SPARK AND CANNON

Telephone:

Adelaide	(08) 8212 3699
Hobart	(03) 6224 2499
Melbourne	(03) 9670 6989
Perth	(08) 9325 4577
Sydney	(02) 9211 4077

TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO ECONOMIC REGULATION OF HARBOUR TOWAGE AND RELATED SERVICES

MR T. HINTON, Presiding Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON THURSDAY, 11 JULY 2002, AT 9.34 AM

Continued from 10/7/02 in Brisbane

MR HINTON: Good morning and welcome to this public hearing of the Productivity Commission inquiry into harbour towage and related services. This process follows our release of a position paper on 6 June. My name is Tony Hinton. I think I've met a number of you already, of course, over the months that this has been under way. I'm the presiding commissioner on this inquiry, and the purpose of this round of hearings is to facilitate public scrutiny of the Commission's work and to get feedback on our position paper.

As many of you know, we held hearings yesterday in Brisbane. After the hearings today in Sydney we will go to Melbourne, and hearings are scheduled for next Monday. We will then be working towards completing a final report to government by 20 August, consistent with the remit from government regarding the deadline and timetable. Participants in the inquiry will automatically receive a copy of the final report, once released by government, and that may be up to 25 parliamentary sitting days after completion.

As many of you know, we do like to conduct these hearings in a reasonably informal manner, but I remind you and note that a full transcript is being taken. For this reason, comments from the floor can't be taken at this stage, but at the end of proceedings today I will provide an opportunity for any person wishing to make a brief statement or presentation if they so wish.

Participants are not required to take an oath but should be truthful in their remarks. Of course, participants are most welcome to comment on issues raised in other submissions. The transcript will be made available to participants and will be available from the Commission's web site shortly following these hearings. Copies may also be purchased using an order form available from Commission staff here this morning. Submissions of course are also available.

I'd now like to welcome to the hearings representatives of inter alia Shipping Australia. Thank you very much for your detailed submission and also for the submission from Mr Cole of Dale Cole and Associates. For the purposes of the transcript, I'd be grateful if you would introduce yourself and indicate the capacity in which you're attending this hearing, and also if you'd like to make an introductory statement, then I would invite you to do so. Thank you very much.

MR RUSSELL: Thank you, Commissioner. My name is Llew Russell. I'm appearing here as CEO of Shipping Australia Ltd. I now ask my colleagues to introduce themselves, and we would then like to make a brief opening statement.

MR COLE: My name is Dale Cole. I'm managing director of a small consultancy firm specialising in harbour towage, pilotage, offshore emergency services and salvage. I act as a consultant to Shipping Australia Ltd, and for the record I have provided consultancy services to federal and state governments, international

governments, national and international port authorities and international towage companies. One of my clients is Ports of Auckland Ltd.

MR McGOOGAN: My name is John McGoogan. I'm the operations manager of Inchcape Shipping Services. I'm also a director of Shipping Australia and I'm here to support Shipping Australia in their submission.

MR PHILLIPS: My name is Michael Phillips. I'm managing director of Hetherington-Kingsbury Pty Ltd and I'm also a director of Shipping Australia Ltd.

MR RUSSELL: Thank you. Commissioner, I think first of all we'd like to say we appreciate the opportunity of elaborating upon our submission today and of course stand ready to answer any of your questions in relation to that submission, which was the original submission, and also the more recent one dated 4 July of this year. The concern of our member lines and/or members generally is to ensure that we receive the most efficient, in all respects, towage services that we can. In that respect we were concerned that Adsteam Marine rejected what we say is an independent arbitrator's decision, the ACCC's decision, in relation to their price increases, which we felt were very significant, particularly in some of the major declared ports. In that respect we have no real concern with the level of efficiency of the services they render. Our primary concern really is one of cost, and where we think services possibly could be more cost efficient and delivering a more cost-effective service.

We support the general thrust of the position paper produced by the Commission, with a few exceptions which we have, I suppose, detailed in our submission, and I'd like to make reference to a few of them now. We believe there are significant sunk costs in relation to the provision of competitive towage services where there's a very strong and powerful incumbent in the port or range of ports. We've detailed the reasons for that in our major submission and in our more recent submission. We believe contestability in the industry is weak. That's not saying it does not exist; we're just saying that its impact is relatively weak.

In relation to monitoring, we would urge the Commission to recommend similar monitoring to that which applies to the stevedoring companies in Australia - the major stevedoring companies - in other words, prices, costs and profits are monitored, and we believe this should extend beyond the declared ports to non-declared ports, in particular those that, if you like, do not tender or issue a licence of any kind and therefore we could provide and help with a listing of those ports. We're not talking about 51 ports being monitored but we are talking about the major regional ports, which extend well beyond the declared ports. We also believe that monitoring would decline over time if the recommendations of the Commission are adopted in relation to exclusive or non-exclusive contracts.

We would also urge the Commission to recommend that the major users or

representatives of the major users in any particular port are part of the tendering process, not simply consulted but are really an integral part of that process. We reject the recent submission by Adsteam that exclusive contracts for towage in ports will undermine Australia's capability for salvage or coastal protection. Emergency response, which we see as slightly separate - or not slightly; it is separate - from salvage is an issue in that exclusive contract provisions and conditions could actually determine when and where that emergency response would be provided. We have no problem with salvage tugs being employed in ports at the average capital cost of a harbour tug, and we believe that in fact the issue of salvage should be covered in the major ports in terms of again the conditions of exclusive contract. It is clear from that Adsteam submission that over the past three years there has been profitable salvage work undertaken in the Australian region.

Mr Chairman, I believe our other points are well covered in the submission and we'd like to leave it there in terms of an opening statement. Thank you.

MR HINTON: Thank you very much for that. You very succinctly covered at least half a dozen key issues of the inquiry, so I thank you for sharpening that focus. I'd like to take the opportunity this morning to seek elaboration on some of those points, particularly to start with this question of barriers to entry. You're suggesting that there are significant sunk costs for a service provider. Can you elaborate on that view in circumstances where there is certainly some scope to recover those costs if a potential entrant no longer is successful and needs to withdraw from the industry? Presumably the capital equipment associated with tugs can be sold or can have alternative use. Can you elaborate why you think that the sunk cost associated with pursuing market share is so significant that it's a barrier to entry?

MR RUSSELL: Thank you, Commissioner. I think first of all it is really, I suppose, the costs associated with mounting a large and successful entry into the Australian market, particularly if it goes across a number of ports, but even on an individual port basis where, if you like, while a tender process is under way you have for example tugs waiting off outside the port on the basis that you may or may not be successful. But essentially a lot of it relates to Australia's geographical position and the difficulty of the costs of positioning tugs down into this region, and if you are going to reposition, those costs, if they're sold here, or repositioned back to Asia, for example, are extensive costs. But I would ask my colleagues to elaborate on that issue.

MR COLE: If I may comment, Commissioner. The difficulty that I see with contestable entry is purely that our markets aren't big enough, so there isn't sufficient revenue for more than one operator to be commercially successful. So if a new entrant was to come down here on the basis of contestable entry, and assuming that there are no lost costs in terms of the plant - he either charters it and incurs a penalty when he redelivers it, or he sells the plant, if he's purchased it, for almost the same price as the purchase

price - we've got to look at the other costs. They are quite significant in terms of delivering the tugs to Australia and redelivering them to the next market. They are significant in terms of preparing entry, because there are significant costs in preparing to enter on a contestable basis, and then there's the training of crews, and there are significant training costs. Probably last but not least, there would be some redundancy costs which, in the event that the entrant had to exit the market, he would have to pay for his crews.

So I've said in my follow-up report to your position paper that I would suggest for a two-tug operation where the owner chartered tugs from the Far East and then within three years was forced to exit the market, he'd be looking at sunk costs of approximately $2.5 million. Whilst they may not be excessive, then certainly, when you're looking at the whole financial position , it's a cost that could very well kill a contestable entry proposal.

MR HINTON: You raised there an important issue for us, and that's the issue of: is it likely that only one service provider can be sustained longer term in most, if not all, Australian ports? Your comments then, Mr Cole, suggested that that's your view - that it's hard to see how the demand, being so thin, to use your word, was sufficient to sustain more than one service provider. I don't wish to put words in your mouth, but I assume that's what you were really saying, is it?

MR COLE: Yes, I was, Commissioner, and I think the experience in Newcastle points to that, and the reason that we haven't had contestability for a number of years is that - and I know firms that have run the ruler over it, and it just doesn't stack up as commercial opportunity.

MR HINTON: I'd be remiss if I didn't ask whether or not you would wish to revisit that view in the circumstances of what's happening in Melbourne at the moment and as foreshadowed by that operator potentially pursuing market share in other ports, including the possibility of Brisbane and Sydney.

MR COLE: Certainly, and I'll be making comments to the Commission about how I see the process evolving when we meet in Melbourne.

MR RUSSELL: Could I just add to that, Commissioner. I guess in summary we have some concern about that operator's medium to long-term sustainability in the market.

MR HINTON: That particular operator? Did I hear you correctly, or both operators?

MR RUSSELL: Only because you mentioned that particular operator, but I think, as we mentioned before, in head-to-head competition we would see a difficulty.

When you look at, for example, in Melbourne, all the crews that are there at the moment, basically a total fleet of seven tugs for 4200 movements a year to us doesn't seem sustainable.

MR HINTON: Coming back a step to sunk costs, in bringing the tugs to Australia you alluded to transportation getting them here, transportation getting them back. Is there an associated cost of converting that capacity of tug to Australian-specific conditions and requirements, or is that not an inherent part of sunk costs associated with this market? Is the market so uniform across the world that there is no extra cost for bringing this specific capacity to Australia?

MR COLE: It depends on the tug, Commissioner. My view would be - and, again, I said it in a previous submission to the Commission - that a responsible owner or towage provider in Australia would certainly make budget provision for at least $50,000 to convert an overseas tug to a state that it was suitable for Australian conditions. That may be a bit light for some of the tugs and it may be too heavy for some others, but I think that anybody that was chartering a tug into Australia would be remiss in not making a provision of that magnitude to convert an overseas-type tug into a tug suitable for Australian conditions.

MR HINTON: You also mentioned sunk costs associated with the labour force, recruitment, training and then potential retrenchment associated with departure from the industry. Is there not scope to pursue employment practices that could at least remove some of those, particularly the retrenchment package requirement, in the short term at least?

MR PHILLIPS: You're dealing with the Australian maritime unions, and you can take it as read that there would be a redundancy cost at the end of the business. If the business folded for whatever reason, then there would be an expectation that those members would receive a redundancy payment of some sort.

MR HINTON: But that would usually be associated with the period of employment.

MR PHILLIPS: Yes.

MR HINTON: And the longer the term, usually it follows the higher the payment.

MR PHILLIPS: The higher the cost, yes.

MR HINTON: In circumstances of pursuing market share, presumably that is time limited if it's going to be a circumstance of a single service provider. What I'm really raising here is - not in any way questioning the view that there are some costs. It's a question of - - -

MR PHILLIPS: Their magnitude.

MR HINTON: - - - what level of sunk costs, what magnitude of sunk costs, in circumstances where judgments about barriers to entry - we have seen a range of views from negligible to very significant. Our position has flagged a view somewhere in between those two, and I was really trying to explore with you dynamics and parameters that would help us make a judgment about the level as opposed to the black and white answer. That was behind my question.

MR RUSSELL: Commissioner, I'll just draw your attention to what happened in the stevedoring industry, where the workforce that Patricks used in the dispute of May 1998 sued Patricks for misrepresentation at the time of their employment and that was settled out of court. We don't know what the settlement was, but obviously in terms of redundancy, I guess in terms of representations you'd make to a workforce that you were seeking to employ, if you said, "It's for a short time," you may not actually get a workforce. In other words, I guess it's a matter of confidence, and making those representations could well increase your potential for redundancy costs.

MR HINTON: I understand. I'm glad you mentioned stevedoring, because I'd like you to pick up your comment about the monitoring process that you were supporting. You referred to what occurs for the stevedoring industry and you saw some parallel to the extent that you thought that would be a good benchmark practice with regard to this sector. You indicated monitoring of prices, costs and profits. Can you elaborate on that? In particular, there's an issue here for how substantive, how extensive that process is in terms of costs to the industry, costs to the regulator and for what purpose. I would welcome your comments on how you see that monitoring fitting in against how extensive, how substantive and with what objective.

MR RUSSELL: I think coming from the recent notification provisions under the Prices Surveillance Act and the role of the ACCC there, who had a very short time to determine, if you like, the justification for the proposed increases, and looking at it from the context of the stevedoring monitoring, where the ACCC produces an annual report, there are costs associated with that both for the industry and for the regulator. But I do think it provides a much-needed degree of transparency in terms of how the industry is tracking, how, if you like, the costs, profits and prices relate to the users of that service, and whether - as I said, over a period of time you build up a very good picture of the industry, which I would hope with towage, for example, would show a more efficient industry as it evolves.

In terms of what you use it for, it's interesting that in the last stevedoring report produced by the ACCC they showed that in fact the average revenue for the stevedores was declining, but the price for stevedoring services had not gone down.

The actual rates had either been maintained or in fact slightly increased, and that was of concern to the users. We made that point at the time, whereas in fact the covering press release inadvertently said that the prices had declined, and they hadn't.

I'm just saying for the users it was very useful to us how the industry was going, given that it is a very strong duopoly, and in towage we have a very large operator in the Australian market. We think for those reasons monitoring is justified, but I emphasise, where licences or the tendering process do not apply.

MR HINTON: Which particular objective would the monitoring pursue? If you're going to have surveillance of sorts, an information flow from the service provider to the regulator, what does the regulator do with the information? For what purpose is this information being accessed, aggregated, obtained? It shouldn't be just put on a shelf. If you're going to do it and incur the cost for the regulator and the industry, what's the end objective for the exercise?

MR RUSSELL: I think the end objective is to monitor and hopefully increase the efficiency in the industry and to judge that in a transparent fashion, and that could in turn lead - if one found that that was declining in a position of either strong duopoly or monopoly, then that information would be available to governments at all levels and to industry to then determine what appropriate action may need to be taken, if you like, in a legislative or regulatory sense, to try and reverse that decline if it was so shown. If, on the other hand - and one hopes - you do see an increasing efficiency from such reports, then of course it is transparent. That's the main reason we see monitoring as being so important: that (a) it provides you with the information as to what's happening in the industry across a range of parameters; and (b) it allows you to determine what, if any, action may then need to be taken if such a report was adverse in terms of efficiency.

MR HINTON: The reason for exploring this is that there are a range of views as to the nature of intervention, whether a declaration could in fact not be terminated but be renewed; that perhaps price monitoring could replace it, and there are even different views as to what that objective would be for price monitoring. Our position paper presents a line of view that it's a transition to a more competitive environment that removes the need for intervention through price monitoring but, if I hear your comments correctly, you see in fact potential for a price monitoring framework in certain circumstances - not inevitably but in certain circumstances - being a platform for being an even more aggressive - that's perhaps too pejorative - more substantive intervention by government with regard to price surveillance, price monitoring, price control. That is why I was exploring with you the objective underlying your views about the structure of price monitoring that you'd have in your framework.

There's a supplementary question: if that is a possibility, does that not then argue that price monitoring should also apply to even those ports that do have a

tender system that moves to exclusive licensing so that you do have a benchmark of performance as to what does give the better outcomes? The absence of having information on that other category of ports that you explicitly excluded would seem to be inconsistent with your basic objective with regard to having some sort of structure of price monitoring, or am I overstating it?

MR RUSSELL: No, we take that point, Commissioner. I think it's a very good one. We saw it more as an encouragement, I suppose, for ports to move in that direction, and it may be that you have a different type of monitoring for ports that do tender. But we would accept the point that there would certainly still be a need in our view to watch the outcome of tendering processes, particularly Australia-wide, and how they impact on future efficiency. But we believe without that, the requirement and depth of monitoring is much greater.

So we take the point that, in terms of looking for future action, there is a need to monitor those that are tendering, but of course with a tender process it almost has in itself a built-in monitoring process, because presumably one of the conditions of exclusive contracts would be not only review towards the end of the contract period but also there will be KPIs for reviewing during the tendering process. So the whole issue of exclusive licensing could well be more transparent, which would reduce the need for certainly the depth of monitoring that may be required if you didn't have such a system.

MR HINTON: I'd like to get on in a minute to questions about the tendering process, but let's stay with the monitoring aspect for a moment. You've referred to prices, costs and profits. Do you have any more detail as to the dynamics and parameters of that modelling? Would it be annually, would it be quarterly, would it be confidential information, would it be publicly-available information? Would it be a system of assessment as to whether or not an industry is operating at cost plus? What sort of framework do you see operating with regard to price monitoring?

MR RUSSELL: I think it's purely based on what happens now with the stevedoring industry, which is annual. It is profits, costs and prices. I think there is a capacity for confidential information, but of course the ACCC really relies on the cooperation of the stevedoring companies in the production of that data. But in turn that provides users and other interested parties with the required information. I guess that is why they do cooperate in providing the data, but I don't think the ACCC should be making any value judgments as to whether that is reasonable or not reasonable. I think the object is to put it all down and let industry and other interested parties determine how they view it. The object is, as I said, to make value judgments and say a particular return on capital is right or wrong. This is the focus of the declared ports in the notification provisions under the PSA. We're not proposing that.

We've seen, basically out of the recent ACCC investigation of that notification of the PSA - we believe it was unsuccessful and therefore we don't promote the continuation of the Act, and we don't promote continuation of such a process. We would prefer to see a more general monitoring, really, we would see, almost exactly along the same lines as presently occurs with the stevedoring companies.

MR HINTON: Thank you for that. A second area of decision-making for a monitoring process that may or may not apply to stevedoring is the question of ports: which ports. You used a number of criteria: (1) not just the declared; go beyond it. You also said those that are larger, not necessarily all ports. You also said, as a third criterion, those that haven't entered into an exclusive licence arrangement. Prima facie, that sounds very complex to me in delivering that sort of coverage, which is not a static process. It's in fact a moving target and it's a moving target with regard to the third criterion, and in particular those that are under exclusive licence. Do you not see that sort of framework generating uncertainty in the industry and one that could be counterproductive to providing a clear and transparent operating environment?

MR RUSSELL: I'd certainly like my colleagues to comment on that. I think just a brief comment though is that, if I recall correctly, I think it was the 1995 Productivity Commission or the Industry Commission, an inquiry into towage did recommend that the declaration be extended to some other major regional ports. But I suppose off the top of the head really one would imagine if you had a single-user port that you may decide that's not a port that you'd include in the list. But certainly there's many major ports outside the declared ports that we think would benefit from monitoring and we feel that it would lead in fact to increased certainty, knowing this monitoring was taking place, rather than to decreased certainty for the industry. As I said, we're not recommending the 51 ports in Australia but I think it's a matter for the industry to decide amongst themselves a sensible and reasonable list that should be subject to monitoring. But I'd be happy to hear the comments of colleagues on that.

