

Our reference
ECS/JC

ONE ONE ONE Eagle Street
111 Eagle Street Brisbane QLD 4000
GPO Box 9925 Brisbane QLD 4001
Tel +61 7 3228 9333
Fax +61 7 3228 9444
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth

22 August 2016

By email: kabita.prasad@acc.gov.au
Kabita Prasad
Assistant Director
Merger and Authorisation Review Division
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Contact
James Cameron (07) 3228 9752

Partner
Eddie Scuderi (07) 3228 9319
Email: eddie.scuderi@corrs.com.au

Dear Kabita,

Response to submission by Svitzer Australia Group Limited

We refer to the submission made on behalf of Svitzer Australia Group Limited (**Svitzer**) dated 5 August 2016 (**Svitzer submission**) to the application for interim and final authorisation (A91545) lodged on 8 July 2016 by Port of Townville Limited (**POTL**) on behalf of itself and Far North Queensland Ports Corporation Limited (together, the **Applicants**).

This letter responds to the Svitzer submission.

Summary of Svitzer submission

Among other points, Svitzer's submission states that it is, in principle, opposed to exclusive licences both globally and domestically, regardless of the port in question.

Svitzer accepts that towage volume will not always be sufficient to justify a second operator or multiple operators but states that this does not in and of itself necessitate an exclusive licence regime.

Response to Svitzer submission

POTL rejects the arguments made in the Svitzer submission about exclusive licences.

POTL refers the Commission to the **attached** 11 January 2012 response (**2012 POTL Response**) to Svitzer's 23 November 2011 application for revocation of notification N93775 with respect to the grant of an exclusive licence at the Port of Townsville, and the Commission's subsequent decision to reject Svitzer's application for revocation dated 27 June 2012 (**2012 ACCC Decision**), also **attached** to this letter.

The 2012 POTL Response (and the Commission's subsequent decision not revoke notification N93775) are relevant because the arguments put forward in its 2012 POTL Response with respect to exclusive towage licences (particularly at low volume ports like

Merger and Authorisation Review Division
Australian Competition and Consumer Commission
**Response to submission by Svitzer Australia Group
Limited**

the Port of Townsville) are the same arguments that POTL wishes to raise with respect to the claims made about exclusive towage licences in the Svitzer submission on this matter.

In addition, POTL notes the following fundamental points about the grant of exclusive licence at small, low volume ports, such as the ones the subject of the application A91545:

- 1 The Applicants have had a statutory right under the *Transport Infrastructure Act 1994* (Qld) to grant exclusive licences since 2002 and its right to do so has been consistently allowed to stand pursuant to notifications it has lodged with the ACCC (including notification N93755 that Svitzer sought to revoke in 2011).
- 2 In the opinion of POTL, the 2002 Productivity Commission Inquiry Report titled '*Economic Regulation of Harbour Towage and Related Services*' (**Productivity Commission Report**) is and remains the most authoritative, evidence-based and thorough report on competition issues relevant to harbour towage services in Australia. The competition principles considered in that report are as relevant in today's towage market as they were in 2002. Finding 8.4 of the Productivity Commission Report states:

In certain circumstance, exclusive licence for the provision of towage services have the potential to generate greater benefits for towage users than non-exclusive licences.
- 3 POTL submits that, in combination with an open competitive tender process that permits bids for individual ports (and which does not require respondents to bid for one exclusive licence for all four ports the subject of the application of authorisation), the circumstances that justify the granting of exclusive licences exist.
- 4 With respect to the 2012 ACCC Decision issued by the Commission on 27 June 2012, the tug job volumes for the Port of Townsville for the 2010/2011 year were approximately 2,110 tug jobs. The number of tug jobs at the Port of Townsville during the 2015/2016 financial year was 2,199 tug jobs, which is the lowest number of tug jobs when compared to the last three financial years. The other ports the subject of application A91545 have even lower volumes of tug jobs. The Productivity Commission Report suggests that economies of scale for a single tug operator could be exhausted at around 8,000 tug jobs per year.¹
- 5 Professor Round, in his report titled '*Competition in the provision of towage services in Australian ports: Is exclusive licensing necessary?*' of 27 November 2011, concludes that competition amongst more than one towage operator is

¹ Productivity Commission, *Inquiry report: Economic regulation of harbour towage and related services* (20 August 2002), XXVI.

Merger and Authorisation Review Division
Australian Competition and Consumer Commission
**Response to submission by Svitzer Australia Group
Limited**

sustainable in ports that are larger in size, namely those with vessel calls on average greater than 10,000 tug jobs in the past three financial years.²

- 6 In the Federal Court of Australia decision of *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* cited at page 156 of the Productivity Commission Report, Justices Burchett and Hely stated (emphasis added in underline):

An exclusive licensee will be insulated from competitive pressures for the period of the licence, subject to any pressures associated with the extension or renewal of the terms of the licence. There will be a shift from a natural monopoly to a legally enforced and controlled monopoly, but the market behaviour of the successful tenderer will be regulated by the terms of the agreement which results from the competition for the market brought about by the tender process. The tender process creates competition between rivals for the opportunity to supply towage services for the next five years on the basis that the prices will be capped. Competitive outcomes are prescribed or sought within the contract entered into as a result of the bidding process, rather than through the operation of market forces during the term of the contract.³

- 7 The successful towage service providers that are awarded exclusive licences by the Applicants will be regulated by the terms of the agreement which results from the competition for the market brought about by the open competitive tender process that the Applicants intend to conduct and which is described in the application A91545.

