

Our reference
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24 August 2023

Gavin Jones
Director, Competition Exemptions
Australian Competition & Consumer
Commission
GPO Box 3131, Canberra ACT 2601

Contact
Eddie Scuderi
Email: [REDACTED]

Dear Gavin

Port of Townsville and ors - application for authorisation AA1000646 - response to request for information

We refer to your letter dated 14 August 2023 requesting further information from the Port of Townsville (**POTL**) and Far North Queensland Ports Corporation Limited (**Ports North**) (together, the **Applicants**) to assist the ACCC in considering the Applicants' request for authorisation.

Unless otherwise defined, all capitalised words have the meaning given to them in the original application lodged 12 July 2023 (AA1000646) (the **Application**).

We have been instructed to provide the following response. The Applicants do not claim confidentiality in relation to the contents of this response other than:

- the current licence agreement terms included as **Confidential Attachments 1 to 11** to this response;
- the estimated revenue calculations in the spreadsheet containing tug movements and vessel calls for Port of Townsville and Lucinda.¹ In this regard, see **Confidential Attachment 12**; and
- the matters set out in the redacted version of this letter.

Preliminary point

Before turning to the ACCC's specific request, the Applicants appreciate that the ACCC wishes to understand why the Applicants are proposing to grant exclusive licences to Service Providers at their Ports.

As noted in the Application, there are a number of reasons for that approach. Principle amongst them is the need to create competition for the market. The Applicants are also of the firm view that the relatively low number of towage jobs available at each Port would not sustain the operation of more than one tug operator. In this regard, we set out below a table which indicates the number of towage jobs at each of the Applicants' Ports for each of

¹ These calculations are confidential as they are derived from the pricing terms in the licence agreements.

the past six financial years as compared to the number of estimated² towage jobs at the Port of Gladstone which currently operates under a single exclusive licence for towage services.

Towage jobs at the Applicants' Ports						
	FY18	FY19	FY20	FY21	FY22	FY23
Townsville	2077	2143	2306	1940	1896	1985
Lucinda	49	43	40	37	35	39
Cairns	365	334	323	286	322	500
Mourilyan	68	56	48	58	56	74

Towage jobs at the Port of Gladstone						
	FY18	FY19	FY20	FY21	FY22	FY23
Gladstone	8928	9099	9237	9357	9312	9347

The ACCC will note that the Port of Gladstone (which as noted above, operates under an exclusive service provider licence for towage services) has a significantly larger number of estimated towage jobs than any of the Ports operated by the Applicants.

As noted in the Application, the Applicants are also keen to ensure that Service Providers are economically incentivised to invest in efficient and innovative solutions. The Applicants have concluded that this objective is best met by a combination of the offer of exclusivity and a reasonable term for the licence.

The Applicants are also seeking to ensure that the proposed new contracting arrangements will deliver competitive pricing for the benefit of their Port Customers. That objective is best achieved in the Applicants' view by the granting of an exclusive licence for each of the Ports because that will give the successful tender certainty of income over the period of the licence. That certainty of income for the Service Provider is expected to provide the Applicants (and therefore their Port Customers) with the benefit of better pricing by reason of the competition for the granting of the exclusive towage rights. This is particularly relevant for the Ports in question because the number of tug movements at the Ports is low compared to other ports.

While the Applicants anticipate that the most economically efficient outcome would be achieved by the exclusive appointment of a single Service Provider at each of the Ports, they would have no difficulty in accepting a tender comprising a joint venture between one or more Service Providers that will offer coverage for more than one Port.

² Gladstone Ports Corporation Limited, 'Submission in support of notification for exclusive dealing' dated 13 March 2018 at page 13.

