

PORT OF TOWNSVILLE – AUTHORISATION APPLICATION A91545

PORTS AUSTRALIA SUBMISSION – EXCLUSIVE TOWAGE LICENCES

Ports Australia takes this opportunity to briefly comment on the submission made to the ACCC by Svitzer in relation to the authorisation sought by the Port of Townsville to jointly procure, negotiate and contract for towage services for the ports of Cairns, Mourilyan, Lucinda and Townsville with Far North Queensland Ports Corporation Ltd.

Our submission is specifically addressed to the matter of exclusive licences which are, in principle, opposed by Svitzer in its submission.

Ports Australia - Representation

Ports Australia is the peak industry body representing port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of ten member ports. Our website is at www.portsaustralia.com.au

General Policy Position

Ports Australia submits that there is no established basis for a rejection of exclusive licensing arrangements. Our position is that the discretion of individual ports to determine the best towage business model for their own particular operational and service requirements should be acknowledged.

Strategic Policy Interest

The position has not materially changed since the ACCC considered the application for the withdrawal of exclusive licence notifications in Townsville and Gladstone in 2012.

Ports Australia's view then, as it is now, is that the availability of exclusive licensing arrangements is in part responsible for the development within Australia of a more mature and competitive towage market.

We contend that exclusive towage licenses, under certain circumstances, demonstrably provide net benefits as outlined by the Productivity Commission in 2002, and which still prevail. There is no demonstrable reason to support a view that the towage market, or other relevant factors, have changed to the extent that this conclusion no longer applies.

In particular our regional ports, where certainty of service is the main driver of policy towards licensing arrangements, hold a strong preference for exclusive licence arrangements. This is supported by a concern that the predominant players in the market place would ultimately prevail and further strengthen their market position particularly in cases where there clearly is not the scale to support more than one operator. Where there are two players, while they continue to compete, both would have to carry the cost of underutilized assets with the larger players logically showing greater resilience to price

wars. Ports Australia accordingly views exclusive licensing as supporting continued choice of provider longer term.

Tug movements at the four ports in question are still well below those deemed by the Productivity Commission to warrant consideration of open entry. The Productivity Commission noted that for a single operator, economies of scale could be exhausted at about 8000 tug jobs per year. The Port of Townsville notes that just prior to the 2012 decision, in 2010/11 tug jobs at the port was just over 2000 and that some five years later they had increased only marginally by about 100 tug jobs.

We also note the comments of the then Chairman of the ACCC, Mr Graeme Samuel in May 2009 when he issued a statement addressing the notification issued by Gladstone Ports Corporation. It said in part:

“Gladstone Ports Corporation proposes to run a competitive tender process to select the towage provider at the port,” ACCC Chairman, Mr Graeme Samuel, said today. The ACCC believes that such a process is likely to stimulate competition between towage operators which are interested in providing their services at the port. This competitive process is likely to deliver benefits to port users in the form of increased efficiency and cost savings.

Under the Act, the ACCC will only object to and remove the immunity provided by an exclusive dealing notification when it is satisfied that any public benefits from the proposed arrangement would not outweigh the public detriments.

“The ACCC has considered a range of information including analyses by the Productivity Commission and PricewaterhouseCoopers, as well as the experience at other ports around Australia. Based on the information available, the ACCC considers that the Port of Gladstone is likely to be most efficiently served by a single towage provider,” Mr Samuel said.”

What is fairly clear, Ports Australia believes, is that the public benefit attributed to the revocation of exclusive licences continues to be asserted but not proven. The case is essentially based on a catalogue of beliefs and there is no empirical or rigorous evidence or modelling offered to support these ideas.

There is for example the idea that *“Exclusive licences....result in an inevitable upward pressure on tariff rates”* but anecdotally at least we can find no evidence to support this statement. We would also contend that the assertion that exclusive licences stifle innovation is dubious and again does not stand up to scrutiny in a situation where towage operators constantly strive for productivity improvements and where the number of players now in the market remains a powerful incentive to stay cost competitive.

Likewise, and as previously stated, there is no penetrating or comprehensive analysis so far offered, for example by way of modelling; that informs us that there exists a net community benefit in doing away with exclusive licences in regional ports.

The findings of the ACCC made in 2009, based in part on the findings of the Productivity Commission, in our opinion stand. The Productivity Commission, in its report titled *Economic Regulation of Harbour Towage and Related Services Inquiry Report* lent strong support to the issuing of exclusive licences in regional ports such as Townsville on the basis that; *“Most if not all Australian ports can efficiently support only one towage service provider in the longer term”* (page 80).

The report further concluded that; *“In certain circumstances, exclusive licences for the provision of towage services have the potential to generate greater benefits for towage users than non-exclusive licences”*

The 2002 report is now admittedly dated and Ports Australia would support a proposal that the Productivity Commission again review the towage industry if this is required to inform the discussion now taking place. It is our view nonetheless; based on engagement with our members, that circumstances have not changed to the extent that conclusions different to those articulated by the Commission in 2002, and more recently in 2012, would be reached.

Thank you for the opportunity to comment.

David Anderson
Chief Executive Officer

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