MR PHILLIPS: No, I support what he is saying, Commissioner, and I guess if you're going to look at any ports, you'd be looking at Fremantle, Adelaide, Melbourne, Sydney, Brisbane as a broad spectrum because they're the main ports associated with the liner trade and obviously there's a degree of concern over the level of rates in some of those ports. On the bulk side, you'd certainly be looking to include one or two other ports to get an overall appreciation of how those rates are going in some of the bulk ports compared to where they're going in the mainline ports, and if you brought some of those ports into the equation you'd probably get a better overview of the reasons for why perhaps the mainline ports have gone up compared to why the bulk ports haven't gone up, and vice versa. Certainly it would be an interesting exercise to do that in determining the level of rates and the level of increases in some of those areas.

MR HINTON: I'm glad you raised that point. I was going to in fact pick it up towards the end of this session; that is, I'd be interested in your views about perceptions of any differing treatment across the categories of vessel with regard to tug service. You mention bulk and containers. Is there a differentiation or segmentation of the industry with regard to pricing or attitude or is it just "a vessel is a vessel is a vessel"?

MR PHILLIPS: If I can reply to that. Certainly there is a difference. Many of the new-generation container ships that visit - and there was one in port yesterday - certainly are equipped with a lot more efficient equipment - ie, bow props and all those sorts of things - whereas the traditional bulk vessel which is conventional single screw, doesn't have the advantage of having bow props and so on, and therefore has to use perhaps two, three or four tugs for a movement around the port, versus one or two tugs that a liner vessel is having. So the impact of a rate increase such as we've seen just recently, the liner operators certainly can lower their costs because they can only use perhaps one tug for a movement, whereas the bulk vessel still has to use two, three tugs in a conventional movement. So therefore if there's a 20 per cent increase, shall we say - which happened in one area - then a 20 per cent increase is going to have a bigger impact on that bulk vessel than it is on the liner vessel, and that's where you will find some of those things creeping through.

MR HINTON: Sure, but that's differentiation by tug requirement which prima facie seems a valid differentiation. If you need more tugs, you pay for more tugs. It was a question of whether or not that in itself leads to a differentiating treatment by pricing or more monopolistic power by the service provider relative to the user. Is there a differing treatment? Maybe there's not, so that's why - - -

MR COLE: I would suggest, Mr Commissioner, there's not. Each port or each entity has to stand on its own two feet and hence we have a variable level in towage rates.

MR HINTON: Yes. Let's move on to one of your other very key points, I thought - and that is in the process of pursuing the exclusive licence scenario which you strongly endorse - you added to that a view that it's crucial that the shipping industry in its various forms be directly involved in that process. I'd like to hear your views on first of all why it should be the port authority - if that's your view - that might be the instrument, the mechanism for pursuing an exclusive licence; why it can't be a consortium of shipowners or ship agents or whatever, or other alternatives, or a mixture of the two, and the sorts of operation arrangements that might underpin the actual practical application of a tender system that puts in hand an exclusive licence.

MR RUSSELL: Thank you, Commissioner. Yes, I think the last part, a mixture of the two, is really what we're suggesting; that a small number of representatives, the major users of a port or ports be involved in the tender process not with a view

obviously to a direct contractual arrangement with the towage provider or providers but with the concept of being totally satisfied with hopefully the end of that tender process. We see ports being in a very pivotal position in relation to that because it is in their interests, I would have thought, in terms of service provision and their trade facilitation role to ensure that service providers within that port are the most efficient possible.

They also, of course, have direct and ongoing contact with all the users of the port and therefore we see that as very important. Shipping Australia could well play a role in facilitating, if you like, the conduit between some of those major users and the port and would be happy to play that role. But yesterday the Port of Brisbane Corporation raised the question of whether Shipping Australia could not form, if you like, its own consortium of major users that would actually come to a longer-term contract with the towage provider. I think the difficulty there is really one of the commercial interests of our members to the point where - I think there's also possibly a serious Trade Practices problem but I'll come back to that. I think probably the major issue is one of a commercial issue where if it was an open, if you like, non-exclusive contract, the question of whether there's a bit of a cheaper alternative around the corner would be of great interest to many of our members who aren't travelling very well financially at the moment, and every little cost reduction they can achieve, they're very keen to achieve. So they would like some flexibility, in the sense that it's very difficult to come up with a total position representing all those individual liners' interests commercially.

It is not to say that they do not subscribe to an exclusive contract, as I mentioned before, where in fact, if you like, the average interests of all the users are probably promoted and advanced over those of an individual. I think in terms of, as I said, under the Trade Practices Act, undoubtedly one would have to seek authorisation for such a collusive arrangement and potentially price-setting. So one would need to go through that process which we regard as reasonably costly, uncertain and that would be a prerequirement as well. So we see the best alternative is to, if you like, encourage the Port Corporation authority to take the lead in clear knowledge of the requirements of the users. If at the end of the tender process those requirements are not adequately reflected in the result, then I presume the users would vote against it. So that's where we see, if you like, the collective interests being best promoted through the leadership of the Port Corporation.

MR McGOOGAN: If I could add to that, Commissioner.

MR HINTON: Please.

MR McGOOGAN: Shipping coming to Australia predominantly is paid for by foreign operators. As a result of that, it is important that we display to them that there is this monitoring process in place and that there is some contribution from

industry and the port authority in terms of the monitoring process. If that does occur then we can satisfy the international operator he was reasonably confident that when he places a ship in an Australian port, the pricing and monitoring of that pricing and control, if necessary, is in fact well managed. It does occur in some other ports of the world. There are several industry bodies. There is not only Shipping Australia; there's the National Bulk Commodities Group and so forth that would in turn have some influence in terms of pricing and therefore they would want to contribute to that. So therefore, in setting up the monitoring process, I'm quite certain that could be done with contribution from industry, being the carrier, and the commodity bodies.

MR HINTON: But at the end of the day there has to be some sort of legal entity that does with authority issue the exclusive licence, and at the end of the day that process, if it's through open tender, would be subject to all sorts of constraints of transparency and integrity. What I'm really exploring with you is how you would see the mechanics of integrating into that process, if it's the port authority, how Shipping Australia or your membership could have an active role in that decision-making process.

MR PHILLIPS: Some time ago, Mr Commissioner, I believe it's the port of Cairns threw their port open for a tender and part of the process was they had the port users get together, threw the ideas around in terms of what they wanted to do, what processes they wanted, what type of tugs they wanted et cetera. That was all then built into the tender, the tender was then sent out to the various interested parties that were interested in tendering. When the tenders came back again, again that same group, in consultation with the port authority, sat down and reviewed all those tenders and decided upon which way they wanted to go.

MR HINTON: Who decided?

MR PHILLIPS: Port of Cairns, I think it was - I think the group as a whole, in consultation with the port. They discussed all the various issues. It was wide open so everybody knew what was going on. At the end I think the present incumbent stayed for a number of reasons but it was discussed and debated amongst those people that were in the port and were obviously interested in the processes in terms of how it was going to be resolved.

MR HINTON: It's that example - and I thank you for giving a specific example - - -

MR PHILLIPS: Now, I could stand corrected on one or two points but basically I think that's how it happened.

MR HINTON: But that sort of arrangement is - and that's why I appreciate you

giving this specific example, even it turns out to be hypothetical - to the extent that it's very important to sharpen the focus on what is the process for issuing this licence. On your description, the decision therefore doesn't rest with the port authority, it rests with a group of entities of which the port authority is only one, and the decision is made by a group. That raises real legal questions about who is the contracting party, who is determining the specification of the tender and who is determining the successful tenderer. Most formulations put to us to date have been one of the port authority, being the decision-makers, the managing entity for the process, but because they are not necessarily the users of the towage service - it is the shipowners, the shipping lines, the container consortium, whatever - it's crucial that there be a consultation process, that the decisions taken by the port authority fully reflect the needs of the actual user.

That's quite well short of a formulation of a committee of entities making a decision as opposed to a port authority as a legal entity making a decision, and that was why I was exploring at some length that issue as to how this view of yours that it's important that the shipping sector get directly involved in the licensing - what dynamics you see that taking on. It's one that we would see as important.

MR RUSSELL: Mr Commissioner, we would see the port corporation having to take the final decision. It is the legal entity. But I personally have been involved in leasing of berths where there's a probity officer, and in fact I represent part of the users in the industry - but it's more than just being consulted; it is actually part of the process - to effectively arrive at an open, transparent and arm's-length tender process. We would see that being very similar, as happened in Gladstone. I think, John, you mentioned that process, where it is a very close consultative process with the major users but at the end of the day it has to be the corporation and its major stakeholder governments in terms of certainly capital city ports, with the exception of Adelaide, who would have to take the final decision in the light of that strong advice, hopefully, from industry.

MR HINTON: Thank you for that.

MR COLE: Commissioner, could I just say that the model you detailed was something similar to what happened in Gladstone and Fremantle that I'm aware of. In the end, the tender process was run by the port authority but the final decision was made after consultation with industry, and in my view it worked well. I don't agree with the outcome necessarily but it did work well, and the users did have an input into the final decision.

MR McGOOGAN: If I could add to that, Commissioner, I think the international shipowner is wanting to see stability in this monitoring process, and they certainly do see there's some major industry working in and out of Gladstone in terms of shipping and they were particularly pleased with the outcome there.

MR HINTON: Thank you. If that's the sort of dynamic that we're working with in this hypothetical process of pursuing exclusive licences, it raises the question then as to whether or not the particular port authority in question has the capacity and the right incentives to pursue a tender system, issuing an exclusive licence in consultation in current circumstances. You may or may not be able to comment on this, but I'd welcome your views on that issue. Without putting words in your mouth, of course, around Australia the port authorities are not a uniform lot, so I appreciate that it's very difficult to generalise completely, but I'd welcome your comments on the sorts of experiences you've had with regard to port authorities and your confidence in them pursuing this option of exclusive licence arrangements through open tender.

MR RUSSELL: Generally, just to start with that in reply, we note the submissions from a number of the major port corporations, mainly, I note from declared ports, have supported exclusive contracts and have expressed an interest. Some of them have questioned whether they have the ability to enter into them, and I think that's an issue around Australia in terms of being clear in legislation or regulation that they have the power to enter into such contracts. I think that's an important issue, and I would be surprised if there was a uniform approach. I would have thought that not only individual ports but individual conditions in ports vary to the point that one would expect different arrangements throughout Australia to some extent to apply.

But from experience we have with those that have entered into a tendering process, we may not all have been happy with the outcome but those particular authorities are very strong on pursuing that process and they have already put that view to the Commission. Other than that, I'd be open to my colleagues, if they would like to add to that.

MR McGOOGAN: If I could just add one point to it. If we really go back in history quite a long way, the original service provider to the port is in fact the port authority in terms of establishing the port, operating in the port. It's the outsourcing process that has occurred where we now have individual tug operators operating within that particular port, and I think it's a question of reflecting as to the port authority's responsibility to ensure that their port is well managed and, on that basis, accept the responsibility that as a monopoly towage operator they must be the facilitator of that in terms of service contracts, with some contribution from the industry.

MR HINTON: I should hasten to add that in the next session we have the Association of Australian Ports and Marine Authorities. It's a continuing discussion on this point later in the morning. Picking up that point about their responsibilities, it's been put to us that the process of tender, consultation, specification, examination, assessment, decision, whatever, is not a costless exercise. It may be part and parcel of a port authority's responsibility to ensuring that the port environment delivers all the

required services in a cost efficient and timely manner but, if this is a new exercise for port authorities, some could raise the question, "If it's going to have wider benefits here, maybe there should be some charge associated with this, and the consultation process with industry - the users of tug services, that is - maybe there should be a commensurate charge upon those users of tug services paid to the port authority to implement this option." Do you have any views on that line of thinking?

MR McGOOGAN: It currently exists in Gladstone, on the basis that the port authority is the facilitator; similarly with Fremantle-Kwinana.

MR COLE: What happened in those two tenders, Mr Commissioner, was the port authority stated what their licence fee was to be, and I assume that all the tenderers included that in their costs, and I assume that the licence fee covered the exercise of preparing a tender document and following the process right through. All who tendered in those ports had an opportunity to include those charges which the authority advised were going to be included on an annual basis in their pricing structure.

MR HINTON: I was actually putting forward a slightly different charging structure. If I heard you correctly, Dale, it was to do with the tender process being self-funding by a charge on the successful licensed entity, the towage provider. I was putting forward a scenario where in fact the charge was on the beneficiary of a more efficient towage service, that is, the users of towage service, so that not only would the port authority consult the shipping industry, the users of tug service; but that could be also widened to pick up a charge upon those to fund the process of the port authority putting in place an exclusive licence by open tender. I can understand your licensing fee being a self-funding financing arrangement for a tender system, but there was an alternative put to me as well.

MR RUSSELL: We would see the port in terms of its own operation and efficiency having to justify to users, hopefully, that they are an efficient port, and in that respect we don't see it would be viable for them to actually put a charge on the users of the service. In fact, we would hope that, just taking the point raised about a licence fee, that that was as low as possible and that such costs of tendering were kept as low as possible, in order for that port to be as efficient as possible and to engage in its trade facilitation role in the most efficient way it can. I don't think you can isolate a part of a port operation in that respect and say, "With respect to towage, we're going to have a special charge on users because we have an exclusive contract and we believe that gives you particular benefit."

We would hope that the community generally, along with the specific users of towage services, would benefit from the greatest level of efficiency that the port can achieve, and we really don't see that objective being advanced by a particular charge on the users of towage services.

MR HINTON: In my questioning, please don't necessarily reach a view that that is my view. I'm pursuing topics that have been put to me as well, and it's my way of exploring the issue. In elaboration of that point - it would be hard to identify in the consultation process all users of the towage service that would be pertinent to the period of the exclusive licence, so having an equitable system of charging to fund the tender system would seem to be an administrative nightmare, which takes you down the generic approach that says if the port authority does provide a process of open tender for exclusive licence, that's part of its operation costs more generally and therefore charges associated with the operation of the port on all port users would be a contributing component to that cost, a generic approach to budget, which I thought was going to be your answer, but never mind. It's in that direction.

Let's take a narrower tranche in your submission that I'd like to explore with you, because I'm a little uncertain as to what you have in mind. I have in mind here your reference to the Trade Practices Act, that you think that there are potential remedies under the Trade Practices Act, or that they should at least be examined, where exclusive licences are not used. I'm not sure what you have in mind there, but I would be very interested in what you did have in mind.

MR RUSSELL: Thank you, Commissioner. I think we were deliberately vague in terms of defining what we had in mind, because I think there are others more expert than us if you wish to go down that track, others that could provide more detailed and perhaps substantive advice on it. What we had in mind was where, if you like, if there is no Prices Surveillance Act in the future, for example, where there is a strong natural monopoly, how you deal with that, and we felt that the Trade Practices Act could be the vehicle to do it as a last resort should all else fail. We were interested in how the government has amended the unconscionable conduct provisions of the act in recent years and extended its scope and power of those provisions, but whether they are the correct ones or in fact there is a need for a specific section dealing with situations of this type we did not have a very definitive view about, and in fact even the whole mechanism of the Act may be wrong in that respect.

But what we are searching for, as I said, is a fall-back position if all else fails and any monopoly provider effectively seeks to exercise its market power. Short of actual price control, if you like, what other remedies there may be available could well extend beyond the Trade Practices Act and it was just simply, I guess, one possible mechanism that we're urging the Commission to look at and recommending the Commission bring this issue to the attention of the current review of the Act, at least not necessarily again having perhaps a specific recommendation as to how it should be changed but alerting that review to this as a potential issue for the future.

MR HINTON: Thank you. Let me now move to the question of related services. Let's commence with salvage. In your introductory remarks you referred to

submissions from others that an exclusive licence arrangement could have the effect of undermining available salvage capacity and you were not agreeing with that view. Is there not a risk that a port authority in consultation with industry and users in specifying towage capacity specific to that port and its port usage, the vessel-specific requirements, that you could in fact have a delivery of a contract, a licence, that leads to port-specific capacity for towage that has no blue water - at least no blue water salvage capacity, presumably port capacity exists because they operate within port - if one takes that to its logical conclusion you could argue that if that port does it and every port within that particular eastern seaboard or southern seaboard or western seaboard does it, then by definition it follows that with the passage of time you have in fact eroded salvage capacity. What points would you put against that logical - purporting to be logical conclusion?

MR RUSSELL: I think, first of all, taking the point about the user's requirements I think is a definitive issue here in terms of their input into the tender process. I would have thought major users in Australia would like to feel comfortable that they have the necessary facilities for not only emergency response but at times the salvage capability in determining the parameters of the exclusive contract. But it is a very valid issue to debate because if one looks at New Zealand you see a situation where they have limited emergency response and basically no salvage capability and one could say, "Well, that could be replicated in Australia."

First of all, if one looks at some of the tenderers that applied - or at least one tenderer that applied for the Fremantle contract included in their tender at least one tug that had salvage capability. So whilst it may appear on the surface that it is a logical conclusion, it is not a necessary conclusion that users would not like to see the successful tenderer, which could of course well be the incumbent, does not provide the required level of salvage and emergency response capability, and we have deliberately split those two because I think they are very different in consideration of that capability. But, equally, we believe that nationally this is a problem we know is being looked at at the moment and we would urge, if you like, that that comes to rapid conclusion, that inquiry, so that, you know, users can be aware of it because we do value obviously salvage capability, coastal protection, which is more in the emergency side of the issue, and we would have thought that the users in being consulted, as I said, on the tendering process would make that as a major - or one of the important planks for success by the tenderer.

There is a cost related to that and, as I said, we have no problem employing such a salvage capable tug but we would hope that the capital costs for the recovery by the towage users would be levied, if you like, on the basis of a harbour tug so we wouldn't actually be paying the larger capital cost of that tug which we see being allocated, as it were, to the reward for salvage itself. But we appreciate also the point that if you excluded all such tugs and you wouldn't use them at all in harbour usage, that is also not a viable proposition. So I think we're being reasonable in that

requirement but I'd be happy if my colleagues have anything to add to that; they're much more experienced in salvage than I am.

MR COLE: Mr Commissioner, that comment that I would make in two tenders for exclusive licences at Gladstone and Fremantle that I was personally involved in, the tenderer nominated a spare tug capable for use for outside work and the argument that was put forward as to why the tug should be capable of being used in the blue water area was on two grounds: (1) that if there was a minimum number of tugs used in the port you would under-service the port because unfortunately tugs do break down, so you need excess capacity, so you need a spare tug and that spare tug would be the outside tug. The other argument is purely commercial opportunity. Salvage and emergency towage, in my opinion, present a commercial opportunity for an operator. I think that would drive anybody who has some knowledge of the Australian coast to make sure in their tender that if they have to provide spare capacity in a port, that that tug can be used for a dual role.

