



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

**INQUIRY INTO ECONOMIC REGULATION OF HARBOUR
TOWAGE AND RELATED SERVICES**

MR T. HINTON, Presiding Commissioner

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON MONDAY, 15 JULY 2002, AT 10.01 AM

Continued from 11/7/02 in Sydney

MR HINTON: Good morning. Welcome to this public hearing of the Productivity Commission's inquiry into harbour towage and related services. My name is Tony Hinton. I am the presiding commissioner on this inquiry, and this particular hearing today follows on hearings that were held in Brisbane and Sydney last week. As I've indicated in those earlier hearings, the purpose of this round of hearings is to facilitate public scrutiny on the Commission's work and to get comment and feedback on our position paper that we released on 6 June. Our objective is to work towards finalising a report by 20 August, which is in accordance with the remit from government concerning the deadline, the timetable. Participants will be given automatically a copy of our final report when it's released, and that could be up to 25 parliamentary sitting days after completion.

As I indicated in Brisbane and in Sydney, we like to conduct these hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. I will not be taking comments from the floor during the course of the proceedings but, as for Brisbane and Sydney, I will provide an opportunity at the end of the hearing this afternoon for those present to make a statement if they would so wish. Participants are not required to take an oath, but they should of course be truthful in their remarks. Participants are also welcome to comment on issues raised in other submissions.

The transcript will be made available to participants and it's also available from the Commission's web site following the hearings. Copies may also be purchased using an order form available from Commission staff here today. At this stage of the proceedings I'd now like to welcome our first participant for this hearing, Mr Patrick Dick of Melbourne Port Corporation. Welcome. I'd like you for the purposes of the transcript to introduce yourself and indicate the capacity in which you're attending this hearing, and if you so wish I'd like you to make an introductory statement to facilitate the next steps. Over to you.

MR DICK: Thank you, Tony. As you said, my name is Patrick Dick and I'm the corporate strategist for the Melbourne Port Corporation. In that capacity I'm conveying to you some views that have been discussed by executive of the Port Corporation and by the board of the Port Corporation. What I'd like to do is to run very briefly through a synopsis of the two submissions that we've made to the Commission, one that was made on the issues paper and one that was made on the position paper. These comments and synopsis are in fact very brief, so that will enable us to get to any discussion that there may be.

The initial submission was directed mainly towards describing the institutional arrangements in Melbourne Port, and these can be summarised that the MPC has no regulatory or licensing powers at present. However, the Port Services Act requires the Port Corporation to perform in a manner that pursues economic efficiency and encourages competition. That provides the charter for these comments. The

Essential Services Commission, which operates by succession from the Office of the Regulator-General, is the regulator for specific prescribed services in the port industry in Victoria. The towage in Melbourne is not a prescribed service at present.

Our initial submission identified some questions for the inquiry to pursue from the MPC's viewpoint. These can be summarised as follows: the MPC expressed concern that if the federal price surveillance declaration is not renewed in September, from that point there would be no form of economic regulation of towage in the Port of Melbourne. The MPC is concerned about the impact of towage price increases on total transport costs. We pointed out at that time that there's insufficient data on the issue of the sliding scale of charges and whether declining ship numbers are compensated by higher per ship charges. However, we note that this could be explored further as a local issue if licensing were to be adopted in Melbourne.

There's a question about the size of the towage market in Melbourne and the ability to sustain more than one operator and to deliver competitive prices and service standards to ships, and this issue is currently being tested in effect by the entry of Australian Maritime Services. In conclusion on our initial submission the MPC suggested a number of principles for the inquiry, which have in fact been addressed fully.

Going on to our current submission on the position paper, the Port Corporation has reflected on the preliminary findings and the preliminary recommendations. We don't go into any detail on the content of the position paper as such. Our conclusions are generally supportive of the inquiry's position. Three dot points here: while towage is a natural monopoly in most Australian ports, Melbourne is perhaps different to that, as shown by the entry of AMS. We note that federal price surveillance without price control has not contained price rises and that some other mechanism is needed. Price monitoring as an information tool is potentially valuable, and this is particularly the case to assess the effectiveness of the competition between Adsteam and AMS in Melbourne.

To conclude by pointing perhaps to the way ahead: if local regulation of towage were to occur in Melbourne, there would appear to be a number of alternative courses of action, and all of these require policy decisions and actions at the state level. They're outside of the jurisdiction of the MPC as such. There are four alternative courses of action to introduce towage regulation into our charter. The first would be an 'Order in Council' to the Essential Services Commission. The second is an amendment to the Port Services Act which would add Melbourne to the list of other ports where towage is a prescribed service. That's Hastings, Portland and Geelong. Another is to amend the Port Services Act to give MPC specific regulatory powers which don't exist at present, and a fourth is to amend the Port Services Act to give the MPC licensing powers.

It's of interest that just last Friday the Minister announced the outcomes of a review of port reform in Victoria and among those outcomes is a need for new legislation to combine the water and the land jurisdictions for Melbourne into a single new corporation. This new corporation would have a more strategic nature and mandate and it would operate within a state-wide strategic ports framework. This gives an opportunity to amend the legislation to provide licensing powers, if that's the state government's view after this inquiry is finalised.

That, Tony, is a synopsis of our submission and our thoughts about the way ahead at this point.

MR HINTON: Thank you very much for those comments, and also thank you for not only your initial submission on our issues paper but also, as you referred to, your submission in response to our position paper. We appreciate MPC's participation, particularly because of events occurring in Victoria, not only the port itself but also the state government processes that you referred to. There are several matters I'd like to explore with you.

The first one is going back a step, and that is I'd welcome your comments on whether or not the MPC is satisfied, happy with, the sort of processes that underpin decision-making for towage use, the demand for towage, the dynamics that determine whether a tug should be two tugs or a tug at all for servicing a vessel; the actual operations of the port itself when it comes to harbour towage, involving perhaps the ship's master, the pilot, your regulations or your policy guidelines, those sorts of factors at work. Are you happy with what occurs in Melbourne Port?

MR DICK: That's a difficult question for us to answer because of the nature of the mandate of the Port Corporation. Under our act we're essentially a landlord and have very little to do with the operations of ships within the port. It is difficult to answer apart from anecdotally, that we note there are changes in technology, there are changes in pilot attitudes, and therefore it is a fairly dynamic area to operate in. But, frankly, we do not have a mandate for looking at those issues and we don't have any particular data in that regard.

MR HINTON: Your submission in response to our position paper talked about the possibility of pursuing further efficiencies in towage and it's that that led me to raise the question with you as to what sort of factors you might have had in mind that might generate better towage efficiency in Melbourne Port in particular.

MR DICK: I think my previous answer really covers that, that we haven't had a mandate and we haven't looked in any detail at those issues.

MR HINTON: Let's move on to licensing that you raised in very direct fashion in your introductory comments. I'd like to explore with you why the absence of specific legislative power or statutory power to license in effect means that MPC

cannot license. That is, there's no legislative statutory impediment to licensing; there just appears to be no explicit power to do so. I was wondering whether or not there is some aspect of MPC structure or its establishment that explicitly precludes licensing or whether in fact that's just a policy decision in view of the absence of statutory power.

MR DICK: Tony, I believe it's essential to have the head of power in the statute in order to carry out licensing. In the absence of that it's really a non-issue as far as the corporation is concerned.

MR HINTON: Has the corporation itself pursued specific action by the state authorities to get power for you to be able to license towage service?

MR DICK: No, we haven't and we would have thought that this particular inquiry - and I think we mentioned this in our initial submission to this inquiry - would cast light on a lot of the issues and would enable the state to come to a conclusion as to whether the licensing or some other form of regulation is required. So at the stage that we made those two submissions we have completely an open mind on the issue. We were responding to the proposition in the position paper that licensing seemed to be a mechanism that could be applied Australia-wide with variation from port to port, in the light of local circumstances. We were responding to that proposition and feel comfortable with that as a port corporation. However, it is a decision of the state government and I would have thought that they will wait until the findings of this inquiry are finalised and will provide them with data and information to at least start that debate in Melbourne.

MR HINTON: Yes. In your introductory comments you listed four alternatives for state level action, state government level action.

MR DICK: Yes.

MR HINTON: Are you in a position to give an indication as to your preference for which one you would like to see occur from the MPC point of view, or that would be straight for state government decision-making?

MR DICK: Well, it is a state government decision. The first that I mentioned can be done without legislative change and therefore is always a better option. The other three would depend on the policy decisions that I've discussed.

MR HINTON: Yes.

MR DICK: And as I mentioned, there may be an opportunity to discuss those and to consult on those issues in the light of the need for legislative change to implement the government's decisions of last week.

MR HINTON: What I'd like to do now is explore with you your comments and views about price monitoring. In your response to our position paper and in your introductory comments this morning you've made a number of references to the

benefits of collecting information. I'd welcome your comments and elaboration of that in that in particular for what purpose would this information be collected and having looked at the purpose it would indicate therefore the sort of information that should be collected, which I'd also like to explore with you. What would be the objective of this collection of information?

MR DICK: If the corporation were to have licensing powers it would need to make a decision at some point in the future as to whether to exercise those powers and in what form to issue licences, and we would have thought that it would be beneficial to have a time series of information on recent price movements within the towage industry, in order to inform that process of licensing if it were to occur in the future. I think that's particularly the case as there is presently competition between two private operators in the port. In the absence of price monitoring we would have no way of establishing what the issues are.

MR HINTON: Who do you think should collect this information?

MR DICK: Again we were responding to the suggestion in the position paper that price monitoring should continue for a period of perhaps three years at the federal level. That provides the framework within which those companies provide confidential information to that form of price monitoring.

MR HINTON: So you see benefit in information being not just with regard to what is occurring in Melbourne but you would look to have a national sort of look at the industry as well, as being helpful for you, or am I reading too much - - -

MR DICK: It's always a difficult question because I think it's a truism that all ports are different. It would be useful from the national level to have that information available. Whether it's all that relevant to any particular port is something that would need to be looked at port by port.

MR HINTON: This is partly related to your comment I think that went something like if declaration were not renewed under the Prices Surveillance Act in September this year and no price monitoring regime was implemented to follow that, that would lead to no economic regulation of the sector.

MR DICK: Yes.

MR HINTON: But if the sector has competition isn't there a prior question why do you need to have economic regulation?

MR DICK: Does it matter, yes. I guess the question there is whether that competition is effective, not just in price but in service standards, and to some extent in safety performance.

MR HINTON: Which takes us down to this - - -

MR DICK: So the question is, I guess to expand on it, whether that competition

can be seen to be effective in all regards over a period of time. Some basic information would be needed. Now, that could be collected in retrospect if licensing was to be enforced as part of the tender process. But it would seem that we were simply supporting the Commission's suggestion that there could be interim price monitoring I guess by the Commission itself at a federal, level.

MR HINTON: You referred to, with AMS entry into Melbourne in competition with Adsteam - and for that matter AMS itself has foreshadowed moves, potential moves, to other ports, Brisbane and Sydney. You then concluded, in effect, that therefore perhaps harbour towage was not a natural monopoly, at least in Melbourne. Is that too categorical a statement for me to say what your views are, or would you like to elaborate on that? I'd welcome your comments.

MR DICK: I'm sorry, Tony. Could you rephrase that?

MR HINTON: Let me rephrase it then.

MR DICK: Because I didn't quite follow the point that you were trying to draw out.

MR HINTON: I understand, it was a little convoluted. My question really is: do you think Melbourne Port could sustain longer term more than one service provider for harbour towage?

MR DICK: Well, that simply remains to be seen. That's clearly the view of AMS or they would not have entered the market, but it remains to be seen.

MR HINTON: So you rule out the possibility that AMS might have in mind being the sole provider of harbour towage?

MR DICK: I really have no idea what they have in mind, nor perhaps should I have.

MR HINTON: But there are three possible outcomes: two continue, one continues and it's Adsteam, one continues and it's AMS.

MR DICK: I guess there's a fourth, that both continue, but - - -

MR HINTON: That was the first one.

MR DICK: Sorry?

MR HINTON: That was my first one.

MR DICK: I'm sorry, okay.

MR HINTON: There is a fourth one as well though of course, that you could have more than two.

MR DICK: Yes.

MR HINTON: What I'm really trying to explore with you is judgments about - - -

MR DICK: I guess my comment was really focused on - yes, you're right, the first one. But there are two sort of sub-outcomes of that, that they compete at a level which delivers good quality service and good prices to the users or that both continue sharing the natural monopoly.

MR HINTON: You don't have a feel for how long this might play out in Melbourne Port? Do you have a concern that - - -

MR DICK: Sorry, I should say no, I don't, for the transcript.

MR HINTON: Thank you.

MR DICK: No, that's simply not - it's not our role in the Port Corporation to have views on the commercial viability of those companies.

MR HINTON: Let me come at it slightly differently then, Patrick. Would the corporation be concerned that direct head-to-head competition in circumstances of a port sustaining only one service provider longer term, would the Port Corporation be concerned that that could be destabilising for the port environment to have that circumstance apply over several years, for example?

MR DICK: I guess that would be of concern if it was counterproductive to the interests of transport through the port. It's a very hypothetical question and it would be difficult to speculate on the outcomes.

MR HINTON: Sure. I was really trying to explore with you a port authority's attitude to an operating environment for the provision of port services and whether there was any systemic advantage in going down a track such as licensing as opposed to head-to-head competition. Maybe for head-to-head competition, the users are ahead because they will get best price in circumstances - - -

MR DICK: Yes, that's quite conceivable. Those would be the issues that would be looked at if a licensing regime was firstly available to the corporation and (b) whether they had a mind to exercise it. At this point it's hypothetical but if that situation were to occur, those are quite the issues that would be looked at. Licensing of course can still be for a number of operators, so that the head-to-head competition can continue within the standards offered by the licence conditions.

MR HINTON: Patrick, I keep coming back to hypotheticals so bear with me. If MPC were to go down the track of exclusive licences, within of course its authority that there would need to be, provided through state government, action along the lines you've already flagged, if it were that scenario, what sort of relationship would you see as being needed with regard to the corporation with users and whether or not

you also see some relationship with other port authorities with umbrella groups or would you just see MPC doing it by itself?

MR DICK: To answer that part of the question, MPC would have to do it by itself, and given the licensing powers in this hypothetical new act, the MPC has a duty to apply all the principles that are relevant in the particular circumstances of the Port of Melbourne and that would include consultation with the parties involved and with the users and the likely beneficiaries of a licensing regime. The extent of which that flows off to sort of national issues or sort of port issues is something that would be considered in the circumstances at the time, but I think that the focus would primarily be on the local issues in this port. I think I mentioned earlier that among the principles that we suggested for the inquiry was that the outcome should be something that was consistent across all ports in Australia but nevertheless took into account local differences and conditions, and it's simply our view that in general, the licensing approach satisfies those criteria, those principles. It's something that would be recognised as appropriate from port to port but would also in each local situation have its own particular implementation.

MR HINTON: In your submission you've referred to MPC pursuing opportunities under a broad umbrella of acting commercially, with even pursuing in effect competition with other ports. What sort of degree of competition exists among ports with regard to Melbourne? Who is your competitor? What sort of shape does that competition take?

MR DICK: I think it's fair to say that ports generally in Australia are regional monopolies to a degree, to a very high degree. The competition tends to be at the margins. Given that general statement, there would be commodities that would be discretionary between, say, Portland, Geelong and Melbourne, and the issue of national distribution of containers to a degree, Fremantle, Adelaide, Sydney and Brisbane. Those are facts that are well known in the port industry. I don't quite see the relationship between that and the towage issue. Are you suggesting that the Port of Melbourne would seek to use licensing powers in a way that provided it with a cost advantage over other ports? That's not been part of our thinking. It's something we might well take up.

MR HINTON: It's been put to us that to the extent there is competition among ports, then the port authorities have some price signal or some incentive to pursue efficiency and performance and that puts some sort of test or rigour to their activity. To the extent that that competition is weak, then that signal is not that powerful.

MR DICK: I see.

MR HINTON: To the extent that that competition is strong, then there is a stronger incentive, a more powerful incentive, to pursue efficiencies which would then translate to port services in general, including harbour towage. So if the port authority was acting on behalf of towage users, then in the competition environment for ports, then you would have a stronger incentive to deliver.

MR DICK: Yes. I think that's theoretically true, Tony, but the case would come down to figures and I think your inquiry has shown so far that towage costs, as a proportion of total transport costs is a fairly small percentage and that that small percentage would apply then to a small percentage of goods that are discretionary between the ports, so you're talking about the margin of the margin. That might make a difference in a competitive situation but I think it's a little theoretical at this point.

MR HINTON: Yes, certainly no-one is disagreeing that the component of harbour towage costs as a proportion of total harbour costs is very small, but that the costs of non-delivery of a towage service is much larger than that.

MR DICK: Yes.

MR HINTON: Let's briefly move on to salvage and I'd welcome your comments from a port corporation's perspective as to the links between harbour towage service providers and the issue of having salvage capacity in port and external to port.

MR DICK: Yes. I'm not sure I can add anything to that, Tony. We've noted the conclusions that the position paper has come to but as I mentioned earlier, we don't have a mandate for managing towage and we don't have any particular data on that in that regard.

MR HINTON: And for firefighting capacity within port?

MR DICK: Well, I'd make the same comment there.

MR HINTON: Patrick, I've covered the matters I wanted to cover but if I've left out anything that you think I should be covering, I'd welcome your reaction accordingly for this morning's hearing.

MR DICK: I think that was fine, Tony. We wanted to introduce our submission and clarify that it falls within a particular institutional framework that prevents us from being active in the area of direct involvement in towage management. However, there is the possibility of legislative change in the future, so I really wanted to make that position clear to the inquiry and at this stage to present our findings and look forward to the finalisation of the inquiry.

MR HINTON: Thank you for your participation and we will follow up that announcement last week by the Victorian authorities regarding the foreshadowed new legislation with the relevant - - -

MR DICK: Yes. That's on the Department of Infrastructure's web site under "Ports and Marine", and all the relevant papers and statements are freely available on that web site.

MR HINTON: Thank you very much.

MR DICK: Okay, Tony, thank you.

MR HINTON: We will now take a short break because we have a scheduled in-camera session, a short session, followed by a 12 noon video link-up with Perth as the next public session. That will be followed by two other video-links to the west, followed by Adsteam Marine Ltd at 2 o'clock. So let's take a short adjournment, thank you.

Continued in Transcript-in-Confidence (pages 112–120 not publicly available).

MR HINTON: Welcome to this session of the Commission's public hearing into harbour towage and related services. Usually I make a detailed statement about transcript advantages of informality. I will cut that short because most are aware of it. I should though for the purposes of the Bunbury Port Authority make some small points briefly. (1) there is a transcript being taken of this hearing, and that will be available to all participants shortly after the hearing. Nevertheless we do seek to have informality rather than formality. We find that more conducive to healthy pursuit of information. Participants are not required to take an oath, but truthfulness is expected of course.

With those brief comments, I would now like to welcome Dom Figliomeni of the Bunbury Port Authority. Welcome.

MR FIGLIOMENI: Good morning, Tony.

MR HINTON: We appreciate your participation, and also note though that videoconferencing does have its disadvantages regarding communication that we are aware of and I'm sure you're aware of, though it does have the important advantage of not having to get on a plane. We hope it works.

