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26 July 2016

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Dear Kabita,

Response to submission by Pacific Tug

We refer to the submission made by Pacific Tug dated 22 July 2016 to the application for interim authorisation (A91545) lodged on 8 July 2016 by Port of Townville Limited on behalf of itself and Far North Queensland Ports Corporation Limited (together, the **Applicants**).

We are instructed by Port of Townville Limited to respond to the Pacific Tug submission.

Summary of issues raised by Pacific Tug

Pacific Tug does not support the application for interim authorisation proceeding.

Pacific Tug states that it would support interim authorisation proceeding if the proposed Request for Tender excludes separable portion options 'a' and 'd' set out on pages 3 and 4 of the application.

The basis for Pacific Tug's claim can be summarised as follows:

- (a) it claims that the application is predicated on an assumption that the Ports have "low levels of demand, lumpy investment and economies of scale" in line with the recommendations in the Productivity Commission Report No. 24 dated 20 August 2002, however it claims that this underlying assumption is not applicable to the Port of Townsville;
- (b) it does not consider that the Port of Townsville should be combined under an exclusive licence with any of the other Ports as this would give a competitive advantage to larger multinational companies which have larger fleets to draw from; and
- (c) it challenges certain public benefit claims made in the application.

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Pacific Tug also considers that a non-exclusive licensing format would be preferred by it but does not appear to provide any competition-related reasons to support this claim.

Port of Townsville response

Port of Townsville Limited does not agree with the reasoning or claims set out in the Pacific Tug submission.

The RFT is not designed to favour larger operators

Port of Townsville notes that one of the fundamental objectives of competition law is to improve competition in the market, not to favour particular participants in that market.

If the RFT were to be modified in the manner suggested by Pacific Tug (to remove separable portions 'a' and 'd'), the effect would be to reduce competition.

The proposed Request for Tender by Port of Townsville Limited and Far North Queensland Ports Corporation Limited is designed to maximise competition by allowing potential towage service providers to submit a tender for one, some or all of the exclusive towage licence combinations within each of the separable portions summarised in the application. This approach is designed to maximise competition and the range of responses likely to be received.

To be clear, each separable portion option and each of the exclusive towage licences within them are alternatives. A respondent to the RFT could choose to bid solely for an exclusive licence to service the Port of Townsville under the proposed RFT, without that bidder being required to also bid to service any of the other Ports. This can be done under options 'b' and 'c' of the proposed RFT. The submission by Pacific Tug appears to imply (incorrectly) that this flexibility is not available under the proposed RFT structure.

If effect were given to the proposals in the Pacific Tug submission, competition would be reduced because it would require particular service combinations that may attract competitive bids from larger towage service operators to be removed from the RFT.

Port of Townsville Limited wants to ensure that a range of towage service providers (including Pacific Tug) have the opportunity to put forward a tender for consideration so that the best decision can be made in the interests of users of the Ports.

The proposed tender structure allows this because it permits smaller operators to bid for towage service licences for the individual ports of Townsville and Cairns as well as the lower volume ports of Mourilyan and Lucinda. In short, the tender process that is proposed is designed to maximise the range of bids that are likely to be received from the market without favouring a particular part of that market.

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Relative size of Port of Townsville and grant of exclusive licences

In addition, for the purposes of considering competition, the Port of Townsville remains (and is likely to remain for the period of the proposed authorisation) a relatively small regional port.

Set out below are statistics on the number of tug jobs performed by financial year for the Port of Townsville:

- (a) July 2012 to June 2013: 2425 Jobs
- (b) July 2013 to June 2014: 2243 Jobs
- (c) July 2014 to June 2015: 2228 Jobs

The downward trend in tug numbers continued for the 2015/2016 financial year, primarily due to the closure of Queensland Nickel Pty Ltd Refinery in February 2016. The number of tug jobs at the Port of Townsville during the 2015/2016 financial year was 2199, which is the lowest number of tug jobs when compared to the last three financial years.

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.¹

In addition, 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 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

The tug job numbers quoted in the paragraphs above support the fact that Port of Townsville is, from a competition perspective, a relatively small regional port with a demand for towage services that is well below the point at which it may be economically efficient to support more than one supplier of towage services at the port.

Pacific Tug states that it would prefer a non-exclusive licensing format but does not appear to provide any competition-related reasons to support this claim.

For completeness, we note that any question as to the granting of exclusive licences for the Ports is a matter to be addressed with respect to the exclusive dealing notification lodged by Port of Townsville Limited the subject of notifications N99117 and N99118.

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

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.

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Claim one: Improved purchasing power

Pacific Tug claims that the number of ports available in a tender process is “inconsequential to competition effects”. It argues that the characteristics of the services required to be delivered at each port is the factor that determines competition.

Port of Townsville Limited does not agree with this claim. As is evident from both the Productivity Commission Report and the principles of economies of scale, increasing the number of ports to be serviced is likely to increase the level of competition available, particularly when coupled with a procurement process that permits smaller operators to bid for individual exclusive towage licences for particular ports.

There is simply no evidence to support the claims by Pacific Tug that the characteristics of the services required at a port is the main factor that affects competition. The characteristics of each Port influence the tender specifications, but do not have any measurable or material affect on competition.

Claim two: Reducing barriers to entry for smaller towage service providers

Pacific Tug argues that coupling the Port of Townsville with any of the low-volume ports (Cairns, Lucinda or Mourilyan) will increase the barriers to entry for smaller towage service providers.

This claim appears to ignore the fact that the proposed RFT does not require tenderers who respond to the RFT to only bid for exclusive licences for the Port of Townsville coupled with any of the other ports.

The proposed RFT will permit smaller operators to bid for individual ports, particularly the exclusive towage service licence combinations under separable portions ‘b’ and ‘c’ of the proposed RFT.

With respect, the proposal to exclude any separable portion that involves the coupling of the Port of Townsville with any of the smaller ports would only have the effect of reducing competition by limiting the attractiveness of the RFT to other towage service operators.

Claim three: Improved marine safety and redundancy between ports

Port of Townsville does not agree with the claims made by Pacific Tug that marine safety issues are not a potential public benefit of the proposed tender approach.

Exclusive licence combinations in the proposed RFT involve a measure of redundancy that would allow the sharing of tug vessels between ports. Such redundancy is an important factor in maintaining marine safety and the flexibility to deal with unexpected scenarios.

Claim four: More efficient use of tug vessel fleet

All of the separable portions provide for different combinations of exclusive licence. While not all of them involve all four ports, all four of the separable portions involve combinations

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which allow for redundancy between the ports, which in turn can lead to efficiencies in service delivery and fleet usage.

Pacific Tug implies that the Applicants have a preference toward one of the separable portions, namely separable portion 'd' that involves a single exclusive licence being granted for all four ports. The Applicants reject this claim.

The applicants will not know what the best combination for their customers is until such time as they have had an opportunity to receive, consider and evaluate all tender responses.

Conclusion

The Port of Townsville Limited 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.

The proposed competitive tender that will be the subject of the RFT is designed to maximise competition tension for the towage services, not reduce it.

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