MR HINTON: So you're saying that the salvage capacity, rather than being spread across - the charge of that, the cost of that, rather than being spread across the users of towage in harbour would be borne by the towage provider which then would be reimbursed through a salvage exercise, whenever that salvage exercise occurred.

MR COLE: The reality is I'm not. The reality is that the provision of that spare tug and the costs associated with it were part of the costs that went into running the port and found their way ultimately into the charges that users pay.

MR HINTON: In those circumstances then, you're also rejecting the view that a port that's operating under an exclusive licence with tug-specific capacity to that port would not run into a conflict of tug usage in circumstances of salvage use because a port has to have surplus capacity in any case.

MR COLE: My argument is that exactly, that if a port requires three tugs, wisdom, conventional wisdom would tell us that you can't operate the port with just three tugs because somewhere along the line there's down time for maintenance, repairs, survey, slipping. So a three-tug port ultimately becomes a four-tug port on the exclusive licence basis and assuming that you don't have licences at ports that are geographically close to you. The incumbent operates three tugs in Gladstone and when a replacement tug is required there, he is fortunate, he can tap into his resources at Brisbane whereas a new entrant doesn't have that luxury. So the port has to be self-sufficient.

MR HINTON: Is Shipping Australia in a position to give any comment on where the wider issue of salvage may be being looked at nationally that I think was referred to earlier?

MR RUSSELL: We're involved to, I suppose, at least a limited extent in that but through our involvement with AMSA and with AAPMA we're aware of some of the issues that are currently being progressed in that respect. We're not only following it with interest obviously but we're very keen to have input into the final outcome of those deliberations.

MR HINTON: Are there specific proposals around for a national approach to salvage, or is that overstating where we're at?

MR RUSSELL: Actually I've been advised by what was the Marine Safety Board of Victoria that that's under way, so I guess the advice we have - yes, it is being looked at nationally but where it is exactly is an issue maybe AAPMA could give you more advice on.

MR COLE: The Australian maritime group are currently investigating, Mr Commissioner.

MR HINTON: Let me now look at firefighting as another related service issue and here there are varying practices across ports. It is a question of essential service, essential capacity. There's also a question of costing, transparency and burden sharing. Do you have any views on this regarding the towage sector? I'd welcome - - -

MR PHILLIPS: Traditionally, Mr Commissioner, there has been a requirement for firefighting tugs in various ports and that requirement has generally been driven by the port authorities and the operator or operators, depending on who was involved at the time, negotiated with the port authorities for the placement of that equipment on board, and the placement of that equipment obviously was built into the capital cost of the tugs which obviously was then worn by the port users. In terms of the actual expenditure of the foam whenever it was used, a charge for that would obviously go back to the shipowner or person involved where it was expended and it was on replacement-type arrangement. But the port authorities also allowed the tug operators an amount of money for the placement of that equipment in the ports.

MR HINTON: So if I read you correctly, Shipping Australia would not see this as an issue that should be exercised in my mind, that the relationship between port parties - there is a conjunction of interest such that this matter gets resolved without it being an issue. Is that an overstatement?

MR PHILLIPS: There were some issues with some ports but in the main, the majority of ports took a mature approach to it and those ports that took the mature approach had the vessels with the firefighting equipment.

MR RUSSELL: Just to add in support of that, Commissioner, we would see this as

a part of the contingency plans that are outlined in the tendering process, for example, and although we don't see it as a major point for the Commission, we nevertheless believe it's important obviously in terms of that emergency response aspect, so it's not just sort of tugs going out to assist vessels in distress on the high seas but also the issue of, for example, fire in the port or their port environs, and that's part of that process which we would see as part of the tender process.

MR PHILLIPS: It also must be remembered that many of the ports where they have firefighting tugs previously had their own firefighting capability themselves. So, to gain, efficiencies in the port, what do they do? They get rid of their own firefighting equipment, their own people et cetera et cetera and they then pass it over to the tug operators.

MR HINTON: But here is a case where, if there was an argument regarding potential erosion of salvage, it certainly does not apply with regard to firefighting capacity because of conjunction of interests.

MR PHILLIPS: Yes.

MR HINTON: Let's move to the third area of interest for us regarding related services and that concerns mooring and mooring lines. I would welcome Shipping Australia's views on whether there is any concern about this component of port activity, whether it's differences across ports or maybe it's operating well.

MR RUSSELL: Commissioner, I think our major concern centres on Sydney, and there could well be other cases, but when we look at the cost per vessel visit, not on a per TEU basis, which was included in the position paper. We don't feel that's the way to adequately address the costs of linesmen. We see it more as an issue of how much it costs per average vessel visit. Sydney, to us, appears to be a lot higher and we notice there's primarily one provider, or it is one provider, whereas in other ports such as in Melbourne there's more than one provider. We question why the costs should be so much more substantial in Sydney when you look at the actual role and job required compared, for example, to another major liner port, for example as in Melbourne. I'm not restricting my comments here to liner only but just as an example of that issue. We have, as Shipping Australia, attempted ourselves to encourage competition into Sydney but so far without success. We have had discussions, for example, with the operators in Melbourne and I think the issue is also one that's well worth putting to stevedores, as we've heard yesterday in Brisbane, to provide line services as a competitive service in Brisbane.

We also fail to see why it could not occur, for example, in Sydney and it has been an issue for Shipping Australia for some considerable time, and we would hope that the Commission in its report could draw attention to that. But the actual resolution of it may be actually outside your terms of reference. We're not sure

really what the end solution is, except to say that we will continue our efforts to introduce competition into the service in Sydney for example.

MR McGOOGAN: Mr Commissioner, linesmen is almost a mixed bag. It's not as clean, if you like to put it that way, as towage services. For example, in the case of Gladstone, there are two service providers in terms of linesmen. In the case of Sydney there is a single service provider, in the case of Port Kembla there's a single service provider, and in other cases such as private terminals like Hay Point, Dalrymple Bay, Abbott Point and so forth the service provider is a single service provider on private terms. So it's almost a mixed bag and it's applicable to the individual port and again we go back to the evolving of the port and how it evolved. I think in some cases the stevedores in Sydney and Port Botany would probably want to provide that service as well for their terminal. But at the moment there's a single service provider.

MR HINTON: What's the impediment for addressing a more competitive environment in Sydney in particular?

MR PHILLIPS: I believe there's an antiquated, outdated award as a union arrangement in this state or in this particular port that precludes the operator from properly being as efficient as he'd like to be. Once you overcame that impediment then perhaps some of the savings would flow from there. But at the moment they're trying to deal with an out-of-date and antiquated system which is stopping them from then modernising or bringing new efficiencies into the port. So for any person who wanted to start off an operation in competition, shall we say, may well face the same impediments in trying to get something off the ground.

MR HINTON: I see. So you're saying that differing practices across ports in itself is not a problem because each of those would be port-specific and could lead to the provision of efficient, more in-line service. It just so happens though that in Sydney, in particular the operating environment, in particular the labour market practices, is an impediment for a competitive force and it's inefficient, the provision of service.

MR McGOOGAN: Yes. If I could cite the example of Newcastle. For many, many years we had a single service provider and that single service provider was not challenged, simply on the basis that he had a lot of control in terms of that monopoly. There was some encouragement for a new operator to come in. That new operator started off very slowly but in turn developed considerably the business that he currently has. That situation is somewhat a model of Sydney and Botany Bay, that a new operator coming in is probably discouraged from doing it on the basis that there is this very strong hold in terms of the current operation.

MR HINTON: Thank you for that. That takes me to the end of my set of questions but it could very well be that I've left out, and haven't given you a proper opportunity

for you to explore things that I should be exploring, so please raise issues now if you'd like, if you think that we've left out something at this stage of the proceedings.

MR RUSSELL: Mr Commissioner, I think it's been most comprehensive and, as I said at the beginning, we appreciate this opportunity to elaborate and answer your questions. I think there was one issue raised yesterday though in Brisbane that I did want to take up, and that was the question of exclusive contracts being - well, one of the downsides or disadvantages of exclusive contracts being new technology and that it could, in the view of - I think it was - the Port of Brisbane Corporation, be a downside of such exclusive contracts in terms of, if you like, maintaining old technology for the period of the contract.

Obviously you can see the complexity of these exclusive contracts, but we would see that as an important part as well that in working with the successful tenderer that there is an issue that as new technology and actually the ways and means of introducing that technology during the length of the contract be covered in it. It doesn't necessarily preclude it. It's certainly not an automatic issue. I'm not saying that it would not only be a complexity and pose some particular difficulties, but I am saying that these exclusive contracts really should be seen as a partnership between the major users and the towage provider in the port and in that spirit and context we don't see it certainly as an insurmountable obstacle or in fact the real disadvantage of such contracts.

MR COLE: If I could just add to that, Commissioner, again, as Mr Russell has mentioned, it's about the preparation of the documentation that goes into the calling for the expressions of interest, and obviously one of those areas is the sharing of efficiency gains. Certainly one tenderer that responded to the Gladstone and Fremantle tenders had a formula for sharing these gains. The scope of the contract really is only limited by the capacity of a human being to think ahead for seven years.

MR HINTON: Thank you for those supplementary comments, but also thank you very much not only for your submissions but also for your participation today - extensive, substantive participation - and I'm grateful for it. We will now break for morning tea and then we will start again as scheduled, 11.30, when we will have the Association of Australian Ports and Marine Authorities.

MR HINTON: Good morning once again. Let's recommence. For this session, commencing we have Mr John Hirst, executive director, Association of Australian Ports and Marine Authorities. Welcome, John. As for others, I would be grateful if you would please, for the record of the transcript, introduce yourself and indicate the capacity in which you're attending. I've probably stolen your thunder, but thank you for your attendance today. I understand you'd like to make a statement. I welcome that as well.

MR HIRST: Thank you, Commissioner. My name is John Hirst. I'm the executive director of the Association of Australian Ports and Marine Authorities. AAPMA is the peak body representing the interests of government and privately owned ports in Australia as well as state marine regulatory authorities. I would like to give a slightly more lengthy statement than Shipping Australia did, because I want to address some of the issues that have come out in recent submissions to the Commission as well as amplify some of the matters we raised in our first submission. I've broken this into what we see as critical issues.

Firstly, the role of port authorities: it's very clear to us that there is a major lack of understanding of the role of the port authority, given information put out in some submissions to the inquiry. Port authorities have been established by legislation in each state, and their prime function, as set out in legislation, is to facilitate trade and as well to implement regulations covering safety, environmental and marine matters generally. The port authority has a responsibility to and works on behalf of the whole port community to ensure that safety regulations are complied with, that the port generally operates efficiently and reliably and that trade is facilitated as far as possible.

In order to carry out these functions, ports have assumed a role as a strategic port manager. If there were not an overall coordinator in a port, it is possible that commercial pressure would lead to a situation where some groups were disadvantaged relative to others. Furthermore, there may be short-cuts in terms of safety and meeting environmental standards. The port may not operate as efficiently as it should, and there could well be a lack of long-term strategic focus on what is needed for the ongoing development of the port for the benefit of shipping, service providers and the wider community that depends on the port. In this regard it is essential that we all recognise that the impact of a port goes far beyond the needs of one service provider and that decisions in relation to port activity have an effect on the direct and broader regional communities.

Turning now to exclusive licences, there has been a number of challenges to the concept of exclusive licences as well as a lot of support for exclusive licences. Unfortunately, much of the concern over exclusive licences comes from one party who, it must be said, has a vested interest in operating to its own requirements. It should be noted that shipping companies, through SAL in particular, have

supported exclusive licences, as have a number of user bodies. We believe that the benefits from exclusive licences have been proved in recent years where tenders have been arranged for the provision of towage services. In all cases, towage prices fell as a result of the tenders.

In the case of Fremantle, it is reported that prices offered under exclusive licensing arrangements were significantly lower than prices offered under the non-exclusive licence that was granted. Adsteam were willing participants in both tender options in Fremantle, and their prices and service delivery were competitive with other tenderers. One conclusion arising from these tenders is that towage prices in these ports may have been too high before the tender process. Furthermore, one must question whether a competitive tender process in the declared ports would have led to either price reductions or at least limited the increases applied for by Adsteam.

Exclusive contracts in our view provide an opportunity for a new supplier to enter a market in the confidence that the considerable sunk costs invested can be recovered over a reasonable period linked to capital cost recovery. Our concept of exclusive contracts is that they will be for a fixed term, near the end of which the process could be repeated. We're not saying that exclusive contracts are the be all and end all. They are an option. Secondly, they must be transparent in that the tender document will set out all service levels required following consultations with users and pilots. We believe that service delivery is equally important as price. Furthermore, they must be capable of providing an opportunity of bringing forward new technology, the introduction of innovative service delivery and other improvements to the overall provision of towage services.

We do not fully agree with some of the comments by the ACCC and others over the difficulties of setting up procedures for exclusive licences. These concerns appear to be related to collusion. Whist we acknowledge that collusion could take place in towage licensing, it must be noted that potentially this would apply equally in any industry in Australia in which tenders for the supply of goods and services are undertaken. There are remedies under the Trade Practices Act which can address evidence of collusion. We do not believe that service provision in ports should be treated any differently to any other industry.

Many of the comments not supporting exclusive contracts either totally or by degree are based on academic assumptions alone and demonstrate a lack of practical understanding of the current towage market in Australia. Whilst we have no doubt that these arguments are sound intellectually, they do not - and this is important - take account of the practical implications of the towage market structure, and therefore service providers market behaviour and attitudes towards the provision of that service. Furthermore, academic arguments do not necessarily take into consideration the market power that one incumbent operator can maintain by remaining in a port when there is a new entrant, and I'll explain that more later on.

There has been a number of comments about towage costs as a proportion of overall transport costs. There is an argument that these are a small element in the overall cost of transporting goods. This is correct, but it is not the issue. The real issue is that a provider with a natural monopoly appears to want to maintain a market position where there is no effective impediment to the adoption of monopoly pricing with or without a level of service specifically required by users. The argument is used that the cost or the price of towage is only small in terms of the contribution to the overall cost of transporting goods in order, we believe, to effectively sanction their monopoly position . This argument generally refers to containers and pays little attention to the bulk and break bulk shipments, where Australian exporters are often in the position of being price takers and thus unable to influence the selling price of their product.

In this situation, where much bulk trade from Australia is sold on a free on board basis - that is, the exporter is unable to influence the freight rate because the freight is provided by the buyer of the goods - any increase in costs overall can reduce the exporter's competitive position , especially when the export is a low value product. Furthermore, most FOB bulk shipments are spot-chartered and are not necessarily subject to long-term freight contracts, and so the shipping company is unlikely to take an active interest in towage charges to the extent that it would seek to influence them in one or more ports which they visit quite irregularly. In this regard it should be noted that Adsteam also operate an active ships agency business in a number of ports around Australia and are therefore able to influence the direction of towage to these tramp shipping companies.

There's also a lot been said about barriers to entry. Like Shipping Australia, we maintain that the level of contestability in the towage market is low and that sustainable long-term entry by a towage provider into a single port is difficult in Australia, not only because of economies of scale and the sunk costs that are involved in entry into a new market, but also because of the national market covering by the dominant supplier. Having a dominant position, the supplier of towage services can utilise a number of arrangements to make it difficult for a new entrant.

Firstly, he can undertake transfer pricing or costing in relation to the charges set in the port where there is a threat or actual competition.

Secondly, he is able to relocate existing tugs to support different cost bases. But this can also create overcapacity in one or more ports, because the relocated tugs may not be the most suitable tug in terms of the capacity and cost available to the particular port, and therefore an unnecessarily high cost basis may be established in such a port.

Furthermore, a dominant supplier can enter into long-term towage contracts with those shipping companies that are regular visitors to Australia, and especially those that visit Australia very regularly, like container ships.

The supplier can also rely on the effect of national rebates given to large users of towage services, which can have the effect of decreasing or even negating the

value of price reductions in a single port offered by an alternative supplier.

Finally, there is the general behaviour of the dominant supplier in a port, which can also have a profound effect on the new entrant.

So these tactics can be used to drive out a competitor over time, either by causing him to cease operations because he is not making a profit, or by ultimately buying out the new entrant. In fact, in Australia all of these situations are well known to potential entrants, and that is one reason why there has been quite a dearth of new entrants into the towage market in Australia in the absence of any protection given by an exclusive licensing arrangement.

We contend that individual ports in Australia are too small in terms of vessel numbers to sustainably allow a second operator - and I stress "individual ports". This situation is likely to continue to be made more difficult through further technological developments on vessels which will result in fewer tugs being required for each vessel, but of course this has to be balanced by trade growth.

Even in Newcastle, where the new entrant was able to control a proportion of the vessel towage business to provide at least a base for entry and was able over time to increase its market share through service delivery et cetera, it was found that the market was too small to maintain two operators. The result, as we all know, was that Adsteam purchased BHP's towage business and became the sole supplier again.

One of the reasons for the failure of one of the two operators was that the number of tugs in the port was too high. The operators could not agree to share tugs, which lead to both having the minimum number of tugs required to carry out all towage operations.

As I mentioned earlier, we do not accept that the towage market is highly contestable and we note that the towage market has consolidated over the last 10 years to so by the acquisition of competitors, predominantly by Adsteam, to a far greater extent than there has been new entrants. If it is argued that the towage market is contestable and that the towage service provider is pricing efficiently because of the threat of new entrants, one must question why there have been significant reductions in towage charges when towage has been put out to tender on both an exclusive and non-exclusive basis.

Price monitoring: we support some cost-effective form of price monitoring of towage prices in all ports where there is no exclusive licence or other acceptable form of market-testing or market-monitoring which is acceptable to towage users. In this regard, we see exclusive licences as an option in the overall regulatory or monitoring process. However, any form of regulation must include encouragement of innovation and efficiency gains in towage service delivery such as adoption of technological developments, revised labour arrangements et cetera. Importantly,

monitoring must be wholly transparent by both users and the regulatory authority. Criteria capable of implementation must be in place to enable the monitoring process to be undertaken by the regulatory authority with appropriate input by towage users that is consistent in its application, is cost-effective to the service provider and the towage users and has an enforceable outcome. If such monitoring is implemented, it should be reviewed in our opinion in, say, three or five years' time. If the process of prices declaration is to continue, then it is essential that a far wider range of ports be declared rather than only the container ports for all the reasons I've set out earlier in this submission.

There has been some discussion of countervailing power. We have doubts over the potential for countervailing power in ports with a small number of users. In such ports there is often a dominant user or users of towage services and their requirements are often quite specific and may well be at variance with the service levels and requirements of other towage users in that port. Inevitably there will be different perspectives on market condition, duration of arrangements, need for price and stability et cetera. In such situations it may be difficult to reach agreement on a common approach. We note that Shipping Australia agree to this view and also do not consider that countervailing power is really effective in container ports.