MR FIGLIOMENI: It does, and hopefully we can get some cheap air fares from east to west at some stage.

MR HINTON: And west to east.

MR FIGLIOMENI: And west to east likewise.

MR HINTON: Thank you for your response to our position paper. There's several matters I would like to explore with you, but would you like to make an introductory statement at the outset?

MR FIGLIOMENI: Yes, thank you, Tony. Look, towage is one of those items which the Bunbury Port Authority embarked on a few years ago to look at how it could actually manage towage services in the port better, how it could make sure that the services that were provided in the port in relation to towage were more responsive to customer needs, and also importantly were competitively priced. We had a number of concerns at the time, and after considering the options, the issuing of an exclusive licence was the option that the Bunbury Port Authority was of the view - gave the best outcome. So it was outcome-driven and it was something which I must admit to date has basically justified the action that the Port Authority has taken.

MR HINTON: Thank you for that. What I would like to do is explore further with you some of the issues associated with actually implementing an exclusive licence.

MR FIGLIOMENI: Right.

MR HINTON: Given the views we have taken in our position paper, we would welcome your comments on the actual mechanics of having made a decision to go to exclusive licence, how you actually went about implementing it for example, a consultation process with users is an important issue as well as the sorts of characteristics of the licence or contract itself, but I would like first of all to hear your comments on the consultative process that you might or might not have implemented.

MR FIGLIOMENI: Before the Bunbury Port Authority went out to tender, we had a number of discussions with port users to find out what the issues were with them, what sort of services they required, what sort of response time they required, and also to try and identify some problem areas that they had experienced in the past. So the tender document was designed to try and address all of those particular issues, and response time was an important part that port users had, and part of that was they wanted to bring the response time down to two hours and naturally competitiveness was an issue with it, making sure that the services were available 365 days a year, 24 hours per day. So the tender document was framed and couched with those outcomes in mind.

Bearing in mind that at the time we also had discussion with what at the time was the Australian Chamber of Shipping, and there were no concerns expressed by the chamber at the time. In fact preliminary discussions, verbal discussions were quite favourable towards the port authority. We subsequently - after we had gone out to tender - and I can't recall the exact period, I can't recall if tenders had already closed - we did receive a response from the Australian Chamber of Shipping expressing concern at the issuing of an exclusive licence.

With the tender process, we had it as open as one can have. We had a probity auditor involved, we looked at - all the financials were evaluated by an independent consulting firm, and we had a steering committee which consisted of the Department of Transport at the time - Department of Planning and Infrastructure now - Department of Treasury, naturally the Port Authority. We had the harbour master involved, et cetera, but we didn't have any users on the evaluation panel. We also had input, before we went out, from the ACCC just to make sure that what we were doing in relation to time frames did not breach any legislative requirements.

So having done all of that, having set the framework in place, Mallesons Stephen Jaques, our solicitors, were also involved in the process in looking at the establishment of the licensing document, et cetera. We went out and what we also wanted as part of the outcome were some key reporting outcomes on a regular basis. To really find out how the service was being provided in the port, were there any

incidents, were the towage services meeting the customer needs, was there the opportunity for towage services to be brought forward if a customer brought a towage service forward, if a ship came into port early as an example; the response times, the number of times that a tug service had been changed, the number of services provided, the types of services, working with the port authority to make sure that we market and promote the port and make sure that the service that is there is required with customers.

So there were a whole requirement of reporting requirements as well, and one of the key requirements to make sure that tug services weren't being overcharged. Each tug service must have the charge associated with the vessel so that we can go through and say this vessel had GRT of 20, 30, 40 thousand GRT, and this is the charge that applied. So we make sure that there is no over-charging, make sure that the charges are in accordance with the licence and so forth. So from the port authority's perspective and from the port users' perspective, it has worked well. In the almost two years of its operation, we have not had one complaint from port users, unlike our previous events.

MR HINTON: Coming back a step to when you actually proceeded to go to a tender system, were you concerned that you might send out invitations to the party and no-one turn up; that is had you undertaken some research on available pool of potential entrants to give you confidence that the tender system would give you a rigorous, robust response?

MR FIGLIOMENI: We were aware of the parties out there that were interested in towage services, and we felt comfortable that based on the inquiries that were made and also on the approaches made to the port authority - because a number of parties actually approached us as well - we felt that we would get some good solid tenders in, which we did do. In addition to that actually, we received - I can't recall whether it was one or two tenders after the actual closing date which naturally we couldn't consider, and they were from overseas. So we were quite comfortable that we would get some robust and competitive tenders before we actually went out.

MR HINTON: Was the tender documentation closed in the sense that it was fully specified with no clause of optional add-ons at the discretion of the tenderer?

MR FIGLIOMENI: Our tender had minimum requirements. The tenderer had flexibility and freedom to actually specify what any additional options or any additional services that they would provide. What we had was a minimum requirement, and that was a must, but anything above that we would have welcomed. For instance, to have firefighting equipment on board, boom sprays which existing tugs have and all of those. All of those are options which the tenderer offered to us which were not part of the minimum specifications.

MR HINTON: Do you think this added to the complexity of your decision-making? You ended up having to compare apples with oranges or not like with like in comparing bids?

MR FIGLIOMENI: At the end of the day we don't believe it did because the key criteria was - and we had - in the actual tendered document it actually had the evaluation process. So we could only assess the tender based on that evaluation. We couldn't then look at things in addition to that. Naturally if you had two tenders on a like for like and one offered a little bit more and everything was equal, you would naturally have a leaning towards the one that offered a little bit more because that was something which we believed enhanced the service provision in Bunbury.

MR HINTON: Dom, I would like to explore with you the cost of this process in that presumably it was borne by the Bunbury Port Authority's general revenue source - - -

MR FIGLIOMENI: Correct.

MR HINTON: - - - that gets funded by its own income stream. Had you considered the possibility of extra surcharges on users or was it just generically funded?

MR FIGLIOMENI: No, it was generically funded, Tony. The cost was not high because we managed it from the port authority. We didn't employ a consultant or a consulting firm to manage it. The cost was no more upwards than \$10,000. It was a very competitive tendering process, and the only additional cost to the port authority was naturally the cost of tendering, the legal fees for the establishment of the licence and the probity auditor. Everything else was in-house. There was no cost from treasury, there was no cost from the Department of Transport at the time, and the consultancies are the ones that actually had a big cost, but it would have been between the order of around about 10 to 15 max with the actual writing of the licence itself.

So there was no need for surcharges. We never envisaged that there would be a cost impact on the port authority, and we did not envisage that there would be any need for any cost increases. Naturally different organisations manage it in a different way. We look at it as how we can actually maintain competitive prices, and managing it internally was one of the ways of actually achieving that.

MR HINTON: You were breaking new ground in many ways. Did you have any benchmark of another entity's activity or operation that you could draw on or were you in effect flying anew?

MR FIGLIOMENI: In towage it was something totally new as far as we

understood throughout Australia. We had, about a year previously, actually also gone through an exclusive licensing approach for stevedoring, and again that went through very smoothly, there were no problems, there were no issues. So what we actually did, we thought why don't we mirror something that has worked well, and that has been in operation for three years, and we have actually just extended it for two years, and the services that are provided in the port are again I believe second to none.

So what we did is actually mirror what we had introduced into the port two years earlier. Whenever you set off on a new scene there are always risks. We looked at all the various options. We looked at the risks of which industrial was one of those. We believed that they were manageable and I must admit to their credit, and I do fully recognise the MUA and its employees in this instances, in both instances we did not lose one hour of work. There were no strikes in the port either for the stevedoring or the towage. But let's say they play hard ball and I think at the time I think they probably would have preferred Dom Figliomeni of Bunbury port not to be there. But to their credit which I acknowledge they continued to provide the services in Bunbury.

MR HINTON: Dom, I'd now like to move on to more specific aspects of the licence itself. The first one that comes to mind, of course, is the length of the licence. What sort of considerations applied there and are you comfortable with the outcome?

MR FIGLIOMENI: There were two parts to that, Tony, before we actually embarked on the issuing of the licence. One was that we wanted to make sure that it wasn't of a lengthy period so that it led to a little bit of malaise and a detraction of service but, two, we needed to recognise that if the period wasn't of sufficient length the costs would be high in relation to capital recovery and so forth. So we tried to achieve a balance in relation to that and the fruit I suppose or the icing is to say, "Well, look, the licence is for five years" - and that was something which was also acceptable to the ACCC with a maximum of seven - to say, "If you perform all of the services, meet all of your key performance indicators which are reported on a monthly basis and then there is the opportunity to extend it for a further two years."

But seven years is the absolute maximum that we would entertain because we believe that gives adequate time for capital recovery and also is of sufficient time so that people have to constantly be on their mettle for seven years or five years and that can come by very quickly and we're already two years into that.

MR HINTON: What sort of performance indicators did you have, just timeliness of meeting tug jobs or - - -

MR FIGLIOMENI: There were about 10 or 15 of them, Tony, and I can probably go through some of those in the licence and, as I said, these are reported on a

monthly basis. We go through such things as demonstrated availability of the towage service 24 hours, seven days a week and this method of assessment includes no lost time through any means whatsoever. Production levels, cost of the chargeable service, number of complaints with customers is one of those. Improving or enhancing the quality of the service and that looks at a number of issues which includes tugs' availability. Instances of towage brought forward because that is always one of the difficult ones is actually to bring towage forward because what you have to do is you have to marshal your troops.

We had an incident not so long ago where within 25 minutes we had the tugs actually available from a cold start, so that is a superb response time as far as Bunbury goes. Also the number of times that services have been cancelled or varied. Lost time injuries is another one. Time taken to respond to port authority questions as an example, and we have set a maximum of five days in there. That is if a customer comes to us and says, "We have an issue" or we actually want to do look at towage services in a different way or the customer would like to, they've got five days within which to respond. Times requested and assisted in marketing and promoting the Bunbury port, so that's also part of that so it's not just strictly towage services.

Then there are other things such as providing audited accounts. Number of customer insurance claims and the use of stand-by tugs. They are just some of the major performance indicators as part of the licence.

MR HINTON: Thank you very much for those. Is there a flexibility clause with regard to possible changes in the demand for tug service in terms of vessel needs or is that not relevant in a five-year period?

MR FIGLIOMENI: Generally you would look at that as part of the planning but the tender document which is also part of the licence actually needs to recognise changing needs in the port and also in the time taken to respond to port authority and the customer services promoting the port. We believe that that actually addresses that because you can't promote the port if you've got a need for a larger service if the towage people aren't prepared to provide it. So the way we believe it's framed it actually does provide for flexibility in the size of tugs as an example. So we feel quite comfortable that within the licence we would be able to do that.

MR HINTON: Did you have any difficulty in terms of pricing formulations, that is whether or not to have escalation clauses each year or was that not part of the tender system?

MR FIGLIOMENI: No, that was definitely part of the process, Tony. What we asked was - and we left it open - we asked the tenderers to nominate their price because it wasn't for us to say, "This is what you will or you won't charge." Then

within that we asked them to advise if there is going to be an escalation clause on the type of escalation clause that would be proposed. We asked in there that towage charges are fixed for the first two years and then after that if there is an escalation based on the criteria prices would increase accordingly. But also part of that is that if growth in the port is above a predetermined level then the prices (recognising the escalation clause) would actually be reduced and that would result in a reduction of towage charges to port users. So it actually also provides for growth to come in and a reduction in towage charges, so it's not just one way.

MR HINTON: So gross income increases but the actual charge could decline in that circumstance?

MR FIGLIOMENI: The charge could decline. So it's not just, "Well, we've got the tender now and we're just going to reap" - to use a term - "abnormal profits." We're saying that that increase in port trade or growth has to be shared with port users through lower charges. That is something which is really I suppose unique as far as towage services go where there is that requirement.

MR HINTON: Can we look at salvage component, whether or not there was a minimum requirement regarding salvage or a clause regarding release of tugs for salvage. How did you handle as a port authority this issue of salvage?

MR FIGLIOMENI: There wasn't a requirement for salvage but what it does provide for - and we had a situation only about six weeks ago where we had a barge offshore and the tug that was actually servicing it had some problems and they needed our tugs for a salvage operation. It's not a problem. But the extent of salvage is so diverse that we just focused on the port itself and first and foremost we really have to recognise the needs of the port because again, as an example, say, we have a storm event in Bunbury and there is a salvage event off Bunbury, my prime focus is to go to make sure that the vessels in Bunbury are safe. We have had an instance just in the past week where I've had to call the tugs out to actually assist a vessel because of the strong winds. So in that instance my focus has to be the Bunbury port and my priority will be the Bunbury port.

MR HINTON: Yes. Firefighting capacity, that was a part of your minimum requirement?

MR FIGLIOMENI: There was a requirement for firefighting capacity which the tugs do have on board and also oil spill monitoring and a minimum of one tug had to have a firefighting nozzle and be able to be used for firefighting aboard vessels et cetera. We actually use tugs quite regularly as part of our oil pollution response.

MR HINTON: To come back a little, Dom, when you were proceeding down the track of a tendering system for an exclusive licence you, of course, had an incumbent

service provider and at that stage it would be unclear as to the outcome of the tender. Was there any concern in the Bunbury Port Authority's mind as to continuity of service in circumstances where the incumbent might not be the successful tenderer?

MR FIGLIOMENI: It was one of those issues, Tony, that we gave a lot of consideration to prior to going out for tender and that's why it was a critical part that we had strategies in place to make sure that the transition of service went as smoothly as can be. We had a lot of consultation with the harbour master, with port users and also with the successful tenderer on how that transition would take place. There was also a lot of discussion in relation to making sure that the local knowledge was also obtained, because that was a critical part as well. While you may have a successful tenderer, they have to obtain the local knowledge and be accredited by the harbour master as having attained that.

So we gave a lot of consideration to the transition, to the training, to the transfers, to the recognition and to the time when the services will stop and start. Again, to the credit of all concerned, that went through very, very smoothly. There was not one ship delayed whatsoever.

MR HINTON: This may be an unfair question, but do you see your experiences at Bunbury being potentially relevant to the practices or options available to many other ports in Australia?

MR FIGLIOMENI: I suppose I would leave that up to the other ports to decide, but it depends to what extent they want to manage the services that they provide in the port. In Bunbury we are very active in making sure that the services that are provided, because at the end of the day we do have responsibility for the port that the services that are provided are responsive to customer needs. I think the days of really just adopting a hands-off approach have past gone. I think port authorities, if they don't provide the services themselves, they have to make sure that the services are there and they are there in a manner which meets the needs of port users. We have made a conscious decision in Bunbury to actually be responsible for how the services are provided and that's something we weren't previously and we saw that as deficiency in the operations and management of the port.

But that, Tony, is really a port-by-port case. We are happy to liaise with other ports that are interested in the process that we went through and the outcomes and the issues to be considered. Some ports have already taken up that opportunity.

MR HINTON: Good. You have put a lot of emphasis on service quality for users, cost-effective quality service but you as a port authority need to be sure that you understand and know fully what those needs are of those users and you touched on this very early in your remarks. I wanted to explore further with you the nature of that connection with the users. Do you see, with the benefit of hindsight, some

advantage of having them directly involved in the assessment of tenderers or would it be one step removed from that and just a consultative process? It's that degree of connection that I would like your views on.

MR FIGLIOMENI: I believe because you've got a diversity of users it makes it a little bit difficult. What we were really after at the outset is to try and identify what the service was that they wanted and then we needed to go about making sure that we met that service because in some of the discussions there were some competing interests from time to time and it will very much depend on if you have got a major user because they will tend to I suppose, in a way, be a stronger driver than a minor user. So what we tried to do was actually bring in the needs of all of the users but recognise in our major users and try to make sure that the service that was provided was equal to all parties regardless of whether they were major or minor. That was one of the difficulties we had previously, because we didn't know who was actually being charged what. As minor users we were in a way, I suppose, at a disadvantage because they couldn't negotiate Australia-wide rates, as an example. What we wanted to do was make sure regardless of whether you're large, small or indifferent or a once off, you can come into Bunbury with the knowledge that the service you're going to get is going to be the same as anybody else, and that was one of the outcomes that we were after.

I would repeat the exercise the way we did, definitely get input from users, but I don't think I would have a user on the steering committee to look at towage. That's a personal view, Tony, because it's very difficult to get a user who may be acceptable to everyone. So this way we felt by having central agencies who were very much involved in transport that we could demonstrate to all users that the outcome was going to be as unbiased and as fair and transparent as possible.

MR HINTON: Does the port authority get involved in the actual process of charging for tug jobs? That is, having set up the system of exclusive licence, presumably it's the ship agent with the towage service provider, and you don't have a role with regard to that billing process itself on a day-to-day basis?

MR FIGLIOMENI: No, we don't have a role in the charging process at all, but what we do have a role in as part of the key performance indicators is we know what each ship has been charged and we know what tug has worked on what ship. So that way we can actually make sure that port users are not being overcharged. Also as an example in Bunbury, in the two years there have only been one and a maximum two cancellation charges that have applied. So by keeping that monitoring, the towage provider is trying to demonstrate to us to say, "Look, we've had all of these changes and we want to look at the good with the bad, but we haven't charged for them", and we do an analysis to see what the price benefit is to port users on a monthly basis.

MR HINTON: Dom, there's only one further area I'd like to explore with you, and

you touched on it in your submission: this question of exclusive versus non-exclusive licence. Clearly Bunbury went down the exclusive licence track, and our position paper certainly addresses a number of considerations associated with that judgment in its general application. Do you have any specific comments you make regarding Bunbury experience regarding not going down the non-exclusive licence track?

MR FIGLIOMENI: The non-exclusive licence track for Bunbury, Tony, was one which would not have achieved the outcomes that we set out. We definitely, in our view, would not have obtained the tenders and we would not have been able to initiate the changes and the enhancements that we were after. With a non-exclusive licence the difficulty would have still arisen. Say, as an example, we gave it to somebody other than the incumbent: we then had an issue as to, "How do we get the successful tenderer in when there is no exclusive licence?" The incumbent has made it quite clear at the time in court that they would fight any entrant very strongly, so the only way we could actually go through the tender process and legitimately end up with an outcome where if there was a need to be changed, that change could take place with the comfort of all players, was by actually going through the exclusive licence.

The non-exclusive licence: we are strongly of the view - and this has come out in the court proceedings that took place as well - that they would not be interested in coming to Bunbury on a non-exclusive basis, because the sunk costs were very high; the risks, given what the incumbent has said, that they would fight any new entrant quite strongly - the chances of the new towage operator of being a profitable and going concern were very slim. So we weighed up all of the issues before we actually went out for tender, and the only way was in our view an exclusive licence. I think that it again has demonstrated that it was the way to go for Bunbury. We got the change, otherwise I don't believe it would have happened. I think in the court proceedings most of the tenderers, or in fact all of the tenderers, basically made that statement, that they would not be interested unless it was an exclusive licence.

MR HINTON: Dom, thank you very much for those extensive comments. I appreciate them and appreciate your time today. I've covered the issues that I wanted to explore with you, but if there's anything you feel that I have left out that I should have covered, please raise it now.