ACCC request

1. Separately for each of the ports of Townsville, Lucinda, Cairns and Mourilyan, for the past six financial years (commencing 1 July and ending on 30 June) please provide the following data and/or information:
 - a. The types of towage jobs, including the specifications required for tugboats to provide towage services at each port.
 - b. The number of vessel calls and towage jobs. If more than one type of tugboat is required to provide towage services at any of the ports, for example, if larger and more powerful tugboats are required to assist larger vessels but smaller and less powerful tugboats are used to assist smaller vessels, please provide the number of towage jobs at the port by tugboat type.
 - c. Revenue derived by the service provider from the provision of towage services at the port or, if this information is not available to the Applicants, an estimate of revenue derived.

Applicants' response

In relation to questions (a) and (b), set out below is a table showing for the past six financial years the number of towage jobs and the number of vessel calls at each of the Ports. The Applicants note that the figures for the number of vessel calls represents the number of vessel calls per year that require tug assistance (and not the total number of vessels calling at each of the Ports). Please let us know if the ACCC also requires the total number of vessel calls.

<u>Towage jobs at the Applicants' Ports</u>						
	FY18	FY19	FY20	FY21	FY22	FY23
Townsville	2077	2143	2306	1940	1896	1985
Lucinda	49	43	40	37	35	39
Cairns	365	334	323	286	322	500
Mourilyan	68	56	48	58	56	74

<u>Vessel calls requiring tug assistance at the Applicants' Ports</u>						
	FY18	FY19	FY20	FY21	FY22	FY23
Townsville	1264	1277	1328	1127	1104	1158
Lucinda	32	29	27	24	24	26
Cairns	266	231	207	176	197	340
Mourilyan	46	37	32	39	38	53

The source material for the summary tables set out above is **attached** in the form of excel spreadsheets provided by the Applicants as **Confidential Attachment 12 and Attachments 13 to 14**.

In relation to the ACCC's question regarding the specifications required for tugboats to provide the towage services, the Applicants advise that the specifications for the current licence arrangements are as follows:

- for the Port of Townsville, 2 x 58 tonne bollard pull tugs;
- for the Port of Lucinda, 2 x 46 tonne bollard pull tugs;
- for the Port of Cairns, 2 x 50 tonne bollard pull tugs; and
- for the Port of Mourilyan, 2 x 40 tonne bollard pull tugs.

Ports North notes that in respect of Port of Cairns, the proposed new licence arrangement will call for at least one 60 tonne bollard pull tug with Class B firefighting capabilities and for the remainder of the tug fleet to have a minimum capability of 40 tonne bollard pull. The 60 tonne bollard pull tug is required due to the larger cruise and defence ships that are now visiting the Port of Cairns.

POTL notes that in respect of Port of Townsville, the proposed new licence arrangement for Townsville will call for a third tug with a capability of 67 tonne bollard pull. There will also be minor changes to the firefighting capabilities and navigational equipment required for the tugs at both Townsville and Lucinda.

In relation to question (c), the Applicants are not aware of the revenue derived by any of the Service Providers.

The incumbent Service Providers publish their charges on their respective websites. Port of Townsville has applied those published rates for its Ports to the number of tug movements at those Ports. The result of that exercise is shown in the **attached spreadsheet** for the Port of Townsville and Lucinda (see **Confidential Attachment 12**).

However, the Applicants are aware from their engagement with the Service Providers and Port Customers that the Service Providers often strike commercial-in-confidence pricing arrangements with larger Port Customers at lower rates than their published rates. The Applicants do not have knowledge of the rates struck in those circumstances. The ACCC should therefore understand that the information provided in the attached spreadsheets represents a maximum allowable revenue and is not reflective of the actual revenue the incumbent Service Providers are generating from towage services at the Ports.

ACCC request

2. Please provide copies of the current towage licences, including any associated documents that would constitute the terms and conditions on which current service providers are licenced to provide towage services, at each the of the ports of Townsville, Lucinda, Cairns and Mourilyan.

Applicants' response

Please find **attached** copies of the current licences for each of the Ports including, where relevant, deeds of variation (see **Confidential Attachments 1 to 11**).

The ACCC is asked to note that the current licences will expire on 30 June 2024.