Salvage: this is a huge issue. We certainly do not accept the contention that exclusive towage licences, because of their port-specific focus, pose a serious threat to the ongoing viability of Australia's existing national salvage and coastal protection capability. Salvage is a most important issue for an island nation like Australia. We all recognise that we have to protect the coastline and this poses a number of very significant problems in Australia in relation to how we do protect the coastline from shipping incidents. We believe that ports are highly responsive and responsible to the wider economic and community needs on environmental grounds, and it is most unlikely that any port would specifically exclude salvage and emergency response requirements from any towage licensing arrangements as there is an expectation for this to be provided by port stakeholders.

There are a number of potential and actual salvage vessels and providers in Australia with maritime salvage expertise other than Adsteam, and in view of the high rewards from successful salvage, competition to win a salvage job can be intense and response is generally immediate. The issue with salvage capabilities is that invariably a salvage-capable tug will also be used as a harbour tug and thus part of the towage capability that the towage operator undertakes to provide under any licensing arrangements or even in the absence of any licensing arrangements could be lost on a salvage job. The absence from a port of a harbour tug undertaking salvage operations, which incidentally earn a substantial reward for the salvage contractor, can leave a port in a position where there is a lack of towage capacity to meet the normal port operating requirements.

This in turn can affect the ability of the port to meet its users' needs, especially in periods of adverse weather or with movements of larger capacity vessels. This situation can be exacerbated where one or more harbour tugs is also used as a relief tug in other ports. Furthermore, there is an issue of whether one particular port where the salvage tug is stationed should in effect meet the cost of this vessel alone, particularly when the salvage vessel is used for salvage operations in a wider area, possibly covering areas closer to other ports. This results in the home port users of the salvage vessel bearing additional costs for this service, which gives singular benefits to the salvage and towage operator.

There is also a distinction to be made between emergency response and salvage operations. In most cases, emergency response can be handled by harbour tugs which only may need to be away from a port for a short period while they make fast the stricken vessel. We have great concerns over situations in which a harbour tug is retained for salvage operation and thus away from its home port for a lengthy period, for example, towage of a salvage vessel to a repair port in Asia. Whilst licences could stipulate conditions for time away for salvage and emergency response work and the associated towage cover that's required, we are concerned that a harbour towage operator with salvage capacity could decide to run the risk of non-performance of their towage licence in the harbour in order to profit from the high rewards that can come from successful salvage.

We support the Productivity Commission's suggestion that the issue of salvage availability and how it should be paid for should be the subject of another separate inquiry in view of its enormous importance to Australia. Thank you, Commissioner.

MR HINTON: Thank you very much for that substantive statement which was quite wide-ranging, but that is commensurate with the interests and responsibilities of AAPMA. As you spoke, I wrote down a number of questions and then you proceeded to answer some of them in the next sentence. But you will not be surprised to hear that I have some other questions.

MR HIRST: I'm sure you do.

MR HINTON: I'd like to, in particular, first of all focus on the role of port authorities, and this topic arose in some detail in the previous session. The issue here is in regard to the process by which exclusive licences might be implemented and the role of port authorities in that. In the position paper we flagged the crucial need for a consultation arrangement with towage users. So the question that arises then is your views about the varying or otherwise capacity of port authorities around Australia to take on this task and in that regard, an elaboration of how you would see that sort of consultation process that's been alluded to might operate.

MR HIRST: Yes. I do not see any problem with any port authority in Australia entering into an exclusive licensing process and I guess you mean by that,

administrative impediments or ability of the people to do it. Once there are a number of exclusive licences around, I think you'll find that port authorities do discuss issues between themselves and there would be a body of knowledge that has developed amongst the port community on how these licences are established and how they operate. So I do not see that there's any problem. I think it is very important that the licences be developed in consultation with stakeholders. That's essential. Port authorities do not know everything, quite simply. We do need to know from our stakeholders their issues, their concerns and what they want. Maybe in the past some ports may not have been too good at a consultative process. But I think now with the new generation, if I could call it that, of port authorities operating in a very commercial environment, there is a far greater appreciation of the need for consultation.

Quite frankly, I think every port has its own port consultative committee in which all the stakeholders are represented. So I do not see that there's any great difficulty in this at all. The difficulty will come from getting a common view from stakeholders because they will all have their own perceptions on what the market is going to be and they will also have their own vested interest. I think in this area the effect of towage rebates can be quite profound because it is quite conceivable that shipping companies could judge that the value of the rebates they get on a national basis would be far greater than the benefits of any assumed price reduction for towage in an individual port. So they would look at their own interest rather than the interests of the broader port community. I think this is where it's very important for a port authority to be able to consult generally and if necessary make a judgment on what is good for the whole community rather than one or two particular people in the community.

MR HINTON: In circumstances where the association holds the view that there are potential advantages for exclusive contracts and in circumstances where port authorities have the capacity - if not already, they would have a capacity to obtain the capacity - to implement exclusive contracts, why hasn't it been done?

MR HIRST: Up until now, ports I think have been relatively satisfied with towage pricing arrangements. Obviously some of our stakeholders do complain from time to time and a port will react to that. In recent years there have been complaints about - or certainly over towage - and also prices. Fremantle and Gladstone both went out to the market in response to suggestions from their community that they should test the market for towage and we've seen the results of that. The success of an exclusive or non-exclusive process though can often be influenced by politics and I don't want to be drawn on that.

MR HINTON: Let me try. Do you detect - I suppose I've coloured my question already - do you detect a shifting in the wider environment as to the more acceptability of exclusive licences today than, say, some time ago?

MR HIRST: Yes, there is. Unfortunately, the term "exclusive licences" does have some very negative connotations in industry and there has to be an education process with the general community as to what the benefits of an exclusive contract are, and we've been racking our minds to think of a better term for it to make it more palatable.

MR HINTON: Do you see a role for the association here in either spreading the good word, as you might say, plus also the potential to have in-house expertise as to a benchmark for best practice with regard to exclusive licensing?

MR HIRST: Yes, there is. I mean, these matters are discussed within the association. There are a number of committees that actively look at all aspects of port operations, a number of which we invite stakeholders to join us on. So, yes, they would be discussed and we would not necessarily take a leading role in this, but the individual ports would ultimately be responsible for any licensing arrangements. There's no way that my association would enter into the role of the principal, if you call it that. It would be up to the individual ports. But we certainly could facilitate discussion on best-practice methods.

MR HINTON: Do you see any difficulties with regard to specification, the sort of parameters or characteristics of a licence under open tender, term of licence, the escalation clauses, performance indicators, technology factor clauses?

MR HIRST: I think the licence has to reflect what users want in terms of the service provision and also that we want to ensure that the port remains competitive and attractive for trade. So we would take into account advice from all our stakeholders as well as put in our own thoughts on what is required in a licence and it is quite possible that licences would vary between ports because of various needs that would be unique to that particular port. But the principles probably would remain pretty much the same.

MR HINTON: I'd welcome your comments on the issue of supplementary characteristics of a tender that might have requirements that go beyond what could be considered as towage-specific; that is, extra performance requirements or characteristics of the service provider that might not normally be associated with towage. Do you have any concerns about a port authority undertaking a tender process that might have those characteristics?

MR HIRST: Do you mean specifically salvage or emergency response? What extra requirements do you envisage?

MR HINTON: You're drawing me out now. Let's take labour market practices.

MR HIRST: That's a very difficult one.

MR HINTON: I was trying to get you to introduce it, not me.

MR HIRST: That is very much a difficult issue. We would like to see respondents to any tender coming forward with innovative approaches to labour. However, we still have to take account of the Maritime Union and its requirements and how negotiable they would be to changes, and that's not always easy to work out in advance. There is one aspect of that that I could talk to you about confidentially, after the public consultation.

MR HINTON: Do you think one of the characteristics underpinning or influencing hesitancy of port authorities going down exclusive licensing has been associated with this area of add-ons to the contract or add-ons to the licence?

MR HIRST: With "add-ons", are you again referring to labour?

MR HINTON: As one example.

MR HIRST: Not really, no. Not really. I'm not aware of any of the licences that have really given too much consideration to the labour conditions. There certainly has been some effects from the provision of labour side as to some aspects of some of the tenders that have come in, but that's not been driven by the Port Corporation.

MR HINTON: But presumably a tender system that is transparent and open and applied under the normal processes of administration of open tender, then it would be open to have whatever criteria the authorities would wish it to have.

MR HIRST: Exactly. If it could, yes.

MR HINTON: Let's shift further to - I think your words - contestability. For a tender to be successful, a prior requirement would be a pool of potential participants that could perform appropriately against the criteria of the tender. Given the absence of - in your words - new entrants only rarely appearing in the Australian environment for harbour towage, are you confident that tender systems introduced by port authorities would generate a sufficiently robust response with regard to potential aspirants to harbour towage provision?

MR HIRST: The tenders that we've had in recent years have attracted a very good range of respondents. Obviously, some tender responses have been far more acceptable than others. I have no doubt that in the large ports there would be a very adequate response and, as I said, that's been demonstrated to date. When you get into smaller regional ports, they probably are less attractive to a new entrant unless that new entrant has already established a base in Australia so he could add it on.

MR HINTON: So you perceive there to be economies of scale associated with activities across Australian ports for harbour towage provision?

MR HIRST: Yes, definitely. I mean, there may well be some niche operator that's doing some launch service provision or something in a small port and decides to go into towage, vertically integrate perhaps, and that's fine. Certainly he would be looked at. There is a historical example of that in one particular port in Australia and that could happen yet again in other ports.

MR HINTON: Does the Melbourne AMS experience with potential for Brisbane and Sydney give you food for thought regarding your view about contestability and not sustaining more than one service provider as a general rule across Australia?

MR HIRST: I think it is very encouraging that the Melbourne provider has been brave enough to enter the market. As I said in my submission, whether it is a sustainable entry or not, only time will tell. But certainly, if he was able to expand into say Brisbane and Sydney, obviously he would be in a position to be a stronger competitor to Adsteam. However, there are still a number of impediments to a new entrant as I outlined in my submission and I think they're still quite relevant, whether they're in one port or in three ports.

MR HINTON: I'd like to draw you out a little more on your price-monitoring comments. You seemed to be putting forward not an interim arrangement or a transition process of monitoring but rather you were putting forward a framework where monitoring would continue as a matter of course for virtually all ports, certainly the major ones, whether they be under exclusive contract or not. You went further to say that not only was that coverage wider than what's in the position paper, you also sought to have - I think your words were - enforceable outcomes which seem to be even stronger than the current arrangement with regard to the declaration system that's in place where there is no enforceablity inherent. There's accountability in terms of transparency but no enforceability. Have I heard you correctly?

MR HIRST: Not quite, Commissioner. My view is that there should be a monitoring arrangement of one form or another for several years, and I think I mentioned, say, three or five years. My view is that that should be reviewed after that period to see what state the towage market is in in Australia; in other words, whether there are new entrants or whether we still have one dominant supplier and what price levels are there and whether stakeholders or shipping companies are happy with the level of towage-pricing and service delivery. I do say that there should be some enforceability. I'm not sure how that enforceability can be undertaken, but it's patently obvious that everybody spends such an enormous amount of money and time under the declaration process and then it's all to no avail because the recommendations are totally ignored and can be ignored.

MR HINTON: So under your formulation, you see it not just as a transition to removing declaration but the option of a platform to even more substantive price surveillance?

MR HIRST: Yes, for this period while we go through what I hope will be a transition in the market. But it also will allow us to compare towage prices between ports in Australia. Now, there's always difficulties in comparisons. We've always got the apples and oranges argument. But I do believe that there is a body of knowledge between shipping companies and ports and towage providers that can make a pretty reasonable assessment if prices in one port are a hell of a lot higher than another or conversely, why they're so much lower in one port. So I see a very great advantage in some monitoring to assess the real level of towage prices. As we note, towage prices, where there has been a tender, have come down quite significantly.

MR HINTON: Doesn't this suggest that you either have only limited confidence in the success of exclusive contracts delivering good outcomes or that you have only limited confidence that exclusive licences will be implemented by the various ports?

MR HIRST: In some states there is no provision for exclusive licences and maybe there is a political argument that they do not want exclusive licences in that port. I do believe that in this short-term period there is no reason why, in ports with exclusive licences, we should not report pricing to a central body for the comparison exercise.

MR HINTON: Thanks. Thank you for your comments on salvage. Can we briefly touch on firefighting and mooring lines. With regard to firefighting - well, don't let me put words in your mouth. I'd be interested in your comments on the issue of provision of firefighting services within ports from your perspective.

MR HIRST: It is incumbent on ports to ensure that there is adequate marine firefighting equipment available in each port. How this is achieved is up to each port. Now, in Fremantle and in Sydney both ports provide their own firefighting vessels which double as emergency response vessels as well and could conceivably be used as harbour tugs in certain circumstances. In other ports firefighting equipment is required to be provided by the towage provider.

MR HINTON: You think that's working successfully at the moment - - -

MR HIRST: I think it's working quite successfully.

MR HINTON: It's not really an issue in terms of - - -

MR HIRST: Not an issue.

MR HINTON: And mooring lines?

MR HIRST: Mooring lines is a very real issue in Sydney. The cost of mooring and unmooring a vessel in Sydney is three times the cost in Brisbane and in Melbourne.

MR HINTON: And the impediment to addressing that?

MR HIRST: The impediment to this is - Shipping Australia mentioned this this morning - an antiquated award structure that does not seem to be able to be changed. As I understand it, there were hearings in the Industrial Commission about this to try and get some substantive changes and that there was no judgment made. The parties were told to take it back and argue it out between them. As far as I'm aware, little progress has been made. Certainly, as I understand it, there is no-one really prepared to come in and offer a competitive service in Sydney. The stevedores don't want to touch it because of the award situation and it's left to a single provider to provide that service.

MR HINTON: Thank you for that. Is there anything else you would like to cover that might not have been covered in the last 45 minutes or so?

MR HIRST: There's nothing that I can think of now but I sort of would like to reserve the right to come back on Monday and make further comments if necessary.

MR HINTON: You're most welcome to. Thank you very much for that, and your attendance and participation today are appreciated. Let's take a two-minute break or a three-minute break just so we can shift the personnel. It's not meant to be a big break but you're most welcome to help yourself to coffee if coffee is still there or bring it in here as the case may be, but two or three minutes. Thank you very much.

MR HINTON: For the next session we have Mr Len Gainsford, partner at PricewaterhouseCoopers. Once again, welcome and thank you for your submission. We appreciate that and thank you for your time today. Once again, I ask you to identify yourself and the capacity in which you attend this hearing for the transcript and invite you to make an introductory statement if you so wish.

MR GAINSFORD: Yes, thank you, Mr Hinton, and thank you for the opportunity to appear today. Firstly, I'm Len Gainsford, partner at PricewaterhouseCoopers. I'm our national leader on pricing and competition policy and we've had involvement with around about 90 per cent of all declarations under the Prices Surveillance Act since it was created and we still have an ongoing involvement, as little as it now currently is, with declared entities such as Australia Post. So I was about to say, Mr Hinton, thank you very much for the opportunity to appear here today. We seek to make a contribution to the Commission's inquiry and to provide comments on the basis of what's in the position paper. We need to say at the outset that there are a lot of commercial-in-confidence issues and so on which we will not comment on and that's not, as we understand, what we're required to comment on. But there are matters of principle and there are some important issues here which we feel, as a firm, it's important that we be heard and contribute as much as we can.

I had some comments said to me before this hearing so I should just identify what I'm not here today as, wearing a hat. So I need to identify that even though for some years I was chairman of the Import and Tariff Policy Committee of the State Chamber of Commerce, New South Wales, and then subsequently on the council and a former president of that august chamber, I'm not here representing, nor do I have any interest in that particular chamber of commerce activity at the moment. Nor do I appear as a former chairman of the Institute of Chartered Accountants in Australia, Customs International Trade and Competition Policy Committee, nor as a former member of the chief executive officer of Customs National Consultative Committee, and just so everyone knows what it is fully, nor do I appear as a doctorial student in trade practices at Macquarie University, which I currently am as well. But I am here purely as a partner in PricewaterhouseCoopers and representing our firm, which is the largest professional advisory firm in the world, with some views on this inquiry.

If I could just track through, and I won't take up the Commission's time too much, Mr Hinton, but if you please stop me or have questions at the end, I'm very happy to answer that or answer questions on notice. But we note that since the declaration of harbour towage in 1991 under the Prices Surveillance Act, there have been a number of issues that have continued to emerge from the ACCC's processes and we sought to address those in our submission. We seek to make a worthwhile contribution, as I mentioned, for the Commission's consideration of regulation for this sector but we confine our comments to preliminary findings out of the position paper, 7.1 to 7.3. Essentially we find it difficult to endorse preliminary findings 7.1 to 7.3 and this is based on our inability to understand, and we're here perhaps to

improve our understanding for the reasons underlying preliminary recommendation 3 to remove Adsteam Marine Ltd from the declaration under the Prices Surveillance Act.

In the absence of good argument to the contrary, we believe that there should be no removal from declaration, but I do emphasise the first part of that sentence, which is, "in the absence of good argument to the contrary". We also question whether, instead of failure of the system of price notifications, there has really been a failure in the administration of it by the regulator. We also acknowledge that there has been a change in role of prices surveillance since the 1983 act was introduced and we've gone through processes of micro-economic reform and we've also gone through processes of national competition policy, and I quote here the Commissioner presiding, Neil Byron, when he looked at the Prices Surveillance Act. He said:

> Today the role of prices oversight is an instrument of competition policy. It is an option of last resort to deal with pricing when competition is not effective and cannot be strengthened.

That seems to be the basis upon which the declaration today applies to Adsteam Marine Ltd.

Our request at this inquiry - we note that the Commission has come to a preliminary view under recommendation 3 that the declaration should not be renewed when the current declaration expires on 19 September 2002. We invite the Commission to reconsider its view such that the declaration of harbour towage continues for three years from 19 September 2002; instead of three years, a price monitoring suggested by the Commission at recommendation 4. I hark back of course to say that it's in the absence of good argument to the contrary that that's where we come to that view. We note that participants such as Fremantle Port Authority, CSR Shipping and Sea Freight Council of Australia have argued in favour of continuing the declaration of harbour towage services under the act and the FPA has also argued for an extension of the declaration to include outer harbour Fremantle. We don't have a view on that but we just note that extension.

We also note that in the 1994 submission to the review of declarations which the then Prices Surveillance Authority conducted, that the Industry Commission, the forerunner to the Productivity Commission, recommended that the government revoke all of the declarations covered by the BSA's review except that for harbour towage. We note that an exception was made at that time and we questioned whether some of those reasons underlying that exception do not continue. I will just touch on our reasons for request just briefly. The act has been in force for almost 20 years, having been created as part of the wages accord. The Productivity Commission has now said in its 2000 report at page 19 that:

> The system of prices surveillance should now be interpreted as restraining prices that exceed costs significantly by companies

with market power.