MR FIGLIOMENI: Tony, thank you for that and thank you for the opportunity. I suppose one of the things that have come up is in relation to second-hand tugs. At the time that we were through the court process, the actual availability of second-hand tugs, while there are second-hand tugs - I am definitely not one to say there aren't - a lot of them were very old, a lot of them were ocean-going rather than port harbour tugs. So I think it needs to be looked at very clearly in relation to what the suitability of the tugs is at the time. At the time - and this is going back a few

years now - there were very, very few that were suitable for Bunbury given the current operations. You can always get something 10, 15, 20 years old, but I suppose if you're looking forward that is not something that one would like to look at. You want something as modern, and particularly if you're looking at providing a very competitive and high-quality service.

The other thing, we were of the view, again which the court strongly supported - was the high sunk costs in relation to competition on the water for towage. That was an issue, and we do believe that there are high sunk costs, particularly if you've got a fire sale for second-hand tugs when somebody may look at setting up. We do have in our operations, we believe, flexibility to ask for increasing towage if the need arises, but within the time frame that we looked at in the port and the type of tugs we actually specified, we are of the view that the tugs there are able to cater for quite sizeable growth in Bunbury, definitely within the time frame of the tender. So we felt fairly comfortable with that approach.

MR HINTON: Thanks for that, Dom, but in talking about second-hand tug market you're talking worldwide, or are you talking Australia?

MR FIGLIOMENI: Worldwide. Within Australia, Tony, there are very, very few that I'm aware of, and in fact at the time, if I recall correctly, going back on the information, that weren't any available, and this was worldwide. But then they have to be suitable to Australian requirements as well.

MR HINTON: That was my supplementary question, in terms of compatibility of those tugs to Australian conditions, Australian needs.

MR FIGLIOMENI: One of the interesting things we had in Bunbury prior to the tender is we had two fairly mismatched tugs, and there was a degree of concern to the harbour master at the time, because there wasn't any discussion basically from the incumbent to say, "We're going to enhance the towage capacity in Bunbury." It actually just happened, and the only way we found out was actually through another port because one of our tugs was going to be relocated to that port. So we actually had absolutely no control over the towage situation in Bunbury, so that was something which we needed to bring back so that we could let our customers know what was happening as well, whether they were going to have to pay more or less or whatever the case may be. So to us, without the appropriate checks and balances, we really had very little input or say previously.

MR HINTON: It may be hard to generalise, but I'd welcome your comments on the issue of costs of transportation of a second-hand tug. Presumably it clearly is the further you have to take it, the higher the costs. The question is: what sort of proportional add-on is this getting a tug from a northern hemisphere port into an Australian port relative to the cost of the tug itself?

MR FIGLIOMENI: That cost is actually not what you'd call significant in the overall cost of things and, if I recall correctly, Tony, at the time we were probably looking at around about 5 per cent or plus, and that's going on recollection. But there are other issues in relation to that. The cost of the leasing, say, as an example you look at leasing as another option, is almost going to be proportional to the period that you're actually going to lease it. So if you're only going to say, "I'm only going to do something for six months as a trial," your lease costs go up quite high, whereas if you have a long-term lease naturally you can become more competitive. So the leasing option over a short-term duration can be quite high. Then if you have a long lease and you go into a port and you just can't make it happen, then you have other associated costs, legal costs, because you've got a commitment there or a contract there which binds you for a number of years.

So there are a lot of issues there that really need to be looked at in relation to say leasing a tug or even acquiring a second-hand tug, as an example, because they aren't always competitive. Just looking at some of the recent second-hand tugs, which are probably in the order of five to 10 years old, those costs are probably not much cheaper than what it costs to actually build a new-built, but you can get some fairly competitive prices for a new-built. It's very much almost case by case.

MR HINTON: Thank you. Anything else you'd like to raise?

MR FIGLIOMENI: No. Thank you, Tony, and I do commend the Productivity Commission on looking at tugs. It is an interesting thing. It is an issue I think Australia-wide and there's been a lot of work on it one way or the other, and hopefully it's something that our ports will look at and determine and develop to suit their needs.

MR HINTON: Thank you again for your participation.

MR FIGLIOMENI: Thank you, Tony.

MR HINTON: That concludes this session. We have a second video-link scheduled for three minutes ago, 12.40.

MR HINTON: We now have Sea Freight Council of Western Australia. Michael O'Callaghan, can you hear me?

MR O'CALLAGHAN: Good morning, Commissioner. How are you?

MR HINTON: Welcome. There's a couple of introductory comments I should make. The first one is that there is a transcript being made, of course, of this session, as of all sessions for public hearings, the text of which will be available to you shortly thereafter. Nevertheless, we should not looking at a transcript adding formality. We in fact would much prefer informality as conducive to an exchange of information and pursuit of information. Participants are not required to take an oath but of course are expected to be truthful. Thank you for your attendance today and thank you for your submissions. What I'd like to do before raising some questions is ask you to identify yourself and the capacity in which you're attending this hearing for the benefit of the transcript, and if you wish I invite you to make an introductory comment to facilitate this hearing. Over to you.

MR O'CALLAGHAN: Thank you, Commissioner. My name is Michael O'Callaghan. I'm the Executive Officer of the Sea Freight Council of Western Australia, and the council prepared and submitted papers to the Productivity Commission on this particular inquiry. I do have one or two preliminary comments that I'd like to make, if I may, and what I've chosen to do is to direct them to each of the four preliminary recommendations. I suppose it is a reinforcement of the commentary paper that we sent back in reply to the position paper.

In respect of preliminary recommendation 1, the comment we would like to make is that it would seem that the prescriptive regulation which has been practised has been on operational aspects of harbour towage. However, with the exception of a rather lame requirement, commercially lame requirement, to notify the ACCC about costing and prices, there is no such strategy in place for costs and pricing. Strategically, this would seem to us to be a rather lopsided approach.

In respect to preliminary recommendation number 2, the issue of licensing coupled to a process of periodic competitive tendering would seem to be a very effective strategy to gain the most operationally and cost-effective outcome for the provision of harbour towage services. It's essential in our view that the individual port operators, in conjunction with service users and cargo interests, decide on whether licensing should be either exclusive or non-exclusive. Influences external to that process should be excluded from the decision-making on that particular issue.

On preliminary recommendation number 3, I believe that any additional comment we could make there is really probably covered in the comments that we make in 1 and 2, and on recommendation 4, we'd really like to reiterate that price monitoring and publication of the data of itself, whilst very instructive and probably

very helpful in terms of gaining information for industry, is unlikely to either change or modify behaviour and I think that's evidenced by recent events. I think that's probably the extent of the opening comments we'd like to make.

MR HINTON: Thank you very much for those comments. I should have said at the outset that videoconferencing does have its advantages in terms of people not having to leave offices and catch planes, but they're certainly not great either. It has disadvantages concerning communication, so I hope it works. I have a number of questions I'd like to raise with you and they're mainly associated with this issue of the relationship between a tendering system for exclusive licences and a regime of price surveillance, price monitoring. If I heard you correctly and read your response paper correctly, you seem to be wanting both, or if not both, some sort of price regulation in the absence of any exclusive licence system. I'd welcome your comments on how you see that working. Is it a substitute or is it transition or is it both at the same time?

MR O'CALLAGHAN: Well, we wouldn't see that licensing or price monitoring of themselves essentially should be run concurrently. Basically what we were looking for was an improvement in the process, and I suppose that is stating the obvious - that is exactly what we're all about here - but the issue that we see at the moment is that purely notification of price variation to the ACCC is not doing the job for the service users and certainly not the cargo interests who eventually pay the account by way of the freight rates that they are exposed to. So what we were looking for was a method by which we could move through a new - Tony mentioned the word - transition, and I think that's quite apt, that what we would be seeking would be to improve the situation whereby we would have actual application for price variation in the short to medium term until a system of periodic competitive tendering could become the norm throughout the industry, and that, coupled with the issue of licensing or contracting for a set period of time - and I again reiterate the point, on either exclusive or non-exclusive - we don't believe the issue of whether a licence should be exclusive or non-exclusive should be a matter for regulation, we believe it should be for the individual port operators in conjunction with the service users and the cargo interests to make up their mind what is best for their particular port operation.

MR HINTON: The concern I'd like to raise with you is the expansion of intervention through price regulation beyond the ports that are currently declared. You seem to be arguing in this period prior to serial competition, depending on decisions by each port, an arrangement whereby every port not only would be subject to a price regulation structure but they would also be subject to actual approval, so it's expansion by the degree of intervention but also the coverage of the ports to be subject to that intervention. That seems to be a very substantive act by the Commonwealth government for this sector, or have I misread you?

MR O'CALLAGHAN: Well, I think in essence what you've said is probably what

we see as a fall-back position. What we would like to see is the immediate uptake of periodic competitive tendering and licensing. If in fact those arrangements can be put into place very quickly, then it should not be necessary to have application - not notification for variation of pricing. So the best possible outcome would be that we would get on with the process of having regular licensing and we would see as an industry where it would be very helpful if ports were able to look at their industry per se and there would be some form of commonality, some form of core commonality, to the way those licensing arrangements were put in place, but doesn't necessarily mean that each port would have exactly the same arrangements. So in reply, yes, I think we are looking for some form of real definition so we don't actually have to go through this process again in a very short period of time. What we want to be able to do is get on with the job of having a good stiff competitive licensing arrangement put into ports.

MR HINTON: Would you still be comfortable with that formulation in circumstances of competition actually occurring without any sort of role of government? For example, we have a second entrant now here in the Port of Melbourne with foreshadowed planned involvement also in Brisbane and possibly Sydney. If that were to occur and it is bringing competition to the market, would that not argue prima facie that government should not be in the game of price regulation for that sector?

MR O'CALLAGHAN: I believe it would, yes. Of course one of the issues that needs to be addressed in all of this is that whilst what you're saying is quite correct for those particular ports, there will be other ports that will be less attractive for a whole raft of reasons as to why competitors will not come in and provide an alternative service, not least of which will be the volume that is contestable. So from our perspective, what we would be saying goes back to the issue of one size does not necessarily fit all, and that we're trying to ensure as we make comment and as we try to elicit a better outcome, then what we're trying to do is provide the most amount of flexibility. Whilst we're the Sea Freight Council of Australia, and obviously we're very interested in what takes place in Western Australia, we're also mindful that whatever comment we might make is heard in other jurisdictions and some of the issues that we might raise for our smaller ports may very well be effective and applicable to smaller ports elsewhere in Australia.

MR HINTON: Yes, it's a very powerful point that you make about one size doesn't necessarily fit all. I had in mind also some ports may be single-user ports that might already have in place contractual arrangements with the towage service provider that would seem to remove, prima facie at least, any case for government intervention.

MR O'CALLAGHAN: Absolutely. The last thing we would want to see is an intervention process put into place by government or anyone else for that matter that would interfere with satisfactory contractual relationships which currently exist.

That would be totally unnecessary, it would be intrusive and it would be totally inappropriate for our council or for anyone else to suggest that.

MR HINTON: Michael, do you have views on the sort of nature of the information that would need to be monitored or as part of the price surveillance system, whatever degree of teeth that system might have? You used the word a moment ago "intrusive"; price surveillance, price regulation can be very intrusive.

MR O'CALLAGHAN: Yes, that's quite right. I think whilst the council may very well have certain ideas about the regularity with which surveillance should take place and the particular issues that should be looked at, I honestly believe that that is an issue that needs to be sorted out between the port operator, the port authority themselves, the service users and the cargo interests. I've referred to cargo interests on a number of occasions here already and I must say that it comes as somewhat of a surprise to me personally that more interest was not shown by cargo interests in this particular issue. There are obviously some significant organisations such as the National Bulk Commodities Group et cetera who showed interest in this and quite rightly so, but some of the other larger cargo interests throughout Australia have not seen fit to put in a submission to you on this very important issue and it does come as somewhat of a surprise.

MR HINTON: Let's come back to the licensing issue. In your response to our position paper and in particular to our preliminary recommendation 2, the council says that external parties should not be permitted to interfere with the licensing process. I'd be interested in elaboration of that point, in circumstances where most have said to us that the licensing process should involve very full and careful consultation with users regarding needs and I assume you don't mean by "users" when you talk about external parties which is really why I'm seeking clarification.

MR O'CALLAGHAN: Yes, you're absolutely correct. Obviously the users would need to be fully consulted, not only the direct users, but again going back to cargo interests, I believe that they must play a part in there somewhere, although they will not be directly related, but I would think that if they really have their eye on the logistics ball, then they should take an interest in this particular issue. To answer your question directly, external influences we believe are external to I guess the direct interest, and I suppose the best way that I can put it is that we don't want to see the issue of whether licences are either exclusive or non-exclusive become a political football, and we're also very mindful of the issue of how opinion on this will probably vary quite significantly from state to state.

This is one of the real difficulties; although there are many joys to federation, I think that there are probably just as many sorrows, and one of the sorrowful aspects of trying to be able to bring an issue like licensing into an industry is how it will be dealt with from state to state, and I don't think that we are going - again to use that

expression, I don't think one size is going to fit all in terms of either exclusive or non-exclusive licensing, but that decision should be made entirely on what best fits that particular port, and it may very well be that in a state like Western Australia for instance, we may very well end up with a mish-mash. As a matter of fact we already have that in Western Australia, and that's entirely appropriate. We should only be looking at what best fits the operational requirements of an individual port, and political issues need to be kept right out of it.

MR HINTON: Can you be more specific? Can I draw you out as to what hypothetical factors may arise that you think would be extraneous and shouldn't arise? What are your concerns here?

MR O'CALLAGHAN: Apart from repeating what I have said, Tony, I - - -

MR HINTON: That's fine, Michael.

MR O'CALLAGHAN: I really don't have an awful lot more to add, and I think you probably fully understand why.

MR HINTON: I will be guided by you and move on.

MR O'CALLAGHAN: Thank you.

MR HINTON: The question of salvage has been raised in a number of our hearings and also in a number of submissions. Does the council have any views on how best to handle the provision of salvage capacity and its direct linkage or otherwise to towage service?

MR O'CALLAGHAN: We would not presume to make or give advice on maritime operational issues because that is best left to those people who are fully qualified to do so. However, from a commercial perspective, what we see - and I believe we had a similar discussion on this matter when you visited Perth, Tony, basically what we see is a conflict - and we understand why the conflict occurs - whereby a salvage capability tug may be stationed at a particular port, and that may or may not at this particular point in time be attracting a premium for the pricing, if it does attract a premium for the pricing, because this particular tug is a piece of capital equipment which costs more to own and more to run, et cetera.

If that is the case then we deem that inappropriate. We don't really know until we look at all of the costs and we actually understand what the costs and pricing are, and how those mechanisms are brought about. Until we know all of that detail, we really can't make comment on that. All we say is that it most certainly is important that salvage capability tugs are available, and particularly in a state like Western Australia with the length of coastline that we have, and I think the towage

operators from that perspective do a fantastic job and they need to be congratulated for actually having that equipment available. However, we just want to be satisfied that there is no premium paid over and above that which will be paid for a tug which could do the job quite adequately for harbour towage.

MR HINTON: Thank you for those comments. Related service also is in regard to mooring - mooring lines in particular. Does the council have any concerns about impediments to provision or quality or service or pricing of service with regard to mooring lines?

MR O'CALLAGHAN: No, we don't. The only comment we would make is that where those services are provided by the same organisation - and that's what we're talking about here in respect of the harbour towage service provider, we would be very anxious to ensure that there is no cross-subsidisation in any way, shape or form, in either direction, and I think that's entirely reasonable.

MR HINTON: Michael, thanks again for your participation. Is there anything I have left out that you think I should be covering that you would like to raise with me now?

MR O'CALLAGHAN: No. The only thing that I really wanted to finish on, Tony, was really I guess we're in full agreement with the general understanding which comes out of this position paper, and that is obviously a summation of those in the industry who thought it important enough to comment on this issue, and of the - I guess the underlying commentary which we believe is coming out of the position paper is that the current arrangements in place do not necessarily lend themselves to the best outcome for users and cargo interests in respect of costs and pricing. I believe it behoves all of us to try and get that outcome which is going to deliver the best result because this is an extremely important issue, and again that's probably one of the reasons I was very surprised that cargo interests did not show a greater interest in this, and I think that is very regrettable.

MR HINTON: Thank you very much. That will conclude this session and thanks again for your participation.

MR O'CALLAGHAN: It's a pleasure. Thank you very much.

MR HINTON: That ends that session.

MR HINTON: So we have the Fremantle Port Authority? Is that Steve Wade?

MR WADE: Yes, good morning, Commissioner.

MR HINTON: Thank you very much for your participation and your attendance here this afternoon and this morning. I would like to make some brief introductory comments consistent with the way these hearings proceed, the first one being we do have a transcript being taken of this hearing, copies of which will be available shortly thereafter for all participants including yourself. Notwithstanding that, we would like to put weight on informality rather than formality because we think that works better for us and for participants. Participants are not required to take an oath, though of course truth is expected.

We welcome your submissions and we welcome your comments today. What I would like to do is invite you to identify yourself for the purposes of the transcript, including the capacity within which you are attending this hearing, and if you would so wish to make an introductory statement to set off this session. Over to you.

MR WADE: Thank you. I'm Steve Wade, general manager marine and technical services at Fremantle Ports. I'm attending the hearing this morning representing Fremantle Ports. I will start with a fairly brief summary of a couple of points which we consider key to our submissions. The first point is that we are generally in agreement with the preliminary recommendations as outline in the Commission's position paper with one exception, that we remain of the view that whilst there is one major operator in the majority of Australian ports and until such time as competitive tendering has been fully and successfully introduced, then we believe the ACCC should continue to be involved in prices oversight and price control regulation.

Furthermore to overcome the shortcomings noted in the position paper and reflected in the recent events in some of the eastern states' ports, perhaps the declaration process might be strengthened to, say, requiring approval to vary prices until this stage of competitive tendering is truly national. On the matter of exclusive licences, a separate issue, we would like to comment firstly that we support the preliminary findings on that. There has been some discussion I know, some input from Adsteam, regarding objections to the concept. There has been objections on the basis that it could somehow limit the flexibility to grow.

We believe that the process that we went through in licensing at Fremantle, our expressions of interest documentation had anything we required to be flexible in it. It had the ability to grow, shrink, do whatever. We had the ability in that documentation and we could have finally ended up with an exclusive or a non-exclusive arrangement. As you're aware, we ended up with a non-exclusive arrangement. However, we believe that the concept of exclusive, or non-exclusive is something for the ports, for the port users and its customers, and it's something that

should be worked through by them. Each circumstance should be investigated and concluded as to its own commercial merits.

I think that's an important point. We do have a comment on salvage. I think you were going to ask some questions on that, so I will leave that as you go through your comments. So perhaps at this point, that's the only comments that I will make.

MR HINTON: Thanks very much, Steve, for those comments, and further to your submissions and response papers that we appreciate. I suppose my first question is in relation to your comment that you would like to strengthen the declaration process, declaration system that is currently in existence. I would like to hear from you what form that strengthening should take both in terms of whether you mean to actually move to a formal approval process of price and whether or not you wish to also strengthen it in terms of the coverage of the ports associated or being required to be subject to the price regulation regime.

I assume you put this in the context of a transition to, in your words, a national exclusive licence system, but I want to get on to that in a minute as to what you mean by that. At the moment I'm really interested in your comments on strengthening the declaration process.