ACCC request

3. Please outline the basis on which you estimate in the submission in support of the application for authorisation that:
- a. upfront capital investment of approximately \$7.5 million is required per tug
 - b. total investment of upwards of \$30 million would not be unreasonable to supply towage services to the ports of Cairns and Mourilyan, particularly if submitting a sustainable option, and
 - c. operational expenditure is approximately \$1.3 million per tug each year.

Applicants' response

In relation to question (a), the upfront capital investment of approximately AU \$7.5 million per tug was based on:

- a discussion between a representative of Ports North and an international shipbuilding company, [Confidential] ██████████, in which the representative of [Confidential] ██████████ advised that whilst prices can vary significantly depending on specifications, for a basic [Confidential] ██████████ (24 metre length, 65 tonne bollard pull, azimuth stern drive) the price would be in the range of AU \$11 million; and
- a review of the footnoted websites advertising for sale new 70 tonne azimuth stern drive tug boats for USD \$7 million and USD \$6.5 million (approximately AU \$11 million).³

A conservative approach was applied to the data referred to above in order to arrive at an indicative estimated price of AU \$7.5 million. Based on the data, it is of course quite likely that the capital investment will be higher.

In relation to question (b), the estimated total capital investment for the ports of Cairns and Mourilyan of AU \$30 million figure was a conservative estimate based on a minimum specification of 1 x 60 tonne and 3 x 40 tonne tugs to service Cairns and Mourilyan. Again, the cost of the tugs involved was based on a conservative approach to the estimate of AU \$7.5 million figure referred to above, adjusted by reference to the required tug sizes. The estimate is also reflective of the required operating model that provides continuous tug availability in both ports.

In relation to question (c), the operational expenditure figure of AU \$1.3 million was arrived at using general industry knowledge available to employees of the Applicants. In considering the ACCC's further request for information, the Applicants wish to note that the actual operational expenditure may vary by reason of numerous factors including, for example, the Service Provider's crewing model – e.g. the mix of experience within the full time crews that are required in order to ensure a continuous service, and the maintenance schedule for vessels.

³ NautiSNP, [Listing for IMS ADAM 101](#); NautiSNP, [Listing for NA-TB171](#).

Based on the Applicants' industry knowledge, they estimate that the operational expenditure figure per annum, per tug would range between AU \$1.1 and \$1.3 million.

ACCC's request

4. Please also provide details of the Applicants understanding about:
- a. the useful working life of the types of tugs required to service the four ports the subject of the application for authorisation
 - b. the resale market for these types of tugs, and
 - c. the extent to which there are any specific requirements for tugs to service the ports the subject of the application for authorisation which mean that such tugs could not be easily used to service other ports.

Applicants' response

In relation to question (a), the Applicants estimate that the useful working life of the relevant tugs is between 25 and 30 years. The Applicants' estimate is based on a combination of industry knowledge and a report attached to a written submission by Svitzer to the ACCC in relation to an exclusive dealing notification lodged by Gladstone Port Corporation and Port of Townsville.⁴ The estimate assumes regular maintenance and an appropriate servicing regime.

In relation to question (b), the Applicants are not qualified to comment on the estimated resale value of tugs at the end of their serviceable life. That value would depend on a range of factors particular to the relevant tug and some of the factors are outside the experience and knowledge of the Applicants.

In relation to question (c), Ports North notes that the minimum specification requirements for the sugar ports of Mourilyan and Lucinda are 40-tonne bollard pull tugs. Consistent with the current operating model, the minimum requirements will allow movement between these Ports to ensure optimal operating solutions for Port Customers.

The operational requirements for tugs in Cairns are different to those in Mourilyan and Lucinda as the tugs servicing Cairns are required to handle a greater variety of vessels calling at that port. Additionally, the port of Cairns requires different types of manoeuvres and has different berthing arrangements to the other Ports.