So there's a real contextual relevance here, particularly in the harbour towage industry, to this statement. The act contains notification requirements for declared entities. It has price monitoring and public inquiry provisions which are not present in the ACCC administered Trade Practices Act. It could be argued that the act serves a useful public purpose in allowing the ACCC to scrutinise both price increases and changes in terms and conditions of sale such as the introduction of rebates, which has been mentioned this morning. Historically, declarations have occurred in relatively concentrated industries. The ultimate objective of any regulatory intervention or policy reform should be to promote the national interest, as the Commission has found in its position paper.

Also, I just make a comment there that's not included in our written submission, but because of the rural and regional impacts of towage services provided by regional monopolies, which may be subject to change with the licensing discussion we've had this morning, it's important for the Commission to take some of the thoughts that were contained in its own report - this is the 1999 report - on impact of competition policy reforms on rural and regional Australia into account as well. So we would suggest that from a public benefit point of view, the rural and regional aspects are also relevantly taken into account by the Commission at this inquiry.

The powers of the minister under section 18 of the act require the ACCC to hold an inquiry - or those powers requiring it to hold an inquiry may also serve a useful purpose for the public to see a matter being dealt with and reported on. On this occasion the minister chose not to refer Adsteam's 30 January 2002 price notification to the ACCC for public inquiry. Provisions under section 24 of the act allow prices to be frozen depending on whether particular persons are named in an inquiry notice by the minister to the ACCC, or to any other body for that matter as we would interpret it. Members of the public are also able to discover details of declared entities, declared goods or services, the basis for notifications and other details from ACCC records and reports, and a lot of those are contained in the ACCC's public register.

Importantly, under subsection 17(3) of the act the ACCC is required to have particular regard inter alia to the influence of profitability on investment and also the need to discourage a person who is in a position substantially to influence a market for goods or services from taking advantage of that power in setting prices. Of course those words are from the 1983 Prices Surveillance Act but also in 1994 the then minister George Gear said that prices surveillance would only be used where there are three situations: firstly, competition is limited or absent; secondly, a firm has substantial market power in a substantial market; and, thirdly, there is strong reason to believe that the firm will use its market power to increase prices. If you look at all three of those elements you find that they have direct relevance to this current situation with harbour towage.

In terms of notification procedures, I've noted here that the Commission says that it won't be addressing the question of whether price increases are justified.

Of course you've got to look at the legislation, the way the legislation is structured. The point is that I think the declared entities really don't have an onus to justify a case. They have an onus placed upon them to notify in certain circumstances and the notification has to be dealt with by the regulator, the ACCC, in a particular way and then the regulator has to make its views known as to whether it objects or doesn't object. The law is quite specific I think in terms of what needs to be done, even down to the 21 days for the ACCC to consider it. But at the same time there is no provision in the piece of legislation for reasons to be given, albeit that the ACCC is subject to the Administrative Decisions (Judicial Review) Act which does allow an interested party or an affected party to obtain statements of reason from the Commission as to why it reached its position of either objection or non-objection, and that's very little used as far as we know.

The ACCC's Draft Statement of Regulatory Approach to Price Notifications in February 1998 may assist in understanding how the ACCC approaches its responsibilities under section 22(2)(b). What this particular draft statement seems to do, it focuses a lot on efficiency but, if you look at the way it's constructed, there's very little mention - in fact, I can't find too much mention directly anyway - of equity considerations, so it's very much driven in terms of looking at efficiency of the cost base and those sorts of elements. In the absence of a section 20 ministerial direction, which is possible under the Prices Surveillance Act, it's difficult to ascertain the legislative basis for the efficiency of the cost base or the reasonableness of the rate of return, approaches which the Commission has mentioned on page 107 of its position paper.

Now, we've always assumed - and this is an assumption - that the ACCC has employed a type of Ramsay pricing model. The Ramsay pricing model that they have employed - the Commission about 10 years ago in its own annual report set out a couple of elements which I think are worthwhile just repeating quickly here now. Firstly, towage markets are characterised by natural monopoly, where pricing at long-run marginal cost results in losses for an enterprise. So the issue is here that if you set prices at that level, it will inevitably lead to losses.

Secondly, under the Ramsay method there's a kind of price discrimination policy which the ACCC employs. All prices are set to exceed marginal costs in a pattern which satisfies the need to earn a specified level of profit and to minimise the impact on consumption decisions. I think if you take that last bit into account, you kind of understand where the ACCC is starting from. That's our interpretation and that's, from our experience, the process we have to go through. What that means is there's some sort of targeting of profit levels, and that may or may not be something which has a positive public outcome.

PWC is not aware of any judicial interpretation which might assist the ACCC's discharge of responsibilities under section 22 of the act. The recent Bunbury case, of course, looked at licensing but it didn't actually go to the heart of this sort of

interpretation. So we've had quite a number of years of subjective views as to the way in which some of these provisions need to be properly interpreted. PWC is aware that under the section 20 ministerial unit cost direction prices should not generally increase at a rate which exceeds movements in unit costs. Some of those directions have been around for a long time. I think the executive remuneration direction has been there unaffected for a long, long time, and a lot of people would say that directions such as that are now largely irrelevant, given that the wage-fixing tribunal process has changed quite markedly since it came into being. So there's not much guidance there, not much help.

In the Commission's chronology of notifications by declared entities, what is not explained are the inabilities of the regulator to deal with aggregated information or information not in acceptable format. From our point of view - and if I can just take off my economist hat for a moment and stick on my accounting hat - we have had some difficulty sometimes in putting it in the format in which the ACCC can come to grips with the information. But we would say that the ACCC has a statutory role to take that information and as best as possible interpret that. The party putting the information to the ACCC has a responsibility, I'm sure, if they want to get some sort of reasonable outcome, to provide that in as helpful a format as possible, but these things don't often meet sometimes, particularly for more complicated notifications.

To the statement by the ACCC in the 2000 inquiry into prices surveillance by the Productivity Commission that assessment within 21 days is very difficult to achieve, we say, so what? You've got 21 days to do it, you've got to form a view and you have to form a view. The responsibility is for both parties, both the notifying party and also the regulator, to reach some sort of agreement and have some ability to interpret that within the statutory 21 days, otherwise why is the law there? Why does the law specify 21 days?

In terms of the Waratah Towage 1997 notifications, it was said, quoting the Commission's position paper, that the ACCC was "not convinced that the proposed increases were justified". As the act contemplates that the regulator can only offer non-objection under section 22(2)(b)(ii) or non-objection under section 22(2)(b)(iii) at a price lower than the proposed price, it's difficult to discover the legislative basis for where the ACCC has a right to be convinced. Everyone wants to be cooperative and everyone wants to achieve the correct result, but if the ACCC has a view that it needs to be convinced in each case, then I would suggest that there's insufficient guidance from the legislation to support that.

In the past, notifications have been withdrawn after pressure from the regulator. The regulator can rightfully object to a proposed increase if it feels that there is insufficient time or for any other reason prior to 21 days having elapsed. The act does not require the regulator to give reasons for its decision. In 2001,

Adsteam acquired Howard Smith Towage from Howard Smith Ltd. We understand the ACCC previously considered this under section 50 of the Trade Practices Act and other mergers and assets sales matters linked to Wesfarmers Ltd's acquisition of Howard Smith Ltd. It is not known whether the minister under section 21 of the Prices Surveillance Act required an updating of the declared persons as a result of these mergers and assets sales to Adsteam Marine Ltd, and in that table there, as best we can understand, there is a deficiency in terms of the declaration list in the sense that not all the notifying parties appear to be declared, notwithstanding the fact that the ultimate parent is.

In terms of regulation and promotion of efficient pricing, regulation can be seen as a surrogate for the pressure that competitive forces would exert to deliver economic efficiency and in effect to mimic the market. Quoting some authors from the telco area:

> As competition strengthens, governments could be expected to lessen regulation.

This is based on the view that competition is typically better than regulation because it encourages a firm to allocate resources more efficiently and to experiment in creative and flexible ways to provide new services and to entice customers into preferring its services.

An important question is whether declaration under the act has provided a surrogate for the pressures that competitive forces would otherwise exert. As the Commission itself points out in chapter 6, although barriers to entry at particular ports are not so high as to be prohibitive, due mainly to the mobility of tugs - and we've heard this morning about location-dependent situations which will impact on that - incumbents probably still earn a moderate margin over efficient average costs. At page 21 of its submission the ACCC itself concedes that there is some evidence of notification having restricted price increases. The factors limiting the promotion of efficient pricing listed by the Commission indicate regulator failure and not notification system failure.

The Productivity Commission itself, in its 1996 report, in looking at regulation, has found that:

> Irrespective of their institutions or legal frameworks, many countries are experiencing problems with their regulatory activities.

The Commission goes on to list - and there are two particular parts of this A, B, C which I think are pretty important:

> Inflexible regulations which often focus on fixing existing problems and are not adaptable to new situations.

That's the situation with the 1983 act at the moment, I'd suggest.

> Secondly, rapid growth in regulation, much of which is subject to consistent and objective assessment prior to implementation; and, thirdly, the challenge of balancing a sense of being overregulated or inappropriately regulated, with the support of many citizens, for regulations which achieve certain economic and social outcomes.

Whether such difficulties extend to regulatory failure by the ACCC may be a question of degree. The OECD refers to the degree of trust between regulatees and regulators. If regulatees feel that regulators treat them as untrustworthy then defiance and resistance build up so that inefficiency and non-compliance both increase, and this can lead to regulatory failure. Under conditions of regulatory failure, the introduction of pre-notification procedures by the ACCC, which is what we've had, is unlikely or was unlikely to improve the regulator's snapshot understanding of industry issues. With issues such as joint and common costs and bulking of price increases coupled with infrequent assessment of harbour towage prices, it's not surprising that the regulator struggles.

In addition, the lack of regulatory teeth which is referred to in the position paper apparently makes it difficult for the ACCC to enforce its decisions. The law, however, still permits objection by the ACCC, and the minister is able to call a public inquiry and, significantly, freeze prices. So there's enough teeth there, I think, under the existing law. It's just a question of how it's exercised. The Commission has found that the ACCC appears to have undertaken public consultation on notifications in a transparent manner, and we would not contest that. We have no reason to comment on that. On accountability, the Commission has found that the process may have been weakened by having the regulator undertake reviews of its own decisions, and while there's recourse to the courts and, the example I gave before, under the AD(JR) Act and agencies such as the Commonwealth ombudsman, there's no real evidence of such external scrutiny being applied. So we don't have, unfortunately, a situation of the ACCC being subject to that sort of process.

With timelines, the Commission recites the legal provisions and describes how parties have administrative procedures available to them. Compared with price notations about 10 years ago - and my mind goes back to quite a number that we were doing in any particular month - there are now greater delays, and perhaps higher compliance costs, due to the extra time the regulator takes in analysis and in reaching a decision. About 10 years ago I think we had 75 entities declared under the act compared to about 22 now, and 22 of course in the case of towage are separate entities in separate ports. So the extra time and the extra delay seems to be counter-intuitive to the lesser number of notifications now being handled by the Commission. On compliance costs, the Commission has found that these costs are not insignificant and would seem to exceed the benefits.

In conclusion, we do not believe there are sufficient reasons for removal of Adsteam Marine Ltd and its various entities from declaration under the act. We go back to the second reading speech as a basis for that view as well, under the

Competition Policy Reform Act 1995, which said:

> Surveillance will continue to be appropriate for firms with substantial market power in substantial markets where there is strong reason to believe firms will use their market power to increase prices and where there are no close substitutes.

We'd suggest that suits this situation. Rather than evidence of failure in the system of price notifications, we suggest there has been a failure in the administration of it by the regulator. It is incorrect to blame the system itself or the law that creates it. With continuation of the declaration, administrative improvements can be made without resorting to major amendments to the act. In fact, the Commission itself, in its 2000 review of the Prices Surveillance Act, said:

> The existing act could be amended to overcome deficiencies and comply with best-practice legislation.

But it then added the rider, to be fair of course, putting it in the correct context:

> However, this is only worth doing if there are no more effective alternatives to the Prices Surveillance Act.

But the Commission has already found that this could be done. Such administrative improvements include compelling the regulator to dispense with its pre-notification processes and to provide quicker decisions under section 22 of the act. Failure to do so should attract scrutiny from an appropriate Commonwealth agency, such as the ombudsman or the auditor-general. The ACCC should be required to provide details of its outside scrutiny in its annual report to parliament.

MR HINTON: Thank you, Mr Gainsford, for that statement and thank you for your submission. If I heard you correctly, you said you'd been involved in about 90 per cent of the declaration applications to date. How many is involved in 90 per cent, off the top of your head?

MR GAINSFORD: I guess if you go back to the 75 entities declared 10 years ago, we've done about 70 of those. When I say "done", assisted those companies in putting that forward. It's those companies themselves that made the applications, but we've assisted in putting forward the notifications.

MR HINTON: My second question is in relation to your reference to the need to take account of the factor called rural and regional Australia. What's behind that particular suggestion? Where is a regional and rural factor involved here?

MR GAINSFORD: You have a situation where in regional ports, of course, the costs are incurred at that particular place, and it's a question of whether in public benefit terms - and I've put that in the submission - that should not be taken into account.

MR HINTON: It should be taken into account.

MR GAINSFORD: It should be, yes.

MR HINTON: But is there a special factor that suggests that regional and rural Australia might be adversely affected one way or another in options being looked at? That's my puzzlement.

MR GAINSFORD: It was something that we thought we would raise because you'd need to look at the rate of increase in towage prices in those far-flung ports around Australia. Now, it's a question of whether it's a cost borne by the local community or not, and it may not be in some cases. It may be a case of that cost being absorbed into a general cost base Australia-wide, depending on the entity. But it is a pressure, nonetheless, in those particular communities.

MR HINTON: So you're suggesting that perhaps there is a differentiation across ports that could see pricing practices disadvantage certain ports that may be in rural and regional Australia?

MR GAINSFORD: From best we are able to understand from the public information, there has been differentials in the rates of increase in different parts of Australia.

MR HINTON: Yes.

MR GAINSFORD: I'm not being critical of commercial decision-making. Companies make commercial decisions according to what they see in that particular location. But it's the effect of those increases and the rate of increase which the Commission may wish to be taken into account in that public benefit area.

MR HINTON: Do you think there's a factor at work here that complicates comparisons across ports in terms of tug usage rates? A small port that might be isolated requiring minimum tug capacity might only have one-tenth of the number of tug jobs per year relative to another port, yet the capital equipment has to be funded.

MR GAINSFORD: Yes. Well, this is where I'm getting outside my area of expertise. I'd agree with you, but it's only on the basis of what I've had to surmise.

MR HINTON: Yes. Let me explore a broader issue with you, and it's one of basic approach, and in fact I pick up what I considered to be and you think to be an important part of your submission, and that is, in the absence of good argument to the contrary, Adsteam should not be removed from the declaration process. That's an approach that could be turned around the other way. Do you think your position and view regarding the declaration might be different if the test was reversed; instead of a

test for continuing with the regulation, a test of whether or not the regulation should be removed? The two have a different mindset. For example, the issue before us is one of renewal of declaration. Declaration for Adsteam - that's shorthand - has a sunset clause. It will finish in the absence of another decision being made. It will finish I think in September of 2002. The issue then becomes should that be renewed, not a question of whether it should be removed. If you put the test of whether it should be renewed, does that not change your position with regard to the process?

MR GAINSFORD: I understand what you're saying. You're making a pre-judgment that in fact a decision is made that in the absence of evidence to the contrary, it shall be removed. I'm not entirely sure that comes about from the last time the declaration was - I don't have any evidence to support what you're saying.

MR HINTON: Let me formulate it. Another way of looking at it is to put the onus on those wishing Adsteam to be subject to declaration to show due cause, not the onus on those not wanting renewal to show that it shouldn't be removed.

MR GAINSFORD: Yes, I understand what you're getting at, but I think the onus is the way I put it. That's my understanding of it.

MR HINTON: But isn't the actuality the other formulation: in the absence of action being taken, Adsteam will not be subject to declaration?

MR GAINSFORD: I believe the minister has to be convinced that the declaration should cease rather than the other way around. That's my understanding of it. But it's a legal interpretation and a policy interpretation.

MR HINTON: Yes, I think it terminates in the absence of a decision to continue it. So it's a renewal decision, not a removal decision.

MR GAINSFORD: If that's the case then I accept that the onus is on somebody to convince that it should continue. But my understanding in the way we proceeded here is that there's no such decision at the moment on that point. The point is, should it continue in this present form and if it should not, then there has to be evidence produced as to why it should not continue.

MR HINTON: Yes, certainly it's open for government to renew it, but it requires that action. Another way of looking at it is in terms of having always the onus to continue a regulation as opposed to remove a regulation. Some would argue that's a persuasive way to look at intervention by government as opposed to removing intervention of government. I will now shift it to more specific - - -

MR GAINSFORD: Neither my firm nor I want to be seen to be in some sort of way advocating continuation of unnecessary regulation. That's really not what we're

about.

MR HINTON: But that's partly behind why I raised the question in that form.

MR GAINSFORD: No, not as a philosophy but as a process, yes.

MR HINTON: Because it does have specific application in this case with regard to - and I think you quoted the then minister, Gear, about the three characteristics of intervention through price surveillance: limited competition - I'm summarising - significant market power for the incumbent and potential to use or actual misuse of that market power.

MR GAINSFORD: Yes.

MR HINTON: It seems to me that those issues are very much pertinent to this particular inquiry and we hope that the position paper addresses each of those. Why I explore this with you is that in circumstances where those characteristics might exist to certain degrees, there may be other opportunities for intervention that achieve the purpose of efficiency and that is, for example, as we discussed earlier today, the possibility of bringing competition for the market - not in the market - through exclusive licences. I was wondering whether or not that in itself also might be a factor that would seek you to revisit your view about renewing declaration for Adsteam, in that there was this other option.

MR GAINSFORD: Yes. We haven't made a request about licensing and I'm not sure really, again, I'm able to give expert views on this. But if you go back to the Bunbury case, of course, it talks about converting a natural monopoly into a regulated monopoly through licensing. Now, you've got to really question whether that is a move in the right direction from an efficiency point of view. The other thing is that when you go into a licensing-type environment - and I'm talking not just in terms of the sector - but if you look at licensing generally, whether it be telecommunications or whatever, what that tends to do with a regulated monopoly is produce an increase in lobbying, regulatory capture; all those sorts of costs. So we come back to the view that the system of prices surveillance is not being given a proper chance to work and hasn't been for some years now. If it is given a proper chance to work, it might be a second-best scenario, but it probably would be preferable over a regulated monopoly scenario. We would suggest that the regulator needs to be doing its job better.