MR WADE: Perhaps the first point is that my comment wasn't restricted to exclusive licensing. I did use the word "competitive". I think there is sometimes confusion as to what is attributed and attached to exclusive, and I think we need to be careful that you can attach and attribute anything you like to either exclusive or non-exclusive. It is merely a form of licensing or contracting I think where you have got the flexibility to do all manner of things, and it's just a mechanism. So I didn't necessarily say that that was entirely the way to go. I think it can go either way.

With respect to the approvals process, perhaps in terms of the scope, I understand the difficulties of expanding the scope, the real practicalities of doing that as an interim measure are probably very difficult. I understand that, so I think to expect that to occur is probably to be far too optimistic. As an interim measure, because the process of rolling out a truly competitive regime may take some time, we were thinking in terms of an approvals process that would require ACCC approval for a price change, so that if prices were to increase it would actually require an approval. There would be an approval process for that to occur. I guess that would be the most extreme end of the opinion. Certainly I guess the other end of the opinion is that there should continue to be monitoring and surveillance, most certainly. But if approval could occur that would be beneficial in the interim, as an interim step.

MR HINTON: That view has been expressed to us from a number of sources and I've been a little surprised that there seems to be no discomfort in having that sort of

degree of intervention by government in an economic activity. That is, it's perceived almost to be costless. I'd welcome your views on whether or not in fact that's a view lightly reached, or maybe you don't have a concern about the costs of that sort of intervention and its efficacy. We put in our position paper a number of comments on the difficulties of actually having an approval process, having a system of price surveillance, price regulation, where it's subject to all sorts of vagaries of uncertainty and difficult judgments to be made, as well as of course the costs of regulation both in terms of the regulator and the regulated. I'd welcome your views on that sort of balancing factor.

MR WADE: The depth of complexity and costs I don't fully understand, but I think that obviously is something that needs to be taken into account because we do see it as an interim measure and it really comes about from our experiences with the licensing process. We did have an experience where it was explained to us the difficulty of moving into a marketplace, into this marketplace that currently exists, and it is going to take some time I believe to get a truly competitive regime in place and until that occurs I believe it would be beneficial to have some form of approval process in place. It really comes about though from the lessons that we saw in the licensing process.

MR HINTON: Let's move on to Fremantle's experience there. You referred to a choice of a non-exclusive arrangement at present. I'd be interested in your comments on the considerations that took you down that track in circumstances where you now seem to be a proponent of a wide application of exclusive licences, though not necessarily applying in all cases. What were the factors at work in Fremantle that took you down the non-exclusive arrangement?

MR WADE: The work that we did in the licensing process involved a large number of customers as well. We were heavily consultative in that process. So at the end of the day we had to take the views of the full customer base. The full customer base is influenced, as you'd be aware, by a number of different factors including national and even international discounting. So that balancing needed to take place before we moved. We certainly could see that people that were coming in and offering pricing under an exclusive arrangement - and they would only do it under an exclusive arrangement because of the reasons that we're aware of, the perceived barriers to entry - were significant improvements even on the pricing that we have now. So, yes, I guess an important factor though was the influence of our customer base; that was a vital thing.

MR HINTON: So the decision-making to go the non-exclusive licence did involve active consideration of the exclusive licence option?

MR WADE: Yes.

MR HINTON: Can you give us comments on the cost differential between an outcome with exclusive versus non-exclusive licence?

MR WADE: Not really. I can say though that I think that would be difficult to do

on the public record. I think the figures that we saw have since been validated by some internal estimates that were done to provide a towage service that looks very similar to what we have now. We've actually had a look at that, assuming that you have the marketplace that you have now safely in hand, and there are opportunities for cost savings. But to say what they are I believe is probably breaching confidentiality so I can't do that.

MR HINTON: I'm not seeking specific details as to individual tenderer information, on the contrary. I was really - an indication from the expectation that an exclusive licence contract could generate greater savings, cost benefits, relative to a non-exclusive licence outcome.

MR WADE: Yes. There is potential for more cost savings from an exclusive licence - significant.

MR HINTON: It was that sort of starting point that raised in my mind the question as to what was the consideration at Fremantle that led you to take the option that was less beneficial by going down the non-exclusive arrangement. What other factor came into play that would push you away from something that could have even given you better cost savings?

MR WADE: We had major customers who have got national discount and international discount arrangements and those arrangements were seen by them to be a significant influence. The facts were tabled. We took quite a lot of detail around to the customers when we consulted with them and the conclusions came basically through the customer base.

MR HINTON: So a rebate system operating for multi-port service?

MR WADE: Yes.

MR HINTON: Do you think that still applies today for that option, if you were to go down to a new tender?

MR WADE: It's a factor we'll need to look at when we're - we are in the process of just starting our planning again for when this tender expires. This licence expires at the end of next year. So we're starting our planning now. It's very hard to say because the discount or rebate system for multiple port use is kept confidential between the parties. So it's a rather interesting and tricky system to work our way through.

MR HINTON: Do you find that the specification of the tender document in terms of service, towage service, is a difficult exercise as for a port authority, or does it lend itself to reasonable ease of specification?

MR WADE: If you believe that we got value for money I believe we did. I believe we've certainly paid off our efforts many, many times over. No, we didn't find it difficult - it obviously takes some time and it's something though that we would be

doing across a number of other fronts with other suppliers, so it wasn't something that we had great difficulty with. It was just a part of our business.

MR HINTON: So that the tender exercise itself was not all that costly to put in place, that's a cost factor. I had in mind more the question of whether the specification of minimum service requirement to actually license someone - how difficult that was. Is the industry a fairly straightforward industry or is it highly complex that makes specification difficult?

MR WADE: I think it's reasonably complex. It is different to a lot of other supply agreements that you put together. It does have some other factors involved. It has some performance measures. It has this fleet balance issue where, you know, the way that you specify performance can influence the size of the fleet and the cost to the customers. There is an interesting balancing issue I believe that needs further exploration and that is, if you're to actually reduce a tug fleet or enable a tug fleet to be reduced, based on performance specifications, does the demurrage cost get offset by the savings in towage costs, because you do have a step function of capital investment. If you could reduce a tug at a port by one, what does that do to the average cost of towage right across the port and what does it do to the delays? So there's probably more work needed there. That's probably one of the trickier aspects of the exercise.

MR HINTON: Steve, do you have a feel for the potential pool out there of possible providers of harbour towage service? If you're going to attend the system then a robust outcome is crucially dependent upon having a reasonable pool of potential entrants. I'd welcome your views on that judgment with regard to Australian explanation, that is.

MR WADE: I think there's a large pool.

MR HINTON: A large potential pool.

MR WADE: I think there's a large pool. Yes, I believe so.

MR HINTON: Which prima facie suggests that there are barriers to entry of some substance.

MR WADE: We had that expressed to us quite clearly during the process we went through, the licensing process. The people that had made good offers under an exclusive basis wouldn't move to a non-exclusive basis for reasons that they couldn't be guaranteed the return of their capital.

MR HINTON: Yes. Under the - sorry, please proceed.

MR WADE: Sorry, I was just going to add I think in other industries my experience is that many private sector industries use the exclusive process of tendering a lot I think the most extreme version is probably the partnership, almost the open-book partnership approach, where the market is almost guaranteed. So

people can adjust their margins to very efficient margins, as you refer to I think in your paper, the so called efficient cost or the efficient cost. If they're comfortable and confident that that's going to be returned to them it makes it far easier for the customer and supplier to come to a satisfactory arrangement, and I guess that was the experience we had with the licensing process.

MR HINTON: I'd like to explore with you this issue that's characteristic for the west, of the minister having a capacity to apply a public interest test for an exclusive licence. I'd be interested, if you're in a position to comment, in the origins of that and what it's meant to capture, what is the objective behind this particular ministerial power in this area.

MR WADE: Probably all I can say is I believe - it's a belief that I have, so I really can't comment other than to say that there are perceptions attached to exclusive and non-exclusive, which as I mentioned earlier, perhaps shouldn't be attached to them. They are just mechanisms. They are mechanisms for licensing or tendering and they are seen I think sometimes as other things and bringing with them other things. That's one aspect. I think the other aspect is that any exclusive process could be seen by people as non-competitive, as anticompetitive, and that argument has been put forward, but when you've got reasonably large capital investments, I think that's just not the case.

MR HINTON: Steve, you indicated earlier in your introductory remarks that I was going to ask you about salvage, so I think I'd better ask you about salvage.

MR WADE: It's just that I was sitting in on Michael's, so I've learnt the questions.

MR HINTON: Have you learnt the answer? Flippancy aside, the question is of course whether or not there is a tension between a pursuit of efficient harbour towage provision in an environment or a mechanism through exclusive licences or even non-exclusive licences, whether that in fact has a tension to achieving sustainable longer-term salvage capacity that's required. I'd welcome Fremantle Port Authority's views.

MR WADE: Yes, there are some tensions and obviously these need to be resolved. I think it probably though confuses this particular issue. I don't think it really has a great influence on the things that are before us at the moment. I think though it does need to be resolved, and the point that has been made previously is that the difficulty that we have is knowing exactly who is bearing the cost. When we were in the process of finalising our licence agreement, the whole issue of salvage came up here in Western Australia and we were playing a fairly dead bat to that because we knew, the path we were going down, that we were going to end up with a salvage capability in the port, and the arrangements we had reached with Adsteam is that we would like to be involved in the discussion about the period of time that a tug will be out of the port and how we were going to manage that and we've said that a fair and reasonable approach to a first response is something that we would deem acceptable. However, if they were to tow a vessel into Asia, for example, and be gone from the port for a significant period, we'd be concerned about that and want to discuss it. So I think we

have probably a practical way of operating here but it is certainly not the ideal solution. There needs to be some form of investigation into how this is going to occur in a way in which it is very clearly understood who is paying for it, because I think that's an important issue. We've only had four examples in the last three and a half years of where there's been a salvage response out of this port. It hasn't been an enormous inconvenience to us. The tug that was used is performing as an ordinary harbour tug. So on the costing side of it, we don't have any figures and I don't have any opinions; I just know that it's something that perhaps needs to be looked into in more detail.

MR HINTON: Steve, thanks again for your participation today but also for the authority's submissions to the commission. We appreciate them. If there is anything that I haven't covered that you think I should have covered this afternoon, please raise now.

MR WADE: I don't believe so, no.

MR HINTON: Well, thanks again. That completes this session of the public hearing. The transcript will be sent to you. Thanks.

MR WADE: Thank you very much. Good afternoon.

MR HINTON: We're surprisingly on schedule. I'm not sure whether that's a good thing or a bad thing. We have next scheduled for 2 o'clock Adsteam Marine Ltd, so we do have 20 minutes before that. If people would like to take a break, I'm going to take a break. Unless others have got a different view, let's restart again at 2 o'clock. Is that acceptable, especially to Adsteam Marine? Good. We could even have time for a sandwich if you so wish, just, otherwise we'll start again at 2 o'clock.

MR HINTON: Good afternoon. Welcome back for this afternoon's session of the Productivity Commission's hearing into harbour towage and related services. We have for this session representatives of Adsteam Marine. I'd like to record once again the commission's appreciation for Adsteam's extensive involvement, in this inquiry process, being both constructive and substantive. I appreciate that, and thank you very much. You've assisted the commission significantly. I now invite you once again for the transcript to identify yourselves and the capacity in which you're attending. I understand you've got a presentation for opening this afternoon's session leading to further discussion. So once again, over to you.

MR RYAN: Thank you, commissioner. For the record, my name is David Ryan. I'm the managing director of Adsteam Marine Ltd. To my right is Henry Ergas, who is a principal of NECG and will be speaking to the presentation that we're about to make to you this afternoon.

As we noted on Thursday when we did the first part of our presentation, our approach has been to assist the commission to review in fact whether there is a problem in this industry in relation to harbour towage and whether there is a need for a regulatory solution. We will also look to help the commission form some views on the costs associated with the preliminary recommendations if those recommendations were to remain unchanged in final form. We've done some work on costs. We believe that some of the benefits that folks are anticipating might come out of an exclusive licensing regime are unlikely to be fully realised. I use the words there "exclusive licensing" rather than "non-exclusive and exclusive licensing" because there has been a penchant since the commission's position paper was put out for the industry to report simply that the commission has recommended an exclusive licensing regime, and that is not what we believe the commission has done in its preliminary findings, and we will continue to make the case for the non-renewal of declaration and the continuation of an open market.

To quickly put the Australian towage industry into perspective, it has a total revenue base of about \$170 million. That includes estimates of participants other than ourselves. From a container point of view, which is the main volume of traffic that goes through the currently-declared ports, it has one-fifth the volume of container movements through Singapore, and then there's the question of statistic shopping. The industry is either .1 per cent of total value of goods shipped in Australia, 2.6 per cent of total port-related charges, or at the extreme 100 per cent of total towage charges. I think there is a general consensus, though, that in the chain of port-related charges we are a relatively small input.

It's also been interesting that in the main there have been few complaints about the level of service that Adsteam, and indeed other towage operators in Australia, provide. I think the industry has reformed itself very significantly from the level of standards that existed in say the late 80s and early 90s.

Is there a problem? A lot has been said about the size of the price increases that we implemented in March of this year. Those price increases were in relation to the actual price we charge per tug. The relevant measure, though, for a shipper and a cargo owner is what the vessel pays, not what we charge per tug: it's the invoice that they actually receive from us. I'm just going to quickly pass through each of the ports in which we put in notified increases and point out some fairly significant moves.

In Brisbane in 1994 a 15,000 to 20,000 GRT range ship was charged \$9264. Prior to the price increase that we announced, that was down to \$8115, which was a 12.4 per cent decrease. After the increase that we implemented, that vessel is now being charged \$9064, which is indeed below the level that was being charged in 1994. These statistics are drawn from our records. We have gone back and looked at every vessel call in each of these ports in May and June of each of the relevant years, added up all of those vessels and their charges, and so this is the average charge.

Where you see in this table a large drop from say \$5400 in the 5000 GRT range to \$2800, a 47 per cent fall, that's because of lower tug usage on that vessel. There has been a reduction in the number of tugs used on that vessel. Where you see a relatively small movement, say in the 20,000 to 30,000 GRT range between 1996 and 1998, \$8292 to \$8796, that's reflecting simply the mix of tugs that are used on vessels, because there was no price rise in that period. So it may be that sometimes vessels were coming in with one tug, at other times that vessel was using two tugs, maybe they use two coming in, one coming out, so you'll get a slight movement in revenues depending on the number of tugs. So modest moves tend to reflect simply an averaging out of tug usage on vessels over time. The large falls show a reduction in the number of tugs used. Again, it's notable in the 50 to 60 thousand range: in the case of Brisbane, 1994, \$18,000; 2001, prior to our price increases, \$13,000 per cent, a 29.3 per cent reduction.

So it's very, very important to look not at the price charged per tug but the price charged to the vessel, because that's the cheque that gets written, and in Brisbane there have been very significant decreases. In Port Jackson the same applies, with price variations of as much as 52.9 per cent over the period 1990 to 2001, 41.4 per cent and at the bottom end of the range a 2 per cent reduction in the 20 to 25 thousand GRT range. In Port Botany, again, very significant decreases over the period 1990 to 2001 pre the price rises, in the order of 20 to 30 per cent right across the board for vessels coming to the port of Port Botany.

In Melbourne, again the same pattern is quite evident in these numbers, reductions of over 50 per cent in the charge to the vessel as opposed to the charge for the tugs, and there was a price rise in the numbers in Melbourne on the way through

that had been through the ACCC in I think it was 1998 or 1999. So again very significant reductions. In many cases the price that vessels are paying for towage following the increases that we put in place in March are below the prices they were paying in 1990 or 1992. So our assertion is simple. Is there a problem? There would be very few industries who can show a reduction in costs to its customers of this magnitude, and that is overlooked almost always in the cost per tug as opposed to the price that the customer pays to us.

The same again applies in Adelaide, where there have been some quite stark and remarkable changes, 65 and 70 per cent reductions in the 15 to 25 thousand GRT range. It begs the question: how is it possible to reduce your charges to customers by this much and not go out the back door? It all has to do with the volume of traffic through a port. We are an extremely high fixed-cost business, so at the margin our variable costs are quite low. So when volumes increase we do not need to take price activity to look after our profits.

On the other hand, when volumes decrease, as they have been decreasing in the container ports in recent years, then we do need to look to protect ourselves. For the same reasons that the shipping industries are in pain, we're in pain. That pain is exacerbated for us due to a movement to larger vessels. I think as recently as five or six years ago no-one would have contemplated 4200 TEU vessels coming into Australian ports, and it's further exacerbated by the work that has been done to reduce the number of tugs per vessel. That work, as we said on Friday and in our previous submissions to the commission, is work that we have been actively and proactively involved in fostering. Our objective is to get the marginal tug out of a port where it might only do 60 to 80 jobs a year and go and send it somewhere it can do 7, 8, 9 hundred or 1000 jobs a year. That's a much better deployment of our capital, so we work quite hard to have that happen. If we can get tugs out of ports, then costs to ports can be reduced.

To further give the commission an idea of how the prices for ships have moved, we have gone back and looked to track several ships that have been on the Australian coastline operating services for quite a long period, and so we've picked the Ariaka in Brisbane and Melbourne and the New Zealand Pacific in Port Botany and Adelaide. There's been a great change, of course, in the specific vessels that come. It's educational to look at the Ariaka. In 1993 for coming to Brisbane it was charged by us \$9840. In 2001 it was charged \$6112. What had happened during that period. This is prior to our price increases in March. With us actively looking at our pricing policy, we had actually reduced prices in Brisbane by 6.2 per cent because volume in that port was increasing. So that vessel saw over an eight-year period a 37.9 per cent reduction in its cost of towage; the New Zealand Pacific a reduction of 27.4 in Port Botany, where our actual price tariff had not changed. Because of a reduction in tugs per vessel for that vessel, it has seen its costs go down 27 per cent.

The Arafira in Melbourne experienced a remarkable 57.2 per cent reduction. Despite the fact that prices went up around 1999 by 10 per cent on our tariff, it is using less tugs than it used to and its costs are substantially down. Finally again, the New Zealand Pacific: in Adelaide prices were steady on our tariff right through that period, again a reduction in its tug use and so its costs went down by 27.2 per cent. It seems to us that, in an industry where people are saying it is a natural monopoly and that Adsteam has abused that monopoly, that if we have attempted to abuse that monopoly, then we're a failure at that, because we have kept prices steady right through a decade of time. That's despite increasing labour costs, despite increasing fuel costs, and we have worked to reduce the number of tugs per vessel call. So I think the figures here, which are easily checked by the commission if they want to, demonstrate beyond a doubt in our mind that there is not a problem in us abusing market power by putting prices up, because in fact we have reduced them, not put them up.

There was an interesting comment from Western Australia earlier today about cargo interests not being actively involved in this inquiry. We have looked at a vessel on a three-port rotation through Australia which is a 1728 TEU vessel. That vessel perversely uses two tugs in Brisbane, three in Botany and one in Melbourne. Its total costs are set out there. When you put the increases onto its total costs that we implemented in March, we show the dollar increase, \$645 in Brisbane, \$1000 in Port Botany and \$719 in Melbourne. That's including the GST effect. We have then divided that increase not by the total number of TEUs on the vessel, which is 1728, but by the average number that vessel loads or discharges in each port. So in Brisbane on average it takes off in the range of 330 to 350. Divide the increase of \$645 by that and you get 95 cents per TEU. In Port Botany you get \$1.12 per TEU and in Melbourne you get 60 cents per TEU or per container. This is a very, very small cost in the grand scheme of things.

