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21 September 2016

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Dear Kabita

Response to request for information relevant to Notification N99117 and N99118 lodged by Port of Townsville Limited and Far North Queensland Ports Corporation

We refer to your email correspondence of 13 September 2016 to Esther Slocombe of Port of Townsville Limited (**POTL**), with respect to notification N99117 and N99118 (**Notification**).

We (Corrs) have been instructed by POTL to respond to your email on behalf of POTL and Far North Queensland Ports Corporation (**FNQPC**) (together, the 'Applicants').

This letter is for the public register.

We respond by reference to the numbered questions in your email. However, before we respond to your questions, we are instructed to make submissions about the objectives and motivations of the Applicants.

1 Objectives and motivations of the Applicants

- 1.1 We note at the outset that the Applicants do not have any incentive to maximise their own profits at the cost of port customers and they are very mindful that any process that lacks competitive tension may result in a poor outcome of the ports and port customers.
- 1.2 The Applicants are Queensland Government Owned Corporations and are motivated to secure reliable, safe, efficient and cost-effective towage services for the ports and their customers at a competitive price. This motivation benefits port customers, who use and pay for the towage services.

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- 1.3 In addition, the Applicants each have statutory obligations to administer and approve towage services (as a 'controlled activity') for the benefit of their customers under Part 4A of the *Transport Infrastructure Act 1974* (Qld), including by granting exclusive towage licences.
- 1.4 The Applicants do not charge, nor will they recover any costs from port customers for towage services. Any fees charged to port customers will be determined by the market through the competitive tender process described in authorisation A91545.
- 1.5 The pricing able to be charged by the winning towage service provider at each port will be fixed following the tender process with increases only permitted in accordance with a contractually agreed formula likely to be referenced to CPI. The exclusive licence holder will not be free to arbitrarily increase price or reduce service standards.
- 1.6 The Applicants propose to jointly procure towage services for the ports under exclusive licences via a competitive tender process.
- 1.7 Such a procurement process is tried and tested. It has been used for many years to secure towage services in Australia. Its competitive effects and benefits have been acknowledged by:
- (a) the Productivity Commission;¹
 - (b) by justices of the Federal Court of Australia;² and
 - (c) in detailed submissions made by experienced industry stakeholders with respect to authorisation A91545 and with respect to a previous notification by POTL that was challenged (see submission by Ports Australia dated 7 February 2012 in response to the unsuccessful challenge made by Svitzer against notification N93775, **attached** to this letter).
- 1.8 The Applicants submit that, despite the Notification being limited to the conduct of exclusive licensing, it is fundamental to any competition or public benefit assessment that the proposed grant of exclusive licences by them is not viewed in isolation.
- 1.9 The Applicants are not proposing to simply grant exclusive rights to towage service providers for those providers to then take advantage of those rights as they please. Instead, the Applicants propose to grant exclusive licences subject to strict contractual terms that lock-in tendered rates bid in response to a

¹ Productivity Commission, *Inquiry report: Economic regulation of harbour towage and related services* (20 August 2002), pages 155-158.

² *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* [2000] FCA 1381, [25]. See also the extract from this decision at paragraph 3.6(e) of this letter.

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competitive tender process. That competitive tender process and the resulting exclusive towage contracts that may be awarded go hand-in-glove.

- 1.10 If exclusive licensing is divorced from a competitive tender process, the Applicants appreciate that competition concerns may arise. Together, however, they are a potentially powerful mechanism for fostering competitive tension and achieving significant public benefits.

2 Response to Question 1

- 2.1 You have requested more recent evidence to support the claimed public benefits.
- 2.2 With respect to question 1, we refer to our confidential submission to the ACCC dated 20 September 2016.

