

July 25, 2000

Associate Commissioner John Macleod
Review of the Prices Surveillance Act
Productivity Commission
LB 2 Collins Street East
PO MELBOURNE VIC 8003

Fax: 03 9653 2302

Dear Mr. Macleod,

Howard Smith Towage is an international towage company which has some 117 tugs operating in 41 ports in the United Kingdom, Australia, South Pacific, Papua New Guinea and The Falklands. In some Australian ports, such as Fremantle (WA), we participate in joint ventures and these are managed by our joint venture partner. In other cases, such as Gladstone (Qld), Howard Smith Towage manages the joint venture operations.

Our business policy for some years has been directed towards surviving and growing in an open-competition environment, which is what exists in the United Kingdom and which we have assumed is properly "the shape of things to come" in terms of globally competitive markets.

There is only one port in which the towage operations we own or manage (on behalf of the joint venture) function under an exclusive licence. This is Gladstone (Qld) where our operating company, Gladstone Tug Services, won a competitive tender against international competition for an exclusive licence for seven years.

In this case Howard Smith Towage has undertaken to the Gladstone Port Authority and port users to continue to honour the service and price commitments of its licence even if the licence is made inoperative by legal or other challenge.

I make these observations to you because the Commission has before it, and has published on its website, a submission which can be interpreted as misrepresenting our company and its business practices. My letter is an attempt to provide what I hope is a more accurate view of our policies and the international commercial environment in which we operate, to assist the Commission in forming a fair reading of towage activities in Australia.

Unfortunately, the submission by Dale Cole & Associates Pty. Ltd. (DCAPL) to which we object repeats assertions by Dale Cole that were published in February (in "Ships and Ports" magazine) and which we rebutted at that time. It is doubly unfortunate that Mr. Cole is a former executive of our company who went on to be associated with one of our competitors for the Gladstone licence.

I regret the necessity to put before you, at this late stage of your inquiry, information that is a “side show” to the main thrust of your inquiry. However, we have found to our cost that unless we answer directly assertions that misrepresent us, the misrepresentation may become accepted as a conventional wisdom. This is particularly the case where assertions may be presented as having an “objective” basis, when the argument in fact favours different commercial interests to our own.

Against this background, I submit the following comments

1. Howard Smith Towage and its parent, Howard Smith Limited, a large Australian public company, have developed business policies for towage based on our experience of the open market in the United Kingdom, which require us to be competitive in all our ports, all the time.
2. We take this position because our company operates in the global maritime business, with customers (and ports) which compete against each other. This is the reality of the competitive international environment for towage today.
3. Indeed, our approach to towage tariffs and negotiation of volume rebates with global ship operators is shaped by a market comprised of very large and powerful customers (the international shipping lines) whose business is vitally important to us in all the ports where we provide towage services to them. We must respond to their needs if we wish to keep their business. We have argued this to the Victorian Regulator General and believe that our bona fides have been accepted by that Office.
4. Indeed we regard the Regulator-General’s Final Report on Port Services Pricing (December 1999) as temperate and considered and we are grateful to the Office for its courtesies and willingness to take our submission into account.
5. As a result of the Office’s findings and guidance Howard Smith Towage has negotiated with the port operator and customers in Westernport and Geelong to introduce respectively a Service Agreement and Service Charter which set service standards and price transparency in those ports – while maintaining an ‘open market’ for a competitor should one be able to offer services that are superior to those benchmarked by agreement in the Service Agreement and Service Charter.
6. Our most recent appearance before the Australian Competition and Consumer Commission for a price rise in Melbourne (a declared port under the Prices Surveillance Act) resulted in a 10 per cent tariff increase. The ACCC took the view that the reforms and service improvements that we had introduced to Melbourne provided port users with net benefits that exceeded the approved tariff increase.
7. The submission to your inquiry by Dale Cole & Associates Pty Ltd (DCAPL) appeared in slightly edited form in the February 2000 issue of the Australian magazine “Australasian Ships and Ports” and was rebutted by Howard Smith Towage in the April 2000 issue. I enclose a copy of this rebuttal.