To give the commission an idea of commodity values per TEU, we just list some various commodities there that are transferred in containers: grapes 20 to 25 thousand dollars; whisky, 30 to 80 thousand dollars; wool, 40 to 50 thousand dollars; cotton, 70 to 75 thousand dollars; chilled meat, 70,000 dollars; wine, 100,000 dollars; waste paper, which would be one of the lowest value commodities moved in containers, 1250 to 2500 dollars. So in the scheme of the value of the commodity, and bearing in mind that I think people have accepted that we are a very small part of the transport chain, the prices that we are charging are hardly going to have an effect on the competitiveness of Australia.

There's always a question that if you are a very small component of a supply chain that charges for goods and you're in a single service provider business, as we are, that you may be in a position to abuse that power because you don't make that much difference. You know, another 40 cents on 95 cents, who cares? I remind the commission having just gone through the previous slides on a port by port basis we

have actually reduced very significantly the cost of towage per vessel which will have reduced the per TEU cost over the last decade. Indeed, what did the price rises mean? In Brisbane the last increase was in 1987. We increased our price there by 11.7 per cent, that is .8 per cent per annum. Jackson works out to 4.1 per cent, when we include the previous increase in 1998, since 1992; Botany 1.1; Melbourne 3.3 and Adelaide 1.6. Again, that is the March increase per tug job, not the invoice cost per vessel. So taken over a 10-year period these are hardly rapacious increases.

Our problem has been the regulatory environment that we exist in leading to price bunching. It is well known through all the academic literature that if you regulate prices you will bunch them up and at the end of the day have to have a significant increase to compensate for the fact that you've had price bunching. We would much prefer to have slowly increased our prices every year or every second or every third year rather than have to face the wrath of our customers. No-one willingly puts the gun to their head and blows their head off. We would much rather be able to adjust our prices as port authorities can, as shippers can, as cargo interests can and everyone else in the chain can. That has been, as I mentioned, exacerbated by declining vessel calls because of larger vessels and the lower number of tugs per vessel.

Is the bunching issue really a big issue for us? Well, I mentioned at the beginning of this that the total revenue in the industry as best as we can figure it out is about 170 million. A large port would be in the range of revenues 10 to 15 million dollars. For the ease of mathematics I will work on 10 million dollars for a moment. The regulatory costs of going through a price notification process with the ACCC is about a quarter of a million to \$300,000. If you think of inflation being 2 to 3 per cent on average in Australia over the long run, you don't have to be a mathematical genius to figure out that if you go for a, say, 2 to 3 per cent price rise and it costs you a quarter of a million to \$300,000 to get it, you've just lost it because the costs of applying and going through the process immediately take all of that off you and that means that you are reticent to go through that process year in and year out with all the commensurate pain that goes with it.

The problem in smaller ports if they were to be regulated, of course, becomes much greater and we operate in some ports where our towage revenues are half a million or a million dollars. The regulatory compliance costs there in would be prohibitive. Also in all of this there seems to be a perception that Adsteam is able to perform some sort of miracle in not giving salary increases to our staff and workforce and not being imposed with higher fuel prices. During that period 92 to 2002 the world fuel price swung up and down between \$8 to \$10 dollars a barrel to \$30 a barrel. Other parts of the industry have a range of different surcharges that they impose to smooth that effect. We do not have those surcharges. There is no fuel surcharge that we apply to anybody so we absorbed the oscillating fuel price and we have absorbed the increases in our standard labour costs.

We don't have a magical recipe for making those go away. What we have done is an enormous amount of work on labour reform to reduce our labour force to help us keep costs under control so that we can hold price steady or indeed, in the case of Brisbane during the period from 92, reduce prices.

The commission's remit, as we understand it from - clearly on the words is to look at measures that could be taken to increase the level of competition where desirable in the industry and we have in presentations to the commission and in our writings said on a number of occasions that we feel the blowtorch of competition on a regular basis. We felt it here again today when Steve was presenting for the Fremantle Port Authority where I read into his words they are clearly thinking about getting into the towage business themselves at the end of the current non-exclusive licensing period and that they have that power is fine, and if they want to do it that's fine because it's a very strong and countervailing power. We have now heard that from the Port of Brisbane and the Port of Fremantle in the last couple of days.

Whether or not there's a continuing need for prices oversight, we are quite comfortable with the findings that the commission has made. We do believe the barriers to entry are, while not insignificant, not large. We are facing, as the commission is well aware, competition in Melbourne right now and an announcement by that competitor that they intend to move on Sydney and Brisbane and previously they had mentioned Fremantle, although that seems to have dropped out of their lexicon in recent time. So we have the possibility of port authorities with countervailing power, we have an actual competitor, we have previously had competitors. Customers got into the business in Newcastle, for instance.

You have found that towage prices in some Australian ports have been above efficient levels, but the margin has not been large. We would take umbrage with that but only at the margin and it wouldn't surprise you. The costs of declaration you have found are not insignificant and would seem to exceed the benefits. They have certainly exceeded the benefits from our point of view. The costs to us have been frighteningly large and there has been no benefit to us or, we believe, any of our customers at all. The key questions that we think need to be addressed in all of this are what are the perceived benefits and to whom will they accrue and how, if there is to be a new regulatory environment or a changed regulatory environment and what are the costs to society of proposed new arrangements directly and indirectly?

Again, it was interesting to hear one of the port authorities talking this morning and mentioning that the costs of running a tender process were relatively small but not including in that process the costs of their internal time, effort and resources or the time of the various departments in Western Australia who were listed as assisting in the process.

What are more efficient alternatives? We say an open market solution is a more efficient alternative.

Volume rebates are something that have occupied some of the commission's time and comments from others and I'm just going to ask Henry if he'd expand on a few of the comments that we've made to the commission in the past.

DR ERGAS: Thank you, David. The issue was raised of volume rebates and the impacts that they might have on market performance and market outcome and in particular the concern was expressed that the volume rebates might constitute an entry barrier. Of course, volume rebates are very common in commercial activity and they're particularly common in activities where the fixed costs are significant relative to the marginal costs of carrying on the activity. By and large economists interpret volume rebates in that context as being an efficient response to a situation where so as to recover the fixed costs prices have to involve a substantial mark-up over marginal costs, but given that there must be such a mark-up, it's desirable at the margin of demand to bring that mark-up down as far as possible so that price-elastic customers, even in context where the overall price elasticity of demand is low, price-elastic customers will nonetheless receive some incentive associated with the investment that they can make in expanding the business.

Typically if customers are then ranked according to the scale of their output, the scale of their demand, most schemes which aim at providing those inducements for growth will involve some type of volume rebate. So economists generally regard volume rebates as being a rational and indeed efficient response to circumstances in which an activity is characterised by relatively high fixed costs of operation. But nonetheless, the question can be put of whether the particular volume rebate scheme constitutes an entry barrier. When you look at that argument there are really two forms that it could take. The first form would be to say that the volume rebates reflect economies of scale, perhaps in turn associated with a high level of fixed costs and some economies of scope from operating across a range of ports and it's those economies of scale and scope that constitute the barrier to entry.

A second possible argument would be that rather than it being the economies of scale and scope that constitute the barrier to entry, it's that the rebates themselves are in some way designed so as to deter entry, for example, by being predatory. Now, if the rebates were predatory, then presumably the appropriate policy response to that would be proceedings under section 46 of the Trade Practices Act. The credibility of any predatory scheme of volume rebates in this industry would nonetheless also have to be low given the fact that the sunk costs appear to be quite low. So it's my view that you can pretty well disregard the second possibility, ie that the entry barrier associated with the rebates arises because the rebates are, in a sense, predatory which then means that you really turn to the first which is that the volume rebates reflect economies of scale and that those economies of scale are the entry

barrier.

If we move to the next line, Peter, the point that I think ought to be made there is that economies of scale and scope by themselves are not an entry barrier. If you have economies of scale and scope it's not that fact that prevents entry, because a firm that was more efficient than the incumbent could enter on the scale and scope that was required to achieve minimum efficient scale and scope, ie the scale required to in fact achieve a competitive level of costs. Rather if there are entry barriers, they don't arise from the economies from the scale and scope but from the sunk costs that might be involved in entry. If the sunk costs are themselves large then it could be the sunk costs that are deterring entry, rather than it being the economies of scale and scope. However, if you accept the commission's preliminary finding, which I believe to be a sensible one, that the sunk costs are relatively small then it's not clear that the economies of scale could be such as to deter entry from occurring.

In the real world of course capital markets are imperfect and capital market imperfections may create entry barriers even with moderate levels of sunk costs. But when you look at the potential entrants, most of the potential entrants are sufficiently large that it seems somewhat implausible that capital market imperfections could deter them from entry, were entry durably profitable. So the conclusion I would come to, given the range of potential entrants, the scale of the financial resources, their links to shipping and port services, their expertise in the area is that what is deterring entry is neither the volume rebates nor economies of scale but rather the fact that entry is by and large not sufficiently profitable to make a scheme of entry worthwhile. In other words, that price cost margins are not sufficiently high to make it attractive for entrants to enter this particular market.

The fact that the price cost margins are not all that high in turn suggests that the forces of at least potential competition are working reasonably effectively. So how would one then explain the volume rebates? It seems to me more sensible to explain the volume rebates not in terms of entry barriers being created, but rather that the volume rebates reflect a number of characteristics of this market. As I said, the fact that fixed costs are relatively high so that prices must involve substantial mark-up relative to marginal costs and given that you do have such a mark-up then it becomes efficient and desirable to try to expand output at the margin, but additionally the factors, some of which are pointed to by the commission in its preliminary report, that include factors such as the countervailing power of users, particularly the larger shipping lines and the lower unit costs of servicing some of the larger volume customers.

Finally, it seems somewhat paradoxical for volume rebates to be, as it were, raised as a concern that Adsteam has to respond to in the sense that in the mid-1990s there were calls by users for volume rebates and it was seen as widely desirable that volume rebates be introduced. In that sense the introduction of volume rebates has

really responded to pressure from users rather than being a strategy aimed at deterring otherwise potentially efficient competition.

MR RYAN: A final comment on volume rebates. It's been said to the commission on at least two occasions today and I think in some of the presentations that have been made to the commission that Adsteam - and I can't speak for anybody else in the industry - but that Adsteam offers volume rebates both nationally and internationally. I have no idea what has given rise to the international part of that. We do not now, nor have we ever, offered international rebate arrangements. We have customers in Australia who we deal with in Australia. We have customers in the UK who are relatively new to us since we acquired the Howard Smith towage business a year and a bit ago. There are customer arrangements with those customers in the UK. None of the people that we work with in the US are involved in Australia or none of the people we work with in Australia are involved in the US, nor the UK and the US. There is no over-arching international rebate arrangement, so I don't know what's giving rise to that comment, but it is an unfortunate piece of misinformation and I take this opportunity to correct it.

Exclusive licence, an overview. I think the commission in the way they couch the preliminary finding was sensibly cautionary in how you couched it in saying that it may sometimes but not always deliver superior outcomes, and indeed at other inquiries in 1993 and 1998, there was a preference noted for non-exclusive licensing. However, that cautionary finding has very quickly been turned into a clarion call for exclusive licences, and in fact the reporting that the commission has indeed recommended a switch to exclusive licences all around Australia. This is a quote from Lloyds list of 6 June 2002. The sentiment of that was followed up by the National Farmers Federation both at that time and again recently saying that competitive tendering for exclusive licensing is the most efficient way to regulate the industry.

My concern is simple; that in a cautionary finding the commission has had, the Lloyds list article appeared the next day. We were getting phone calls from port authorities the next day saying, "When do your current arrangements with us expire because the Productivity Commission is recommending that we move to exclusive licensing." I don't think that that is what the commission is doing, and so I would urge caution in the wording that be used. I think the wording was clear on the face of it, but it has been clearly misinterpreted out there in the world by a range of different people, and this sort of comment was picked up not just by Lloyds list in both these cases, but it was picked up in literature right around the world in the maritime industry that the Australian Productivity Commission inquiry has recommended exclusive licenses. I don't think that's the case.

Licence duration is a question that is clearly exercising in the commission's mind. The Industry Commission in 93 suggested three years if there was to be

licensing. Interested parties are now arguing five or seven years. The question is what will the licence issuer decide and on what basis, and there has been no clarity in that in the debate that I have had the privilege of listening to at the hearings to date. People are all over the place in their views of who should be involved in the process, how the process should be run, who should make the decision. We have heard cases where the users weren't consulted at all and a decision was made that imposed a regulatory environment on the customers without the involvement of the customers whatsoever.

There is a real issue for port authorities as we alluded to on Thursday. The first is the conflict of interest question. There again is a clarion cry for information and data, price surveillance, "Please give us lots of information," from the very people who are contemplating moving into the industry. It would seem wholly inappropriate for a whole range of detailed confidential financial information to be provided at the stroke of a pen to a competitor. That is not the way I understand our system is supposed to work. There is also a question of the skill set amongst the 50-odd port authorities out there which range from very active and involved port authorities in the day-to-day running of their business. As we heard from Dom Figliomeni in Bunbury earlier today, he wants to be actively involved in all elements of the port's operations to perhaps the other extreme from the chap from Melbourne Ports Corporation in charge of strategy who said under their current legislative environment, they are a landlord port and know little about things on the water.

There is a graduation of skill sets out there amongst the port authorities. I'm not being critical of those port authorities in saying that. It's just that their remit for their particular tasks varies quite widely right around Australia. It is interesting, given the history between Adsteam and the ACCC in relation to price notification, that indeed we share a great number of similar views in relation to licensing. I find it somewhat perverse, but nonetheless it is interesting that they are concerned about the potential costs and risks. They are asking the same question we and the commission are asking, if there is to be an exclusive licensing or non-exclusive licensing regime, who designs the tenders and what are the problems with them? There has been ample evidence to the commission over the public presentations that there is no clear definition of who should design them, who should be involved in them, what they should or should not include.

There is an inconsistent regulatory framework right around the coast of Australia which will involve, if there is to be a framework put in place for the tendering of non-exclusive and exclusive licensing, a very significant amount of work to be done by a range of state governments which does not come without significant cost, and I don't think that cost has been calculated in any form, but those involved in shepherding regulations and legislations through state governments will understand that there is a very significant cost to the state in doing that. There is the question of the approach of port authorities to skate past salvage capability, in many

instances not to be interested because again of the authority that they have been given by their owners to look after everything that happens in the harbour, not to look at the provision for the national salvage and coastal protection issues as broadly might be the case.

In the position paper on page 141, the Productivity Commission raised the question of transaction costs, and I think in couching it in that simple paragraph really invited someone to do some work in trying to assess what the costs may be and so we have risen to that invitation. We have commissioned two separate reports, one by ACIL who I think the Productivity Commission will be aware of. We have had no previous dealings with ACIL, and another one from Charles River and Associates who - our only previous association was with an earlier report that was provided to the commission. The costs of implementing preliminary recommendations are wide and fall upon many, many shoulders - port authority set-up, cost benefits analysis, draft contracts, tender management, probity audits, contract management. I'm sorry, you cannot do that for \$10,000. It is impossible.

The cost to tenderers - port authorities typically and understandably, as I said on Thursday, do not want to make forward forecasts of shipping movements, and so there will be a need for those who haven't been in a port to do a local study of port conditions, a demand study of future ship movements over time, work securing tugs, preparation of the bid, dealing with the sorts of termination and handover issues that were mentioned by the Port of Bunbury, contract management and renegotiation; quite significant costs for tenderers, and we have seen tenders take place in Australia for both exclusive and non-exclusive licences where there have been from two to 10 people tendering in that process.

Total transaction costs are very significant, and they are generally not scalable because as a tenderer you wear your own costs. You don't collude with someone else or you go to jail. I will run through some numbers, but on a tender for a port where there were, say, five people involved in the tendering, the total pool of costs may run to a million dollars or more because there are some uncertain items which can't be quantified. What would be behind those numbers, for port authorities - and we forwarded the full report to the commission on Friday and again it's a non-confidential report so we're quite happy for it to be made public in any way the commission likes, and we're quite happy for people to disagree with these numbers.

These numbers were prepared by a competent group in ACIL with assistance from KPMG and a legal firm, but they could be over or under, but their estimates are set-up costs, \$20,000; doing the cost benefit analysis that the commission recommends, \$50,000; legal fees in drafting a contract, \$25,000; if you are dealing with tender management of five people, a hundred to 150,000; a probity auditor and various other contract management issues. It is not hard to see 200 to 300 thousand dollars worth of costs in that, but even if I'm out or they're out by 50 per cent, that is still a significant number per tender, bearing in mind there are 50 ports around the coast of

Australia.

For a bidder to do the local study, about \$20,000 - that's to understand the port which you would be bidding for; the demand dynamics in the port, \$30,000; going out and searching through brokers or your own sources to find appropriate tugs or to talk to people about how to build suitable tugs to go into that port, it's almost impossible to quantify what amount you would put on that; travel 5 to 10 thousand dollars. That would be easily the case domestically given our single airline policy. If you're coming from overseas, you could easily see a significantly higher number there; bid preparation - an enormous amount of time goes into these things. You can again easily see that sort of number, and so it goes on - quality accreditation, termination and handover costs, contract management, renegotiations that take place during the contract; responding in five days to requests for information looking at replacing, upgrading, varying tug requirements during the contract period; again very easy to see 170 to 200 thousand dollars per bidder.

So these are not small costs that people are talking about, bearing in mind large ports in Australia have 10 to 15 million dollars in revenue; small ports may have as little as 500,000 to a million. So these numbers can be out by a degree of magnitude, and I welcome any stones being thrown at them because we have done the work to put them up there to get people thinking about the costs. Broader economic costs I was going to, Henry, ask you if you would again speak to some of the broader economic costs in relation to exclusive licences. Some of this commentary, commissioner, picks up on part of the conversation we had on Thursday afternoon.

DR ERGAS: Thank you, David. I won't go back over everything I said the other day, suffice it to say that any scheme of exclusive licensing - and I think there are significant differences between exclusive and non-exclusive licensing - obviously raises a number of complicated economic issues. Before I go onto those, I would like to for one moment go back to the question of rebates if I may just to clarify a point that perhaps wasn't entirely clear in the earlier presentational material but which I think is important, and then I will get on to this material.

The point in my mind is this: that there is nothing in economic terms that tells us that as a general matter, where you have conditions or situations where there are fixed costs - and so there's a gap between marginal costs and average total costs - that it is efficient or desirable in equilibrium for all customers to have the same mark-up over marginal cost, and indeed as a general proposition, if there must be a mark-up over marginal costs, then we would expect that the efficient approach to determining that mark-up would differentiate amongst customers, and in particular if the mark-up over marginal costs is going to have some effect, even if it's a very slight effect on long-term demand and on the incentives that customers have to invest in long-term demand, then at the margin of consumption, efficiency will require that the mark-up be minimised.