3 Response to Question 2

- 3.1 You note that the ACCC is aware of other Australian ports that have adopted a non-exclusive licence arrangement which have less than 8000 towage jobs per year. You ask whether the Applicants have considered different provider models and why they prefer an exclusive licence arrangement at the ports.
- 3.2 The Applicants argue that each port has its own particular characteristics, including with respect to volume and size of shipping, number of towage jobs per year and geographic location.
- 3.3 The Applicants are not privy to and cannot comment on the specific factors that may have influenced the decisions of some port operators to adopt a non-exclusive licence arrangement, other than to say that it cannot be assumed that such decisions have been based on competition reasons.
- 3.4 In its report, the Productivity Commission drew the following conclusion (emphasis added in underline):

Is harbour towage a natural monopoly?

There is consensus that low demand levels, combined with 'lumpy' investments (due to minimum tug fleets needed to offer appropriate service levels) and economies of scale in towage operations, mean that most, if not all, Australian ports can efficiently support only one provider of towage services at a time (box 1).³

- 3.5 The number of towage jobs per year at each of the ports is well below 8000 jobs per year (which is a threshold figure noted in the Productivity Commission Report).⁴ For example, the number of tug jobs at the Port of Townsville during the

³ Productivity Commission, *Inquiry report: Economic regulation of harbour towage and related services* (20 August 2002), XXVI.

⁴ *Ibid.*

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2015/2016 financial year was just 2,199 tug jobs. The other three ports the subject of the Notification have substantially lower annual volumes of tug jobs again, making them very low volume ports.

3.6 With respect to the ports the subject of the Notification, the Applicants have given due consideration to the Productivity Commission report, and genuinely believe that an exclusive licence model coupled with a competitive tender process is most likely to achieve the claimed public benefits for the following reasons:

(a) A non-exclusive model could result in **less competitive prices**. This is because respondents to a tender for non-exclusive licences must price their offer based on the unknown volume of towage service jobs that they 'might' win when competing with other towage service providers for the same work.

Conversely, respondents to a competitive tender process for an exclusive licence are more likely to have the confidence to submit more competitive pricing because they have a much higher degree of certainty about the volume of work that they would receive if their bid is successful.

Evidence to support this claim is found on page 157 of the Productivity Commission report, which describes how the offer of an exclusive licence for the Port of Fremantle resulted in bids to reduce towage charges by an amount in excess of 30% compared to a reduction of only 15% for a non-exclusive licence.

(b) As noted in the 7 August 2016 submission by Townsville Shipping Agencies Pty Ltd with respect to authorisation A91545, the certainty offered by exclusive licences means that towage service providers responding to a competitive tender process are more likely to offer to (and be able to) **invest in new or upgraded tug boats** resulting in better service delivery to customers and improving the ports' capabilities to handle larger vessels. This is because an exclusive licence gives them the certainty that they need to amortise the high sunk costs associated with market entry.⁵

(c) Another factor relevant to the high sunk costs of market entry is that a non-exclusive model has the **potential to discourage new entrants** because the incumbent has already incurred those cost and is therefore able to engage in aggressive competitive activities that may discourage new entrants. Adopting an exclusive licence arrangement helps address this by enabling new entrants to more fairly compete with incumbents.

⁵ Ibid, page 157 noting the experiences of FPA.

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- (d) A non-exclusive model involves higher risks with respect to the **stability of the towage service providers** operating at the ports. This is because a non-exclusive arrangement for low-volume ports increases the prospect of one of the providers exiting the market (such ports are unable to sustain two towage service operators for a prolonged period of time).⁶ Such an event can be disruptive to the port operations and customers, result in job losses upon exit and can leave behind a single operator that is able to then command comparatively higher towage rates. In short, the Applicants are motivated not just to secure the best price from the market but also to ensure the stability of the towage service across the term of the awarded contract. This is most effectively achieved by offering an exclusive licence.
- (e) The exclusive licence model that is proposed to be adopted by the Applicants will be coupled with a competitive tender process (namely, the competitive tender process described in authorisation A91545). The Applicants submit that the public benefits claimed in the Notification are inextricably tied to that competitive tender process.

The Productivity Commission acknowledged **the efficiency and competition outcomes that can result from combining an offer of exclusive licences with a competitive tender process.**⁷ The reasons why this combination results in increased efficiency and competition are explained on pages 156-158 of the Productivity Commission report.

