



Our ref: N10000453
Contact officer: Elizabeth Batten
Contact phone: (02) 6243 1359

16 March 2018

By email

Dear Sir/Madam

Exclusive dealing notification N10000453 lodged by Gladstone Ports Corporation Ltd – Interested party consultation

The Australian Competition and Consumer Commission (ACCC) has received a notification from Gladstone Ports Corporation Ltd (GPC). GPC is proposing to engage in exclusive dealing conduct with regard to the provision of towage services in the Port of Gladstone.

The ACCC invites you to comment on the proposed arrangements. Further information about the exclusive dealing notification process is provided in the ACCC's [Exclusive Dealing Notification Guidelines](#).

Exclusive dealing notification lodged by Gladstone Ports Corporation Ltd

On 13 March 2018, GPC lodged an exclusive dealing notification. GPC proposes to require that all vessels requiring towage services at the Port of Gladstone use the services of the holder of the exclusive 'tug licence' for the Port of Gladstone for the period commencing on 1 January 2020 and up to 31 December 2027.

GPC is proposing to engage in the notified conduct by awarding a new exclusive license through a competitive tender process to provide harbour towage services at the Port of Gladstone for a term of up to eight years, commencing at a date yet to be determined but no later than 1 January 2020 and expiring no later than 31 December 2027.

A copy of the notification is available from the [ACCC's website](#).

The protection from legal action afforded by the notification commenced on the day the notification was validly lodged with the ACCC – in this case, 13 March 2018.

The protection will continue unless or until the notification is revoked or withdrawn. While the notification is in force, GPC is able to engage in the exclusive dealing conduct as described in the notification without the risk of breaching the exclusive dealing provisions of the *Competition and Consumer Act 2010 (Act)*.

Exclusive dealing notification process

Broadly, exclusive dealing occurs when one person trading with another restricts the other's freedom to choose with whom, in what or where it deals.

Exclusive dealing is common in many business arrangements. Importantly, changes to the Act which came into effect on 6 November 2017 mean that exclusive dealing is now only a

breach of the Act if the restriction is likely to have the purpose, effect or likely effect of substantially lessening competition.

The ACCC may remove the protection from legal action provided by an exclusive dealing notification if it is satisfied that the proposed conduct:

- has the purpose, effect or likely effect of substantially lessening competition and
- in all the circumstances will not result in likely public benefit which would outweigh the likely public detriment.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements. This may include comments based on your experience of the current harbour towage arrangements at the Port of Gladstone.

If you intend to provide a submission in relation to this notification, please do so by **6 April 2018**. Submissions should be emailed to adjudication@acc.gov.au with the subject "N10000453 – Gladstone Ports Corporation Ltd - Submission".

Alternatively, if you would like to provide comments orally, please contact Elizabeth Batten on (02) 6243 1359 to organise a suitable time.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

If you are not the appropriate contact person in your company, please provide a contact email address for the appropriate contact person.

Please also advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the notification. If you are able to, please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

This letter will be placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Elizabeth Batten on (02) 6243 1359 or adjudication@acc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication

Gladstone Ports Corporation Ltd – Notification N10000453 – Interested party list

AMS Tugs and Barges

Asiaworld

AusBarge Marine Services

Australian Institute of Marine & Power Engineers

Australian Maritime Officers Union

Bhagwan Marine

BHP Billiton (Towage Services) Pty Ltd

Cement Australia Pty Ltd

Coastal Tug & Barge Pty Ltd

Conoco Phillips Australia Pty Limited

Daltug Pty Ltd

Department of Infrastructure, Regional Development and Cities

DP World Australia (Holding) Pty Limited (P&O Maritime)

Fodico Marine Group

Gladstone Port Logistics

Gulf Agency Company

Harbour Services Australia

Inchape Shipping Services

Ironmonger Shipping

Ironmonger Shipping Agencies

JWMS

KT Maritime

LBH Group

Mackenzie Marine and Towage

Maritime Industry Australia Limited

Maritime Safety Queensland

Maritime Union of Australia

MMA Offshore Limited

Monson Agencies Australia

National Bulk Commodities Group Inc

North & Trew Marine Consultancy
Orica Limited
Origin Energy Limited
Pacific Tug
PB Towage
Port & Coastal
Ports Australia
Queensland Alumina Limited
Queensland Competition Authority
Queensland Department of Transport and Main Roads
Queensland Ports Association
Rio Tinto Alcan
RiverWijs
RivTow Marine
Royal Dutch Shell plc / QGC Pty Limited
Santos Ltd / GLNG
Serco Group (DMS Maritime)
Shipping Australia Limited
Smit Lamnalco Australia
Sturrock Grindrod
Sturrock Grindrod Maritime
Svitzer
Teekay
Toll Remote Logistics
Westug
Wiggins Island Coal Export Terminal Pty Ltd
Wilhemsen Ships Service Pty Ltd