What that will mean under any scheme of self-selecting consumption, ie if you have prices that are set and then customers, as it were, select their volumes and according to those volumes are then charged, under any such scheme, the efficient structure of prices will involve mark-ups over marginal costs which are lowest at the highest levels of demand. So even if we just started from elementary economics about the properties that we would observe in an efficient equilibrium with fixed costs and mark-ups, we would derive from that the result that at the marginal consumption, the marginal prices ought to be lower than the average prices.

So in that sense it seems to me that when you look at an activity such as this one where there are significant fixed costs to immobilising assets in a port then your expectation ought to be that you would have some type of volume discount, and that indeed what you would want to explain is circumstances in which there were no such volume discounts, but the mere fact that there is such a volume discount ought not to be surprising. If it were then claimed that that volume discount constitutes an entry barrier, I think that any such claim would encounter a number of analytical difficulties, and that the onus of making out such a claim ought to very much be on its proponents.

Having said that, let me turn to the wider issue of exclusive licensing. As I said the other day, it seemed to me that a scheme of exclusive licensing may have both some benefits, but also not insignificant costs, and those not insignificant costs are likely to be greatest where the authority carrying out the exclusive licensing process faces interests which may not entirely align with the long-term interests of the users on behalf of whom it is contracting for the service. In those cases, what is happening by means of the exclusive licensing is that the market choice that is exercised by users voting through their dollars, as it were, is replaced by a decision that is made by a central planner, in this case the authority, and the question would be how that central planner can adequately measure and then the incentives it has to fully comply with the long-run interests of those users whom the port would normally service.

When I set out the analysis the other day, I ran through the verbal presentation, as it were, a simplified model, and I think it might be useful to try to illustrate the model graphically just so as to clarify exactly what is involved in the analysis. What I'd like you to do is to conceive of a simple graph which is highlighted here, where on the X axis is an indicator of the extent of entry barriers, going from entry barriers which are extremely low to entry barriers which are so high as to in fact blockade entry. On the Y axis, there is simply an indicator of dollars of cost benefits and the different items that I'll be discussing.

So my first line on this space is simply the social gain from an efficiency enhancement and in the course of our presentation last week, we ran through the rather significant efficiency enhancements that have been achieved in the context of

harbour towage by means of but not solely the reform of work practices and industrial relations. It's clear that the social gain from such an efficiency enhancement can be drawn - with obviously some assumptions involved there - as being independent of the height of entry barriers.

Achieving that gain is the firm issue and what I've drawn on this line is the return to the firm securing the improvement. It's also clear that the higher are the entry barriers, the greater is the appropriability of returns to the innovating firm. Now, we know from many studies and indeed from elementary growth accounting that even monopolists do not secure 100 per cent of the social gain from productivity enhancements that they achieve. So the way I've drawn this curve highlights a fact that there is always a gap, at least at the margins between the private and social return on efficiency enhancement but that the share of the return accruing to the firm will be greatest when the firm is in a position where it's protected by substantial entry barriers. To secure the return, ie, to secure the social gain, the firm expends a range of costs and those costs again can be drawn in a simplified world as not depending on the extent of the entry barriers it faces. That really leads me to the situation before exclusive licensing, broadly that you have entry barriers that whilst not being zero, are not prohibited and allow the firm to secure an improvement from the enhancement that exceeds its costs, even though it falls well short of the social gain from the efficiency improvement.

Now, clearly when you do have some entry barriers, there will be some inefficiency associated with that, but for reasons that are I think fairly cogently set out in the Productivity Commission's report on Part XIB and Part XIC of the Trade Practices Act and Part IIIA of the Trade Practices Act, by and large, those inefficiencies associated with excessively high mark-ups are likely to be very small. Of course the fact is that the inefficiency associated with the mark-up in price over margin or cost, that inefficiency is only felt at the margin of demand and so it will give rise to a relatively small cost, whereas efficiency enhancements are infra-marginal and affect the totality of demand. So you would naturally expect that the gains from shifting the entire supply curve will be very large relative to the costs that might be imposed by market power at the margin of demand. So even if in addition to the allocative efficiency you had a bit of a productive inefficiency from the market power, say, by inefficient substitution as between harbour towage and building bigger boats or whatever else there might be, you would expect those costs to be extremely slight in the great scheme of things.

What happens with exclusive licensing is, as I said in my presentation the other day, the impact of exclusive licensing will be to concentrate demand and to make entry more attractive in the immediate, and so you can conceive of exclusive licensing as shifting the position on the X axis sharply to the left. What will the effect of that be? The effect of that will be to expropriate a substantial share of the sunk costs that were expended so as to secure the efficiency enhancement. So what will you see in the immediate? It's conceivable that in the immediate, prices will drop very sharply because all of the share of the efficiency improvement that accrued to the firm that secured the improvement will in fact be socialised or at least potentially socialised. So it's at least conceivable that in the short term, you will get

very substantial price reductions and indeed, I would say that if you don't get spectacularly large price reductions, you would have to assume that the licensing authority is capturing for itself most of the sunk costs that it's expropriated and merely passing on a relatively small share, just enough to make the process palatable to end users. So if the sunk costs involved are large, if the expropriation is substantial, then it may well be that the bulk of that will flow to the licensing authority rather than to consumers and so in the short term you won't even get a reduction in the inefficiency associated with the above cost pricing to consumers, all you will get is the effect of expropriating the sunk costs and hence the deterrent to continued investment in securing efficiency gains in future periods.

As I said the other day, it's clear that there are circumstances in which the costs of exclusive licensing in their manifold forms are worth bearing, and the case that economists have always concentrated on is the case where the alternative is between entrenched and protected monopoly on the one hand and other forms of regulation of monopoly, such as classic greater return regulation on the other. Where those other forms of regulations such as classic greater return regulation are themselves extremely inefficient, it may be that the difficulties, costs, including the transaction costs of exclusive licensing, can be justified from an economic point of view. Here, however, I think it remains pretty common ground that though the market is not textbook-perfect competition or textbook contestability, there are disciplines associated with potential entry and so in those cases, you really have to wonder how great these benefits might be.

If I might conclude on that note, I was very struck this morning on the plane down and reading John MacMillan's - who as you may know, is a professor at Stanford in economics and one of the pioneers of modern theory of (indistinct) design and he's just issued a rather nice little book on the economics of market design called *Reinventing The Bizarre*. In this book on *Reinventing the Bizarre*, there's a lovely little section where he talks about sorcerer's apprentices who, knowing a tiny bit about the theory of market design, rush off and think that they can do much better than the imperfect markets they face. He quotes H.L. Mencken in this respect and he says H.L. Mencken said for every problem, there is a solution, and MacMillan is referring to problems, the fact that markets never look perfectly competitive, that there's always a bit of entry barriers and so on. He says for every problem there is a solution that is simple, direct and wrong. It struck me, reading this, that perhaps the attraction to exclusive licensing would fully bear out Mencken's quote.

MR RYAN: Thank you. Turning to the broader economic costs as well, I'd already mentioned the ACIL work that we had done. I don't intend going through chapter and verse on this slide, but for the record, we also approached Charles River and Associates and asked them to develop a paper for submission to you that addressed towage licensing establishment costs, port authority costs, towage providers, actual and potential costs and towage users' costs. They have done that, and if we haven't submitted the full text of that paper to you yet, we will do in the next day or two. Again, that's a piece of work - we've only used Charles River in relation to this inquiry, not in relation to anything else. Unlike ACIL, they don't quantify the various elements but they go on to discuss them at some length. The interesting

thing that comes out of it here is in towage licence establishment costs, policy development, stakeholder consultation and legislative change; again, the costs involved in policy development and legislative change, the amount of legislation that would need to take place in the disparate state governments that we enjoy in this federal system will not be without significant cost.

In your position paper you did touch on the question of national salvage capability in ocean waters and commented that they were well beyond the scope of this inquiry and how salvage should be paid for; it may warrant further examination. Further examination it indeed warrants because it is a very important issue that is absolutely inextricably interlinked in Australia right now, into the way harbour towage operates in this country. Interestingly again and perversely again, given our history, the ACCC - and we share similar concerns in this area and they highlighted those to you in the report they provided - that there may be no incentive for port authorities to allow for salvage tugs if they believe another port authority will do it for them.

That leads to a free-rider type problem and we've heard in very cogent and understandable terms from the Port of Bunbury today that their first and primary consideration under their remit is vessels in the Port of Bunbury, not outside the Port of Bunbury. I don't think referring to a barge in distress just outside the Port of Bunbury satisfies our definition of a salvage where there's major potential environmental damage and risk to life and limb. So it is again perverse to find ourselves on the same page as the ACCC on this issue.

It's no surprise we're a large island. We have 36,000 kilometres of coastline. If you want to count the little circular bits around all the islands, which would be a nonsense, you can get 50,000 or 55,000 kilometres. But if you just want to go for a trip around the coast there's 36,000 kilometres of coastline that require protection. The Great Barrier Reef won't have missed your attention as well as a number of other reefs and a rock off Lord Howe Island right now. We have international obligations and there are industry expectations. We have specialised strategically positioned tugs which provide the backbone of the salvage capability.

It has been said to you in a report that we are looking to entrench a monopoly in this industry. Well, I think in relation to the provision of tugs the HMS Nottingham has just proved that there is not a monopoly in the provision of salvage tugs in Australia because the primary salvage tug that is engaged for that vessel is in fact coming from Swiers out of - it's an anchor-handling tug coming from New Zealand. We are providing the secondary tug which is the Austral Salvor out of Brisbane. The Ministry of Defence went through a significant international tender for that process. I have to say if that was a commercial vessel I don't know that there would have been that amount of time.

Sometimes you do not need the tugs today or tomorrow because there's a lot of work that can be done before the tugs are involved. Other times you need to get the tugs there very, very swiftly indeed or something is going to hit the coast in an ugly way, or remain sitting up on the Great Barrier Reef or some other rock. Our salvage

requirements are being currently met by privately funded salvage operations. We have salvage capability. Again, it is not true, as has been said to you, to say that we are a monopoly provider of salvage people expertise. There are plenty of other people in that business right around the world who fly all around the world providing that sort of service, a bit like the Red Adair of the petroleum industry.

The Japanese have well developed salvage folks. We have salvage folks in the UK. The MOD has flown people out to the Nottingham. You put these people on a plane and you move them around. So there is plenty of competition in that, although we are very proud of the business we have here and of the business we have in the UK and we do take people backwards and forwards to maintain their training. That capability is efficiently and seamlessly integrated into our existing harbour towage fleet. It was said to you on Thursday and in other submissions that we have built in, in our new building process, a huge new cost of salvage capability.

We provided a report to you in June talking about salvage and we nominated the 14 front-line tugs that provide the salvage capability around the coast. Only one of those is a new build. The majority of the front-line salvage tugs are eight and 10 years old. There are then a whole range of our harbour tugs around the coast and you will find the new tugs, the six new ones that Adsteam built and the new one that Howard Smith built, which is in fact in this port called the Gurrong, all listed as support tugs, not front-line salvage tugs. Those six or seven tugs, however you want to count them, simply do not have front-line salvage capability. So this capacity has been integrated into the existing harbour towage fleet over a very long period of time and is not new, as was said in one submission to you, in the last one or two years.

You were also told on Friday that there was a back-up tug in every port. That is prurient nonsense. There is not a back-up tug in every port and I was stunned to hear that from a person who used to sit on the joint venture companies. There are back-up tugs in some ports. Typically there will be one back-up tug per state. In the larger states there might be two. But we operate in 36 ports out of the 52 ports. We do not have 36 back-up tugs. That would be economic suicide and it would be wrong for you to proceed on the basis that that was a correct statement. Indeed we have great difficulty at some times removing the back-up tug, let alone salvage tugs, from ports.

The question of a recent conference on salvage capability came up on Thursday and you asked for details of that conference. It was a conference and workshop on safe havens and salvage conducted by the Australian Maritime Safety Authority and the Association of Australian Ports and Maritime Authorities. It was conducted from 19 to 20 February 2002. It was facilitated by Thompson Clarke who produced a detailed report of the matters that were discussed. It was not just in relation to salvage, it was in relation to safe havens: where do you take a vessel in distress? A number of people who had presented to you prior to me were in attendance and there is an attendees' list here as well. You, I think, will find it interesting to read an answer at that conference that confirmed that on at least two recent occasions port authorities refused to allow tugs to leave the port to attend a salvage incident.

So there is a significant problem here, first of all with port authorities looking inwardly, saying they will look after their port, and I understand that entirely, but saying somebody else can deal with the salvage problem. We have heard over and over in the written submissions and in the oral or is it verbal submissions to you that salvage needs to be dealt with but somebody else needs to pay for it. Now, I'd like to know who's going to pay for it. At the moment we carry the capital cost of it. We carry the training cost of it.

Again in this conference and workshop there was raised in one of the workshops the significant amount of grey hair in the industry in Australia and how are we going to deal with that. The person who wrote that report left our employment a number of years ago, has no idea what work has been done to bring younger people into the business, to transfer people out from the UK and improve our training. So we spend a lot of money on training up folks in the industry and there is no charge to the customers for that. You can see from the information I've provided to you earlier on the port by port, year by year, charges in Brisbane, Jackson, Botany, Melbourne and so forth those charges haven't changed for 10 years up till the late 90s. The tugs that offer front-line salvage capability were put in place in the late 80s and early 90s. So the industry is not paying for them through recent price increases.

We have what I'd describe as an efficient "user pays" model. I'm sorry the port authorities and Shipping Australia said, "Get someone else to pay for it." But if it's one of Shipping Australia's members whose vessel is in distress, and it invariably is because they cover such a wide number of participants, that company, that vessel owner, will want salvage capability to be there right now and they will pay whatever it takes. We don't have the ability to charge whatever we want to charge because there is a well-documented worldwide precedent with Lloyds' open forms and Bimco tow-hire contracts and a whole range of other matters that govern how you are rewarded on salvages. But if your ship is in trouble I can assure you no matter what society you're a member of, you will want a salvor there and you will want towage capacity there quickly.

So it is a user-pay system. There is no taxpayer or third party contributions to maintaining our national salvage capability. Is there an alternative model? Well, there is. In the United Kingdom they have recently moved to a dedicated-emergency towing vessel model. They used to have that model in place for six months of the year. It's going to be in place for 12 months of the year hereafterwards. The Brits have just, late last year, awarded an eight-year contract - unfortunately not to us - for year-around coverage for a 1700-kilometre coastline, I remind you that we're talking 35,000 kilometres, for four dedicated emergency towing vessels and that contract is for 75 million pounds or \$A205 million, depending on what exchange rate you want. They are not my numbers, they are numbers off Lloydslist.com in the UK as announced by the relevant authorities.

That is for four dedicated-emergency towing vessels. That is approximately \$US40,000 a day or \$A75,000 a day. But they just bob up and down at the choke points around the coast in the UK. I don't think the Australian government wants to

start writing cheques for \$205 million to build redundant capacity into the Australian fleets. That is an enormous impost. I wouldn't want to imply that the number of tugs that would be required would be 35,000 kilometres divided by 1700 kilometres multiplied by four; that would be erroneous. People could easily work out the choke points in Australia.

We have, by where we've positioned tugs - Townsville, Gladstone, Brisbane, Sydney, Botany, Eden, Melbourne, Adelaide, Whyalla, Fremantle and Papua-New Guinea and we're in the process of sending an extra vessel across to Fiji - we've figured out where we need to have vessels. We have 14. Could it be done with less? Quite possibly so, but it is a lot more than four. So if that salvage capability is not to be provided by us, then I think everybody else is looking at government and that will be an exciting conversation with the treasurer, because I don't think the treasurer will want to write that cheque and I don't think he should.

What are our conclusions in relation to exclusive licensing? It may reduce a perceived price margin but at what cost? I think there's a whole range of broader social costs that could come into play here and the way the industry has grasped your cautionary comment about exclusive and non-exclusive licensing, not one shoe fits all and so forth, and turned that into a comment that you have recommended exclusive licensing suggests to me there's a real danger that people will go galloping down that squirrel hole and without doing a proper cost benefit analysis come to the conclusion, "Let's have an exclusive licence because it is the flavour of the month." Once you kick an incumbent out of a port and grant an exclusive licence, whether it be for three, five or seven years, you live with the consequences of it and those consequences aren't, on our submission, without great cost potentially to everybody involved in the chain.

It is perverse that we are arguing against exclusive licences when we're not allowed to enter into exclusive licences with our customers. We would love to be able to contract exclusively with our customers but we're not because of the Trade Practices Act. Yet a port authority or an empowered government instrumentality for some perverse reason would be allowed to enter into an exclusive licence. People are taking the relationship away from the service provider and the customer. The customer includes, but it's not limited to, the port authority. The most important customers are Llew's members and all the other members of the various different shipping bodies out there, not the port authority, although we take great heed of the port authority requirements, state government requirements, and all the way back up the transport chain, as you heard from the Sea Freight Council today. They're concerned about the cargo interests.

It is interesting that people are focusing on this tiny little bit of the industry when the industry is a transport logistics business that starts, if you like, at the farm gate or the mine head and goes all the way through until the point of disembarkation of the ultimate freight. There are many, many people in that chain, many, many businesses in that chain. There are many natural monopolies in that chain. Port authorities themselves are natural monopolies in their regional market. But they are not clamouring for any form of exclusive licensing, nor is there a clamouring for a

provision of detailed profit and loss and costs of all of the various people in that chain. I don't understand the clarion call for exclusive licences, particularly given the numbers that I showed you at the beginning of the presentation.

Are exclusive licences desirable and where does the onus lie? I have said already that your assessment to date at best has said that it's cautionary. We believe that open market forces and non-exclusive licences are effective and shouldn't be subject to inappropriate comparisons, as is demonstrated by what Henry said to you earlier. There's a temptation to compare franchising to a regulated monopoly and say franchising might be better than a regulated monopoly. I would certainly agree that there are cases where that's the case, but in every case an open market and contestable market is much more desirable than any form of regulatory intervention, and indeed you have heard, as I mentioned earlier, Fremantle Port Authority, Brisbane Port Authority and goodness knows how many other port authorities out there are thinking about entering into the industry.

I don't have a problem with people thinking about or indeed even entering the industry. I don't particularly like it, but that's called competition, and we will either compete and operate well in the competitive environment or we will lose. That's the way it ought to be. The bunching effect that I referred to earlier of the PSA regulation I think makes a compelling case for less, not more, regulation. Had we not been subject to that act, then we would have been able, as has everybody else in the chain, to move our prices up and down at will, and indeed we have voluntarily on a number of occasions moved our prices down in ports as volumes have gone up. It's notable that in the recent past there have been some significant increases announced in relation to the dollar rate per box movement to and from Australia for various carriers. There have been significant increases announced in terms of port charges that are being passed on through container terminal handling charges to shippers.

There is no call for those prices to be regulated. There is no call for those prices to be looked at on a transparent basis, nor do I think there ought to be, because people are reacting to market forces and are able to move their prices up and down. We have had the problem that because of the PSA regulation, if we move prices down, we were then stuck. We couldn't go back up. So we didn't have stickiness on the way up, we had stickiness on the way up and on the way down because having reduced our prices it was a "use it or lose it" approach in the Act, so we found ourselves in a terrible place in relation to our pricing policies. So we would say less regulation, not more regulation.