The outcomes of this approach are also described by Justices Burchett and Hely in the Federal Court of Australia decision of *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* (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

⁶ Ibid, page XXVI - XXVII.

⁷ Productivity Commission, *Inquiry report: Economic regulation of harbour towage and related services* (20 August 2002), pages 156-157.

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as a result of the bidding process, rather than through the operation
of market forces during the term of the contract.⁸

In conclusion, rather than relying on the instability and disruption to port operations that can arise from allowing market forces to affect the provision of towage services at the ports, the Applicants argue that, for the ports the subject of the Notification, better public benefits can be achieved by the competition *for* the market brought about by a competitive tender process for exclusive towage licences.

Those benefits are with respect to the stability of the towage services offered, the quality of those services and with respect to the price payable by port customers for those services.

4 Response to Question 3

- 4.1 Given the Svitzer and Pacific Tug submissions with respect to authorisation A91545, you are interested in the Applicants' views on how an exclusive licence may impact or affect port customers.
- 4.2 With respect to the Svitzer submission, we refer to our response to that submission dated 22 August 2016, which is on the public register for authorisation A91545.
- 4.3 With respect to the Pacific Tug submission, we refer to our response to that submission dated 25 August 2016, which is also on the public register for authorisation A91545.
- 4.4 We also refer to the submissions made in this letter, which provide detailed reasons as to why the Applicants consider that their proposed procurement approach is likely to result in a range of legitimate public benefits for the ports and their customers.
- 4.5 For completeness, the Applicants have also consulted with their regular port customers about the proposed procurement approach and we are instructed by POTL that the response of those customers to the proposed procurement approach (including the grant of exclusive licences) has been positive and supportive.
- 4.6 Indeed, if any of those customers had strong objections to the proposed approach, one would expect them to file submissions raising those objections. We understand that no such submissions have been made.

⁸ *Stirling Harbour Services Pty Ltd v Bunbury Port Authority* [2000] FCA 1381, [25].

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5 Conclusion

- 5.1 Thank you for the opportunity to provide the Commission with more detailed information about the Applicants' proposal to offer exclusive towage licences under a competitive tender process.
- 5.2 Please feel free to contact me or James Cameron to discuss this letter.

Yours faithfully

Corrs Chambers Westgarth

A handwritten signature in black ink, appearing to read 'Eddie Scuderi', with a stylized flourish extending to the right.

Eddie Scuderi
Partner

**PROPOSED REVOCATION OF EXCLUSIVE HARBOUR TOWAGE
NOTIFICATIONS IN PORTS OF GLADSTONE AND TOWNSVILLE**

PORTS AUSTRALIA – RESPONSE TO SVITZER SUBMISSION

Ports Australia welcomes the opportunity to comment on the submission made to the ACCC by Svitzer for the revocation of exclusive harbour towage notifications in the Port of Gladstone and the Port of Townsville.

Ports Australia - Representation

Ports Australia is the peak industry body representing all 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

Strategic Policy Interest

Ports Australia is of the view 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 also contend that exclusive towage licences, under certain circumstances, demonstrably provide net benefits as outlined by the Productivity Commission in 2002, and which still prevail. To reverse this situation at this point would be premature and likely to result in price wars which favour those incumbents who still enjoy significant market share, and would pose, for our regional ports, risks to service security and to the longer term benefits of the current arrangements in return for the expedient of some possible short term price impacts.

Ports Australia supports introduction of competition where there is a clear benefit in doing so. We recognize that, over time, there may be more scope at some ports to introduce more competition into markets servicing those ports as the scale of operations increases, such as in the towage and pilotage sectors, but at this point there is no change in circumstances over and above those that existed in 2009 to warrant the revocation of notifications at Gladstone and Townsville Ports. Tug movements at these ports are still well below those deemed by the Productivity Commission to warrant consideration of open entry and a pedantic approach to this issue simply on the basis of economic anecdote lacks rigour and fails to take account of the particular imperatives of regional ports including security of service levels, changing vessel size, seasonal trade volatility and general operating characteristics of specific ports.