Conclusion

POTL argues that competitive tenders for the exclusive right to operate towage services at low volume ports for a fixed period promotes more competitive towage outcomes for port users and is likely to achieve the public benefits described in its application.

² Professor D Round and Dr M Agarwal, *Competition in the provision of towage services in Australian ports: Is exclusive licensing necessary?* (27 October 2011), 38.

³ *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* [2000] FCA 1381, [25].

22 August 2016


CORRS
CHAMBERS
WESTGARTH
lawyers

Merger and Authorisation Review Division
Australian Competition and Consumer Commission
**Response to submission by Svitzer Australia Group
Limited**

Further information

Please contact me if you have any queries or require further information.

Yours faithfully
Corrs Chambers Westgarth

A handwritten signature in black ink, appearing to be 'E. Scuderi', with a long horizontal stroke extending to the right.

Eddie Scuderi
Partner



**Australian
Competition &
Consumer
Commission**

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our Ref: C2009/374
Contact Officer: Shane Chisholm
Contact Number: (02) 6243 1036

27 June 2012

Barry Holden
Chief Executive Officer
Port of Townsville Ltd
PO Box 1031
TOWNSVILLE QLD 4810

Dear Mr Holden

Third line forcing notification N93775 lodged by Port of Townsville Ltd

I refer to the above third line forcing notification which has been under review by the Australian Competition and Consumer Commission (the ACCC) since 8 December 2011.

Under notification N93775, the Port of Townsville provides access to the Port of Townsville on condition that vessels requiring towage services engage the holder of the exclusive licence for the provision of towage service. The licence is for a duration of five years, with an option for a further two years. The current holder of the exclusive licence is PB Towage.

The ACCC received a complaint regarding the notified conduct from Svitzer Australia on 23 November 2011, which alleged that the market had changed since the ACCC's decision to allow the notification to stand in 2009.

Following the receipt of this complaint, the ACCC sought the views of the Port of Townsville and other interested parties on the likely benefits and likely detriments to the public of the notified conduct.

The ACCC received submissions from a number of interested parties opposed to the notified conduct, including Shipping Australia, Coastal Tug & Barge and the Australian

Institute of Marine and Power Engineers. These parties considered that the ACCC should revoke the notification as:

- the Port of Townsville may be able to support a second towage operator;
- the exclusive licence has led to higher prices for towage services; and
- the exclusive licence had caused over capitalisation in tugs, with the tender requesting tugs with a higher bollard pull than what was required for the port.

The Port of Townsville and PB Towage both provided submissions in support of the notification. These parties advised that the ACCC should not take further action as:

- based on scale, harbour towage services at the Port of Townsville is a natural monopoly that will only support a single operator for the next decade at least;
- the competitive tender process undertaken in 2009 for the provision of an exclusive towage licence at the Port of Townsville has produced a good outcome for all port users collectively;
- if a tenderer was prepared to provide new tugs of greater bollard pull at around the same or lower price than the incumbent offering tugs with lower capacity the port overall benefits from the increased capacity and safety; and
- the port operator does not have an incentive to maximise its own profits rather than look after its users.

Svitzer Australia subsequently withdrew its complaint regarding the Port of Townsville on 28 March 2012.

The ACCC has considered the matters raised in the submission from the Port of Townsville, the original complaint from Svitzer Australia and the submissions from interested parties. Based on this information, it is not intended that further action be taken in this matter at this stage.

In particular, the ACCC considers that, having regard to the specific characteristics of the Port of Townsville and the current forecasts of demand for towage services at the port, the Port of Townsville will continue to be most efficiently serviced by a single harbour towage operator over the period of the exclusive licence. As a result, the notified conduct is likely to have delivered increased competition *for* the market from the tender process conducted in 2009.

In these circumstances, the notified conduct is likely to be delivering public benefits in the form of reduced costs and increased efficiency at the Port of Townsville. As the rates for harbour towage at the Port of Townsville have been set following a competitive tender process conducted in 2009, the ACCC considers that it is unlikely that the notified conduct is generating public detriments in the form of higher prices.

As a result, the ACCC is satisfied that the likely benefits to the public from continue to outweigh the likely detriments to the public from the notified conduct.

As with any notification, please note that the ACCC may act to remove the immunity afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Shane Chisholm on (02) 6243 1036.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a long horizontal line.

Dr Richard Chadwick
General Manager
Adjudication Branch



**PORT of
TOWNSVILLE**

PORT OF TOWNSVILLE LIMITED
ACN | 130 077 673

EMAIL | info@townsville-port.com.au
WEBSITE | www.townsville-port.com.au

**BENWELL ROAD | PO BOX 1031
TOWNSVILLE | QLD 4810**

TELEPHONE | + 61 7 4781 1500

FACSIMILE | + 61 7 4781 1525

LATITUDE 19° 15' S | LONGITUDE 146° 50' E

Contact Officer: Esther Slocombe
Telephone: 07 4781 1531
Email: eslocombe@townsville-port.com.au
Ref: ACCC Submission - Towage

11 January 2012

Attention: Mr John Rouw
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Rouw,

PROPOSED REVOCATION OF EXCLUSIVE HARBOUR TOWAGE NOTIFICATIONS IN THE PORT OF TOWNSVILLE (N93775)

We refer to the request by the Australian Competition and Consumer Commission ("ACCC") for stakeholder submissions in response to the submission made by Svitzer Australia Pty Ltd ("SVITZER") that the ACCC should revoke notification N93775 lodged by Port of Townsville Limited ("POTL") on 10 February 2009, on the basis that:

1. the Port of Townsville ("the Port") has increased in size sufficiently to be able to support a second towage operator; and
2. the public benefits of exclusive licensing of towage services at the Port no longer outweigh the public detriments.