MR HINTON: Yes, your comments this morning addressed that issue very directly. Is there anything else you would like to add further this morning to the discussion to date? My questions are complete. If that's sufficient then - - -

MR GAINSFORD: I think we've covered the major points, but I just wanted to

restate one point: that we're not, as a firm, arguing in a detrimental way - and others may disagree of course, and Adsteam Marine may disagree - that declaration should continue because in some way there's a punitive provision needs to be applied. What we're saying is that the system is there, the system is not being properly administered, as we would see it, and until you reach a position that it is being properly administered and you get the correct signals coming out of that process, you really don't have a firm basis to make a decision at all. What we see is that in some way we're jumping beyond this in the process.

We've talked about licensing and all those sorts of things, and there's validity in talking about that, but it seems to be running before you walk, and the walking process is that you really need to look at the system as it is and the way in which it needs to be properly administered. If you can't even get the declaration entities correct or if you can't even track through - and we've tracked through the public register to find notifications of the introduction of rebate systems and those sorts of things - if you can't even get those sort of bits of evidence correctly or, from our point of view, identify those bits of evidence publicly from public available information, then really you've got to doubt the basis upon which any conclusions are drawn that the system is not working.

MR HINTON: Yes. You're saying that the existing system "if applied properly" removes the need for even examining these other options such as exclusive licensing. If I oversimplified it, that's your basic message.

MR GAINSFORD: I'm not quite saying that. I'm saying that it may well be that the system of declarations and those sorts of things have flaws which are unable to be overcome such that regulation and so on in another way, like licensing, needs to be employed. But our view is that you're not at that point yet, and it may be a case of us not being able to access the right information. It may not be publicly available. But from what we have seen in piecing together the publicly available bits of information, it doesn't appear to us that the system is being properly administered at this time.

MR HINTON: Thank you very much.

MR GAINSFORD: Thank you.

MR HINTON: Thanks again for your attendance this morning. That completes this morning's schedule. We are now going to have a break for lunch and return here at 2 o'clock with Adsteam Marine.

(Luncheon adjournment)

MR HINTON: Let's commence this afternoon's session. We have before us representatives of Adsteam Marine. We're delighted to have them here today. I want to record my appreciation and the Commission's appreciation for the extensive involvement of Adsteam Marine to date in our inquiry for clearly obvious reasons, given the significant interested party that Adsteam is, but it's not been costless, I'm sure. Adsteam has been involved substantively in our work with extensive submissions and I want to record my appreciation. Thank you also for your attendance today. As for others, I would be grateful if you would please identify yourself for the transcript and the capacity within which you attend this hearing. David, over to you.

MR RYAN: Thank you, Commissioner. Thanks for the opportunity to speak to you today. For the record, Commissioner, we're also slated to have a chat in Melbourne on Monday so we're looking to present to you in two quite distinct parts. We have welcomed the opportunity to be involved in this inquiry. From the outset we said we would embrace it. Thank you for acknowledging the work we have done and, yes, it would be fair to say that a lot of that work is done because it's out of self-interest but also we've engaged with a range of industry specialists, both academic and business professionals, to expand on the information about the industry because we believe there were a lot of motherhood and apple pie understandings about the industry and we needed to flesh those out and get information in the public arena in the interests of creating a more efficient industry.

Our position is very simple and that is, the industry was inefficient 10 years ago. It is still to a degree inefficient. We believe we have pioneered a vast number of changes in the last 10 years but we believe also there is a lot more to be done. We also believe that regulation should only exist where the benefits outweigh the costs and we'll be seeking to demonstrate that. In fact we are at odds with some of the Commission's preliminary findings, and that won't surprise anybody. We think that a move towards more regulation rather than less regulation may not pass the net benefit test and so we've done a lot of work on that as well, which we're happy to be transparent and share with the Commission and so it can be put on its web site.

The first and pivotal question is, is there a problem? I think the problem that's been addressed by nearly everyone who has put in submissions today has been, "Well, Adsteam increased their prices substantially following the ACCC price notification process and therefore there is a problem." Again, more likely on Monday than today, we will talk about what has happened to price in the industry, the bunching effect that the regulations of price declaration have caused, the inefficiencies of those and what has actually happened to towage prices. So we don't believe that there is actually a demonstrated case that there is a problem.

The Commission has made some recommendations in its preliminary recommendations and had not at the time of the preliminary recommendations costed

out some of those recommendations and we will be providing further third party estimates of costs of regulation to you which we hope will help you examine those. We have also from the get go made a case that the declaration should not be renewed in September and we continue to hold that view and share the conclusions the Commission made.

What are our conclusions to date? Certainly on the harmonisation of regulations affecting towage there has been not a great deal said by other parties other than ourselves and the Commission on that. There have been some recent comments about it. We think there are efficiency gains to be achieved there. The question we ask ourselves is, how are they going to be achieved in a federal system? What is going to be the forum to really sit down with the regulators or the transport interests in each state government and drive these efficiencies through? We don't offer up an answer to that because we don't know the answer to that but we would be disappointed if having raised the prospect of harmonisation, if it now just went through to the keeper because it's not a federal government matter, it's an individual state government matter.

As I mentioned a little moment ago, we don't think exclusive towage licences will pass the net benefit test and we will be speaking on that extensively. On transition price monitoring, we think that is just unnecessary and potentially harmful and we'll talk about that more today and on Monday. Bearing in mind that we are a listed public company with 24,500 shareholders listed on the Australian Stock Exchange with continuous disclosure regulations, if light-handed monitoring of prices means that we have to publish our prices on a web page, either on our own web page or on the Bureau of Transport and Regional Economics, we have no problem with that whatsoever because our prices are not a secret. In fact every participant in the industry is able to and would have a copy of our tariffs.

But if we have to start providing price, cost and profit information, that goes way beyond what we are required under stock exchange listing requirements to provide. It provides powerful ammunition to competitors to come and attack us in ports because they have our detailed P and L account, and it frankly solves the ACCC's problem that emerged in the price notification process where they leaked our private and confidential information to eight so-called interested parties before speaking to us. If we go down this sort of a road of price, costs and profits, then for me the only person who will benefit out of that is the ACCC and it will take away that problem. It certainly will create massive potential damage to our company and we're not sure that it creates any benefit at all to shippers and ship operators.

Today we're going to ask Henry Ergas from NECG - and NECG stands for Network Economics Consulting Group - to talk about exclusive licensing. On Monday I'll review the Australian towage industry, further discuss exclusive licensing, touch on salvage, talk about declaration, regulatory reform and summarise

our position. Commissioner, with those few opening comments I'd now hand over to Henry, ask him to credential himself to you and then move on with the next part of our presentation. Thank you.

DR ERGAS: Thank you very much and thank you for the opportunity to address these issues today. My name is Henry Ergas. I'm the managing director of the Network Economics Consulting Group and I won't bore you with my CV or the many things and positions which I am not representing here, but if you're interested in that you can find it on our web site.

The background to my presentation today is that over the years I've been fairly extensively involved with regulated industries and with the economics of regulated industries and, more generally, with issues associated with the economics of industrial organisation. It's really from that perspective that I'd like to address the issues which are raised in your preliminary report and I'll do so according to that outline which is in front of you. I want to start off by noting some points where I strongly agree with the views that are expressed in your report and then move on to some areas which I think are more difficult and controversial, and in particular issues associated with exclusive licensing and its proper economic interpretation.

So let me start with the points of agreement. It's my view that the Commission is correct that in many ports, if not most ports, the market is probably only large enough to sustain one operator on a durable basis. I suspect that's not true in all ports but it's certainly true in quite a few ports. As a result of that, active competition for towage services within any harbour may not exist for those ports. However - and here I really echo what is said in your preliminary document - even in those ports, competitive pressures may well be faced continuously by towage operators because of the pressure of competing entry or the threat of entry. That threat is credible and feasible because entry barriers - and I cite your terms - while insignificant - - -

MR HINTON: There's a "not" missing, I suspect.

DR ERGAS: While not insignificant are not large. There's a word missing there. The reason the entry barriers are not large is because the most significant cost that an entrant would incur are capital costs and the bulk of those capital costs are not sunk and, hence, would not normally be viewed as creating an entry barrier. That material is important and those points of agreement are important because they then help one in looking at the issues associated with exclusive licensing. What I want to do here is I want to briefly introduce some of the relevant concepts and then I want to run through some of the issues and problems that arise with exclusive licensing in the type of activity that is at issue here.

Let me start by going to the empirical fact which the Commission places the greatest weight on in its preliminary report. That empirical fact is that recent

competitive tenders have resulted in price reductions, not massive price reductions but price reductions of about 5 to 15 per cent. The issue which that raises is, how should you interpret those price reductions? Clearly, one way of interpreting price reductions is that if you have competitive tenders in markets where costs are well below prices where you have monopoly levels of mark-ups, then if the competitive tendering process is effective, then it may well give rise to price reductions. So there is an inference which I think the Commission draws in its preliminary report that the fact of the price reductions allows you to conclude that there is a substantial margin in prices above efficient costs, that that margin reflects the presence of entry barriers and that the competitive tendering process helps eliminate those entry barriers and, hence, provides to consumers the benefits that flow from competitive markets.

Now, when you think about that proposition and the inference that the Commission draws, it's obvious that there are some quite substantial caveats that one would need to place on it. The first caveat, which is perhaps the most obvious of the caveats, is that you may not be comparing like with like because it may be that the quality levels associated with the lower prices may not be as high as the quality levels that were previously being provided in the market. So that's an obvious empirical issue that one needs to address on the basis of the factual information that's available. Having said that, it doesn't seem to me that that is the major difficulty that the inference the Commission faces. It seems to me that the major difficulty of the inference the Commission faces is really associated with its underlying assumptions about how competitive tenders work and what sort of effects they normally have.

Now, there's a fairly extensive economic literature on these issues and that economic literature really points to two sets of factors which may result in price reductions in competitive tenders where those price reductions are not desirable from the point of view of economic efficiency. The first situation, which is the situation familiar from textbooks, is the situation in which you have a natural monopoly, which may be or may not be a contestable natural monopoly, but unless you have a natural monopoly where marginal costs are an equitable amount higher than average costs.

If marginal costs are an equitable amount higher than average costs, as is likely to be the case, for example, if you were looking at an electricity transaction grid, then a competitive tender mechanism will typically lead to prices going to average costs because that's the nature of competitive tendering if there's a sufficient supply of entrants. Yet the difference between marginal cost and average cost will in fact result in a social inefficiency, and this was the point that Demsetz himself in his classic article on competitive tendering recognised, that the model did not necessarily generate efficient prices because the prices that it would generate were going to be prices based on average costs and not on marginal costs.

Now, I don't pretend that that is a substantial problem in this case. It may be,

but I don't have the empirical evidence which would lead me to conclude that it necessarily is. However, the point is a useful one because it reminds us that not all reductions in prices are socially beneficial. There's a second case, which is a more complicated case and which is the case I'll come on to now, where competitive tendering will, as a general proposition, lead to a fall in price in the immediate, perhaps even a very substantial fall in price, but that fall in price is markedly inefficient from a societal perspective.

To explain that case, it's useful to look at a completely different industry and context, and I'll do so because it's really been the situation which has stimulated a great deal of the writing in this area and hence may be more familiar to you and your colleagues in the circumstances we'll come on to in a moment. That case is the case of exclusive licensing or tendering for second or third-generation technologies and the issue which has attracted attention here are the so-called 3-G licences for mobile telecommunications operators. The situation you're dealing with there is the situation where you have incumbents who have invested, often very heavily, in the development of the current telecommunications mobile service and who are then invited to bid for the right to provide service in the next generation, the next generation requiring a different spectrum from the spectrum that is used for 2-G or second-generation mobile service.

When the 3-G auctions were held, particularly in Europe and to an extent also in the United States, the tenderers' prices were extremely high. In other words, the amounts which were bid by the potential operators for the new spectrum far exceeded expectations. From an economic point of view of course that's exactly equivalent to the price fall really because it's just that instead of the price fall, as it were, going to the consumers, the price fall is the amount that is being transferred to the auctioneer or the initial owner of the spectrum. These very substantial amounts that were paid by incumbents and by entrants were viewed as somewhat mysterious when you assessed the cash stream going forward that was associated with the new service.

Now, why is it that the incumbents and by reaction the entrants were willing to pay so much for 3-G spectrum? The initial theory that was voiced by economists who looked at this issue was that there was a winner's curse problem, the winner's curse being the phenomenon in auctions where, if it's a common-value auction such as buying a house, then the main information that is revealed by a common-value auction is that if you win the auction, you're the person who has the most optimistic view of the value of the asset. So if there is imperfect information about the value of the asset, which there must be for an auction to be worthwhile, then the only information that is derived from winning an auction is that you've paid too much. Of course, people know that, and the result of that is that bidding in open-cry auctions tends to be relatively conservative. But the inference was that it was this phenomenon of the winner's curse - people paying too much because of the auction

process - that had inflated to such an extent the prices for 3-G.

But there's another explanation which is much more compelling, and that explanation is this: that if you look at the European situation in particular and the US to a lesser extent, it's clear that in 10 years' time, if you want to provide mobile telephony service, you will have to have access to 3-G spectrum. The basic reason for that is that unlike the situation in Australia, in most European countries there's an acute congestion problem in respect of the existing spectrum and the existing spectrum is simply insufficient to handle either the numbers of users or the data rates that are expected in future. This is not our situation in Australia because we obviously have exactly the same amount of spectrum as the US or Europe but we have it over a much wider area with a much smaller population. So here the 2-G spectrum is certainly sufficient to go until 2015, probably 2020. But in Europe, the constraints associated with the 2-G spectrum are very tight indeed, and in the US also in the major metropolitan centres.

So, given that, what is the position of the incumbent operators? The position of the incumbent operators is that they have invested extremely heavily in developing the market. They, for example, subsidised handsets for many years so as to achieve very high levels of take-up, yet when the 3-G spectrum auctions were held, faced the situation where if they did not obtain 3-G spectrum, the investments that they had made in developing the service were effectively written off. In other words, the essence of what happened in the 3-G auctions was that the regulators, in the sale of the auction, transferred from the incumbents to themselves the value of the sunk investments that had been made in developing the market.

Now, why were they able to do so? The reason they were able to do so was because though there were significant sunk investments, those sunk investments were not entirely appropriable by the incumbents. In other words, had you had a situation where the incumbents, if they had lost the tender, could have not merely exited the market but removed from the market the benefits of the accumulated investments that had been made until that date in developing the service, then the prices bid in the 3-G auctions would have been very much lower.

So what does that tell us? What it tells us is that when you have competitive tendering in a situation where there are sunk investments but those sunk investments are not appropriable by the incumbent, then the auction can in fact expropriate the quasi-rents associated with those sunk investments. So what are you dealing with here? You're not dealing with monopoly rents; ie, rents associated with or arising from the restriction of output. You're dealing with quasi-rents; ie, the stream of income above and beyond avoidable costs that goes to finance or to recoup the cost of acquiring sunk assets. Those quasi-rents, precisely because the underlying asset is not fully appropriable by the investor, are available for transfer or expropriation.

Now, if we turn to the situation here, what are some of the facts that are salient in considering the sorts of processes that might be involved in and result from exclusive licensing mechanisms? It's fairly clear, and I think it would be uncontentious, that over the course of the 1990s there were very significant efforts made to improve the operation of the ports and of towage services in particular. Those efforts involved substantial investments in altering, for example, working practices which were, in the words used this morning, antiquated and clearly inefficient. Once those improvements were secured, then the benefits of those improvements are clearly, given the nature of our industrial relations system, not fully appropriable by the entity that incurs those investments. Given that they're not fully appropriable by that entity, then the issues that I raised with respect to 3-G become, I believe, of considerable importance.

What is, in other words, involved? What is involved is that Adsteam appears to have made substantial investments, taking on itself quite significant risks, to alter the arrangements within which towage services were provided. It's clear that the return on those investments would only be capable of being recouped over long periods of time. It would be unrealistic to expect that the entire return would be secured at the time that the gains were made.

How does exclusive licensing affect us or how can it affect us? Exclusive licensing can provide a mechanism which has two effects. The first is that it facilitates entry by its impact on aggregating demand and providing a degree of certainty about demand. Second, and associated with it, it provided a means of transferring the quasi-rents that would otherwise flow to the investor whose investments had provided these benefits. In those circumstances, where the impact of the exclusive licensing mechanism is to expropriate sunk investments in improvements, sunk investments which by their nature are not entirely appropriable to the entity which makes those investments, though it's true that you get additional entry, as a general matter that entry will reduce efficiency rather than enhance it.

When you consider the context in which this behaviour occurs, it's clearly important to look at the position of port authorities and at the incentives that they have. The reality of it is that port authorities are essentially commercialised entities which have obligations to provide returns to their shareholders - quite properly so - and to other stakeholders. It's also clear that they are in different ways price regulated, and are regulated typically with respect to the aggregate of their charges. This will give port authorities incentives, at least in the short-term, to force down the prices charged by complementary service providers, and indeed possibly to force them below efficient levels. It's plain that it's very difficult to do that with ongoing costs. However, it's much easier to force prices down by in effect expropriating sunk assets; that is, by forcing prices down to levels that do not allow a sufficient stream of quasi-rents to validate the investments that were initially made.

To the extent to which that is done, then port-related prices can be held or reduced in line with the pressures on the authorities whilst, at least in the cases of those authorities which face fewer pressures to be efficient, without having to face the difficulties involved in cutting their own costs. Seen in that light, the tenders for exclusive licences dovetail well with the incentives and objectives as I outlined them a moment ago. This is because exclusive licensing can promote potentially inefficient expansion in entry, which pushes prices down and hence yields the type of price effects that the Commission has pointed to in fact by preventing the recovery of sunk costs.

This type of mechanism and the effects that I pointed to a moment ago, though they do give rise to reductions in prices, have obvious long-term implications for economic efficiency. The reason that they have implications for economic efficiency is that by and large the incentive to engage in investments in cost reduction comes from the prospect of earning a return on those investments. Indeed, to the extent to which the investments themselves are risky, uncertain, likely to be controversial, quite high returns will need to be forthcoming if those investments are to be made. If those returns are removed, then the incentives for investment in cost reduction, in quality improvement, in growing the market, will inevitably be blunted.

If we look at the situation in the towage service, we do see a history of quite substantial improvements being secured in terms of increases in efficiency, and all I've done in this slide is to summarise some of the changes which have occurred over the years in labour, productivity, where one has gone from eight-man crews in 1992 to three-man crews for at least some tugs in 2001. It's also clear that securing those improvements has involved quite significant investments, and those investments have been spelled out in some detail in some of the material that has been provided to you in previous submissions and is summarised in this slide.

It's also plain that under exclusive licensing almost all of the returns on these investments can be appropriated by new entrants. It was striking this morning to hear descriptions of a situation with respect to lines and mooring, where the point was made that in Sydney the full efficiency improvements are far from yet being secured but that, once those improvements are secured, one can expect entry and competition to occur. What is at issue? Putting it fairly plainly, an expectation that Adsteam will incur those investments and that then the benefits of those investments will flow to others. If that is the expectation, then it's clear that those investments will never be made, and the result of that is that inefficiencies, rather than being addressed, will be perpetuated.