It is our view that the availability of exclusive licences has generated demonstrable net benefits in the Australian port sector and that these benefits continue to prevail at Gladstone and Townsville.

These benefits include the following outcomes:

- going to the market for an exclusive licence ensures serial competition among bidders

- provides an opportunity for a real change in the service delivery based on competitive outcomes
- provides for service stability and pricing certainty for the contract period
- provides service and performance outcomes as provided for in the tender documents/licence which may not be available without the competitive tendering

Ports Australia - General View

Ports Australia opposes revocation of the notifications.

On 1 May 2009 the then Chairman of the ACCC, Mr Graeme Samuel, issued a statement pertaining to 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.”

Ports Australia contends that the Svitzer submission establishes no case that specifically demonstrates, in the instances of the Port of Gladstone and the Port of Townsville, that there exists public detriment in maintaining the exclusive licences which outweighs the public benefit. Nor does it establish that conditions have changed between those that exist now and those that existed in 2009, when the notifications were issued, that would cause the ACCC to divert from the view formed on the basis of the “range of information” alluded to in the May 2009 statement.

The submission relies instead on endeavouring to diminish the veracity of the Commission’s original judgement based on empirically based comparisons with other ports that tell us nothing about the specific operational and other imperatives that have to be addressed by the two port corporations in question. Establishing statistical trends and empirically based comparisons, and citing economic anecdote does not of itself establish a case that the ACCC erred in its judgement, or that the Productivity Commission, which undertook much more rigorous analysis than contained in the Svitzer submission, got it wrong. There is no penetrating or comprehensive analysis, for example by way of modelling the relative benefits and disbenefits of exclusive licences being maintained in the specific cases of the Gladstone and Townsville Ports.

Much of the material presented is descriptive or not specific to the Ports of Gladstone and Townsville and accordingly is essentially immaterial or is based on the philosophical supposition that open competition is preferable, rather than proving a greater net benefit test. It argues against the merits of exclusive licences per se, albeit not very convincingly, rather than addressing itself to the particular circumstances of Gladstone and Townsville.

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 Towing and Related Services Inquiry Report* lent strong support to the issuing of exclusive licences in ports such as Gladstone and Townsville on the basis that; “*Most if not all Australian ports can efficiently support only one towing service provider in the longer term*” (page 80).

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

The Productivity Commissions identified a number of factors to support its findings. These included:

- Exclusive licences are preferred by new entrant towing companies reflecting the high capital costs of market entry and highlight the fact that high capital costs are a barrier to market entry where there is a threat of competition with the possibility of price wars. Note for example the comment in Svitzer’s submission on the practice of some players, who have established operations in a number of ports, to engage in offering rebates for client loyalty across those operations.
- The greater interest of potential entrants in exclusive licences suggests that advantages that accrue to incumbents can be significant and the awarding of exclusive licences can negate some of the advantages of incumbency; and
- The benefits of this competition appear to be passed on to users of towing services. The report noted that the offer of a non-exclusive licence at Fremantle resulted in a reduction in towing charges of approximately 15 percent, while the offer of an exclusive licence resulted in bids to reduce towing charges by an amount in excess of 30 percent. (p157)

The research conducted by the Productivity Commission and PricewaterhouseCoopers also established that if towing providers were separated this would, under certain circumstances relating to scale of operation and other factors, impose a direct cost penalty on users.

The thrust of the Svitzer submission is that circumstances have changed in the Australian towing market to the extent that exclusive licences generally now generate greater detriment than assessed in 2002. This it concludes establishes a case to move to open competition. We disagree with this conclusion firstly because the submission provides no rigorous case to establish its veracity and secondly that it is the strong view of our members impacted by this case that the proposed withdrawal of notifications would cause, or potentially cause, significant damage.

The submission rightly points out that the number of ports in Australia with open competition arrangements has between 2002 and 2011, reduced from 45 percent to 15 percent of the total number of ports (p25) as if this of itself is some sort of indictment on exclusive licences.