As a direct stakeholder in this matter, POTL provides the following response to Svitzer's submission:

Background

POTL is responsible for managing two small regional ports, Townsville and Lucinda. The harbour is man-made and accessed by a relatively narrow channel which limits vessels to a maximum beam of 32 metres. Trade throughput is roughly split 50/50 between imports and exports. Vessels engaged in the largest single trade (import of nickel ore), which accounts for more than 40% of total throughput, are loaded to the maximum draft possible given minimum under keel clearance requirements, based on the predicted tide at Townsville for the expected date of arrival. Failure to meet the tidal window may mean the ship must wait at anchor until the tide cycle allows safe navigation.

Other products handled through the Port of Townsville include fuel and other petroleum products, LPG, and mining chemicals. Risk management dictates that tugs operating in the port must be fire fighting capable.

In the event of a tug not being available to provide towage service, either through scheduled maintenance, breakdown, damage or response to an emergency as directed by the Maritime Emergency Response Commander, the port cannot operate. Consequently, the towage licence for the Port of Townsville requires the operator to be able to provide a back-up tug within 24 hours of a Townsville tug not being available.

Statutory functions and regulatory power regarding the operation of tug services in its ports

POTL is a government owned corporation established under the *Government Owned Corporations Act 1993* (Qld) ("**GOC Act**") and *Corporations Act 2001* (Cth) and is responsible for the management of the Port of Townsville and Port of Lucinda pursuant to the *Transport Infrastructure Act 1994* (Qld) ("**TIA**").

POTL's regulatory functions and powers regarding the operation of tug services in its ports are based upon two complementary elements, those being:

1. POTL's core business functions which are to:
 - establish, manage and operate effective and efficient port facilities and services at its ports;
 - make land available for:
 - the establishment, management and operation of effective and efficient port facilities and port services at its ports by other persons; or
 - other purposes consistent with the operation of its port; and
 - provide or arrange for the provision of ancillary services or works necessary or convenient for the effective and efficient operations of its ports;
 - keep appropriate levels of safety and security in the provision and operation of the port facilities and port services;
 - provide other services incidental to the performance of POTL's other functions, or likely to enhance the usage of its ports;
 - performance of any other functions and exercise any other powers conferred on POTL under the TIA, GOC Act and Regulations or another Act or under POTL's Statement of Corporate Intent or Corporate Plan;
 - provide port services and ancillary services whether in or outside its ports, whether in or outside Australia and whether for another port or for other parties; and
 - carry out any activity that is incidental to the attainment of the objects set out above.¹
2. POTL's regulatory power of authorisation which requires a person to apply for approval to operate tug services in its ports. POTL is authorised to exercise discretion about the conditions of the approval and any approval may or may not give an exclusive right to operate a tug service.²

The express power to grant an exclusive right of operation has only been included in the TIA since 2002. The discretion to grant exclusive rights in giving an approval to operate a tug service is in probable recognition of the economic realities relating to towage operations in the majority of Australian ports. Following an inquiry into harbour towage and related services by the Productivity Commission in 2002, there is general recognition of the fact that the market for the provision of towage services in the majority of Australian ports is a natural monopoly.³

It was recommended by the Productivity Commission that port authorities should be given explicit discretion to licence towage operators, subject to safeguards that protect and promote towage user interests including user consultation processes, demonstration of net benefits of licences and transparent and 'arm's length' tender processes and licence conditions⁴. Consequently, later in 2002 the Queensland Government released the '*Guidelines for the Issue of Harbour Towage Licences by Port GOCs*' to ensure additional Government oversight and implementation of the recommended safeguards.

In January 2009, POTL notified the ACCC of its intention to exclusively licence the towage operations at the Port of Townsville. POTL exercised its discretion to give an exclusive towage licence having regard to the Productivity Commission's 2002 findings and the following considerations:

- the statutory requirement for POTL to arrange for the provision of ancillary services (such as towage) which are absolutely necessary for the continuing effective and efficient operation of the port;
- the statutory requirement for POTL to ensure appropriate levels of safety are met in respect to towage services and that appropriate emergency response capability exists at the port;
- the fact that the Port of Townsville is a small regional port which is unlikely, in the medium term, to be capable of supporting more than one towage operator given the volume of towage

¹ TIA, section 275.

² TIA, Part 4A.

³ '*Economic Regulation of Harbour Towage and Related Services*', Productivity Commission Inquiry Report No. 24 dated 20 August 2002 and released publicly on 27 March 2003, 80.

⁴ *Ibid*, XXII.

services required at the port and the unlikelihood of demand significantly increasing during the term of the existing exclusive licence;

- that in view of the Townsville towage market being a 'natural monopoly', the need to promote more competitive towage outcomes for the towage market in order to achieve more efficient pricing and services levels for its port users;
- the fact that port users had requested POTL go to tender to test the market; and
- the fact that an exclusive licence for a fixed short term period would stimulate interest from more prospective providers given that the term of the licence would give them reasonable opportunity to recover their sunk costs and earn a reasonable margin on their services.