It's simple economics that if the initial price of a service is $5 and a firm that supplies that services realises that by engaging in costly innovation it can reduce it to $3 and then, because it has carried out that investment, bring the price down from $5 to $4, it's true if the price were immediately forced down to $3, in the short-run the

consumer would be better off, but it's equally obvious that in the long-term those kinds of investments would never be made.

It's my view that the issues associated with the expropriation of sunk costs are very significant ones which have been extensively discussed in the context of other industries in respect of exclusive licence and tendering arrangements, and I believe that they need to be taken into account in the Commission's consideration of these issues. But above and beyond those issues associated with the expropriation of sunk costs, there are other issues associated with the costs and benefits of exclusive licensing that arise from the economic literature, and I would like to briefly turn to those. In essence, what I'll be doing after setting out some of the nature of the problem is to look at some of the impacts that as a general matter these types of arrangements can have, and some of the general problems that they encounter.

Really, what this goes to is the assessment in a considered way of the costs and benefits of exclusive licensing arrangements. I would note that the costs - which I'll come to in a moment - are applicable to exclusive licensing processes probably independently of the incentives which bear on port authorities in the specific instance. What are those issues? The first set of issues has to do with the design and enforcement of contracts, that is, of the exclusive licences themselves, and these issues can really be broken down into two groups, which are the problems relating to the criteria for the award of the exclusivity and then the problems associated with the implementation and execution of the agreements.

Turning to the issues of contractual design, the starting point is that all processes that involve the allocation of a licence for a period of time will require the specification of the grade of service that is to be provided. In all but the most simple cases - and those simple cases prove to be extremely rare and far between - the definition of the appropriate level of quality of service to be provided is relatively complex, and so a broad range of considerations has to be brought to bear in deciding the basis on which licences will be allocated. In the case of harbour towage, I think it's uncontentious that both quality and price are important, and then the issue that arises is whether the price quality combination selected will be that that would be chosen by users in an open environment.

Now, the fact of the matter, which was I think highlighted in some of the comments made this morning, is that users' needs do differ, and in an open environment, even if it's not perfectly competitive or perfectly contestable, users' needs express themselves through the mechanism of, as it were, voting with dollars. Effectively what happens in an open environment is that users, precisely because, as was said by one of the presenters this morning, they can enter into differentiated contracts with suppliers - you have a situation which is like an ongoing licence where users determine the quality of service, in effect, through their negotiation with suppliers and where it's the pool of revenues and profitability that determines the

grade of service that is ultimately offered.

In an exclusive licensing situation you don't have that voting with dollars. Instead of having voting with dollars you have some other mechanism that comes into play, and I believe that it was fairly clear this morning that that other mechanism is extremely poorly defined. It's very unclear quite what it consists of - some type of committee process, some type of consultative mechanism. Yes, those may all have their place, but at the end of the day we know from economic analysis that median voter type models are very poor at choosing the optimal quality of service when users are differentiated by the quantity that they consume. So from an analytical perspective I don't think one could have any confidence that a mechanism that relied on committee decision-making of some kind or another would result in the appropriate selection of the quality of service when user demand is differentiated.

So it's important to bear in mind that, even if you think that the current situation is not perfect - and there are very few markets in the world that I know of at least that are perfect - the relevant comparison is not between the current situation and perfection; it's between the current situation and a process of selection that seems rather poorly defined and where, on analytical grounds, we have no reason as economists for believing that it will lead to the optimal choice of quality levels.

Turning to the problems associated with contract execution, the execution problems arise because in effect during the period of the exclusivity market forces no longer act as a corrective mechanism or as any disciplinary mechanism in the supply decision. The exclusive licence, by its nature, creates a barrier to potential entry that would otherwise have exerted some pressure and discipline on incumbents, and what that means is that the regulator or the party awarding and managing the tender bears a very substantial burden of ensuring proper enforcement, and its incentives to do so and its ability to do so in conditions of necessarily imperfect information obviously need to be very carefully assessed.

So again - and I come back to this point - you don't need to believe that the present situation is perfect, because that's not what's at issue here. What's at issue here is not a comparison between an imperfect world as we have it and a perfect world where contract enforcement would be costless and contract execution flawless. The relevant comparison is between a world where there is some, and we believe significant, discipline that comes from potential entry and a world where the entire burden of assuring service quality and price competitiveness rests on a regulatory mechanism.

In addition to those issues which affect the costs of exclusive licences, it is also widely recognised that any exclusive licence arrangement has impacts on dynamic efficiency, and those impacts on dynamic efficiency arise insofar as the improvements made in any period are not fully appropriable within the period of the

exclusive licence. So if you have a situation where you have, say, relatively short exclusive licences, then the party to whom that licence has been awarded, if it engages investments which may be transferred to subsequent periods, will not be able to reap the full benefits of those investments. That in turn will affect both the level of its investment and the timing of its investment in innovations, and the effect there will be, under quite general conditions, to reduce the rate of productivity improvement over the longer term.

Now, the only way in which that effect can be removed or significantly attenuated is if the exclusive licences have extremely long durations. So if you go back to the literature on these issues, it will tell you that, for example, licences with periods or durations such as 50 years or 70 years overcome most of the problems associated with non-appropriability of investments in improvements and innovations. But it's also clear that if you have extremely long licences then that brings many other costs of its own, and in particular if you have extremely long licences then in fact what you've done is created an entirely protected monopoly relative to a situation where you may have had a sole supplier but that sole supplier operated subject to some degree of competition.

The final issue that I want to point to is the issue of bidding parity. This issue is an important one because if exclusive licences are to be efficient as a long-term approach, then it must be possible to structure them so that you will get ongoing competition at each date of renewal. But to have ongoing competition at each date of renewal, then there must be some symmetry between the incumbent and potential entrants. If the incumbents have very significant cost advantages relative to potential entrants, then it's clear that competitive tendering or exclusive franchising cannot work over the long-run to assure efficient outcomes.

Here comes the paradox in this situation, and that paradox is this: the proponents of exclusive licensing argue that you need exclusive licensing because you have, allegedly, a monopoly that is protected by substantial sunk costs, and those sunk costs, allegedly, go to the benefit of the incumbent. But if that's the case, then exclusive licensing as a matter of economics cannot be efficient. The reason it cannot be efficient is because if the sunk costs are large, then at contract renewal there will be asymmetries between the incumbents and entrants, and those asymmetries between the incumbent and the entrants will ensure that the incumbent under such an arrangement can always secure the full rents associated with the sunk costs.

So if you believe that there are high sunk costs involved in entry, then while it's true that exclusive licensing may do something to help alleviate those sunk costs, it itself will bring new problems and difficulties as you go to contract renewal, because there will be difficult issues associated with securing bidding parity.

This leads me really to my conclusions, Commissioner, and I apologise for having taken a bit of time to get to them, but my conclusions are really quite readily set out. I can fully understand that, if one looks at a situation where there is an exclusive licensing process and the result of that exclusive licensing is that prices decline, one might want to infer from that that the exclusive licensing mechanism was in fact providing benefits and efficiencies to the community. However, the substance of what I've had to say today is that you need to be extremely cautious in drawing that inference. You need to be cautious in drawing that inference first whenever there are sunk costs that may be expropriated and there are parties that have incentives to engage in that expropriation; and, second, when, though there may be initial gains, there will be longer term costs associated with the impacts on dynamic efficiencies that I pointed to in the course of my remarks.

It's undoubtedly true that there are circumstances in which the costs of exclusive licensing are worth bearing. Every economist knows that exclusive licensing has its costs but equally knows that in some cases those cases are socially worthwhile. The most obvious circumstance in which those costs are worth bearing is when one compares the costs of the admittedly imperfect mechanism of exclusive licensing with the cost of regulated entrenched monopoly. Much of the economic literature associated with franchise bidding for natural monopolies is in fact concerned with precisely that comparison. It compares rate of return regulation of an incumbent with periodic franchise bidding for the monopoly. That is not the situation that we are dealing with here, and to my mind it's extremely important to bear that in mind, because otherwise one will misread the economic literature and not make the proper, as it were, comparisons between the different possible counter-factuals.

I think matters were nicely summed up by Justice Goldberg in the Sydney Airports case, which, as you know, involved an exclusive licence that was awarded by Sydney Airports. In that case, circumstances were in some respects similar to some of the issues that we're grappling with here. There were these relatively, in that case, marginal firms, including - truth in advertising compels me to make a disclosure at this point: the applicant, on whose behalf I gave economic evidence in that case, and these firms had wisely or foolishly invested in developing a market for what you might call a cheap and nasty service. So I wouldn't want to suggest for a moment that my esteemed colleague here is in that business but that was certainly what that particular client was in. They were in fact a very engaging client in many respects. Unfortunately, they didn't live long enough to benefit from the verdict which was in their favour because it took Justice Goldberg two and a half years to hand down this particular decision.

But the essence of it was this: that they had discovered a niche for providing the sort of cargo-handling and other airline services that were used by airlines such as Aeroflot and Yugoslav Airlines who didn't particularly require the highest level of

Neil Perry catering. So this applicant had developed this market and there had been quite a bit of growth because international aviation in Australia expanded very considerably and the market as a whole for these services really rather took off. Sydney Airport then decided that it was all very well having these people there but it was rather a nuisance and life would be much easier and more profitable for them if they had an exclusive licence arrangement, which they then sought to implement, and as it so happened, they felt that the dollars associated with Yugoslav Airlines and Aeroflot and whomsoever really shouldn't get much vote in the quality of service that was to be provided. So at the end of the day these people were excluded and then the Sydney Airport matter ensued.

In his decision in Sydney Airports, Justice Goldberg says that - and I wouldn't pretend to have the words down perfectly but this is the import of them - he says exclusive franchises and other forms of regulated competition for the market are very much an imperfect and second-best alternative that ought only to be pursued where it's apparent that the alternative to that - ie, the open market - is plainly inadequate. If you don't do that then I think the danger that you run is of moving to a situation where you do get short-term benefits for some - and there's no doubt about that; all expropriation of sunk costs transfer benefits and creates benefits for some - but the long-term costs in terms of economic efficiency, which really ought to be the goal of this inquiry, can be very substantial. Thank you.

MR RYAN: Commissioner, if I might make a few closing comments and they will be quick.

MR HINTON: Certainly. Please proceed.

MR RYAN: Thank you. Just one comment. We've touched a lot on the role of port authorities in the discussion today. I'd just like to reiterate that we deal with about 36 port authorities around Australia. We think of them as a very important customer of ours. So when we raise some of the issues we raise, it's not because we think port authorities are being (indistinct). They are being corporatised, they have shareholder concerns, they have customer concerns and so forth. We expect them to behave economically, rationally and look after the various constituencies they have to look after, which leads to the conflict of interest issue.

We have a significant problem with the idea of the port authority being elected as the grantor of the exclusive licence, if that was the way things are to go. The reason we have that is out of our own experience and the sort of example you were given yesterday in Brisbane. A corporatised commercial port authority in Australia has the power to be in the towage business, and you heard yesterday that the port of Brisbane indeed has contemplated doing it, and I can assure that I'm sure AAPMA would confirm that a whole range of port authorities around Australia have from time to time contemplated doing that. That creates a huge conflict of interest because it

means that at a point in time you go through such a tender process the first time, the port authority may be the umpire. The next time you turn up it may be a player and the umpire so in a football competition, for the first half they're the umpire and the second half, they are the person you are playing against and they are also the umpire. It is an impossible conflict of interest.

Indeed, we faced exactly that problem in the last decade where a tender came up in a particular location. It wasn't a port authority as the user, but a tender came up. We were the incumbent, we tendered. There was one other tender. The other tender had had a conflict of interest, and then there was a third tender because the person who was the grantor had tendered and hadn't won the first time so allowed a second tender for themselves alone, and we were promptly dispatched from the port. It seems a quite unreasonable place to put the port authority when they in fact, by having the power to get into the business, have significant countervailing power and don't hesitate to remind us that they have the ability to get into our business if we don't perform properly. We will be delivering you a written paper with Dr Ergas's thoughts on it. We hope to get those to you, if not tomorrow afternoon, certainly in the very early days of next week, which expands - although I don't think it probably needs it - but expands on the things that were said today.

The other thing - and I don't mean this in a trite sense - is in a conversation this morning there was a comment that, "Well, gee, 'exclusive licences'. It's kind of got a pejorative feel to it; let's decorate that concept with a different name." Well, I'm sorry, a rose by any other name is still a rose. I wouldn't have a problem though with renaming "exclusive licences", "regulatory expropriation licences" because that is in effect what would be happening to our employees and to our shareholders and to others, where if we are inefficient and there is an open market and contestable position and there is no forced competition at a point in time, someone can enter into the market, as has been done, and seek to take our market off us, and we risk expropriation in a competitive environment and we have been in favour of that for 10 years. We remain in favour of it. I'm happy to take any questions you now have.

MR HINTON: Thank you, Mr Ryan, and also thank you, Dr Ergas, for that substantive presentation and those comments. I think, as Mr Ryan said right at the start, we do have the opportunity of Monday as well. Where some of the issues that have been very directly raised this afternoon we can revisit again on Monday. I don't wish to duplicate that but in particular in that regard I'd like to have a discussion on Monday about your views about open contestability, barriers to entry, including the issue of rebates to the extent we can go down that track to see whether that is an issue that some perceive as a potential impediment to entry, but overall views about a very important ingredient of Dr Ergas's presentation; that is, the starting point of contestable market to some extent, and I'd like to explore that further on Monday.

But I did have some questions I'd like to explore this afternoon in the time

available, and they're more in direct reaction to Dr Ergas's presentation. Let me take them in turn. The first one was this cost of improvement; investments that have had a cost that have occurred in the industry at Adsteam's initiative and action. A particular example brought forward was the savings that have flowed from labour market reform, and one of the charts put up precisely listed the sorts of improvements that have occurred. What I'd like to raise with you is what are these other costs? Is that the only one that we're referring to here? Is that the prime example?

MR RYAN: Another example would be - and it would be well known to a lot of the people in this room because a number of them participated in it - we for many, many years have engaged actively with the Australian Maritime College and individual ports, investing in testing operations in ports in computer simulations and modelling to see if it is possible to reduce the number of tugs per vessel, with the ultimate objective from our point of view being to withdraw a vessel from the port. That has been done in many, many ports around Australia over a very long period. We, as a company, have invested substantial amounts of money in that. I think in one of our submissions to you we attached a note from the Maritime College that spelt the number of occasions that we'd worked with them on it.

Now, it is our contention that it is possible for instance in Port Kembla to operate that port with three tugs, not four. It is our contention that it's possible to move the Shell tanker that comes into Gore Bay in New South Wales, in Port Jackson, with three tugs, not four. We are not the one who nominates the number of tugs per vessel. It is the pilot, having reached a decision on port guidelines that may or may not involve the port authority, that may or may not involve the harbour master, that may or may not involve the users, but in best practice would involve all of those people in designing the guidelines. It is certainly not our objective to have a marginal tug in a port and we certainly have many marginal tugs in ports.

So it is possible that, having spent years and years and years working with those groups, expending a huge amount of money; doing actual trials in the port; shuffling the fleet so we put more powerful tugs for instance down in Kembla to see if the port could operate with three tugs instead of four; doing trials with actual vessels; standing a tug beside it, the fourth tug in case of need. It's then possible that a port authority would go, "Okay, this is great. We have now got the power to grant an exclusive licence and we'll now do it and, by the way, the guideline will be for three tugs, not four," and we will have suffered the burden for five or 10 years of having that fourth tug, made the investment to have it removed, to have it expropriated before we even achieved it.

MR HINTON: Thank you for those extra examples. Coming back to labour market, what direct costs or what actual costs are involved in that improvement?

Are there retrenchment packages associated with negotiation or higher salaries?

MR RYAN: Folks tend to focus on the simple retrenchment payment, which has been very, very significant to our bottom line, also to Howard Smith's bottom line prior to our acquisition of Howard Smith, and back in the early 90s when it went from eight to four, equally substantial to both companies' bottom line. There was no government contribution in the recent round of four to three, to our crewing reductions, zero. We wore the entire expense of that. In the round in the early 90s, equally there was no government contribution to the redundancy package, but there was a payment made by the government, as I recall, of $20,000 to each departing employee where the employee guaranteed he would not come back into the industry. So the retrenchment packages have been substantially self-funded.

But the other sorts of costs that are involved, it took us two years of negotiations with the maritime union to get agreement to move from four to three. During that period we were involved in two years of negotiation with the AIMPE, which is the union representing the on-board engineers, to get their agreement to come out from the engine room to be trained in being a competent deckhand and to assist the remaining deckhand as required during the process. We had to engage specialist internal industrial relations people. The current chap, who is general manager of our IR and development division is a chap by the name of Tony Wilks. He's a former commissioner of the Industrial Relations Commission. His predecessor in title was a guy called Bill Watson, who had been a senior policy adviser to Laurie Brereton during his period as the Minister for Industrial Relations down in Canberra.

It's a very high cost, high quality internal resource that you need to deal with what are acknowledged as difficult but not intransigent unions. It took an enormous amount of my time, our CEO's time, Clay Frederick, in working up the strategy for doing it, for discussing it with the board, for deciding whether we would run the risk of a national strike of the same sort of magnitude that Patricks did because you stop the tugs in the ports, you stop the ships. Now, we managed to keep the tugs operating during the waterfront dispute. So that was a huge bid for a tiny, little company like us with a market cap of $450 million. So the board had to be brought up to date. We had to do what we call the Women's Weekly world discovery tour, taking a group of Maritime Union officials around the world with our people, going to three different continents, visiting towage operations in other places to prove to them what we all knew to start with, and that was tugs could operate quite successfully with three-men crew.

We bore all the costs of that ourselves. We bore the costs of the security measures that we had to put in place to protect our staff when we really had the final push. It's okay for everyone to talk about exclusive licences but when you have to contemplate moving your family because you might start having rocks thrown

through your windows at night; when you have to employ security people who sit at the ground floor of Norwich House, which was where our then office was, to protect access to our floor and to the other floors of that building; when you have to engage security people to sit inside your office in the foyer to make sure that a group of people don't go charging through your office and trash it; and where you have to design a code that starts with red, yellow, green and blue and train all your staff to be able to identify a problem coming through the lift to again immediately be able to activate a security process to protect our people while you're taking these sorts of industrial bids is not even remotely close to being summarised by the retrenchment payment that was paid to the crews. These are all things that we did. These are all things that we paid for.

I don't like the fact that Australian Maritime Services are now competing with us in Melbourne and it would be a lie to say that I did. But I absolutely support their right to come into that harbour. If Melbourne had had an exclusive licence, they wouldn't be there right now. If there'd been a tender two years ago, they may not have been ready and financially available. Everybody is trying to guess who Australian Maritime Services really is. Is it James Chen Smit, Weismuller, Port of Singapore Authority, Semcorp that's really part of Port of Singapore Authority, Kotug, Hong Kong Salvage and Towage, Swiers, Patrick Corp, us in disguise to convince you that there is contestability, Arabian money and a Chinese shipyard.