If anything the trends shown in the table establish on a *prima facie* basis that exclusive licence arrangements have succeeded in driving competition and diversifying the market and that most ports, whatever their towing service arrangements might be, cannot sustain, at this point in their development, more than one operator. Much of the material contained in the submission addressing the developments in the Australian towing market confirms the Productivity Commission’s 2002 findings.

The submission notes that there are now significantly more participants in the Australian towage market than there were in 2002 thereby establishing that there have been healthy competitive outcomes including in price. This is not to say we have suddenly reached a point where exclusive licences should give way to open and unfettered competition.

The observations of the Productivity Commission in our view still apply if for no other reason that there is no evidence presented that the net benefits provided by exclusive licences have now become net disbenefits. It is our view based on available evidence and on the expert views of our members, that a revocation of exclusive licences would not produce a result other than net detriment to the operations of the ports concerned and to their customers. This situation is unlikely to change any time soon.

Interestingly the submission, it would seem, inadvertently draws an historical correlation between the proliferation of exclusive agreements and the emergence of a more mature and competitive towage market but seems to miss the point entirely that exclusive agreements may, in part at least, have been responsible for producing this outcome.

The reality however the Svitzer submission shows that ports offering exclusive licences have undergone a modest increase from 6 to 9 percent of total ports in the period 2002 to 2011. It is instructive to note also that the number of ports where towage is provided by the port operator/authority has risen from 3 to 8 percent of ports and there are otherwise increases in arrangements which give rise to one towage operator per port, lending further support to the Productivity Commission findings about the dynamics of the towage market.

Other Key Issues

1. The Economic Report

Heavy reliance and reference to the so called Economic Report is made in the Svitzer submission. It is not an economic report in the sense that it provides modelling or analysis that unambiguously demonstrates that detriment, as it claims, attributable to exclusive licences is greater than that previously assessed by the ACCC.

The report is more a statistical analysis, supported by observations of industry players who bring, amongst other things, predictable perspectives to the issues. The report otherwise relies on a literature search. It is our observation that the report searches for issues to rationalise its position to anecdotally demonstrate detriment attached to exclusive licences. There is no treatment of the individual characteristics of the two ports in question, their particular operations and trades all of which having a bearing on the relative impact of exclusive licences viz alternative arrangements. Even the geographical characteristics of a port have a bearing on this matter. These factors are addressed in the respective submission of the two port corporations in question.

As a further observation the Economic Report contains a number of flaws, which are accordingly in turn reflected in the submission, including internal inconsistencies and erroneous assumptions about the role and motivations of port corporations, which compromise its logic and line of argument.

2. Capacity of Operators with Exclusive Licences to engage in Predatory Behaviours at other ports.

The Economic Report asserts the following:

It is clear that an exclusive licence could potentially allow a tug operator in one port to use its market power in the relevant port to cross-subsidise its services in a spot market in another port, when faced with a situation of unutilised capacity. By giving the operator an unfair advantage in such a situation, an exclusive licence could potentially violate the principle of competitive neutrality or result in predatory conduct, especially if such conduct were to persist (page 42)

Likewise the submission says:

“if demand levels are lower than predicted at ports and the towage provider has spare capacity, it may divert any unutilised tugs to the spot market where it can perform one off jobs using its available tugs. It may be possible for towage providers who have a guaranteed fixed rate of return clause in their licence to unfairly compete in this market.

As a result, this towage operator would have a competitive advantage in the spot market. Therefore, there is a risk that a towage operator could use its market power in the relevant port to gain an unfair advantage in the spot market” (page 28)

This is an extraordinary piece of rationalisation i.e. that an operator with an exclusive licence is better placed to engage in predatory behaviour in the general towage market than its competitors. Other dynamics of the towage market would have a much more powerful influence in this respect.