8. Turning briefly to other matters in the DCAPL submission,
- we reject the assertion that because the Australian market is small “there is no commercial incentive to compete”; in fact, Howard Smith Towage has sought to enlarge its market by becoming one of the largest port towage companies in the world operating in an open market for most of its business
 - we reject the argument that exclusive licences should be for “10 years at least”, a view we shared with the ACCC (based on our experience in Gladstone); we believe such a term would effectively close the port to competition except for a brief “window” of a few hours when a committee considered tenders
 - we reject any inference that the tender process in Gladstone was other than properly conducted by fully competent people
 - we reject the notion that “the jury is out” on how to reform the towage market; the ACCC, Office of the Regulator General in Victoria, and the competitive dynamic of the international shipping market already endorse the approach of our business policies: good service at competitive prices to global customers who exercise countervailing power in the market
 - we agree that any reform process “must have the support of its customers”; enclosed are endorsements from the port operators in Australia and the United Kingdom which reflect a high order of confidence in and support for the way we do business and value-add for customers. Because of their commercial nature we request that this material remain confidential to the Productivity Commission
9. We particularly reject the view that Howard Smith Towage is reluctant “to voluntarily introduce reforms”; the contrary is true:
- in 1998 Howard Smith Towage introduced reforms in Melbourne and Brisbane which reduced tug utilisation by 33 percent
 - over the past decade real towage costs in Melbourne have declined by 60 percent, in Brisbane by 54 percent
 - on January 1 our towage charges reduced in Brisbane by the equivalent of three percent – entirely voluntarily and without the intervention of ACCC
10. We reject the view that tariff reductions in Gladstone (12.5 percent) are only occasioned by tenders for exclusive licences; the towage tariff in Gladstone was cut by 25 percent between 1989 and 1999 under a non-exclusive licence. Further, in July this year the tariff in Geelong reduced by 20 percent under a “rise and fall” clause that has the support of port users and port owner.

11. We reject as particularly out of touch with market reality the view that “competition becomes a casualty of economic survival and investment in our plant”. Howard Smith Towage is nearing the completion of a \$135 million investment over the last five years to modernise its total fleet because it believes that the ability to compete is the only way to ensure economic survival and that investment in new plant is necessary to be competitive
12. We reject the view that Howard Smith Towage is tardy or reluctant to implement manning or work practice reform; however, we acknowledge our customers’ wishes and those of port operators to minimise disruption of trade during negotiations. We are currently close to reaching agreement for the introduction of three-person crews and expect this to be accomplished without dislocation to port trade.
13. We reject the view that “history has shown that reform will not come from within”; the record suggests that the opposite is true in Howard Smith’s case.

There are other matters in the DCAPL submission that invite comment, but these may be better left.

Howard Smith Towage’s intention in making this submission is an attempt to ensure that its activities are not misunderstood by the Commission. The Commission was kind enough to acknowledge that its report of a few years ago on Waterfront Productivity contained errors of fact and omission and significantly understated the positive impact of reforms which we were putting in place and consequent benefits to port users, port operators and trade.

Certainly I believe that our bona fides have been acknowledged by both the ACCC (in its response to our application for a price rise in Melbourne) and the Office of the Regulator General, in its review and recommendations on Port Services in Victoria’s regional ports.

Howard Smith Towage acknowledges that we have a way to go in convincing tribunals such as yours that “open competition” is in the broader community interest. However, the courtesies and constructive dialogue extended to us by the regulatory authorities are appreciated and, I would hope, reciprocated, by our company.

Yours faithfully,
For HOWARD SMITH TOWAGE

JIM SWEETENSEN
General Manager, Australia

The February issue of "Ships and Ports" initiated a debate on "reforming Australia's towage industry" which is timely, and likely to be sufficiently lively to mask the commercial self-interest of some of the participants.

Let there be no doubt: Howard Smith Towage is in favour of open competition.

The recent Federal Court decision on towage at Bunbury certainly opened the way for restricted (or exclusive) licensing of towage in regional ports, and this decision was under appeal at the time of writing.

However, the debate is incomplete without an understanding of some of the other competitive and regulatory forces at work in the marine services market.

The first of these is that towage operators do voluntarily introduce reforms.

Howard Smith Towage is not reluctant "to voluntarily introduce reforms"; the contrary is true.

For example, Howard Smith Towage introduced in 1998 operational reforms in Melbourne and Brisbane which reduced tug utilisation by up to 33 per cent.

Over the past decade real towage costs in Melbourne declined by 60 per cent, in Brisbane by 54 per cent.

Brisbane is a "declared" port where prices are monitored by the Australian Competition and Consumer Commission. On January 1 Howard Smith Towage reduced its charges in Brisbane by the equivalent of a three per cent rate cut. This was entirely voluntary and without intervention from ACCC. In the decade to 1998 Brisbane towage rates declined by 42 per cent in real terms, with real costs falling by up to 54 per cent for many vessels because of our tug utilisation reforms.

The February article suggested that a rate reduction at Gladstone only followed a tender for a towage licence, and that this was evidence that exclusive licences were the only way to win genuine cost cuts.