Now, the fact that the industry is full of all of those guesses means that they're all possibilities, except I think, I suspect, I know it's not us. He was able to come into that port and immediately operate with three-men crew. He was able to come into that port - and Dale Cole would know well - operate with three-men crew without the winches that we have on our tugs but against the promise that he would retrofit them later, so he's on a holiday for a period. The extensive training that is required so said to operate in Australian ports was achieved in three weeks. Now, I don't like the fact that he's there. We are having head-to-head competition. The market share fluctuates day to day. But he was able to enter and expropriate everything that we had achieved in that early period.

MR HINTON: Well, you've anticipated my question. Dr Ergas's presentation indicated significant concern about expropriation of the benefits of past investment that accrues to the winner of a contestable tender. But surely that same risk occurs or the same event occurs; that is, appropiation of costs of past investments in circumstances where you have open contestability. Is that not a concern for you at all?

MR RYAN: One of the problems is whether you get the efficiency gain in the first place if you have an exclusive licence. Why take the risk?

DR ERGAS: I think the point on that is that it's obvious that if you had a market that was perfectly competitive, in such a market, no-one would make investments that were appropriable by entrants and as a result, for it to be rational for an incumbent to make those investments, it must expect that it is able to appropriate at least some of the benefits of those investments. Now, in a workably competitive market, as against a perfectly competitive market, you will observe those investments being made because there are some frictions and differentiating factors which allow firms to - albeit for a more or less limited period of time - to secure the benefits of the investments that they have outlayed.

So you're quite right. If you had sort of textbook contestability, hit-and-run entry, then the issue simply wouldn't arise because the investments would never have been made and if they were made they would be immediately expropriated by entrants. But when you move away from textbook contestability then it becomes rational for a firm to make those investments. It's especially rational for the firm to make those investments if the benefits of those investments can to some extent be translated into goodwill and good clients, and that goodwill with clients has value to the firm over a period of time if the benefits of the investment are in one way or the other complementary to other specific assets that the firm may have and which may distinguish it to some extent from its potential competitors. An example of that would be in the case of an entity such as Adsteam, it does operate in a large number of ports and so it's to some extent in a position to secure the fruits of those investments across a very large number or a number of ports in which it operates.

What does exclusive licensing do in that context? Well, basically what exclusive licensing does in that context is it helps reduce or even eliminate those frictions. In a way, what it does is it says to the potential entrant, "Here, this is yours; now you can bid for it and benefit from it if you are the winning bidder." So naturally in that situation, those potentially rather small frictions that in workably competitive markets induce continuing innovation, those frictions will be removed.

MR HINTON: There's a paradox here, to use your word. If I understand your argument correctly, the strength of your criticism of exclusive licences increases the less contestable the market. The less contestable the market, the more there is a case for intervention in some form or other by the authorities.

DR ERGAS: Well, I'm not sure there is a paradox because the point of view that I've taken - and I think it's not terribly different from the preliminary findings that are set out in your report - is that really perfect contestability is not of this world. What we observe in markets where the disciplines of potential entry operate is not perfect contestability but rather the presence of barriers that are not inexistent without being so substantial as to allow the entrenchment of potentially inefficient monopoly. In those situations what will happen, as I said, firms will invest in innovations and improvements because they will have a reasonable expectation of being able to

benefit from so doing.

One of the important ways to my mind in which they do so is through the goodwill that they acquire with their larger and more longstanding customers. Those longstanding and larger customers have of course greater incentives to monitor the efficiency and overall competitiveness of the services that are being made available to them and hence they will be most responsive to any improvements that are being secured. Again, you have to ask yourself what does exclusive licensing do in that situation? Well, it basically says to the customer, "No, it's not up to you to determine who will be your supplier. It's not up to you act on the basis of that goodwill," because it's the party allocating the licence that will take that decision. So in fact the benefit that comes from the reputational investment is entirely lost.

MR HINTON: Mr Ryan, I've got five more questions I'd like to raise this afternoon as long as you have time here. We're scheduled to finish at 3.30 but I'm happy to proceed if you've got available time.

MR RYAN: Certainly.

MR HINTON: I know we have Monday as well, but these are more specific to what's been raised this afternoon as opposed to your foreshadowed presentation in Melbourne if you are available.

MR RYAN: Absolutely.

MR HINTON: And I assume if others are happy to stay, then proceed on that basis. My first one in fact is a follow-up to Dr Ergas's comment just then and that's a distinction, and I really seek from you whether or not there is a distinction, between improvements that are specific to the Australian working environment, and labour market practices is a prime example, where it's quite clear where a new entrant can in fact appropriate the benefits of that, and that's fairly well understood. But that doesn't mean to say that the exclusive licensing environment precludes more general-style improvements; technology for example that may be developed overseas that can be brought into the harbour towage sector that has no characteristic of appropriation of the kind that you seem to be expressing concern of, or is my distinction inappropriate?

MR RYAN: Yes, I think you raise a terrific issue, and I'm not sure who the winner or loser out of this issue is. It has already happened in some locations, where people have sat down and, with their best efforts, tried to define what life was going to be like over a period of a non-exclusive licence, let alone an exclusive licence, and there are already views that life ought to be different and changed. Now, if you have an exclusive licence to provide two, let me say, 50-tonne bollard pull tugs that must be no greater than five years old to have a certain rostering arrangement and so forth.

Then suddenly, for whatever reason because a new customer is going to come to that port that requires a larger tug, the port authority or the issuer, I will call it, of the licence there has a real problem and so does the provider of the service because something is going to have to change. Now, if you're the holder of the exclusive licence you are, at that point in time, in a position to make out like an absolute bandit because you're complying with the licence terms and you're being asked to change that and you bid in good faith and someone with a relatively short-term view of life, given say a seven-year licence with five years to go, may well hold up the port authority and the customers and not respond.

Conversely, in an open environment it was interesting that we have been roundly criticised in Mackay for introducing two new and larger tugs into Mackay. Why did that happen? That happened because the port authority in Mackay decided that the type and style of vessel that were going to come to that port was going to be larger. They went down a tendering route and aborted that process. But in response to it we went, "Well, okay, you've chosen to abort this process, it will come back. We have a significant fleet, we will adjust the fleet in the port right now to deal with the customer requirements and the port authority's requirements." We weren't forced to. We didn't have a bargaining chip to do it. It is in fact costing us money but from a long-term view of the market we felt we were positioning those vessels there to service the port and the customer needs in the future. Now, the ships haven't turned up. They may turn up in a year. They may turn up in two years.

But that was not a difficult process between us and the port authority. We saw them flagging a need, we responded to it and the tugs are there. If you've got a long-term licence somebody is going to end up in tears. I'm not sure who it is, but somebody is going to end up in tears. My fear is it's the customer.

MR HINTON: But, come back a step, Dr Ergas is not saying that exclusive licences preclude investments that generate improvements. It's saying that it needs to be an improvement that is Australian environment-specific, whereby appropriation occurs, therefore appropriation is a disincentive for investment for improvement.

MR RYAN: Well, I'll react to it, but indeed we are talking about a delay in technological improvement and that's fleshed out more fulsomely in Henry's paper. We talk in terms of dollars in pricing and tecs in - - -

MR HINTON: I think Dr Ergas used the term "a bunching" of investments for technology associated with the cycle for the licence but doesn't rule it out.

MR RYAN: I think it makes it much much more difficult.

DR ERGAS: It's a long-standing problem in the context of franchise arrangements and exclusive licences and the issue arises in fact because the service provider has to

incur or engage investments where the benefits of those investments will have a longer life than the duration of the licence itself. Now, in that situation the service supplier faces two disincentives to engage in those investments. The first disincentive is that assume you have a five-year licence and you engage in investment which yields benefits over a period of five years when you're in the second year of the licence, then at that point there's going to be those two final years of the investment which perhaps you won't be able to benefit from if you lose the licence.

MR HINTON: The service provider might benefit?

DR ERGAS: No, what I'm saying is - - -

MR HINTON: Not the service user?

DR ERGAS: No, what I'm saying is that assume that there's a licence that has a duration of five years, you're at year 2 and at year 2 you're going to engage in investment and that investment will have a life that extends through to year 7.

MR HINTON: Yes.

DR ERGAS: If the investment is sunk then if you lose the licence at year 5 you basically write off the benefits associated with year 6 and 7 simply because you can no longer transfer that investment. So the result of that is that if investments have relatively long lives and/or licence duration periods are relatively short, then investment will be highly risky and so you will get less investment. At the same time - and this is the second fact - the competitive tender situation creates a premium to being able to deliver cost reductions at the moment of contract renewal.

MR HINTON: With that new technology, yes.

DR ERGAS: So it becomes, under quite general conditions, efficient for the service provider to defer investments and make them or rather promise them in the process of contract renewal. So you both get less investment and you get a bunching of investment. If you look at the investment path over time and you compare it with the path of efficient investment, there will be a significant, or at least potentially significant - - -

MR HINTON: Thank you for that elaboration. My next question was in relation to - I think you used the term "execution problem". This is where you've got a specification of user needs and service provider obligations and there may be some stickiness in meeting changing needs if you've got a contractual obligation that is fixed. My question then becomes while I understand the theoretical point, what is its application with regard to this sector? How difficult is the specification process for

harbour towage? Does the user needs vary so dramatically over time and over type of vessel and type of environment such that there is practical issue for stickiness in specification of obligation versus user need? I can see in some highly technical areas of the communication sector where that could be a real issue. But does it have the same sort of force with regard to harbour towage?

MR RYAN: Yes, I do think there is a problem there. An example of it would be in a port, and hopefully there are many of them because we're in a derived demand business where volumes are rising. Someone referred to the Newcastle experience earlier in the day. What in fact was the Newcastle experience? Well, there were in fact two towage operators in Newcastle: we and Howard Smith in joint venture operating two tugs; Brambles operating two tugs separately but there was close collaboration between the two operators and for the large part it appeared as one, although there were lots of complaints in the port that there wasn't a good level of cooperation between us so the port authority indeed started to go down the licencsing route.

The consequence of that was that BHP and a number of Japanese shipping companies were at that time so unhappy with the - from their point of view understandably - quite bad service they were getting that they got into our business and we set about reforming ourselves. So you then had one operation with four tugs and one operation with three tugs, they imported three (indistinct) tugs from overseas. Again, the comment was made that the two operators didn't cooperate. Well, I'm sorry, competition is called competition. If you don't bring a sufficient fleet into a port to do the jobs you want to do in the port, you shouldn't expect your competitor to support you. So BHP had to bring a fourth tug into the port and their joint venture partners were sufficiently unhappy with them that BHP had to actually buy that tug themselves and charter it into what was then Hunter Towage Services and that is, "Welcome to the world of competition."

So then there are two operators competing head to head for five years in that port for the business. We were furiously going around reforming our behaviour because we had provided a bad service in that port. BHP were able to self-direct about 50 per cent of the market to themselves and away we went. The interesting observation was made that the port had too many tugs in it. Well, the burden of that was borne commercially by BHP and its shareholders, the Japanese and its shareholders, ours and our shareholder and socially in economic terms, the community, but not the shipping companies because they got a benefit in pricing during that period. In the end we satisfied BHP that we could provide a service that they would be happy with and the other folks were happy with and we acquired their business and we were able to reduce the number of tugs in the port from eight to six, the number of crews in the port from I think it was 28 to 21 and so forth.

A long story to get you to a place which place would be, "What if an exclusive

licence had been granted in 1994 to the then incumbent for six years or seven years for the provision of four tugs?" What drove the need for six or eight tugs - the rational number was six? It was increased volumes of coal movements through the port. If you're the incumbent, having been granted a licence to operate for, say, seven years with four tugs and for whatever reason, a port authority didn't realise they were going to get another customer or a number of other customers, they come cap in hand to you as a provider and say, "Look, I know you agreed to the work on this particular basis, but would you please consider providing two more tugs or the extra crews 24 hours a day, seven days a week. What do we need to do?" I mean, the whip is in entirely the wrong hand. You run into all the hold-up issues, and that's a problem that repeats around and around the coast.

You hear over and over again - I'm sure AAPMA would confirm - that most port authorities have a view that they will grow their business over time. I wish that was what was happening in the volume of vessel calls in Australia and right now it's not. So they'll get it wrong, and you have a point of time competition where someone awards a licence on the best assumptions at that time and the high probability is they will be wrong. If you look at the sorts of tenders that have been put out for licensing, port authorities and other people run a million miles from predicting volumes of ship movements in the future. They will show the trend in the past historically but will go nowhere near volume in the future. I don't blame them because if they're wrong and they over-predict, they're going to get sued. So there are all of these uncertainties that are going to turn up.

Five or six years ago did anybody in Australia know we were going to get 4200 TEU vessels? I don't think so. We are now getting them. Did anybody know that the Port of Melbourne would have to think about deepening their channels? I don't think so. Did anybody know that the bridge over the port in Adelaide might come down and the tugs would have to be moved to the other side of the bridge and new berths built? Certainly not, and now they're talking about not doing that redevelopment and the tugs staying where they are. Did anyone know that the state of South Australia would privatise those ports five years ago? Not on your nelly. Did they know about the sorts of developments that the state would put in place post-privatisation? There are so many unknowns.

To use a UK example, the port of Felixstowe in which we operate which is a completely open port, as a practical matter really didn't exist, Dale, 20 years ago. It was little more than a fishing village. But with the advent of the European Economic Union it is now the fifth largest container port in Europe, the 14th largest container port in the world; that's happened in a very short period of time. Shipping and freight movements and freight lines and time lines are changing all the time around the world.

MR HINTON: This is a digression perhaps from your main point.

MR RYAN: Sorry.

MR HINTON: My question is a digression, not your comment. You talked about competition is competition, not cooperation. Is that more a reflection of the thin market, thin demand in Australia? For example, in larger ports like Singapore where there are lots of service providers and lots of tug jobs, would that not also have a characteristic of cooperation for sharing of tugs or sharing jobs with shared tugs?

MR RYAN: Absolutely not. I mean, the Port of Singapore, who are the dominant provider of harbour towage in the Port of Singapore, would walk through the valley of death over hot coals before it helped one of the other towage providers in that port. The only port I could really think of where it happens - Lee, you might know - would be Hong Kong. I think there's a little bit of cooperation from time to time.

MR HINTON: So it's not market practice in any event?

MR RYAN: It's not market practice to assist your competitor in our industry. If someone wants to come and compete, fine, come and compete on whatever terms you choose to come and compete on, so if you want to come in with two tugs, come with two. That means you won't be able to handle vessels that require three tugs. If you want to come in with two underpowered tugs, you're not going to be able to handle some of the bigger vessels. But they're active choices you can make, and you having made your decision about where you're going to pitch your competition and your price and your labour relations, then get on and compete. It's a bit like David Jones and Grace Brothers sort of thing, away you go. Whatever service offering you want to give, you choose it, but don't go over the road and ask the guy then to help you out if you don't want to compete on a level playing field.

MR HINTON: I'm wanting to go down the track of potential entrants and barriers and contestability but let's do that Monday.

MR RYAN: Sure.

MR HINTON: But maybe it might be a useful use of time this afternoon if we not touch on salvage, because you've made a very detailed submission on that and we'll look at that on Monday as well, I suspect. But maybe we could usefully quickly address Adsteam's views on the question of firefighting and mooring lines.

MR RYAN: Well, on firefighting, we provide that service in a whole range of ports. In a very small number of them we receive a modest amount of payment by the port authority - we've detailed that to you I think in one of our submissions - and it's five or $10,000 here or there. I think on the balance it is a service that ought to be provided by the harbour towage operator. We happily provide it. Would we like

someone to give us more money for doing it? Sure, we're in business. Do we expect it to happen? No, I don't really think so. So I share the sort of view you're getting. I wouldn't lose too much sleep about that one.

Now, lines and mooring, everybody in this room is as frustrated as we are. If I can separate lines and mooring in the sense of line boats and mooring gangs. The issue is it's a people business. With the mooring gangs, we're held up because of a few ludicrous provisions of the award in New South Wales in particular. We have tried desperately to get that award changed through the [Industrial Relations] commission and, as someone said today, have been dispatched to go and have a chat. We are massively overmanned in that business. We had 120 people in it in the State of New South Wales, which is really talking about Newcastle, Jackson, Botany and Kembla. We lose money, believe it or not. Our customers rightly gripe about the price and I can tell you if any of them would like to buy our mooring gang business from me right now for a dollar, I'll give them the dollar, because we lose money. It will immediately make us more profitable as a company. Happily, we succeeded in negotiating with the - we've been quietly working away with the Maritime Union yet again and we succeeded in a negotiation we had with them, and as of late May, 20 of our employees are no longer employees. So we've got down from 120 to 100. We are still losing money, we still need to do more than we've done. If the [Industrial Relations] commission would deal with the award, we could do that, but in the meantime it is just going to be a continued slow negotiation with the union. Again, we don't want to put anybody in a position where the ships don't move because the mooring gangs won't operate, and that is a real danger. I took Henry's point earlier that no-one seems to want to get into the business in Jackson right now because of the award so we're kind of stuck with it. So we're the ones who have got to go and invest in solving the problems through negotiations with the union because the industrial relations regulatory framework will not deal with it.

MR HINTON: Thank you for that.

MR RYAN: By the way, there are no barriers to entry in that business. Anybody who wants to be in the mooring gang business can go and hire some people and get into it tomorrow. What wasn't said was, you don't have to be a member of a union in Australia to be in the business around the wharves. Someone could start a non-union operation in any of those ports and offer a service. They could do it on a casual basis and that's the precise, correct reaction because unfortunately there will then be vigorous discussions – in the vernacular, 'down behind the pub next to the dunny with a baseball bat' – to discourage entry, which is an outrage. But the theoretical position is correct.

MR HINTON: Thank you for those comments and thanks again for your attendance today and your submissions. It's much appreciated. We will have another opportunity on Monday and I'm looking forward to that. So I won't seek to go further than that today, but look forward to seeing you on Monday. But before

concluding today's proceedings, what I'd like to say is that it is open for anyone from the floor to make your statement now if you would like to for the record. We would invite you to a microphone to help the transcript. It's also open for those who haven't already done so to participate directly in the hearing by making an appearance to add their name to the list. It's not a closed list, so please contact myself or any of the Commission staff here today if that's what you'd like to do. But in the absence of anyone else jumping up to speak, let me conclude today's proceedings to say that we will start again on Monday morning at Melbourne, though it is a little earlier than it might have been previously advised to you because we have had some additional interest in appearing and we've put them on earlier rather than later. So I think the last information I had it was a 10 am start Monday - Lisa is nodding - if you haven't caught up with that development and if you're interested in hearing others or being there when others actually appear at the hearing. Thank you very much.

AT 3.53 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 15 JULY 2002

INDEX