

AIMPE RESPONSE TO POSITION PAPER PRELIMINARY RECOMMENDATIONS AND FINDINGS.

Preliminary recommendations

PRELIMINARY RECOMMENDATION 1

Subject to maintaining appropriate levels of safety, prescriptive regulations that stipulate tug use and/or tug size or type, should be modified to better encourage provision of required levels of service at minimum cost.

AIMPE RESPONSE

Levels of overutilisation of tugs identified in previous reports (BTCE Occasional Paper 96, 1989) have been eliminated. There is no serious evidence of over-utilisation remaining.

In terms of size of tugs, undersized tugs have been seen to be inadequate to handle the increasing tonnage of the larger vessels visiting Australia's ports. Whilst owners of smaller vessels may be able to be serviced with smaller (cheaper) tugs this would leave port facilities and infrastructure exposed the risk as occurred in Wallaroo where an under powered tug was unable to control a bulk grain ship (MV Amarantos, 10 April 2000).

Regulations, including port guidelines, have been developed by those responsible for port safety on the basis of their experience over many years. Alteration has taken place on the basis of practical trials and tank testing (at the Australian Maritime College, Launceston).

Relevant jurisdictions should also consider harmonising or, where appropriate, introducing a system of mutual recognition of minimum crew qualifications and standards, to minimise impediments to the movement of crews and tugs across Australian ports in different jurisdictions.

AIMPE RESPONSE

Maritime qualifications are a subject that is not properly within the scope of the current inquiry. There is in place a process involving all of the relevant State and Territory authorities plus the Australian Maritime Safety Authority together with industry parties dealing with this and related issues. The Productivity Commission has not received detailed submissions about these matters and should not make any

recommendation about them. The National Marine Safety Committee is the appropriate body to deal with these matters and it is bureaucratic duplication for the Productivity Commission to jump into this process. The disparate State systems are a product of Federation and overcoming those differences is not an easy process. It should however be left to those charged with the specific responsibility.

PRELIMINARY RECOMMENDATION 2

Where port authorities currently do not have explicit discretion to license towage operators (on an exclusive or non-exclusive basis), the relevant jurisdiction should grant them that discretion.

AIMPE RESPONSE

AIMPE is opposed to the issuing of exclusive licences by port authorities. There are major philosophical and practical concerns with exclusive licenses.

Philosophically, an exclusive licence gives endorsement to the monopoly control of a particular market (or market segment). There is then not even the threat of competition to keep the monopolist honest. It then becomes the responsibility of the issuing authority to ensure that the privilege of the monopoly licence is not abused. Thus there are ongoing public costs involved in maintaining such a system.

By contrast a non-exclusive licence system permits the relevant authority to set down standards and conditions but does not guarantee the operator total control of the market. Any other operator who sees an opportunity to provide a competing service can do so as long as they meet the same conditions. The market provides the discipline.

In practical terms, if an exclusive licence had been in force in Melbourne, the new operator Australian Maritime Services would not have been able to commence its operation in May this year. It is understood that AMS is providing towage services at significantly lower rates than the existing operator. If exclusive licences were also in force in Brisbane, Sydney and Fremantle then AMS could not proceed with its plans to set up operations in those ports.

The AMS plan apparently is to provide towage and other maritime services to customers in each of the major container ports. To do so it wants to be able to roll-out its expansion program on its own business-driven timetable. A system of exclusive licences would certainly frustrate this development.

AIMPE submits that port authorities should only be empowered to issue non-exclusive licences.

This should be accompanied by procedures to ensure that a port authority, if and when exercising its discretion to licence towage providers:

- * demonstrates the net benefits of proposed licensing arrangements;*
- * formally consults with towage users in a transparent manner prior to changing existing arrangements and the conditions that attach to any licences; and*
- * implements 'arm's length', transparent competitive-tendering processes.*

AIMPE RESPONSE

Subject to the comments above opposing exclusive licences, AIMPE supports open and transparent processes. AIMPE's original submission proposed making towage information available to the public.

PRELIMINARY RECOMMENDATION 3

Declaration of harbour towage services at the ports of Melbourne, Sydney (Port Botany and Port Jackson), Newcastle, Brisbane, Fremantle and Adelaide under s. 21 of the Prices Surveillance Act 1983 should not be renewed when the current declaration expires on 19 September 2002.

AIMPE RESPONSE

Agree.

PRELIMINARY RECOMMENDATION 4

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.

AIMPE RESPONSE

Agree that only limited price monitoring should apply but it should not only relate to the currently declared ports. The towage industry is much bigger than that. Publication of such information on a web-site would aid transparency.