In March and May 2009, the ACCC decided not to revoke the immunity afforded by the notification on the basis that the public benefits resulting from the conduct outweighed the likely public detriments resulting from the conduct. It is assumed that the ACCC's decision was primarily based on the findings of the Productivity Commission's 2002 inquiry and the following Federal Court decisions which considered the issue of exclusive towage licencing:

- *Stirling Harbour Services Pty Ltd –v- Bunbury Port Authority* [2000] FCA 38 (28 January 2000);
- *Stirling Harbour Services Pty Ltd –v- Bunbury Port Authority* [2000] FCA 87 (11 February 2000); and
- *Stirling Harbour Services Pty Ltd –v- Bunbury Port Authority* [2000] FCA 1381 (29 September 2000).

When the above decisions and the Productivity Commission's 2002 report are read together it would seem clear that exclusive licences for a reasonable period following a competitive tender process will achieve both compliance with the *Competition and Consumer Protection Act 2009* (Cth) and more competitive outcomes in certain towage markets.

Has the Townsville towage market changed sufficiently to be able to support a second towage operator?

Svitzer submits that the Productivity Commission's report is no longer relevant in that there have been material changes to the Australian towage industry since 2002 which suggest that at least larger ports are now likely to be able to sustain more than one operator. These material changes include:

- the size and structure of the industry has change with high levels of growth which are forecast to continue, the entry of new domestic and international operators including Smit International and PB Towage, and an increase in the number of competitors in the towage market;
- the cost of entry has decreased as a result of these changes making entry into ports more rational; and
- towage arrangements have changed with a pattern emerging that larger ports prefer open towage arrangements.

POTL is of the view that the above assertions are incorrect in respect to the Townsville towage market for the following reasons:

Levels of Demand at the Port of Townsville

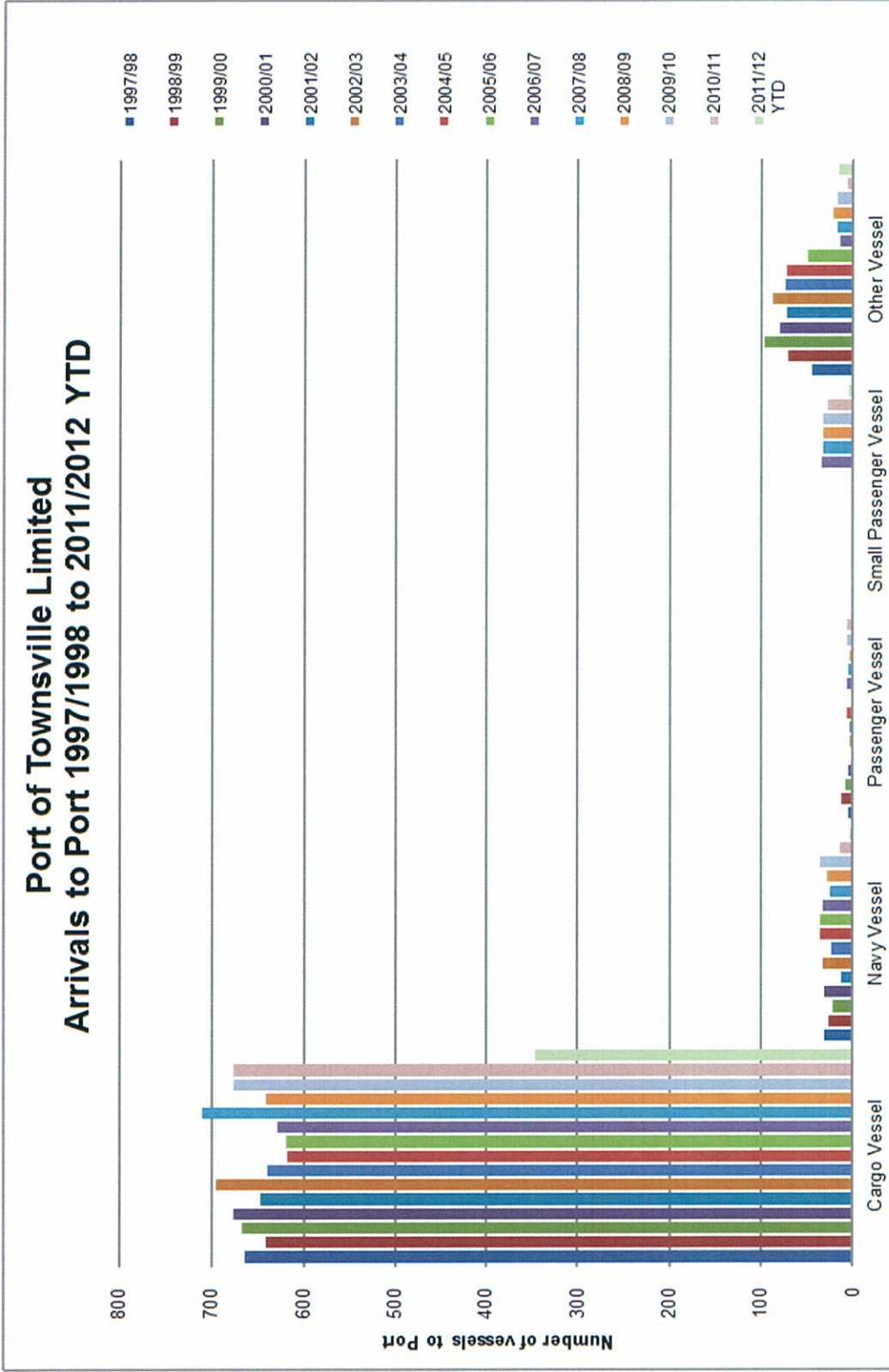
Svitzer submits that the demand for towage jobs in Australia has grown substantially in the past decade and therefore the market has grown.⁵

In respect to the Townsville towage market, which is the relevant market to be considered in this matter⁶, the number of vessel visits to the Port of Townsville and consequently the demand for towage jobs has remained relatively stable over the past decade as shown in Tables 1 and 2 below:

⁵ Svitzer Australia Pty Ltd, 'Submission to the Australian Competition and Consumer Commission on Exclusive Licensing of Towage Services at the Ports of Gladstone and Townsville' (23 November 2011), 14.