For example Svitzer is reported to have 57 percent of the Australian towage market, that is of tug jobs in Australian ports (p20 Economic Report). It is further reported (Svitzer Submission p10) that it has vessels, including tugs, involved in other markets such as ocean going towage including salvage (for which demand is unpredictable and therefore availability of excess capacity from time to time is likely), as well as presumably having access to substantial overseas assets. To claim that Svitzer would be disadvantaged and out-muscled in the spot market by another operator, specifically by virtue of the other operator holding an exclusive licence, does not stand up to objective analysis.

Secondly the service conditions attached to an exclusive licence would, in all probability, limit the ability if the operator to engage in such behaviour which would require it to withdraw assets from the home port. It also indicates that should such excess capacity occur, albeit on a temporary basis, then by deduction the ability for that port in question to viably sustain two operators is severely limited. We are further advised that the costs of repositioning a tug are substantial.

3. Other Argument re Detriment

The Economic Report cites the following as a *detriment*:

*That tug crews do not accrue any long service leave benefits and have uncertainty of tenure because exclusive licences are granted to a towage operator for a fixed term and tug crews are therefore hired through fixed term contracts for the term of the licence. **An additional cost of exclusive licensing is unnecessary redundancy costs** which were in the order of \$4.6 million when Svitzer’s exclusive licence ended at the Port of Gladstone.” (page 8)*

The submission further says:

*Further, if the spare tugs were sold or leased to other towage operators **Smit International and PB towage could minimise redundancy costs by moving crews to other ports.** If there were a need to make any crews redundant these costs would be relatively low as both licences would have been in operation for a short period of time*

and they would not incur redundancy costs in the order paid by Svitzer at the end of its exclusive licence at the Port of Gladstone (page 31)

The submission is accordingly asserting, on the one hand, that absolute detriment is incurred in the case where an exclusive licence for Svitzer reached its conclusion (and therefore to some extent could be anticipated) and the licence won by another operator, and on the other hand little or no detriment is incurred where another operator experiences termination of an exclusive licence.

Further, for Svitzer it was not a case of a contract being terminated (as indeed is the case that they are proposing for the other tug companies in Gladstone and Townsville) but the submission nevertheless claims that the company paid redundancies. The submission otherwise claims that crews are on fixed term contracts for the duration of an exclusive licence, and that other companies would not be exposed to this liability.

It is also being suggested that whereas it was not possible for Svitzer to move crews, it ought not to be a significant issue for other operators. It also claims elsewhere that transferring skills between operators should be easily accomplished when it apparently had difficulty in doing so, or preferred not to do so.

In another instance the Economic Report argues that exclusive licensing regimes may lead to higher towage charges stating “ *one reason is the loss of rebate for a shipping company in a port with an exclusive licence because of having to deal with a towage provider other than its preferred towage provider in other ports*” (page 40)

So while the economic report purports to champion open competition it laments the lack of access by shipping companies to a practice which is clearly a manifestation of market power and designed to keep new competitors out of the market, which also no doubt would have price impacts.

We also note in passing that Gladstone Port Corporation provides the criteria for price rises and the operator cannot change towage prices without the consent of the Corporation, and are subject also to independent review and auditing. Other ports with exclusive licence arrangements have similar safeguards.

4. Changes in Freight Markets

The Svitzer submission places great store on increases in trade volumes experienced in the last 10 years. Our contention is that there is an onus on Svitzer to demonstrate that there has been such a change in circumstances since the notifications were issued in 2009 as to convince the ACCC that the net benefit available from the exclusive licences has been displaced by a net detriment. We therefore question the relevance of this statistical exercise.

We present below a brief picture of the development of growth in trade at both ports which indicates no shifts in substance since recognising that this is but one among many factors that have lead the Gladstone Port Corporation and Townsville Port Corporation to judge that the best interest of their respective ports are served by exclusive licences.