Preliminary findings

This section draws together all preliminary findings contained in this report.

Preliminary findings are listed under the relevant chapter.

Chapter 6 Market power in harbour towage and related services

PRELIMINARY FINDING 6.1

At most Australian ports, significant scale economies remain for a single operator, given the relatively low level of demand for towage services. Hence towage markets in each port are likely to be able to sustain only one operator. There are cost advantages for a single common operator across some regional groupings of ports.

However, natural monopoly characteristics do not extend to one operator providing towage at all ports in Australia or even at all of the major container ports.

AIMPE RESPONSE

The finding relates to all ports however the recent entry of AMS into Melbourne suggests that the accepted wisdom (single operator only) may be wrong, at least in major ports.

This finding also highlights the narrow scope of the 'harbour towage' reference. There is no understanding or recognition of the vital importance of the salvage function currently carried out by harbour towage operator Adsteam. Without a private provider of salvage service outside harbour limits, pressure would inevitably build on State Governments to provide a salvage and emergency response capability.

PRELIMINARY FINDING 6.2

Barriers to entry into the towage market include the costs of transporting tugs, losses on resale of tugs, development of a customer base and training of crews. Available evidence suggests that these barriers, while not insignificant, are not large.

AIMPE RESPONSE

Agreed, there are always start-up costs in commencing any new business. The AMS approach of chartering (or leasing) tugs minimizes the capital component of such costs.

PRELIMINARY FINDING 6.3

While towage users have some longer-term options in responding to price increases, overall demand for towage at a particular port is not very responsive to price changes in the short to medium term.

AIMPE RESPONSE

Bow thrusters are not usually retro-fitted on existing ships but rather designed into new vessels. Thus with standard tug numbers at minimum levels it is difficult to reduce tug usage except in the most favourable of weather conditions.

PRELIMINARY FINDING 6.4

Countervailing power of towage users has the potential to limit or even eliminate the market power of individual towage providers. At ports with a small number of users, their negotiating power should be sufficient to temper significantly the market power of towage providers. At ports where there are a larger number of users, the cost and complexity of organising them to negotiate as a group will limit their countervailing power.

AIMPE RESPONSE

Towage users who require services in several ports have some power because of the size of their aggregate business. The power of such users will arguably be increased if, for example, AMS is successful in establishing operations in four major ports.

The relative power of national towage users would be diminished by a move to a multitude of separate, independent port monopolists.

PRELIMINARY FINDING 6.5

Available evidence indicates that towage prices in some Australian ports have been above efficient levels but the margin has not been large.

AIMPE RESPONSE

No comment

PRELIMINARY FINDING 6.6

Non-regulatory entry barriers to the provision of mooring services are negligible. However, in some States and ports, award and/or port requirements significantly add to costs and may create barriers to new entry.

AIMPE RESPONSE

No comment

Chapter 7 Assessment of price notification of harbour towage Services

PRELIMINARY FINDING 7.1

There are substantial deficiencies in price notification of harbour towage services as a means of reducing any sustained price margin above efficient costs.

- * Notification does not allow for ongoing assessment of the efficiency of harbour towage prices.*
- * The regulator faces substantial difficulties in determining whether proposed prices are 'efficient'.*

AIMPE RESPONSE

Agreed

PRELIMINARY FINDING 7.2

There are tensions in the application of best practice principles to the administration of the price notification system, such as between transparency and timeliness.

AIMPE RESPONSE

The current price notification system may well have been the cause of some of the perception problem in this regard. Most commercial service providers would raise their prices annually in response to cost increases. Such increases would be quite modest. Sydney public transport fares went up by 2% on 1st July 2002, for example. The towage price notification system required such justification that applications were apparently held back for years until significant increases were required.

PRELIMINARY FINDING 7.3

Costs arise for both the regulated entity and the regulator in relation to the price notification system for harbour towage under the Prices Surveillance Act 1983. These costs are not insignificant and would seem to exceed the benefits.

AIMPE RESPONSE See comment on preliminary finding 7.2.

Chapter 8 An assessment of alternative arrangements

PRELIMINARY FINDING 8.1

Price notification under the Prices Surveillance Act 1983 is an inappropriate instrument to address potential misuse of market power in the provision of harbour towage services.

AIMPE RESPONSE

Agreed, it has not been effective in stopping price rises but has seemed to bottle them up until large rises are required.

It has not had a positive effect on the ownership structure in the industry. Arguably the decision by Howard Smiths, and Brambles before them, to exit declared ports was related to their difficulty in achieving price rises which would satisfy Board and shareholder expectations.