⁶ *Stirling Harbour Services Pty Ltd –v- Bunbury Port Authority* [2000] FCA 38 (28 January 2000), 109-112.

TABLE 1:



Note: Small Passenger Vessels do not use tugs. Passenger Vessels (i.e. cruise ships) sometimes use tugs. Navy Vessels includes landing craft and other small vessels do not use tugs.

TABLE 2:

Port of Townsville Limited

Arrivals to port 1997/1998 to 2011/2012 YTD

No. of visits	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	YTD
Vessel Type	664	640	666	675	647	694	639	617	619	628	709	640	675	675	675	348
Cargo Vessel	664	640	666	675	647	694	639	617	619	628	709	640	675	675	675	348
Navy Vessel	31	27	23	32	14	34	24	37	36	33	25	28	37	15	15	4
Passenger Vessel	6	13	9	5	2	4	4	7	3	7	5	4	7	7	7	0
Small Passenger Vessel	0	0	0	0	0	0	0	0	0	0	34	34	34	28	28	6
Other Vessel	45	71	97	81	73	88	75	73	50	15	18	22	18	7	7	16
Total	746	751	795	793	736	820	742	734	708	718	791	728	771	732	732	374

* only arrivals to port for berth 1,2,3,4,7,8,9,10,11 and excluding PB Tugs and Maintenance visits

TABLE 3:

Port of Townsville Limited

Total vessel GRT 1997/1998 to 2011/2012 YTD

Sum of Reg GRT	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	YTD
Vessel Type	9,248,789	9,890,091	10,090,532	10,915,602	10,945,288	11,972,860	12,064,643	12,375,105	12,335,039	12,969,443	12,648,041	14,317,128	14,205,419	14,205,419	14,205,419	7,358,316
Cargo Vessel	9,248,789	9,890,091	10,090,532	10,915,602	10,945,288	11,972,860	12,064,643	12,375,105	12,335,039	12,969,443	12,648,041	14,317,128	14,205,419	14,205,419	14,205,419	7,358,316
Total	9,248,789	9,890,091	10,090,532	10,915,602	10,945,288	11,972,860	12,064,643	12,375,105	12,335,039	12,969,443	12,648,041	12,317,128	14,205,419	14,205,419	14,205,419	7,358,316

TABLE 4:

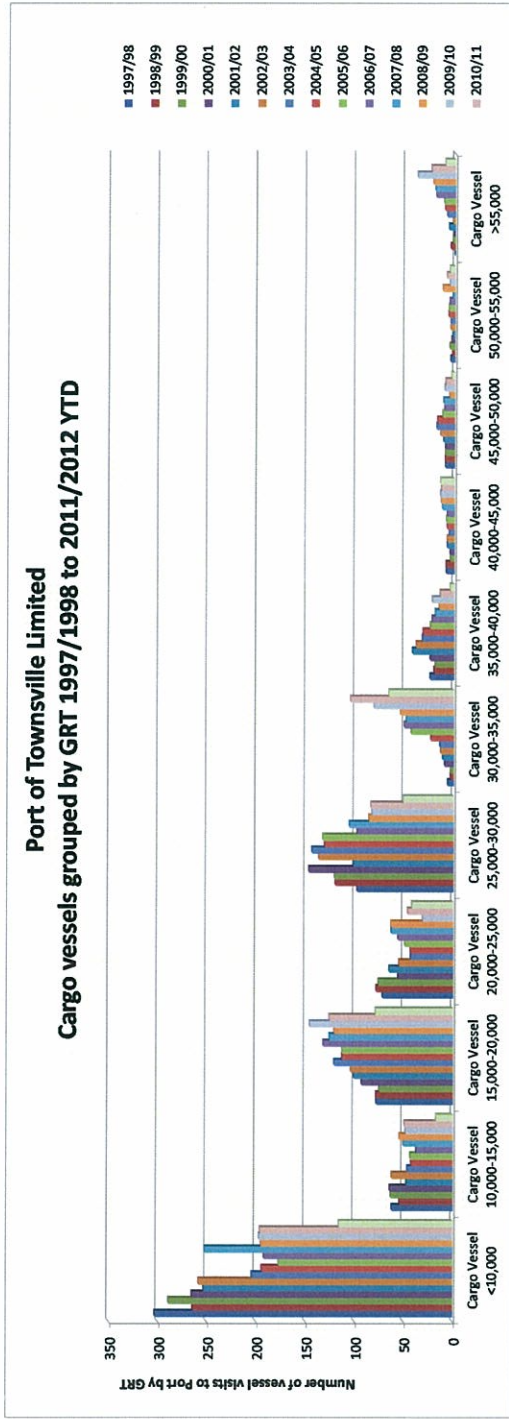
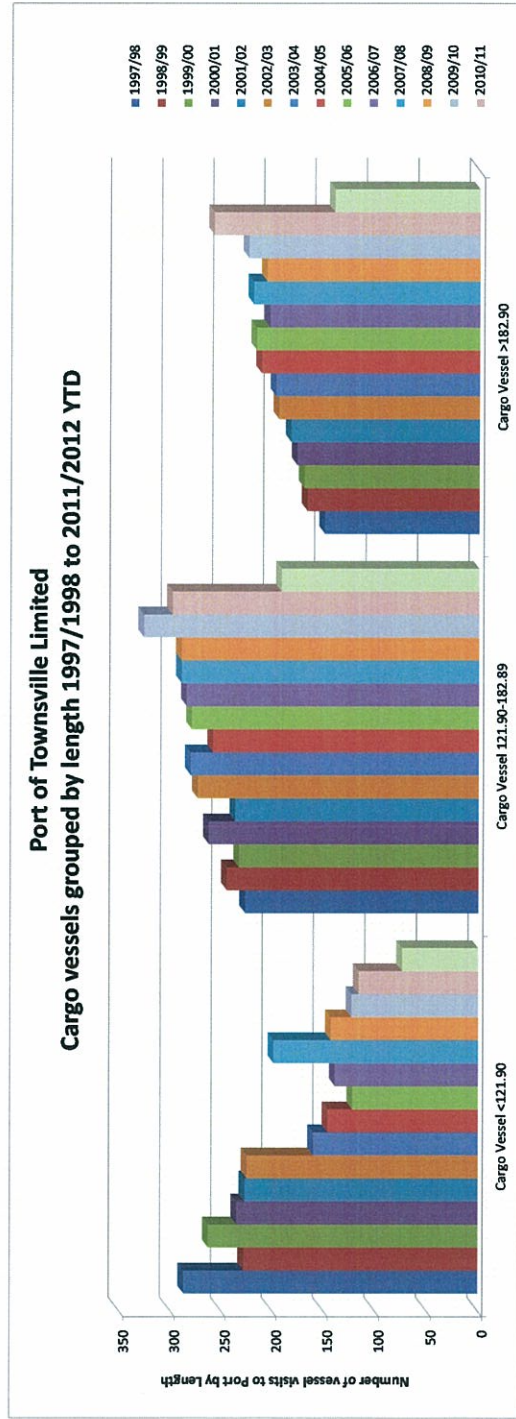


TABLE 5:



As is shown in Table 2 above, the number of vessel visits to the Port of Townsville has in fact decreased from 820 vessels in 2002/2003 to 732 vessels in the 2010/2011, despite the Port of Townsville's tonnage throughput increasing from 9,811,723 tonnes in 2002/2003 to 10,601,137 tonnes in 2010/2011. This could be due to the size of ships gradually increasing over time as shown in Table 3-5 above which demonstrates a gradual increase in the Gross Registered Tonnage of vessels visiting the Port of Townsville. Consequently, demand in the Townsville towage market has grown marginally from approximately 1,900 tug jobs in 2002/2003⁷ to 2,110 tug jobs in the 2010/2011 financial year⁸, which is an increase of approximately 11%.

The Productivity Commission's 2002 report suggests that economies of scale for a single tug operator could be exhausted at around 8,000 tug jobs per year.⁹ Professor Round, in his report entitled *"Competition in the Provision of Towage Services in Australian Ports: Is Exclusive Licencing Necessary?"* of 27 October 2011, confirms that competition amongst more than one towage operator is sustainable at least in ports that are larger in size (those with vessel calls on average greater than 10,000 tug jobs in the past three financial years).¹⁰ Page 18 – number of tug jobs considered as the benchmark for the introduction of competition = 5,179

It is clear from the statistics presented above that Port of Townsville remains a small regional port, with demand for towage services well below the point at which it may be economically efficient to support more than one supplier of towage services at the port. The fact that there has been entry of new domestic and international towage operators in the Australian towage market is irrelevant in terms of the Townsville towage market as the level of demand to support more than one operator currently does not exist and is not expected to exist at least in the medium term. It is also irrelevant that larger ports prefer open towage arrangements as the levels of demand for towage services differ to that at the Port of Townsville. The assertion that Port of Townsville is a "busy port...with multiple coal and LNG terminals"¹¹ is simply incorrect and demonstrates a complete lack of understanding of the Port of Townsville's operations.

In addition to the low levels of demand existing at small regional ports like the Port of Townsville, there are other issues associated with having more than one towage provider in a small regional port, including:

- berthing space for the tugs;
- the risk of the provision of older, lower capacity, lower value tugs which may have impacts on reliability and availability;
- the ability to recruit, train and retain qualified crews.

These issues further support the need for Port of Townsville's towage operations to be regulated through an exclusive licencing regime.

POTL confirms it is currently seeking environmental approvals to proceed with its planned expansion of the Port of Townsville. POTL is only in the preliminary phases of the design and approvals process and is yet to enter into any commercial contracts with prospective port customers for the supply of these additional port facilities. POTL is progressing with the design and approvals process simply to ensure that it can respond to any future commercial opportunities that may arise in the future, given the long lead times associated with obtaining approvals and constructing port infrastructure.