Price declaration and monitoring and overview have occupied a lot of the commission's time as well. Certainly there are significant costs involved in monitoring, and the comment was made that price monitoring may have a role in a transition to a more competitive environment. I'm not sure to whom the benefit and burden of that role may fall. I can see an enormous burden falling upon us. I can see

a benefit falling on potential competitors who get detailed information about our business, but I can't see how that translates to a benefit for the cargo interests or the shippers.

PSA declaration and PSA monitoring involve high regulatory costs. An inquiry by the Productivity Commission of those who have been subject to PSA monitoring which involves not just prices, but costs and profits, will find that is an unbelievably intrusive piece of regulation. We would support the view that any regulation ought to be light-handed. The practice of PSA monitoring is far from light-handed. I commented on Thursday and make the point again that we are an Australian publicly listed company. We have a significant number of shareholders in Australia. The sort of heavy-handed monitoring of prices, costs and profits goes well beyond what the Australian accounting standards regulators require. It exceeds the level of disclosure required under the stock exchange.

Some folks have said to you, "Gee, look at the stevedores." They are subject right now to price monitoring, and we're talking about price monitoring in the same order of magnitude. The stevedores had the benefit of a \$260 million government funded retrenchment program. We paid for all our retrenchments ourselves. The reason the price monitoring was put in place for the stevedores was to make sure that the government funds that allowed the retrenchments to take place were not trapped and go straight to the bottom line. Indeed, there is a levy that is imposed on the industry, not the stevedores, to enable the repayment of that \$260 million fund. So there is a very particular reason why the government would have an interest in monitoring prices in that industry. If the government would like to give us \$260 million, I would be happy to submit to price monitoring. In fact I will submit to it for less than half of that. So to draw an analogy with that industry and say, "Let's step out from there," is an unfair analogy to draw.

What is the problem or what is hoped to be gained from price monitoring? There's no gain to us. It is a potential deterrent to a new entrant. It is also a potential benefit to a new entrant. If you are operating or thinking of operating in an Australian towage market, one of the prices that you are going to have to pay for entering into the industry is to have your prices, costs and profits monitored on the way through, because surely any monitoring would apply to all, not some. I could imagine that being a significant deterrent. I certainly wouldn't contemplate entering into any market in the world where my prices, costs and profits were immediately or within a relatively short period of time disclosed to the very people who I was seeking to compete with. It's again a bit like putting a gun to your head and shooting yourself. So I can see it is a real problem for a new entrant to be asked to voluntarily join such a regime.

Of course, it does give a potential new entrant a lot of information that might encourage them. If you know the volume of vessels that have historically gone

through a port and if you can take an educated guess at the number of tug jobs that would be used on those number of vessels, and experienced people can do that, and you know the price, costs and profits of the person you want to compete with, that would hardly seem to create a level playing field for the person that is going to suffer the burden of competition. I can think of no other industry in Australia who is asked to be in the position where it discloses prices, costs and profits to the benefit of a potential competitor. I can't think of one.

We don't think any monitoring indeed is justified. If there needs to be any monitoring, then perhaps a less intrusive arrangement for price transparency - although our prices and tariffs are a matter of record, but if they needed to be gathered up and provided to the BTRE or some equivalent, we have happily participated in their surveys in relation to port costs, and would be prepared to agree to that, although again we can't see the economic benefit of that to anybody.

We do not believe, in conclusion, that formal price declaration should be renewed. We don't believe intrusive price monitoring should be imposed, because we can't see a clear objective and we can see significant costs involved in anything other than light-handed monitoring. We fully support the preliminary recommendation to harmonise state-based regulation, but we are questioning in our mind how it will happen, what the mechanisms are, the objectives and the time lines. We think there needs to be a champion for that process. There is in existence right now because of this inquiry a certain momentum. I don't know how the industry can capitalise on that momentum, but I'm glad that it has arisen. It would be a very sad thing if that preliminary recommendation turned into a final formal recommendation and then gathered dust. I think that would be a great disappointment for all the participants in this inquiry and most assuredly it would be for us.

Regulation of towage in Australia, in summary, needs to be put in perspective; the size of the problem versus the cost of regulation. My assertion is simple: there is not a problem. What there is is a bunching of prices because of a previous regulatory regime that has not allowed us to move our prices the same way as any normal citizen in the country who is in business can move their prices either up or down. We think the costs of regulation on closer examination won't stack up for further regulation. The net economic cost both in real dollars and in welfare dollars to the consumers in Australia we think massively outweigh the sort of regulation that is being contemplated.

We are struggling to understand what is so unique about the very small part of the chain we're in. I don't know how the industry came under the Prices Surveillance Act in the early 90s. It was very early. It happened I think just before I got involved in the industry. I don't know with which swipe of the pen that happened, but since that time there has been a spotlight on the industry that has cost us literally millions of dollars in costs which have needed to be recovered because there has been a whole

range of inquiries, let alone the whole engagement process with the ACCC under the notification process. They are all costs that need to be recovered. They are costs which, if they weren't in our business, would have meant that we wouldn't have had to take as significant an increase in March as we did.

We think the open market environment is working very effectively. It is interesting to see that everybody is consigning Australian Maritime Services to history already. I can tell you they are not history as far as we are concerned. They are out there taking business off us every day. They are talking about expanding. If there had been an exclusive licensing regime put in place in the Port of Melbourne three years ago, AMS would not have been there. It's as simple as that because they weren't at that point in time ready to enter into the market. Exclusive licences work for the people who are ready and can react at that point in time. Nobody would have thought that James Chen would create AMS and look to get into the towage industry in Melbourne, Sydney and Brisbane three years ago, let alone more recently.

We think there's a whole bunch of really good building blocks for removing and preventing undesirable regulatory intervention in the Productivity Commission's paper, and we look forward to providing the further written reports that we have promised you - the Charles River report if it's not already available, and a further written report from ourselves. We think we will have that done in the next several days, and with that I'm happy to answer any questions you may have.

MR HINTON: Thank you very much for that very substantive and detailed presentation. You have certainly addressed most if not all the issues that arose in our issues paper and then were input into our position paper. What I would like to do is give you a chance to get your breath back after one hour 40 minutes. I'm going to take a two-minute break and people can get a cup of coffee if they so wish, they can stay if they would wish - whatever you wish - but before I raise some issues I would like to raise with you, I would like a two-minute brief recess.

MR HINTON: Thank you and welcome back. Let's recommence. That was a very extensive presentation and one that certainly addressed a lot of the issues that are fundamental to the inquiry. I don't propose to go through in detail each section of it. In many ways it's input across each section into our further processes, reaching a final report to government by 20 August, and I don't think the system itself of a public hearing lends itself for me to take each page and pursue you on it. I don't think it warrants that.

I mention that because the questions I do have could give the impression that that's all I'm interested in. On the contrary, I'm interested in the lot that you've presented. It covers a lot of the issues and therefore is germane to my inquiry. In asking some questions on aspects of it, I would not wish that to be read as that's all I'm really looking at. What I'm doing is picking out some aspects that I identified on the way through that I would want to use this occasion to explore with you, as opposed to, "Let's look at this whole thing afresh again and go through each one," to run through all the arguments either way, including what we say in our position paper.

So let me commence with a question about an important part of your presentation associated with your concept, I think it was charges for tug usage per vessel across time and across ports, showing significant reductions. I think that's a very valuable and valid concept, and one that illustrates very clearly significant changes in the industry. There's no question that tug usage has changed dramatically. But I certainly have a question in my mind as to how appropriate that concept is in addressing a very different question, which is not the cost of tug usage but what that means for judgments about appropriate pricing. In presenting those declines across time in many ports is a very powerful illustration that the industry has changed, but you then moved on to say, "But this also shows that we have not been" - I don't think you used the word - "excessively pricing", but that concept.

I've yet to be persuaded that the concept is the valid one for judgments about whether or not the pricing of tug usage has been appropriate or that is not excessive. I would value your reaction to that issue or that aspect of that part of your presentation.

MR RYAN: Surely. If you were bringing a vessel into one of these currently declared ports back in 1994 - and I'll pick an example because it may make life easier. Indeed since we're in Melbourne, I'll pick an example in Melbourne. If it was a vessel in the 20 to 30 thousand GRT range, in 1990 you were writing us a cheque for \$10,478. In 2001, before the price increase that we put in on a per-tug basis, you were writing us a cheque for \$6332. How did that happen? That happened because either from a technological point of view your vessel may be different today than it was in 1990. It might have bow thrusters, stern thrusters, variable pitch propellers or any other variety of self-assistance, and therefore it needs at least one, if not two, less

tugs than it used to do. You as the customer have made a choice to give yourself more manoeuvrability.

We as a service supplier have to maintain in the port the number of tugs required to move the largest user of tugs at any point in time. So you as the customer have chosen to reduce our revenues, or the guidelines have changed so that there is a lower number of tugs used on your vessel and your vessel is identical. So that has taken revenue off us but it has not allowed us to take capital out of the port, because there are very, very few cases where we have been able to withdraw capital. What we've got is, as you pointed out in part of your report, some tugs that are very idle, which we would prefer to get out of the port.

We're a derived-demand business. It does us no good at all to put an ad in the paper saying, "Would more vessels please come to Port Botany or Port Melbourne." If we were abusing our market position, we would have through that period been compensating for the fact that you are putting a different vessel into that range that can look after itself without as many tugs or the guidelines have changed by whacking price up to keep ourselves in the same place, and we haven't done that. If we are a natural monopoly with significant market power, you would protect your revenue base during that period if you could, I assume, economically. We haven't done it because that's not us.

MR HINTON: I'm in no way questioning the use of that measure as an indicator of how industry changes have impacted on your revenue stream. That's not challenged at all. It's to do with this question of the counterfactual: what would prices have been otherwise if the market competition was different?

MR RYAN: The but for - again, the but for analysis is in every one of these ports we have held the price per tug constant or reduced it during the period that we're talking about. Let me see if I can go to the relevant page. In Brisbane, rather than looking at the invoice we give the vessel, the last increase that we had prior to March 2002 was in 1987. That's 13 years without an increase. In Jackson we had an increase in 1998 which was a substantial increase. That's a port that with vessel calls and tug jobs that has been in significant decline since Botany was created. In Botany we had not had a price rise since 1990, 12 years; Melbourne, an increase in 1999 and many years prior to that before there was another increase; and, in Adelaide, 1992. So you've got three cases where the price per tug job had not changed in over a decade.

MR HINTON: There are lots of indicators of price performance, efficiency, and crucially also, some would say, the starting point is different.

MR RYAN: If we're looking at those earlier dates, if we were extracting very significant monopoly rents back in those days which has allowed us to go down the

revenue curve and still extract significant monopoly rents today, there would have been competition back in those days, because they must have been very, very significant monopoly rents. We have examined our mind about other ways of pricing, and if you look at the audience you'll see them have a heart attack in a second. In container ports we'd be quite happy to charge per box a fixed rate, because boxes going out of container ports are on a growth trend of 4 to 6 per cent per annum around the world. That would give everybody absolute certainty in pricing, but the industry doesn't want it, so that's not where we'll go.

MR HINTON: I didn't see anyone fall off their chair, but - - -

MR RYAN: You will.

MR HINTON: Llew just did, yes, and I understand that.

DR ERGAS: Commissioner, why would it be the case from an economic point of view that another measure would be a better measure of market power? I mean, if what you were looking at was an economic model, wouldn't you think that the charges would be largely driven by and reflective of the factors that caused the relevant costs, and wouldn't those factors really have to do with the number of movements, as it were, and the scale of the maximum movements, in the sense that if you had to have the capacity in place to handle very large vessels, that peak demand would determine the capacity that you would have to have and then costs would recover that through the number essentially of usages of the relevant assets?

MR HINTON: I'm glad you mentioned that, because I'd like to move on to finding 6.1. I think it's a widely-held view that unused capacity exists in every port, there exists some scope for further economies of scale if demand increases by the point that Dr Ergas just mentioned: you need to have capacity to meet your peak demand by tug job and that has to be funded somehow. You'll have to have the capacity, and therefore you'll get a variety of charging across ports per tug job. So there are a lot of difficulties with indicators in this industry as to efficient pricing. The ACCC has had significant difficulties in coming to grips with assessing applications under the declaration process, especially within the timetable that they're obliged to follow.

So I would really like your views also on whether or not you can sign up to a 6.1 finding that, given the nature of the industry, unused economies of scale, it's hard to see how otherwise most, if not all, Australian ports, can sustain only one service provider in the harbour towage sector. Would you find that a reasonable conclusion from your industry experience?

MR RYAN: On the first part of the question, "Is there excess capacity?", to the extent that the customers require a service 24 hours a day seven days a week and that

we have to have stationed in a port the number of tugs that can handle the largest vessel that requires movement in a port, that drives excess capacity. We have a large capital cost in a port at the margin sitting up and down, bobbing up and down, not doing much at all. If the customers chose to change their requirement, for instance, to take a ludicrous proposition, and say that they didn't require a service between the hours of say 10 pm at night and 6 am in the morning, that would immediately change the cost dynamics in that port.

If the user of the marginal tug - because often it is only a user that drives the marginal tug - said, "I need a fourth tug when I come into Gore Bay in Sydney" or "The cape-size vessels in Port Kembla need a fourth tug coming into various terminals. I'm happy to wait until you bring a tug down from Botany or up from Botany," that would allow us to remove one tug from Jackson and one tug from Kembla. That's two tugs out of the system. That would drive a significant reduction in cost. But they don't and they haven't, despite all the work that we have done and the port authorities in both places have done and the mapping that's been done. So I'm happy to sign up for that.

I certainly don't accept the proposition that there is only room for one operator in Australia, and I'll point straight at the heads here right now. That operator was able to come into this port, establish a presence, establish a market share, obtain some concessions in the sort of equipment that they've got relative to us, and he's talking about moving to enter into Sydney and Brisbane. That operator presumably is a rational person not tearing up \$100 notes who must, presumably, have the view that they can develop a contestable presence, and I support their right to try and do that. It does make sure that we keep our eye on the ball right around the coast, as does the countervailing power of the port authorities who are talking about getting into the business. So I don't accept that there's not room for two operators.

MR HINTON: You used "in Australia". I don't think anyone was suggesting that there was an Australia-wide natural monopoly, but that a natural monopoly probably exists in most, if not all, Australian ports, the distinction being that there may be some economies to operate across more than one port but it doesn't seem to be such that you would operate Australia-wide only, that the advantages there would see that there was a natural monopoly Australia-wide. You jumped between Australia and Melbourne. There are several service providers in Australia.

MR RYAN: Indeed, but, for instance, there was an exclusive licence granted in the Port of Bunbury. If that exclusive licence was turned into a non-exclusive licence overnight, I am sure that we would look to compete in the Port of Bunbury. It is said to be a port by others that is too small to allow for competition. We don't share that view. It's a 300 ship visit approximately port a year. We would compete in that market. We have been denied that ability.

MR HINTON: That goes directly to the question I asked, David, about finding 6.1. You in fact are challenging the view that most, if not all, ports can sustain only one service provider?

MR RYAN: Certainly from our perspective, there are a whole range of ports in Australia that we would be happy to compete in which we are currently unable to compete in and, given the chance, we would.

MR HINTON: So you're saying that the size of activity in quite a few ports means there's a capacity to sustain more than one service provider?

MR RYAN: I think so, yes, and that has historically been the case. There has been more than one service provider in a number of ports, who for their own reasons have chosen to exit the industry one way or the other.

MR HINTON: I'd like to explore that, because you've mentioned on a number of occasions this afternoon and elsewhere open competition, and you've referred to the AMS presence here in Melbourne recently and their foreshadowed at least plans to look north. You've also referred to implied possibilities of port authorities entering the harbour towage market. But the reality seems to be very different, in the sense that AMS is a recent arrival and prior to that the possibility of an entrant in competition with the incumbent is virtually non-existent. While the threat of entry in itself is a competitive pressure on misuse of market power, the examples of actual entry seem to be very thin on the ground. Is that an unfair characterisation of the industry?

MR RYAN: I certainly held my breath from a competitive point of view from about 1994 for four or five years with BHP and four then five then six Japanese shipping companies coming into Newcastle, with the general manager of BHP Transport, Len Hockeridge, saying that they were going to enter half a dozen other ports, and in those ports they had significant business that they could have directed themselves. That veil of competition sat over us for four or five years and, as I said to you on Thursday, part of the reason that BHP and the Japanese shipping companies entered the port of Newcastle was because of the demonstrably poor service levels that they were getting from our and Brambles' operations in the early part of the 90s and we then embarked on a process of reform.

There was no suggestion that BHP would enter the market at Newcastle, tickle us up a little bit and then leave. They were there to take us out of the game. So this was a fight for our future, and we had to significantly reform our behaviour, not just in Newcastle but right around the coast to deal with a very significant corporate imperilling piece of competition. Be under no doubt in relation to port authorities, they have not been backwards in coming forwards over the years to threaten to get into our business or as they see it, the possibility of them being in the same business.

Indeed they have also sponsored various other people in the port chain to look to get into the business, most notably in Western Australia where there was repeated work done in the Port of Fremantle by the port authority and the state Department of Transport to encourage other people into the port. You live with that every day. It's not a veiled threat of competition.

Here you have someone who can, since the Western Australian government created the legislation, have the ability to take away 100 per cent of your market saying they're thinking about it or encouraging someone else to come into the port. That is very real competition. That is why we voluntarily reduced prices in that port long before the non-exclusive and exclusive licence tender. We did the same thing in Kwinana because of the threat of competition. So for us we feel it every day.

MR HINTON: Do you think that the port authority could adequately compete with Adsteam, the experience, knowledge base, technical base, management history in this sector? It prima facie would seem difficult for an entity whose core business is not harbour towage could take you on effectively.

MR RYAN: Certainly port authorities in other parts of the world are in the business. I mean, that is the model in New Zealand which has oft been quoted to you. It is the case of if you want to get into a particular business, going and acquiring the expertise that you need to. The ease with which AMS was able to come in, acquire berth space, despite everything that has been said to you, charter appropriate tugs - they are quite good tugs that they have - access people, train them up and start an operation, for someone who had never been in the towage industry suggests an active port authority - an active one who is actively looking to drive the business rather than a landlord port authority - could quite credibly get into the business, but certainly a threat that, when made by port authorities who are at that end of the spectrum as opposed to the landlord end of the spectrum, we take incredibly seriously.

MR HINTON: Let's move on to rebates. Thank you for your comments. As you have noticed in a number of hearings, some of the sessions, a number of interested parties have noted the existence of rebates, the practice of Adsteam offering rebates, and some have taken it further to say that they do represent some sort of impediment or barrier to entry, and their argument usually is based upon the lines that it's consumer loyalty, that an existing user of harbour towage would be reluctant to go to the new entrant, the competing entrant, without some sort of expectation that they would get at least longer term as good as if not better deal than that that has been offered by Adsteam including rebates, the argument being of course if you are an efficient provider of service, you provide the pricing accordingly.

But there certainly is a perception out there that the rebate practice of Adsteam is a barrier to entry. That perception is in the minds of users rather than potential

entrants it seems. Do you have any reaction to that perception?

MR RYAN: Yes, I don't think that perception is in the mind of users. I'm not aware of a single one of our customers who we send the bill to, who we send the invoice to, complaining to you that we give them rebates. I'm aware that port authorities have commented about it, lobby groups have commented about it, other uninterested parties have commented about it, but I don't think you will have had a single complaint from one of our customers - and I don't apologise for trying to make our customers loyal to us. That is one of the basic reasons in doing what I'm supposed to do. That's my job. If someone wants to compete with us, they are welcome to compete with us.