PRELIMINARY FINDING 8.2

The costs and limitations of price control regulation are likely to outweigh significantly the benefits of using it to address potential misuse of market power in the provision of harbour towage services.

AIMPE RESPONSE

Agreed, see above.

PRELIMINARY FINDING 8.3

Price monitoring, if undertaken through clearly specified and focussed indicators, may have a role during a period of transition to a more competitive environment.

AIMPE RESPONSE

Agreed, this may even have a wider, longer term benefit for towage users. Information is a key requirement of efficient market systems.

PRELIMINARY FINDING 8.4

While there may be some scope for further regulatory reform in the towage market, such reforms are unlikely to generate scope for ongoing competition in the provision of towage within Australian ports.

AIMPE RESPONSE

This finding does not acknowledge the entry of Australian Maritime Services into the towage market, firstly in Melbourne but with intentions to enter Brisbane, Sydney and Fremantle. According to AMS, the port authorities have been most helpful in facilitating their establishment.

PRELIMINARY FINDING 8.5

Port reform has resulted in more commercially-focussed port operators. In some cases, however, unclear or conflicting objectives and scope for government intervention may weaken commercial incentives. Competition between ports, although limited, provides some pressure to operate commercially.

AIMPE RESPONSE The reference to commercially-focussed port operators is correct and at the same time worrying. Port Authorities that are totally focussed on their port operations do not accept any responsibility outside their defined port limits. They only concentrate on the regular operations within their port. They display a lack of concern for ship salvage capacity on the part of harbour towage providers. Salvage capacity has not been a prominent feature of recent tendering processes.

Harbour tugs have performed numerous salvage and emergency operations outside port limits over the years. These have not only been to the benefit of the individual ship owner concerned but to the community and the environment as a whole. The capability of the private harbour towage sector to carry out this function has depended on its ability to station large, powerful, suitably equipped vessels at strategic locations all around the vast Australian coastline. The only way this can be managed by the private sector is if these vessels are also able to earn income by doing harbour towage. It is also necessary to employ suitably qualified and experienced personnel to be able to respond to the situations which arise without notice at any time of the day/week/year.

If exclusive licensing results in a harbour only focus, the private sector will not be able to continue to provide the service it currently provides. Licence requirements to have a specified number of tugs in a port at all times mean that tugs cannot leave the port to attend these emergency situations.

Inevitably (perhaps after our own Exxon Valdez environmental disaster) there will be public pressure on Government to devise a system whereby an emergency response capacity is available on a 24 hour / 365 day basis in multiple strategic locations around Australia. At a minimum this would require tens of millions of dollars investment of public money to provide the service directly or else very significant long term contracts to private operators to provide a dedicated service. The significant costs of such a system would probably be recovered by a levy on the industry that is seen to benefit from this system – the shipping industry.

Fire fighting capacity is another feature of the current harbour towage arrangements which can be overlooked by an approach which concentrates only on driving harbour towage prices down. There are

currently a variety of different arrangements some involving extra payments to tug operators to provide a fire-fighting tug or tugs in a port. It costs an operator more to equip a tug to fire fighting capability and to maintain the systems including fire suppressing foam. Without this capacity the port, its users and facilities can be placed at risk.

Inter-port competition depends on the cost-effectiveness of the land transport links to the respective ports. Sea transport is far more cost-effective over long distances. However the example of Brisbane after it became connected to the standard-gauge rail network shows what can happen. Brisbane's ship visits have grown strongly in recent years.

PRELIMINARY FINDING 8.6

In some States, specific regulation and uncertainty over the powers of port authorities may be inhibiting consideration of the full range of options for promoting competition for the market in towage services.

AIMPE RESPONSE

As commented previously AIMPE opposes the exclusive licence option.

PRELIMINARY FINDING 8.7

Exclusive licences for the provision of towage services have the potential to generate greater benefits for towage users than non-exclusive licences.

AIMPE RESPONSE

Disagree – it is clearly capable for a port authority to impose conditions on the issue of a non-exclusive licence. This is what has been done by the FPA in WA. And towage users may well yet get the benefit of the entry of a new towage provider in the shape of AMS in Fremantle because the licence that was granted was non-exclusive. Similarly in Gladstone the port authority imposed conditions on the issue of a licence.

Request for information

The Commission requests comments or information from participants relating to the feasibility of users at multiple-user ports contracting directly with harbour towage providers.

AIMPE RESPONSE

As mentioned previously, AIMPE understands that some users have contracts with Adsteam for the provision of services around the country.