Given the current circumstances and the long lead times associated with the POTL's port expansion plans, POTL does not expect there will be significant increases in vessel visits and consequently the demand for towage services over the term of the existing exclusive towage licence (which is due to expire on 30 June 2015 subject to a further two year option period), even on optimistic estimates.

At the expiry of the licence, POTL intends to assess whether it is appropriate to continue with an exclusive towage licence arrangement and seek to obtain any appropriate clearances from the ACCC should a further exclusive arrangement be pursued.

⁷ Svitzer Australia Pty Ltd, above n 5, 19.

⁸ Figures provided courtesy of PB Towage (Australia) Pty Ltd.

⁹ Productivity Commission, above n 3, XXVI.

¹⁰ Professor David Round and Dr Manish Agarwal, 'Competition in the Provision of Towage Services in Australian Ports: Is Exclusive Licencing Necessary?' (27 October 2011), 38.

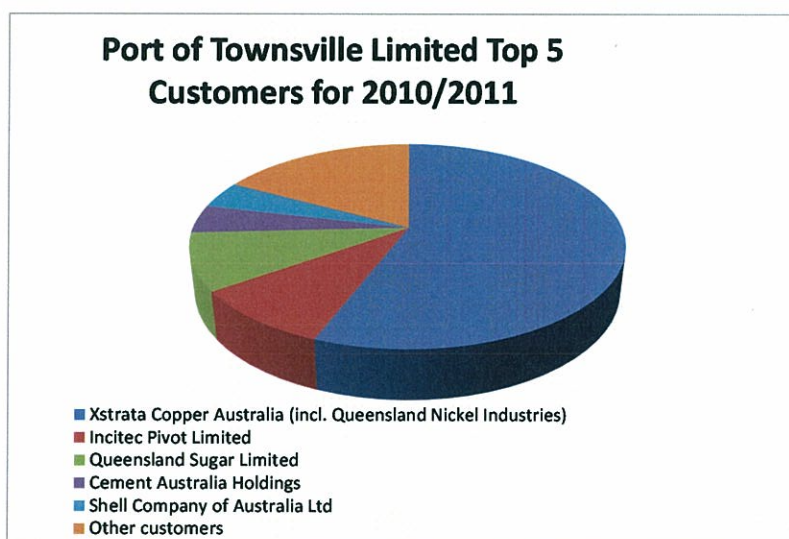
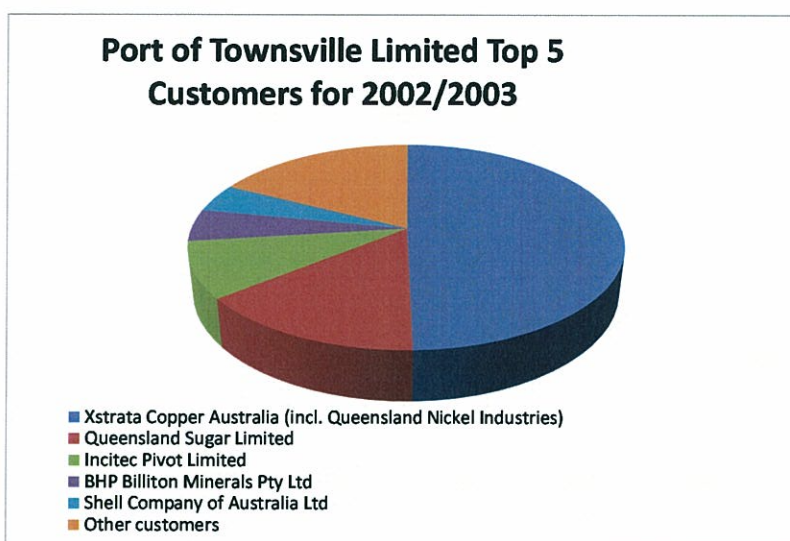
¹¹ Svitzer Australia Pty Ltd, above n 5, 32.

Finally it should be noted that as part of POTL's port expansion plans, POTL is proposing to deepen and widen the existing channel such that larger vessels can be accommodated. Port users currently charter vessels that meet the specifications/restrictions of the channel and their allocated berth. It is expected that Port users will charter larger vessels should the existing channel be modified. A number of inner harbour projects currently underway will upgrade existing berths so that they can accommodate panamax sized vessels. This could result in a reduction in vessel visits given higher tonnages could be transported per shipment.

Costs of Entry

Svitzer has submitted that a new entrant does not have to win as large a share of the market as it did in the past to compete and operate with cost advantages and that the cost of entry has decreased making entry into ports economically rational.¹²

The Townsville towage market, in terms of its customers, has been dominated by five primary port users over the past decade as shown in the following diagrams:



The above diagrams demonstrate that the customer base at the Port of Townsville has remained substantially the same over the past decade and is quite small, highlighting the difficulties that would be faced by a new entrant in circumstances where there is a well-established incumbent. The incumbent in any regional port has an enormous advantage over any potential competitor in the market. Invariably, the incumbent will always call for non-exclusive licencing.

¹² Ibid, 19.

The assertion that under-utilised tugs can be easily redeployed to another port or utilised on the spot market demonstrates a lack of understanding of the arrangements between and within ports and the market generally. It would be destabilising to the good management of the Port of Townsville (and presumably other regional ports) to have tug operators coming and going as they please with no long term commitment to the Port or its customers. Our customers want security of supply; the costs to them of demurrage, loss of time in published sailing schedules, etc. far outweigh the potential savings between competing towage providers.