None of our rebate agreements are exclusive. It would be illegal at law for them to be exclusive, and it is, as Henry touched on earlier, kind of weird to be sitting here in 2002 being criticised for putting in place a rebate range of agreements which dollar sum we have told you about relative to the total market of revenue. It's bizarre to be here in 2002 being criticised for it when in fact the industry asked us for it in the mid-90s and we responded to it, and no-one willingly goes away and gives away revenue if they don't think it's sensible to do it.

DR ERGAS: Isn't the point, commissioner, if I may - - -

MR HINTON: Please.

DR ERGAS: - - - that if you take account of the rebate and calculate the effective price which is the price net of the rebate, if the effective price is above avoidable cost, then an efficient entrant ought to be able to match it?

MR HINTON: That was the point I just made, yes.

DR ERGAS: Yes, if it's not above avoidable cost, then perhaps the entrant or potential entrant has the reasonable claim that the pricing is predatory, but no such claim to the best of my knowledge has been made.

MR HINTON: Let's not be misunderstood. I was not suggesting I had had complaints from the users of harbour towage that they don't like rebates. That wasn't quite what - - -

MR RYAN: And nor am I aware of potential competitors complaining about it either.

DR ERGAS: Indeed, the complaints seemed to be that prices were a bit too high rather than that prices were too low.

MR HINTON: That's the point: that while the feedback from industry, loosely defined, has been loud and clear, as you rightly flagged there has been significant widespread satisfaction regarding quality, but equally there has been not widespread, but certainly very clear feedback as to dissatisfaction as to price, as to the cost of harbour towage.

MR RYAN: If I might make a comment about why I think that is the case.

MR HINTON: Exactly.

MR RYAN: The reason I think there has been quite widespread comment about price, not service quality, is that because of the regulatory environment in which we lived. We were forced into a bunching situation which meant that we waited and waited and waited, and hoped that volumes of vessel calls or ship calls would increase, and they didn't. So we were faced with years of it being uneconomic to go for a 2 or a 2 and a half per cent increase because it cost us that much to get that increase. So we were put into a bunching place.

If we had been able to increase prices 1 or 2 per cent each year over a decade, we wouldn't be sitting here today. That is the effect of the price rise we put in in March, but prima facie, on the face of it, they were very big numbers, and it wasn't something we did just because we had the power to do it. We needed to get rate restoration, as the container shipping lines themselves are doing right now in restoring their own rates per TEU. There have been substantial increases in the recent past and that's fine. That's the way industry works. So we were forced into a bunching place, and everybody went bananas, and I understand that, but that wasn't of our making. That was the making of the regulatory environment which we had been consigned to.

MR HINTON: Do you think that another component of that reaction was also associated with perceptions about the timing of your application?

MR RYAN: I'm sure it is. I think with the benefit of twenty-twenty hindsight, we could have done a much better job earlier. There have been comments that we were arrogant in the way we went about it. We spent an enormous amount of time developing the papers that we put to the ACCC. It is well-known that there has been an absolute regulatory failure between us and the ACCC, and that has been the case for at least five years. So we put a lot of time and effort into it, and the timing and the process and a range of other things that were around and surrounding it created a lot of heat. Some of that is quite fairly pointed at us, some of it I think is not, but you learn in these processes.

MR HINTON: I have two more questions, if we're right for time.

MR RYAN: Sure.

MR HINTON: One is quite narrow. It was to pick up a comment from Dr Ergas' presentation about the process of exclusive licensing involving a port authority that could in fact see the benefits accrued to the port authority, and I was a little puzzled by that scenario as to how that might arise in circumstances where I have not heard any proposal around for actually a licensing process that involves a fee. It was more of a tender system to provide a service, but if you have a different explanation, I would welcome it.

DR ERGAS: I believe there are two aspects to that. First, as a purely factual matter, there may be fees that are levied and those fees may not be insignificant or insubstantial, and hence the port authorities may in fact secure direct wealth transfer, which again I would emphasise that, given the very significant investments that have been made in securing productivity improvements, would amount to direct wealth transfer from the party that made those investments to the port authority. So there are these quite significant fees that maybe are being levied and - I'm sorry?

MR HINTON: Fees for a licence to provide harbour towage? I know they have fee structures across port services but in terms of harbour towage I'm not aware - in our process people have not drawn my attention to the opportunity to charge a fee for harbour towage licence.

MR RYAN: There have been fees charged for the issue of towage licences. Indeed, the Port of Bunbury charged a fee, and I was just trying to find the place in our report where the weighting that was placed on the amount of the fee that was paid was, I think, 20 per cent of the weighting of the quality of the service, which seemed quite extraordinary to us at the time. If I could quickly find it I would point you back at it, and I will do after the meeting if needs be. There are a range of ways, by the way, that fees get charged. There is a licence fee in some of the ports that have issued licences.

There are also, in some cases, extremely high berth and wharf charges or rent for premises in some of the ports. There are two or three ports in Australia who have very, very substantial charges that we pay for operating out of their ports, completely out of all proportion to their equivalent ports, and I mean completely out of proportion.

MR HINTON: That's monopolistic pricing.

MR RYAN: Well, indeed. I mean, if you are paying 5, 6 or 7 hundred thousand for rented premises and berths in a port it's a disgrace. There are at least two ports where we do that, and I don't believe the industry knows or understands that because it's lost in the port's total overall numbers. One of those is a capital city port, one of those is a regional port.

DR ERGAS: In any event, the point I was making was that the port in fact is in a position to award a monopoly licence. It's a monopolist in the market for the supply of those licences. It's the sole and total supplier of that licence and it can charge directly and indirectly what are apparently quite significant amounts for that right and those amounts, which may be more or less transparent, are no more and no less than a direct wealth transfer to the port. So that's the direct aspect of it. In addition to that, of course to an extent what the port is involved in is providing a bundle of service to its end users, and most of those services are continued by the end users as essentially complements rather than substitutes from an economic point of view, so that they consumed a bundle of services that the port provides.

What matters from the point of view of the end users is by and large the price for the bundle rather than the price for the individual components, and so what ports are in a position to do, if they secure reductions in one component of the price for the bundle, is to in fact compensate for that by increasing prices for other components which may be less transparent or where there are fewer opportunities for direct transfers of the kind that they benefit from by expropriating some costs in this particular activity. So you would get both the direct effects and the indirect effects, and it was the sum of the two that I was referring to.

MR RYAN: Indeed, the comment I made about Bunbury is in the CRA report, which I think is the one that we're about to send you. But to give you an idea - this is written by CRA, not me:

For example, where the Port of Bunbury propose to issue an exclusive licence for towage services the following selection criteria was specified with respective weightings in brackets: amount of licence fee payable to port authority 10 per cent, prices charged for harbour towage services 50 per cent.

Now, I think if you ask the customers in the Port of Bunbury whether they think the prices they're charged should only have a 50 per cent weighting when the fee paid to the port authority was getting a 10 per cent weighting in the selection criteria, they might have a minor problem with that. That doesn't necessarily say that the licence fee was hundreds of thousands of dollars, but it gives you an idea of the mindset of the port authority, that that is a fact in the way they weighted those. There is another port authority where previously we had a licence and the conditions we operate under there now are different to the way they were in the past.

But there was a profit-sharing arrangement where if volume through the port increased over certain levels then we shared with them the profits that we earned from that process. I am quite sure the users of the port were not aware of that arrangement. Another example that just popped into my head and went out - I mean, there are a whole range of these sorts of things, commissioner, that are going on and which we wear as part of our basic costs, which I'm not sure that the industry understands.

MR HINTON: Thank you for that. My last question was in relation to the salvage issue, and I would like to go on record and thank you for that very detailed submission that we received the week before last, I think it was, that addressed explicitly the salvage issue. My question this afternoon is quite a narrow one in that you in your presentation talked about specialised and strategically positioned tugs, the backbone of the salvage capability. That sort of implies to me that you actually have decisions within your corporate operations, an allocation of tug capacity with regard to salvage tug capacity, where you allocate them around the Australian coastline, strategically positioned tugs, with the view to in fact meeting potential salvage demand. Is that over-reading that comment?

MR RYAN: No, that is true. We have of our own volition made decisions to station salvage capable tugs in Townsville, Gladstone, Brisbane, Sydney or Botany or both, Eden, Melbourne, Adelaide, Whyalla and Womberri and in Papua New Guinea - we have a tug recent sent there called The Brighton. So in a free market environment where no-one has specified where the vessels need to be, we've made a decision in relation to where we think they are best positioned. They do move around. Some of these tugs are in different places today than they were two or three or four years ago, with no change in the tariff by the way when they move around.

Are they perfectly situated? Well, generally they are able to get to where they need to fairly quickly. Last year when there was an event up on the Great Barrier Reef it just happened that we had another tug being relocated as part of our fleet redeployment who happened to be going past and was able to get there first and hold fast the vessel until a salvage capable tug got there. So sometimes you get lucky like that. But, yes, these decisions have been made by us with no input from AMSA or anyone else, although AMSA is well aware where these tugs are and I believe is happy with the fact that we've got them located where they are.

MR HINTON: This is designed to be located where they can meet potential demand for salvage, not anything to do with harbour towage?

MR RYAN: These are all harbour towage capable tugs that are salvage tugs as well. If you speak to the sort of master mariner type people who understand salvage, which I don't pretend to, they will talk about identifying what they call choke points - where are you most likely to have an event or where is the area that's strategically most at risk - and there's where you look to position vessels. So it's people with that sort of expertise over many, many years who have come up with this demographic.

MR HINTON: But the industry then argues that the funding of that capability is borne by those using harbour towage, not the users of the salvage towage and that that becomes an issue in terms of transparency. What's your response to that?

MR RYAN: I can't remember the last time a vessel just happened to be going past Australia, not heading to an Australian port, and had a prang. I think all of them were coming to or going from an Australian port. So it is a user-pay system. In the report we gave you, in appendix 2 on salvage, if you look at the age and demographic of the tugs that are the front-line salvage tugs, they are not the new

tugs. They were put into service quite some time ago and yet again, if you go back to the tariffs that we charge in various ports, there hasn't been any movement. So we've got the capability there. We haven't put new capability in and we haven't increased the tariffs until March. I'm not sure how industry is paying extra for those vessels. They've been in place for a long time. We could reduce our costs by the way and take those vessels out, replace them with harbour towage tugs and make a greater profit.

MR HINTON: Do you see any impediment to the sort of structure you've just described as currently applying, also applying under an exclusive licensing system?

MR RYAN: It will disappear because - - -

MR HINTON: Would there not be a potential benefit for having salvage capacity to obtain the salvage job being utilised for harbour towage work, just as it applies today with regard to your current operating environment?

MR RYAN: It will be a case of pick your victim from the port point of view. Who is going to decide which ports? I mean, if we end up with an non-exclusive licence regime then at the extreme, the analysis needs to be done on the assumption that every port has an exclusive licence to see what outcome you get at the extreme. So that means you could theoretically - it won't happen but you could theoretically have 52 different operators in 52 different ports around Australia, all of the ports going out tendering for harbour towage, not salvage, and at that extreme you lose the capability entirely. Which port authority is going to get elected to say, "You're the one who must now bear the burden of having two harbour tugs and one salvage capable tug," to the detriment of other ports around you where at the moment the capability is built into the fleet and is not being charged to the customer base.

MR HINTON: That was my point. Can't it be built into the fleet of an exclusive licence and not be charged to the harbour towage user? It would be funded by the salvage job that was obtained once every X years, just as it purports to occur now.

MR RYAN: So now in the extreme 52 ports, 52 operators, and you're asked to provide a salvage capable tug in Townsville and - - -

MR HINTON: No, I was really thinking that, provided asides, it would be useful to have salvage capacity in Gladstone because there might be a potential salvage job near Gladstone and they will be able to use it and charge for it accordingly.

MR RYAN: And your licence runs for five years and there's no prangs in that five years anywhere near Gladstone, and so you're unlucky.

MR HINTON: Yes.

MR RYAN: And the guy down in Melbourne has, you know, three in a 12-month period, which we recently had, and he's lucky. So you've got your exclusive licence. You've put in the plan and you've lost the lottery.

MR HINTON: But doesn't that occur now with your five strategically positioned tugs?

MR RYAN: 14 strategically located - yes, it does. I mean, you have events occurring all around the coast. On average there's a significant salvage somewhere around Australia about every five years, a large one. In between there are lots of regular small to medium-size events, and I don't want to devalue the importance of those small to medium-size events. If you've got a vessel that goes up on the bank out here at Port Melbourne, that can create a lot of damage. It was very lucky that it didn't.

MR HINTON: I was really exploring with you, David, to see if the incentive for Adsteam today to have that capacity - and, as you argue, that capacity being funded by salvage jobs - why that same incentive would not exist under a mixed environment of some exclusive licences, some open competition, some non-exclusive licences, that is, a mixed port environment around Australia. This incentive for a company, a service provider, to have salvage capacity, would seem to exist in that circumstance just as it seems to exist today for Adsteam.

MR RYAN: Indeed, in building six new tugs to put into the fleet in the last couple of years, not one of those has been given full salvage capability. So in a mixed environment that currently exists, we have actively decided that the rewards from salvage don't justify additional salvage capability being built into the fleet right now.

MR HINTON: So other things being equal, with the passage of time and technology and the fleet being totally replaced with new tugs eventually, none of them will have salvage capacity.

MR RYAN: I think that's drawing the bow too far. We depreciate our tugs over a 30-year life to a 30 per cent residual so these vessels have very long lives. Engineers tell me that in fact the new generation Z-peller type tugs will be around and operating quite happily in 40 years' time. I don't know; I'm sort of long retired, having fun with my kids at that point in time.

MR HINTON: Global warming, too.

MR RYAN: Yes, global warming - but we made an active choice in this last round that there was no need for extra costs to be built into these tugs. That's not to say in the future replacement strategy that that will change, although we ask ourselves questions about whether we will continue to buy our own tugs or whether we will charter them, because we own plenty of tugs, and there is no shortage despite what you have heard, no shortage of tugs available for charter on the world second-hand market and, no, they are not all rust buckets. People say with a tug, "It's 10 to 15 years old." At 10 years old as a tug, you are barely out of nappies. There is no shortage of tugs out there in the five to 10-year age bracket that we could charter if

we chose to go down that route, and that's just a cost of capital question.

MR HINTON: Is there anything you want to particularly emphasise to round off this particular hearing that I might have overlooked or neglected?

MR RYAN: No, I appreciate the fact that we have had the access to the commission that we have had to provide all of the information and the time that you have taken to ask and think of the questions. I suppose my concern is that I think there's some very good work coming out of all this: how will the cards fall at the end of the day? I do worry that some goodwill momentum that has been created may then just fall away. I think from a business point of view, the industry folks and we can get on with some stuff. I hope from a regulatory point of view, particularly the harmonisation thing, you can elect a champion, because there's some work needs to be done there.

MR HINTON: It's one of our challenges: the different levels of government having an involvement in different aspects of the sector. Thank you again for your participation and your contribution. That doesn't quite conclude our hearings. At this stage, as foreshadowed previously, earlier this morning, I now provide an opportunity for anyone who is not on the speakers' list to come forward if you so wish. If you would like to comment on contributions from others or even make a fresh comment, any participant is welcome to do so, except if you do wish to make a comment, I would invite you to come to a microphone so that it can be picked up in the transcript. But it's now open to any particular attendee. Mr Cole? I would for the purpose of the transcript also invite you to once again identify yourself.

MR COLE: Certainly. I think it's appropriate that I should be sitting next to Mr Ryan when I have to make this comment. Firstly, commissioner, my question is, is the transcript going to be made available in written form?

MR HINTON: Yes, it is. What we do is the company who is contracted - exclusive contract by location; local monopoly - produces a transcript, a draft transcript, of each of the hearings and sends them to us. We then dissect it and send the excerpts that you have actually said to the person who said it - that is, seeking their comment to show that the transcript that has been recorded is accurate from your perspective. It doesn't give you an opportunity to rewrite what you said; it gives you an opportunity to tidy up potential errors and omissions in the transcript process itself. That then comes back to us to be fed into an aggregated set of transcripts that then goes on our web site, so that the transparency of our public hearing process is absolute. If I have answered your question, that's how we operate with regard to transcripts.

MR COLE: Thank you, because Mr Ryan brought up this afternoon - and I can only imagine he was talking about me because I looked around the room and I

couldn't see a former director of one of the joint venture companies sitting here and wearing that hat. I had to assume it fitted my head, and my comments last Thursday at the hearing were totally different to the perception that Mr Ryan had of spare capacity. I said at Thursday's hearings that the company that I represented - Ports of Auckland - were in the unfortunate position that they didn't have access to or excess tonnage available when they tendered for the Gladstone licence. So instead of tendering with three tugs, we tendered with four.

The incumbent, Adsteam, was in the fortunate position of having spare capacity at Brisbane. I certainly didn't say they had spare capacity in every port. I just wanted to make sure that that point was made because I have never ever claimed that every port in Australia that Adsteam is in has spare capacity in towage. Mr Ryan would know that I know that that's a nonsense statement.

MR RYAN: That being the case, I'm quite happy with that comment because Dale and I are in exactly the same place on that recitation, and that is that there is not surplus capacity in every port in Australia. There is not a surplus tug in every port in Australia.

MR HINTON: I was going to say, I'm puzzled by these interventions. Your last point clarified it dramatically for me because I think that we all agreed that there is surplus capacity, but not necessarily a surplus tug.

MR RYAN: Yes, there can be - - -

MR HINTON: "Unused" capacity is the word I think we use in our report - "unutilised".

MR RYAN: Perhaps, so that there can be no doubt for you, it may be in a port like Port Jackson that we have four tugs permanently stationed in that port because, for instance, the Shell vessel comes in and needs four tugs to go to Gore Cove. It may well be that from time to time there will be a fifth tug stationed in Port Jackson that is not required for the largest vessel that comes into the port, but serves as a back-up for any or all of Newcastle, Jackson, Botany, Kembla or Eden against the possibility of a breakdown of a tug in one of those ports or one of the tugs having to go off for its regular docking. So it has been standard practice for many, many years - and back in Dale's time as well - to make sure that in each state there is an excess tug, one that is actually not gainfully needed in that port to serve that requirement.

In some cases such as Fremantle, there is an extra tug in the port at the requirement of the port authority. That does not work except when one tug has to be released to go out on salvage or when vessels are being docked. So there's an excess capacity for tugs in Port Jackson. Most of the vessels only need one or two, but you need it for Gore Cove or a spare tug for covering breakdowns.

MR HINTON: Mr Ryan and Mr Cole, thank you for that clarification. Is there anyone else who would wish to take the microphone from the floor who is not listed on the hearings? That brings me to the conclusion of the public hearings process for this inquiry. We will now beaver away to finalise the report in accordance with our timetable - that is, 20 August to government - and participants will receive a copy of that report when it is released by the government, which may be up to 25 parliamentary sitting days after receipt. So that it is in the hands of government then to not only release that report but also respond. Thank you all once again for your participation and input, and that ends the proceedings.

AT 4.44 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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