The facts prove otherwise: the towage tariff in Gladstone was cut by 25 per cent between 1989 and 1999 under a non-exclusive licence.

These decreases were the result of volume increases and improvements in efficiency, discussed with Gladstone Port Authority and implemented by agreement and there is no reason to suggest this trend would not have continued.

In our view, the evidence of our company's pricing practices simply does not support the contention that sustained, on-going price reductions occur only by tendering for an exclusive towage licence.

As to our sensitivity to customers on reform:

The ACCC did not object to a proposed two-tiered pricing schedule in Melbourne which would have been to our commercial advantage. Our customers were not comfortable with it, however, and we dropped the idea in response to their views. The ACCC had concluded in its inquiry that our cost base in Melbourne was appropriate. It suggested a rate increase less than we had proposed because of a difference of view about accounting procedures.

The Victorian Office of the Regulator General published in December a temperate and considered review of pricing practices for services, including towage, in Victoria's regional ports.

Significantly the Report concludes with three options for pricing oversight: franchise bidding (exclusive licences), service agreements between towage operators and port operators (non-exclusive) and prices surveillance by the Office.

Clearly, the Regulator is satisfied that each of the three options can produce efficient, cost-effective results for port users – a far cry from the special pleading apparent in the February article.

What all this means is that exclusive licences are not “the only process licensing authorities have to attract a competitive bidding process”. In our view, for example, service agreements provide superior benefits to port users, port operators, cargo owners, regulators, communities and government.

Howard Smith Towage is an international towage company and Gladstone is the only port of the 20 ports in Australia, South Pacific and United Kingdom, where it manages operations under an exclusive licence. We informed Gladstone Port Authority we would be willing to operate under a non-exclusive service agreement and honour all the undertakings given in our tender, which won the exclusive licence.

In the wider national debate on competition policy, there is some fresh consideration being given politically to the efficacy of “blanket reform” and its social and economic costs. There is growing recognition that service providers who do have transparent pricing practices should not be penalised “for competition's sake” alone; there is growing acknowledgment that Australian enterprises are both competitive and loyal to their customers and provide job security for Australians.

In this broader debate the choice is between an open market for towage (with no special pleading about “competition becomes a casualty of economic survival”, whatever that means), or a locked-up market with one operator in sole control for seven years, or perhaps more.

It's the choice between an on-going open market, or a limited market for

perhaps one day while tenders are assessed (usually by port operators, not the customers of the towage operators).

Howard Smith Towage developed a customer focussed competition policy five years ago based on its experience in UK ports, where there is a continual open market for towage.

We know what competition is; we will meet it and win. We don't complain about it.

February 22, 2000

Mr. Neil Baird
Chairman & Editor-in-Chief
"Australasian Ships and Ports"
135 Sturt Street
SOUTHBANK VIC 3006

Dear Mr. Baird,

I was interested in the "Tugs and Towage" feature in the February edition and there are two matters I would like to raise with you.

They relate, in part, to our participation in such features. Howard Smith Towage sees itself, and is increasingly acknowledged as, a trade facilitator in the ports where it operates. In this sense we would be pleased to be associated with "Ships and Ports" features on ports where we operate or have an interest and in your regular towage features.

Mr. Paul Brown, our Commercial Manager, is bringing a more consistent approach to our advertising and marketing efforts and has been in regular contact with your magazine regarding forthcoming features.

The second matter is more delicate. The article by Dale Cole described him as "the former Chief Executive of Howard Smith Towage" and, while true, your readers may have been left with the impression that Dale spoke in some capacity associated with the company.

This is of concern to us, since Dale was associated with a bid by a competitor for the towage licence in Gladstone. His article could be read in a somewhat different context if this interest had been declared to your readers. Indeed, his argument could be seen fairly as representative of a particular commercial view rather than an objective overview, or of Howard Smith Towage's position.

The views expressed in Dale's article are legitimate, of course, but they do not take into account the actual findings of the most recent inquiries by the Australian Competition and Consumer Commission and Victoria's Office of the Regulator General, about what may actually be in the best interests of efficient port management at the port level.

All this constitutes a valid debate for the Australian marine industry and "Ships and Ports" has always been a respected vehicle for such debate.

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Against that background I've prepared the attached article as a contribution to a wider debate, taking into account the recent Federal Court "Bunbury" judgement.

I would be grateful if you would consider it for publication in your next issue.

Yours sincerely,

For HOWARD SMITH TOWAGE

Jim Sweetensen

General Manager, Australia

(Attch.)