POTL supports the Productivity Commission's 2002 findings that competitive tenders for the exclusive right to operate towage services at a port for a fixed period promotes more competitive towage outcomes. It encourages new entrants, including small operators, which would not otherwise consider competing in the market given the need to secure a certain level of demand over a fixed period of time to recover the sunk costs associated with entry.

Although the Productivity Commission found that barriers to entry in the towage services market, while not insignificant, were not large, the initial 'lumpy' investments required to enter into a market together with the level of demand continue to be significant factors taken into account by towage operators when assessing whether an appropriate rate of return can be achieved on their investment. Accordingly, these factors cannot be discounted in terms of their importance when determining the most appropriate towage licensing framework to implement to stimulate competition for the market.

The proposition that a towage operator can minimise redundancy costs by redeploying crews to other ports¹³ displays a lack of understanding of human resource and industrial relation limitations that generally exist in regional areas, including Townsville.

In addition, the assertion that tugs can be introduced into the Australian market with little modification¹⁴ is too generalised and does not take into account the specific requirements of regional ports. The Port of Townsville is most particular in terms of tug specifications, given issues with the port's characteristics, the type of vessels handled, weather conditions and trade direction. The mix and tonnage of hazardous trades handled through the Port in close proximity to, and upwind of a large urban area requires both tugs to have fire fighting capability to the required Australian standards, including have fire fighting foam concentrate on board. Without a licencing regime requiring such capability, a smaller, non-fire fighting tug could be provided.

Existing Exclusive Towage Licence Arrangements

The competitive tender process undertaken by POTL in 2009 for the provision of an exclusive towage licence at the Port of Townsville has produced a good outcome for all port users collectively. POTL has discharged its statutory functions to ensure that tugs of appropriate size/availability/reliability together with emergency response / fire fighting capability operate in the port for a defined period for the benefit of all port users. Port users have surety of towage charges for a defined period, with any proposed price increases having to be justified to and approved by POTL. Innovation to improve efficiency, pricing and levels of service is encouraged by way of key performance indicators and sanctions (including early termination) for poor performance.

In view of the Townsville towage market being a 'natural monopoly', a licensing regime that represents the interests of and meets the operational needs of all port customers and relevant stakeholders is essential. This means that the tug specifications, in terms of the size/availability/reliability, emergency response and fire fighting capability, must meet the requirements of all port users and relevant stakeholders, including Maritime Safety Queensland who employs the marine pilots.

Specifications stipulated by POTL as part of the 2009 tender process were determined following consultation with port users, specialist consultants and Maritime Safety Queensland. The specifications not only took in to account pricing considerations but also the types of vessels that will be serviced, weather, port layout and other relevant navigational issues. Svitzer concern (pp28) about the value of tugs and excess investment is irrelevant. If a tenderer is prepared to provide new tugs of greater bollard pull at around the same or lower price than the incumbent offering the same old tugs with lower capacity, the port overall benefits from the reserve capacity and increased safety factor. POTL may now be corporatized and registered as a public company however it, together with its port users, has a common interest to ensure port operations are efficient, reliable and safe. The assertion

¹³ Ibid, 31.

¹⁴ Ibid, 19.

that POTL will act in its own best interests rather than its own port users¹⁵ is illogical. Without sufficient towage services to service all ships needing that service the Port is effectively closed, resulting in an immediate cessation of POTL's income. Since no money changes hands between POTL and the towage providers (except for a small licence fee that is paid by whoever is the licenced operator, we fail to understand the argument.

Do the public detriments arising from the exclusive licensing of towage services at the Port now outweigh the public benefits?

As the levels of demand at the Port of Townsville have remained relatively stable over the past decade and are expected to grow marginally at least over the period of the existing exclusive towage licence, POTL is of the view that the public detriments arising from the exclusive licencing of towage services at the port remain similar in weight as previously disclosed in its Form G Notification dated 12 January 2009 and discussed in the Productivity Commission's 2002 report¹⁶.

Conclusion

In summary, POTL submits:

- POTL has regulatory functions and powers to arrange for the provision of ancillary services such as towage which are absolutely necessary for the continuing effective and efficient operation of the Port of Townsville.
- POTL has a statutory obligation to ensure appropriate levels of safety and environmental controls are met in respect to towage services and that appropriate emergency response capability exists at the port.
- Port of Townsville remains a small regional port which is unlikely, in the medium term, to be capable of supporting more than one towage operator given the volume of towage services required at the port and the unlikelihood of demand significantly increasing at least during the term of the existing exclusive licence.
- That in view of the Townsville towage market being a 'natural monopoly', there continues to be a need to promote more competitive towage outcomes for the Townsville towage market.
- That in terms of the Townsville towage market, an exclusive licence for a fixed short term period is necessary and appropriate to stimulate interest from the widest pool of prospective towage providers given that the term of the licence provides a reasonable timeframe within which they can recover their sunk costs and earn a reasonable rate of return on their investment.
- That in view of the Townsville towage market only being capable of supporting one towage operator, a licensing regime that meets the requirements and specifications of all port customers and relevant stakeholders is necessary.
- That the public benefits arising from the exclusive licencing of towage operations at the port of Townsville outweigh the public detriments.

If you require any further information regarding this submission, please do not hesitate to contact the writer on (07) 4781 1511 at your convenience.

Yours faithfully,



Barry Holden
CHIEF EXECUTIVE OFFICER

¹⁵ Ibid, 28-29.

¹⁶ Productivity Commission, above n 3, particularly Chapters 2 and 6.