

Submission to the Inquiry into Economic Regulation of Harbour Towage and Related Services

The ACCC in general supports the major findings and policy directions identified in the Productivity Commission's position paper. However the ACCC continues to urge caution in relying upon the development of competitive tendering for the exclusive right to supply towage services to provide an efficient outcome within the natural monopoly structure of harbour towage in Australia.

Firstly the ACCC notes that few ports have implemented competitive tendering. The ACCC considers that the PC should explore more fully appropriate complementary regulatory safeguards to ensure that exclusive licensing operates effectively in practice. This is reinforced by the PC's own observation that "it does not consider that exclusive licensing by port authorities in practice will always deliver superior outcomes to non-exclusive licenses". The ACCC is concerned that port authorities as monopoly providers of a service may not have sufficient incentive to implement a tender process that will provide users of harbour towage services, such as shipping lines, with a service of an efficient price and quality. As such the ACCC considers there is a need for effective regulation of price setting of harbour towage in major ports particularly in light of the PC's view that harbour towage services would be unlikely to be declared under Part 111A of the *Trade Practices Act 1974*.

More generally, in terms of fostering efficient outcomes, effective competition *for* the market, and the design of practical tendering contractual arrangements, a number of key aspects ignored by the PC warrant explicit attention. These include: the depth of potential competition and the expected number of actual pre-qualified bidders, the price-quality of service nexus, and specification of the "rules of the game". For example, constraints on prices and quality of service (standard) levels, the duration and renewal conditions of the concession, and the alternative of bidding based on the lowest price of supplying "standard" service, rather than on the monopoly rents associated with an exclusive licence.

The ACCC also has some specific comments for the PC in relation to two matters identified in the position paper.

Preliminary finding 6.5 states, “Available evidence indicates that towage prices in some Australian ports have been above efficient levels but the margin has not been large.”

The ACCC understands that in concluding that the “margin has not been large”, the PC has relied upon price reductions following tender processes at the ports of Bunbury, Fremantle and Gladstone.

The ACCC is concerned that the information necessary to reach a general conclusion that the margin has not been large is not publicly available. That is, information, particularly as it relates to the cost of providing harbour towage services, is not disclosed by harbour towage firms.

Further, the ACCC view is that a number of circumstances suggest that generally margins in the harbour towage industry as they relate to declared ports have been large.

- (a) In particular the ACCC refers the PC to comments by Adsteam (in a January 2002 submission to the ACCC in support of increases in towage prices at declared ports) that “a benchmark margin of 18% on costs is regarded as appropriate” which “represents an appreciable reduction against levels that applied in the more profitable ports early in the 1990s”. The ACCC considered that Adsteam's price increases which it described as being necessary to “restore margins” could not be justified on the basis that they were greater than was required to meet the efficient cost of providing harbour towage services in these ports. On this basis the ACCC would suggest that prices and margins in the harbour towage industry are likely to have been set historically at levels consistently above those that would be expected to apply in competitive industries with similar levels of systematic risk.
- (b) The ACCC also considers that as a result of Adsteam's decision in March this year to increase its towage prices at declared ports, towage prices have risen above efficient levels and provided an opportunity for monopoly rents to be generated on these activities. The ACCC notes that the implementation of Adsteam's price increases has coincided with the entry of Australian Maritime Services (AMS) into the Port of Melbourne and that according to the Lloyd's List DCN of 30 May 2002, AMS is now holding between 18-20% of the market in that port. If AMS has achieved this market share without any significant reduction in towage prices within the Port of Melbourne and if Adsteam has not adjusted its towage prices to match those of the new entrant this may indicate that monopoly rents generated by the setting of prices above efficient levels is enabling two businesses to operate in a market where previously it was only profitable for one firm to operate.

The ACCC also notes the PC's recognition that extraordinary rates of return may have been capitalised into the purchase price of harbour towage assets acquired by Adsteam. If a business purchases harbour towage assets and the transaction price reflects expected future monopoly rents this may generate allocative inefficiency as the purchaser of the towage assets is anticipating to set its prices above economic costs in order to obtain a market rate of return on those capitalised rents.

Preliminary recommendation 9.4 states that “Harbour towage services provided at ports where declarations currently apply should, as a transitional measure, be subject to limited monitoring of prices by the ACCC for a three year period. Price data should be published annually”.

The ACCC’s general view is that the power to monitor prices is an important regulatory tool that can be particularly appropriate in the following circumstances:

- Where there are concerns that an unregulated market may allow firms with market power to charge excessive prices leading to inefficient pricing outcomes
- Where an industry is in transition to competition it may be appropriate to monitor the industry in the short term to ensure that firms are not able to set excessive and inefficient prices to the detriment of consumers and competition.
- Where a rapid and flexible response is required to emerging community concerns about a particular pricing outcome.

However the ACCC considers that the PC needs to provide further clarification than is currently reflected in the position paper of the specific objectives of the prices monitoring that is being proposed. The ACCC also seeks information from the PC on why the position paper makes no reference to some review process to assess whether price monitoring should continue beyond the proposed three year timeframe.

The ACCC also considers the PC needs to articulate more fully how its proposed “limited price monitoring” should operate. The ACCC understands that the PC is proposing a “light handed approach” to price monitoring but considers the tasks associated with this role could only be accommodated within the context of responsibilities currently assigned to it under the *Prices Surveillance Act 1983*.

The ACCC would have no confidence in satisfactorily undertaking any monitoring program that relied upon voluntary compliance. The ACCC considers that if a monitoring program is to be undertaken by the ACCC then it should receive formal directions for this activity by the Treasurer under the *Prices Surveillance Act*. Under s27A of the *Prices Surveillance Act*, the Treasurer may direct the Commission to monitor prices, costs and profits of a specified industry or person and to report to the Minister on the monitoring. Under 27B, the monitoring report must be made publicly available as soon as practicable after the report has been given to the Treasurer.

Within this context the PC would be aware that the ACCC for example has been directed under s27A of the *Prices Surveillance Act* to monitor prices, costs, and profits of container terminal operating companies at designated ports. The objectives of this monitoring are to provide information to the Government and wider community about the progress of waterfront reform at Australia’s major container terminals. This monitoring program also provides information to the community about the absorption of the stevedoring levy by the stevedores.

The ACCC also requests further information from the PC on the scope of the proposed price monitoring. The ACCC notes the PC's comments regarding the need "for clear and unambiguous specification of indicators to be measured" however it is unclear which harbour towage prices are intended to be monitored. It is for example unclear whether the scope of the ACCC price monitoring is intended to be restricted to the publication of harbour towage price lists in the currently declared ports or whether the monitoring should more closely focus on actual prices paid by customers. One of the potential issues associated with restricting monitoring to price lists is that they will not reflect any additional discounts or rebates received by customers. Furthermore if the value of discounts and rebates change over time the price lists will potentially provide a poor indication of both actual transaction prices and movements in transaction prices. The ACCC therefore suggests that any monitoring activity that is restricted to the publication of price lists is unlikely to be of significant value.