

10 July 2002 - email

Dear Ms Cross

I have pleasure in attaching a further submission on behalf of the Melbourne Port Corporation. We regret that this is somewhat late, but we trust is still in time for inclusion in the Melbourne hearings on July 15th.

In this submission, we comment separately on the Preliminary Findings and each of the Preliminary Recommendations. In essence, we generally concur with these in so far as they are relevant to the port of Melbourne.

As is now well known, Australian Maritime Services is now offering towage services in competition with Adsteam in the port. We believe it is appropriate for the MPC to consider further the central recommendation that jurisdictions should provide licensing powers to port authorities, once the Productivity Commission's inquiry process is complete.

In passing, we also noted two factual issues that you may wish to check prior to finalising the inquiry report. On page 65, Table 5.4 in reference to the Victorian Port Services Act 1995, the table quotes text that does not appear in the current version of the Act, as included in the Victorian Consolidated Legislation:

12. Objective

The objective of MPC is to carry on the business of being the land manager of the Melbourne port area by- (a) planning and co-ordinating the development of port land and infrastructure within that area; and (b) making that land and infrastructure available to port service providers- and to do so in a manner that is economically efficient and that encourages competition among port service providers.

On page 190, end of Para 2, it is stated that the WA Minister can apply a public interest test to a tender process and this may result in the tender being disallowed. However, this is limited to the specific case where a port authority wishes to grant an exclusive licence and the public interest test is on the matter of exclusivity only. The relevant parts of Section 35 Powers Generally of the Port Authorities Act 1999 are:

(4) 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.

(5) 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.

This process did occur in the Bunbury towage licence tender, and the Ministers "reasons statement" would be available in the records of the State Parliament.

Thank you for the opportunity to comment. I have separately faxed a registration form.

Patrick Dick
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Melbourne Port Corporation

	Productivity Commission <i>Preliminary Recommendations</i>	MPC Comment
1	<p><i>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.</i></p> <p><i>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.</i></p>	<p><i>Agreed in principle: however MPC/VCA do not have regulations at present.</i></p> <p><i>MPC could collaborate in this process.</i></p>
2	<p><i>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.</i></p> <p><i>This should be accompanied by procedures to ensure that a port authority, if and when exercising its discretion to license towage providers:</i></p> <p style="padding-left: 40px;"><i>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</i></p> <p style="padding-left: 40px;"><i>implements ‘arm’s length’, transparent competitive-tendering processes.</i></p>	<p><i>To implement this in Victoria, the Port Services Act would need to be amended to provide MPC/VCA with power to license port services.</i></p> <p><i>MPC could adopt relevant policies when needed.</i></p>
	Productivity Commission <i>Preliminary Recommendations</i>	MPC Comment
3	<p><i>Declaration of harbour towage services at the ports of Melbourne, Sydney (Port Botany and Port Jackson), Newcastle, Brisbane, Fremantle and Adelaide under</i></p>	<p><i>The ‘Declaration’ only provides for price surveillance, not price regulation, and has</i></p>

	<i>S. 21 of the Prices Surveillance Act 1983 should not be renewed when the current declaration expires on 19 September 2002.</i>	<i>proved futile to influence pricing behaviour.</i>
4	<i>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.</i>	<i>The flow of pricing information will remain important to port users and MPC.</i>

	Productivity Commission <i>Preliminary Findings</i>	MPC Comment
	Chapter 6 Market power in harbour towage and related services	
6.1	<i>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.</i>	<i>At present the towage market in Melbourne is being “tested” (PC description) by the recent entry of AMS in competition with Adsteam.</i>
6.2	<i>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.</i>	<i>This reflects the recent experience in Bunbury (Riverwijs) and Melbourne (AMS)</i>
6.3	<i>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.</i>	<i>A key finding, that drives the conclusion that reserve regulatory powers are needed, aimed at the supply side.</i>
6.4	<i>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 users, the cost and complexity of organising them to negotiate as a group will limit their countervailing power.</i>	<i>Last sentence reflects the position in Melbourne.</i>

6.5	<i>Available evidence indicates that towage prices in some Australian ports have been above efficient levels but the margin has not been large.</i>	<i>Reflects the ACCC finding about Adsteam.</i>
6.6	<i>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.</i>	<i>Mooring issues have not been raised in Melbourne.</i>
	Productivity Commission <i>Preliminary Findings</i>	MPC Comment
	Chapter 7 Assessment of price notification of harbour towage services	
7.1	<p><i>There are substantial deficiencies in price notification of harbour towage services as a means of reducing any sustained price margin above efficient costs.</i></p> <p><i>. Notification does not allow for ongoing assessment of the efficiency of harbour towage prices.</i></p> <p><i>The regulator faces substantial difficulties in determining whether proposed prices are ‘efficient’.</i></p>	<i>The recent experience with the Adsteam notification, and subsequent price increases, demonstrate this point.</i>
7.2	<i>There are tensions in the application of best practice principles to the administration of the price notification system, such as between transparency and timeliness.</i>	<i>The timing of the [initial] Adsteam notification was unfortunate.</i>
7.3	<i>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.</i>	<i>The information revealed by “monitoring” towage pricing is valuable for stakeholders.</i>
	Chapter 8 An assessment of alternative arrangements	
8.1	<i>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.</i>	<i>Agreed, but the information is valuable.</i>
8.2	<i>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</i>	<i>No objection.</i>

8.3	<p><i>towage services.</i></p> <p><i>Price monitoring, if undertaken through clearly specified and focussed indicators may have a role during a period of transition to a more competitive environment.</i></p>	<i>Information is of value.</i>
	Productivity Commission <i>Preliminary Findings</i>	MPC Comment
8.4	<p><i>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.</i></p>	<p><i>Further efficiencies may be worth pursuing, in the interests of lower aggregate shipping costs.</i></p> <p><i>MPC is actively pursuing opportunities to act commercially and in competition with other ports.</i></p> <p><i>MPC/VCA have no licensing powers at present.</i></p> <p><i>The main point is that the PC supports the availability of licensing powers for port authorities. Benefits of <u>exclusivity</u> depend on the circumstances.</i></p>
8.5	<p><i>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.</i></p>	
8.6	<p><i>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.</i></p>	
8.7	<p><i>Exclusive licences for the provision of towage services have the potential to generate greater benefits for towage users than non-exclusive licences.</i></p>	