributed to increased trade and employment. This outcome in the low-volume ports was only possible because a new competitor was able to enter the market. This was only possible because there was no exclusive licence in place.

² Application A915454 (8 July 2016) and subsequent submission “Response to submission by Pacific Tug” (26 July 2016)

³ As described in Table 1 and our interim submission – A91545 – Port of Townsville

The port of Townsville is different to Cairns, Lucinda and Mourilyan – and this is important for competition

Removing the option of one joint (collective) licence for all 4 ports will increase competitive tensions by encouraging (rather than discouraging) competition from smaller, Australian-based towage providers.

We agree with the applicant's view that:

"Smaller towage providers are also more likely to be able to offer more flexible crew rosters. This will provide substantial cost benefits in low-volume ports such as Cairns, Lucinda and Mourilyan and in situations where tug vessels have low utilisation rates."

In addition, it is important to note that the incumbent providers of these low-volume ports are the large multi-national providers (Svitzer and Smit). It is expected that they will also be competing to retain control of these low-volume ports, and maintain their industry-wide duopoly.

Therefore, the effect of approving a licence for all 4 ports is to remove the competitive effects acknowledged by the applicant in the above statement.

It has been suggested by the applicant² that the characteristics of each port has no effect on competition. This position does not reflect the upfront capital investment differences between Townsville and the other three ports. The size and number of ships visiting Townsville are significantly larger than those of the other three ports. This is evident from the higher tug capacity requirements for Townsville, compared to other three ports.

Above all, we fear that the customers' needs are not best catered for by towage licencing across the 4 ports. Our specific concern is in regard to the customers of the three low-volume ports. The customer base of these 3 ports is very different to that of Townsville. For example, Queensland Sugar Limited is the primary customer for Lucinda and Mourilyan and is a significant customer of Cairns.

The nature of the customer base in the 3 low-volume ports is different to that of Townsville. These two distinct customer-bases require services that are tailored to their needs. It is our view that the applicant's desire to licence all 4 ports fails to recognise these customer differences.

Our experience from over 50 years in the Australian towage industry is that exclusive licencing in low-volume, narrow customer-base ports fundamentally alters the relationship between the supplier (towage operator) and customer. In such ports, the need for a direct customer/supplier relationship is more important due to the requirements for flexibility and substantial cost-efficiency (as noted by the applicant). We argue that exclusive licencing of such ports interferes with the capacity to deliver this type of service.

Yours sincerely



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