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4 July 2002

Productivity Commission
Harbour Towage Inquiry
LB2 Collins St East
Melbourne Vic 8003

(email – harbourtowage@pc.gov.au)

Dear Sirs

POSITION PAPER ON ECONOMIC REGULATION OF HARBOUR TOWAGE AND RELATED SERVICES

I refer to the Productivity Commission's inquiry into the economic regulation of harbour towage and related services and the invitation to make further comments in response to the June 2002 Position Paper and other submissions made to the Commission.

The Commission has made important observations regarding the provision of harbour towage services in Australian ports.

We are in agreement with the key messages and preliminary recommendations as outlined in the Position Paper, with the exception that we remain of the view expressed in our earlier submission that while there is only one major operator providing services in the majority of ports nationally, and until such time that competitive tendering has been successfully introduced, the ACCC should continue to be involved in prices oversight and price control regulation.

We would also like to comment on some important issues put forward by Adsteam that are still being debated, such as the use of exclusive licences and the issue of salvage. In addition, we take this opportunity to offer suggestions on some matters of detail in the Position Paper where some clarification seems to be needed.

One of the Commission's key findings is that while there has been substantial reform in the harbour towage industry over the past decade, concerns over towage pricing still remain. The Commission also found that in many cases, the most efficient pricing of towage services can be achieved through competitive tendering for exclusive licences, as has been demonstrated by the publicly and privately owned ports which already have exclusive contracts with towage providers. The Commission therefore recommends that port authorities should be given explicit discretion to license towage operators.

In its submission of 24th June 2002, Adsteam opposed exclusive licensing on the grounds that "exclusive towage licences, because of their port-specific focus, pose a serious threat to the on-going viability of Australia's existing national salvage and coastal protection capability." Adsteam expressed "gravest concern that the

Commission's preliminary recommendation that port authorities be given the discretion to issue exclusive towage licences...".

Fremantle Ports believes that the reasons given by Adsteam's in opposing exclusive licensing have been exaggerated. The Adsteam submission shows that salvage operations using tugs based at Fremantle were carried on 4 occasions over the three year period from 1st January 1999 to 27th March 2002. On three of those occasions the tug used was the Wambiri which is one of the main tugs nominated as a harbour tug under Adsteam's existing Licence Agreement with Fremantle Ports (the Wyong, a smaller back-up tug, was used on the fourth occasion). Over this three year period, the Wambiri carried out thousands of harbour towage jobs in the port area. Its primary purpose is clearly as a harbour tug, and it is used only on rare occasions for salvage jobs. There have also been other occasions when the Wambiri has been used for special tug jobs in nearby ports. On those occasions, the Wyong has provided the necessary back-up at Fremantle and Kwinana.

Adsteam stated in its submission that "salvage/harbour tugs earn their keep through the supply of harbour towage services". This statement should be kept in context – the Wambiri, for example, undertook 3 salvage operations while it carried out thousands of harbour towage jobs at Fremantle and Kwinana. It could not be implied that the Wambiri is primarily a salvage tug – rather our view is that it is a harbour tug fitted with some salvage capabilities.

The existing licensing regime at Fremantle/Kwinana is designed to ensure that service standards are maintained to appropriate levels within the port area. Fremantle Ports requires service providers to ensure that there is a back-up tug at times when one of the main tugs may not be available (such as those times when the tugs are operated outside the port area). If this requirement did not exist, then the service provider would be free to compromise harbour towage service standards whenever it becomes profitable to do so (as would be the case with salvage opportunities). It is not unreasonable, therefore, to regulate towage service provision within the port area to ensure that minimum standards are complied with. This can be done effectively with either exclusive or non-exclusive licences.

The Adsteam submission also makes reference to "inward-looking licensing regimes without regard to wider economic and community needs...". In Western Australia the functions of port authorities are clearly set out in the Port Authorities Act and specific reference is made to "the development of trade and commerce generally for the economic benefit of the State", as well as to clear responsibilities in respect of safety and the port environment. It is acknowledged that wider safety and environmental responsibilities outside the port are vested in other government authorities, but there is nonetheless an expectation that port authorities comply with broader government requirements and assist where possible to ensure that they are met. We do not believe that licensing regimes should be referred to as being "inward-looking".

The following are some additional points of detail relating to statements made in the Position Paper where some clarification would be useful:

Page 47, section 4.3. Reference is made to the *Ports and Harbours Regulations* in respect of pilotage requirements. This is correct for all port authorities except

Fremantle and Dampier where regulations covering pilotage matters are made under the Port Authorities Act 1999.

Pages 58, section 5.1. In the statement “Subsequently, the Port Authorities Act 1999 corporatised all Western Australian State government port authorities” the word “corporatised” should instead read “commercialised”. The same also applies to Table 5.1 where the Western Australian port authorities are shown as being corporatised” instead of “commercialised”.

Page 61, Table 5.2 The comment is made that “The Port Authorities Act 1999 established eight government ports as Government Trading Enterprises.” The words “*Government Trading Enterprises*” do not appear in the legislation. It would be more correct to refer to port authorities as “*commercialised entities*”, consistent with the language used elsewhere.

Page 146, section 8.2. It is stated that “In Western Australia, port authorities may tender for the provision of towage services but the Minister for Transport may apply a ‘public interest test’ to the tender result. This permits the Minister to intervene in the commercial operation of the port authority and the Minister has the power to disallow a winning tender (appendix D).” This statement is not correct. The Minister has the power to apply the ‘public interest test’ only where an “exclusive licence” is to be issued. Section 35 (4) and (5) of the Act states that “A port authority must get the Minister’s approval before it issues a licence giving a person an exclusive right to provide port services of a particular kind” and “The Minister is not to give approval under subsection (4) unless the Minister considers that the public benefits of exclusivity exceed the public costs and on providing such approval, the Minister must table in Parliament within 14 days, full reasons for his decision to grant an exclusive licence.” The comments made in Appendix D (page 188) in reference to the same matter also should be corrected.

Page 99 section 6.4 A statement is made that “In 2000, the Fremantle Port Authority requested tenders for exclusive and non-exclusive licences to provide towage at the Inner Harbour and/or Outer Harbour. It eventually awarded a non-exclusive licence to each of the incumbent operators (both Adsteam subsidiaries) which were the only applicants for such licences.” The two Adsteam subsidiaries referred to were not the only two applicants – a further licence was granted to Total Marine Services Pty Ltd which provides only occasional services to small vessels.

Page 189, Appendix D. In the statement “Western Australia’s eight port authorities ... are corporatised ...” the word corporatised should read “commercialised”

I would be happy to elaborate on any of these points if you require more information.

Kerry Sanderson
CHIEF EXECUTIVE OFFICER