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20 July 2023

By email: exemptions@accg.gov.au
Gavin Jones
Director, Competition Exemptions
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne, VIC 3000

Contact
Eddie Scuderi
Email: [REDACTED]

Dear Gavin

Port of Townsville Limited and Ors – application for authorisation AA1000646 - request for information regarding interim authorisation

We refer to your email dated 14 July 2023 requesting a submission from Port of Townsville Limited and Far North Queensland Ports Corporation Limited (the **Applicants**) about whether the application for authorisation AA1000656 (**Application**) could have been lodged earlier to avoid the need for an urgent request for interim authorisation. Unless otherwise stated, all capitalised words in this letter have the meaning given to them in the Application.

This letter constitutes the Applicants' submission and is made on their instructions.

We are instructed that work on determining the respective towage requirements of the Applicants and whether it would be beneficial to again proceed by way of an authorised joint procurement process began in the final quarter of 2022.

However, we are also instructed that none of the Applicant's management personnel involved in:

- assessing the respective towage requirements for each of the Applicants;
- analysing the data that would be relevant to the decisions made about the tender process to be followed, the information to be provided to prospective tenderers as part of the tender process, and to be included with the application for authorisation;
- analysing changes in technology and the supply-side market since the last application for authorisation was made in respect of the current contracts;
- formulating a view on the appropriateness and benefits of a joint procurement and subsequently developing the requests for approval from their respective organisations to jointly approach the market;
- preparing the necessary application for Ministerial approval to proceed by way of a joint approach to market; and

- seeking advice on the need and prospects for authorisation and engaging in the development of the current application for authorisation,

were involved in the previous application for authorisation. They were therefore not aware that the process for the gathering of necessary information and internal approvals leading up to preparation and lodgement of the application for authorisation was likely to take as long as it did.

The Applicants note that if an interim authorisation is not granted the Applicants cannot commence the joint tender process until potentially November 2023, (which the ACCC's indicative timeline notes as the potential time for a final determination). In that scenario, and in the case where authorisation is not granted and the parties need to individually procure towage services, it is likely that the term of the current licences for towage services at the Ports will expire before new Service Provider(s) for the Ports can be selected and contracted to deliver the required services.

As stated in section 3.5 of the Application, Service Providers (particularly new entrants) require reasonable lead times to prepare, acquire necessary vessels, personnel and resources. While it may be possible for the Applicants to extend the current licences, the Applicants note that the existing authorisation expires on 30 June 2024.

In this regard, the Applicants emphasise that towage services are an essential component of port operation and part of the Applicants' statutory functions under the *Transport Infrastructure Act 1994* (Qld) include establishing, managing and operating effective port services in the Ports (such as towage services).

The Applicants foreshadow that if an interim authorisation is not granted it will be necessary for them to apply for re-authorisation in respect of performance of the existing contracts beyond 30 June 2024 pending the award of new contracts. Extending the existing contracts will also delay the opportunity for potential new Service Providers to submit tenders for the Ports for probably a further 12 months or more. The Applicants note that they have received enquiries from Service Providers indicating that they are eager to submit a tender for the towage services and we are instructed that the Applicants are keen to take advantage of that enthusiasm.

Please let us know if have any questions in relation to the matters raised in this submission.

Yours faithfully
Corrs Chambers Westgarth



Eddie Scuderi
Partner