The Applicants confirm there is nothing particular about the tugs required for provision of towage services at the Ports that would prevent those tugs providing similar services at other ports. However, the Applicants also wish to make clear that they require continuous service availability at their Ports, which means that while there are no specification restrictions preventing use of the tugs at other ports, there is a practical impediment based on the contractual obligation to provide continuous service when required.

⁴ David Round and Manish Agarwal, 'Competition in the Provision of Towage Services in Australian Ports: Is Exclusive Licensing Necessary?' dated 27 October 2011 at page 4 (attached to Svitzer Australia Pty Ltd submission to the ACCC dated 23 November 2011 regarding notifications N93770 and N93775 lodged by Gladstone Ports Corporation Limited and Port of Townsville respectively).

ACCC request

5. Please explain what if any information, other than the 2002 Productivity Commission report noted in section 10.1(b) of the submission in support of the application for authorisation, the Applicants have relied on in forming the view that the low number of towage jobs relative to the minimum number of tug vessels required to establish a towage operation means that each of the Ports the subject of the application for authorisation can only support one service provider in the long term.

Applicants' response

As noted in the preliminary comments at the start of this letter, the number of towage services provided at each of the Ports is, as a matter of fact, relatively low when compared to the number of towage jobs at other ports such as Gladstone.

The Applicants appreciate that the Productivity Commission report was handed down in 2002. However, the Applicants note that:

- as noted in its response dated 2 August 2023 to Pacific Tugs' initial submission in relation to this Application, the Productivity Commission report was referred to and relied on in an IBISWorld Industry Report in March 2022 which relevantly stated:⁵

"The towage sector exhibits strong geographic concentration. The low number of tugboat jobs relative to the minimum number of tugboats needed to establish a towage operation mean that many Australian ports are natural monopolies, as only one provider can sustainably serve them given the industry's capital costs. Major ports with a high number of ship calls are the exception.

The Productivity Commission's preliminary assessment of the Australian towage market suggested that providing harbour towage services is likely to be a natural monopoly in many individual Australian ports. This situation is unlikely to change without major changes in towage technology or substantial increases in demand for towage."

- in the ACCC's Statement of Reasons dated 19 July 2018 in respect of a notification lodged by Gladstone Ports Corporation Limited in respect of exclusive dealing for towage services, the ACCC stated:

"...the work of the Productivity Commission indicates that in some cases economies of scale in towage services may be exhausted at around 8000 towage jobs per year and that this need not imply that two operators would be efficient at and above this scale of operation. Returns to scale may not decrease until much higher volumes are reached."⁶

- in that same Statement of Reasons, the ACCC noted that:

"The ACCC acknowledges that the Productivity Commission Report was released in 2002 but considers that the economic principles underpinning the Productivity Commission's analysis remain relevant."⁷

⁵ IBISWorld, Industry Report I5219 "Navigation, Towage and Services to Water Transport in Australia" dated March 2022 at page 22.

⁶ ACCC's Statement of Reasons in respect of a notification lodged by Gladstone ports Corporation Limited in respect of exclusive dealing for towage services for the Port of Gladstone (N10000453) dated 19 July 2018 at paragraph 64.

⁷ Ibid.

- in that same Statement of Reasons, the ACCC considered that the requirement for all vessels to use an exclusive licensee for towage services at the Port of Gladstone following a competitive tender process was:

“likely to result in increased competition for the provision of towage services” and was “likely to increase competition for the provision of harbour towage services at the Port by providing an incentive for competitors of the incumbent to tender for the market where they may not be prepared to compete in the market (under the counterfactual)” and that “[t]he ACCC accepts that the Notified Conduct is likely to create certainty for bidders” with service providers having “the opportunity to develop tenders in the knowledge that if they are successful, they will be entitled to provide towage services for the licence period. This is likely to result in more providers tendering for the licence compared to the counterfactual”.⁸

- the Applicants are not aware of any circumstances which would invalidate the principles underpinning the Productivity Commission report or the ACCC’s conclusions in the Statement of Reasons extracted above.