Port	Total Trade – Million Tonnes			
	2008/09	2009/10	2010/11	% change
Gladstone¹				
General Cargo	0.15	0.34	0.33	
Bulk Cargo	79.00	83.50	76.71	

Total	79.15	183.84	77.04	-2.67
Townsville²				
General Cargo	1.01	1.01	1.13	
Bulk Cargo	8.07	9.75	9.89	
Total	9.08	10.85	11.02	21.37

(1) Figures for 9009/10 and 2010/11 include ports of Rockhampton and Bundaberg

(2) Figures for 2009/10 and 2010/11 includes port of Lucinda

Source: *Ports Australia*

The Productivity Commission noted found that for a single operator, economies of scale could be exhausted at about 8000 tug jobs per year. Gladstone is well under this number with less than 6000 tug jobs per year. Where Townsville is concerned the Svitser submission does not endeavour to use the argument of scale directly but rather uses national trends to imply that it is relevant.

We have previously noted that both the Gladstone Port Corporation and the Townsville Port Corporation have outlined in detail in their respective submissions, why the particular characteristics of their ports dictates that exclusive towage licences remain the appropriate model for their respective businesses. These include the physical characteristics of their trades, ports and channels and the importance of security of service and safety. We also contend that it is the model most appropriate to these ports fulfilling their statutory obligations.

5. Role of Port Corporations

By way of further example illustrating our concerns about the submission and accompanying Economic Report we note reflections on the role and apparent motivations of port corporations. These reflections lead to assertions about the behaviour of port corporations toward towage that is fundamentally wrong.

The Economic Report states the following:

“...in an exclusive licence a port authority may force an upgrade of tugs due to excessive reliance on improving the service quality of towage and excessive concern with safety over and above what is required, which could result in an increasing the costs of providing towage services” (page 40).

The submission itself says the following:

Exclusive licensing regimes cause a mix match of demand and supply dynamics causing inefficiency and higher than required towage costs...Exclusive licensing regimes encourage inefficiency by placing a third party (the port authority) between the customer and the service provider. This allows the port authority to dictate the terms without reference to the customer’s actual needs which can cause inefficiency through a mismatch of demand and supply.

These statements are inaccurate and prejudicial.

An “excessive concern with safety” is a highly subjective notion. Along with a number of other statutory obligations safety of the port waterways is one of the key accountabilities of port corporations.

The ports of Gladstone and Townsville are located in difficult and sensitive waters and subject to cyclonic conditions and, as with other ports, are witnessing visitations by larger

and larger vessels. While we would agree that port corporations are understandably cautious and highly cognisant of risk, particularly as these ports are situated on the Great Barrier Reef to suggest that they are, or might be *excessively concerned* about safety is disingenuous.

The port authority is not dictating the requirements of the customer – it is dictating the requirements of the port with proper regard to safety (in a situation where a vessel master may have little knowledge of local conditions and crew competency for example may be uncertain)) and each tug job requires judgements in that regard by the pilots, harbour masters as to appropriate tug capacity taking into consideration weather conditions, the size and nature of the vessel, limitations of swing basins and so on. Just as the idea of being overly concerned about safety might apply to the port, it can equally be said that service providers customers (shipping lines and operators) are exposed to the risks generated by commercial expediency and not so concerned about protecting public safety.

Both port corporations are required to carry out their statutory functions by reference to the interests of their respective ports as a whole, not by reference to the interests of individual users of those ports.

Further however, the report and submission both miss the point. Whether a port has exclusive licence arrangements or open competition, and this point is open to direct scrutiny, towage operators are expected, as a condition of operating in any port, to have certain minimum capabilities stipulated by the port, which they may revise and upgrade at any time, for example following the provision of extra channel capacity.

Ironically, and to the certain knowledge of Ports Australia, in a small number of cases in our major ports certain operators have refused to entertain the idea of capacity sharing to moderate the required collective investment in powerful tugs designed to handle the larger vessels entering and leaving these ports. That is the prerogative of the operators concerned but a situation where all operators in a port have tugs with the bollard pull and other capabilities to handle the largest vessels means that their charges must reflect their respective investments in this capacity.

Thank you for the opportunity to comment on the Svitzer submission. Ports Australia would be pleased to expand on any of the points raised in our response.



David Anderson
Chief Executive Officer

7 February 2012