ACCC request

6. Please provide details of the types of ‘more innovative solutions’ as described in section 3.7 of the submission in support of the application for authorisation that the Applicants consider that providing exclusive licences for up to 12 years may attract.

Applicants’ response

The more innovative solutions in the marketplace that have evolved and continue to evolve include hybrid (diesel and electric powered tugs), fully electric and emerging solutions e.g. hydrogen powered. Hybrid and electric tugs are used in the Port of Auckland and Barrow Island in Western Australia and further information can be found on innovative options at the links in the footnote.⁹

⁸ Ibid, at paragraph 85 to 86.

⁹ Offshore Energy, [‘Damen’s eco-friendly tugs boost sustainability at one of Portugal’s major ports’](#) dated 25 November 2022; Offshore Energy, [‘Ports of Auckland welcomes world’s first full-sized, electric tug’](#) dated 21 June 2022; Wartsila, [‘Eco-friendly tugs make a splash’](#) dated 2 January 2018; Sanmar Shipyards, [‘Sanmar Shipyards to build another eco-friendly tug for environmentally-aware operator’](#) dated 13 April 2023; ABB, [‘Futureproof tugboat: efficient, sustainable and automated’](#) dated 6 July 2020; Svitzer EcoTow [website](#); Svitzer, [‘New TrAnsvErse tugs for Australia’](#) dated 15 May 2023.

[REDACTED]

[REDACTED]

[REDACTED]

ACCC request

8. Please provide a response to Pacific Tug Group's submission that it operates profitably as the holder of a non-exclusive licence at a port with, it submits, a comparable number of movements to the ports the subject of the application for authorisation.

Applicants' response

The Applicants disagree with Pacific Tug's latest submissions for the same reasons as were previously articulated in the Applicants' response to Pacific Tug's first submission dated 2 August 2023.

The Applicants wish to stress that they are not aware of any reason why smaller operators like Pacific Tug could not be successful in the tender process, particularly given the likelihood they have lower operating costs compared to larger operators.

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As noted above, the Applicants are also willing to consider tenderers forming joint ventures to ensure that they can meet the Applicant's operational requirements while satisfying the objective of lower prices for their Port Customers.

Please let us know if the ACCC wishes to discuss any aspects of this response.

Yours faithfully

Corrs Chambers Westgarth



Eddie Scuderi

Partner

Attachments

- 1 Towage Licence between POTL and Smit Lamnalco Towage (Australia) Pty Ltd (**Smit Lamnalco**) for Port of Townsville dated 22 June 2017 (confidential)
- 2 Deed of Extension to Towage Licence for Port of Townsville dated 20 August 2021(confidential)
- 3 Tug Berth Licence between POTL and Smit Lamnalco Towage for Port of Townsville dated 22 June 2017 (confidential)
- 4 Deed of Extension to Tug Berth Licence for Port of Townsville dated 20 August 2021 (confidential)
- 5 Towage Licence between POTL and Svitzer Australia Pty Ltd (**Svitzer**) for Port of Lucinda dated 4 July 2017 (confidential)
- 6 Deed of Variation to Towage Licence for Port of Lucinda dated 11 December 2019 (confidential)
- 7 Deed of Extension to Towage Licence for Port of Lucinda dated 25 October 2021 (confidential)
- 8 Towage Licence between Ports North and Svitzer for Port of Cairns and Mourilyan dated 6 July 2017 (confidential)
- 9 Deed of Variation to Towage Licence for Ports of Cairns and Mourilyan dated 28 May 2019 (confidential)
- 10 Deed of Variation to Towage Licence for Ports of Cairns and Mourilyan dated 31 October 2019 (confidential)

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- 11 Deed of Variation to Towage Licence for Ports of Cairns and Mourilyan dated 29 October 2021 (confidential)
- 12 Spreadsheet containing tug movements and vessel calls for Port of Townsville and Lucinda (public version)
- 13 Spreadsheet containing tug movements and vessel calls for Port of Cairns
- 14 Spreadsheet containing tug movements and vessel calls for Port of Mourilyan