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2 August 2023

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Dear Liz

## **AA1000646 - Port of Townsville & Anor – Authorisation Application for Towage Services**

Thank you for providing the Applicants with an opportunity to respond to the submission made by Pacific Tug Group (**Pacific Tug**) as part of the Commission's public consultation process on the Application for Authorisation by the Port of Townsville and Ports North.

We have been instructed to provide this response.

Given the limited timeframe available for a response this response is necessarily brief and expressed in high level terms. The Applicants reserve the right to make a further submission in response to the Pacific Tug submission in due course if the Commission requires one.

The Applicants take the view that the Pacific Tug submission is directed at the proposed conduct generally and is not directed specifically to the granting of the interim authorisation requested by the Applicants.

In any case, it is submitted that the matters raised by Pacific Tug do not raise any issues that would prevent the interim or the final authorisation from being granted.

No	Pacific Tug's submission	POTL / Ports North Response
1	<b>Assumptions about market constitution and market dynamics</b> The application is based on broad assumptions as to the current market definition and makes no effort to describe future market dynamics, despite seeking a 13 year duration.	The market definition has been carefully considered and is consistent with the Commission's view on market definition in the existing authorisation. The Applicants gave due consideration to future market dynamics, including the need for tug operators to invest in environmentally and innovative tugboats.

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		The significant upfront capital investment to be made by the successful tenderer(s) was a key factor in the deciding on the proposed term of the exclusive contract(s). The term of the proposed exclusive contract(s) is designed to ensure that the successful tenderer(s) can secure the financing needed to make the necessary capital investment and to help ensure that prices are kept at a lower level than would otherwise be likely to apply if the required payback on the investment was to be recouped over a shorter term.
2	<p><b>Additional market participants?</b></p> <p>The application proposes that it will result in a broader range of market participants, whereas the opposite will almost certainly be the case.</p>	<p>The Applicants rely on the reasons set out in section 9 and 10 of their Application as to why the proposed conduct will attract a broader range of market participants. In particular, the Applicants reiterate that:</p> <ul style="list-style-type: none"> <li>the separable portion approach means that smaller towage Service Providers can submit a bid for a single Port if that is all they have capacity to service; and</li> <li>the proposed grant of exclusive licences attracts a broader range of market participants as it creates competition <u>for</u> the market and provides greater certainty about the volume of work a successful bidder will receive.</li> </ul> <p>Ports North confirms that it has already been fielding enquires from a range of tug companies, (including small and large-scale operators), eager to participate in the tender process.</p>
3	<p><b>Competition for the market</b></p> <p>The applicant claims that there will be competition for the market, while at the same time proposing to more than double the length of the current exemption.</p>	<p>As noted above, the Applicants submit that the longer term is necessary to allow service providers to realise returns on the investment necessary to provide the service. It is expected that the longer term will also have beneficial impact on the number of respondents to the tender and on offered pricing.</p>
4	<p><b>Practical monopolies</b></p> <p>The applicant claims that in the event of a non-exclusive licence being granted, the practical outcome would be one operator in reach (sic) port; in</p>	<p>The Applicants submit that the proposed conduct will lead to better outcomes for consumers when compared to granting non-exclusive licences. This is because a competitive tender process for an exclusive licence creates competition <i>for</i> the market in</p>

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	which case there is no reason not to allow for a non-exclusive license.	circumstances where there is not otherwise competition <i>in</i> the market (as explained in section 10.1(b) of the Application). The Applicants understanding of the natural monopolistic nature of the towage services market is based on the Productivity Commission's inquiry report titled "Economic Regulation of Harbour Towage and Related Services 2002" ( <b>PC Report</b> ). While the report was published in 2002, the Applicants consider that the nature of the market has remained largely the same. This understanding is based on the most recent IBISWorld industry report released in 2022 on towage services in Australia which indicates the market is still a natural monopoly.
5	<p><b>More efficient use of tugs?</b></p> <p>The applicant claims that the proposed arrangement would lead to more efficient use of assets such as tugs, without making any effort at all to demonstrate whether a competitive market could or would produce even greater efficiencies.</p>	<p>Due to the low volume of tug movements, particularly in Cairns, Mourilyan and Lucinda it may not be economically viable, in a non-exclusive environment, for even the smallest of operators to provide a cost-effective towage solution to port customers because of the high fixed costs of running a towage company.</p> <p>The initial capital costs and fixed overheads associated with the operation of towage services means that the best way to reduce towage costs for customers is to offer a multiple port solution which in turn will allow the operator the opportunity to gain the benefits associated with economies of scale.</p>
6	<p><b>Costs of procurement</b></p> <p>The application is justified on the basis of cost savings in the procurement process, whereas in fact there is no reason that the ports cannot provide non-exclusive licence to any complying towage company. This would effectively eliminate the need to spend <u>anything at all</u> on a competitive tendering process.</p>	<p>While the Applicants acknowledge that not conducting a tender process would eliminate all transaction costs, public benefits are ultimately maximised by holding a competitive tender process – for example in helping to secure competition for the market, with flow-on benefits in terms of pricing and quality of services.</p>
7	<p><b>Third line forcing</b></p> <p>The combination of an exclusive licence and approval for third line forcing means, effectively, that the approval sought would be an approval for the winning bidder to operate a monopoly, without that operator having</p>	<p>We have reviewed the details of this point set out at page 6 of Pacific Tug's submission and understand that Pacific Tug's main argument is that "<i>there is nothing in the application to prevent the successful bidder from providing tug and towage services at whatever cost they wish, or to prevent them from imposing</i></p>

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	been required to seek ACCC approval to do so.	<p><i>whatever conditions they wish, on incoming vessels</i>".</p> <p>In this regard, we note that, as stated in section 10.2 of the Application, there will be no opportunity for the successful bidder to amend the licence agreement(s) after prices and contract terms have been fixed. As such, the successful tenderer(s) will not be free to determine prices and licence terms as they see fit.</p>
8	<p><b>Lessons from the past</b></p> <p>The applicants, through their past conduct, have demonstrated that neither the Commission, the community, nor the industry can have confidence that the tender process (purportedly the competition for the market) will be conducted fairly.</p>	<p>As stated in section 3.2 of the Application, the competitive tender process will be conducted pursuant to the <a href="#">Queensland Procurement Policy</a>. The Policy requires compliance with the six procurement principles which include:</p> <ul style="list-style-type: none"> <li>• achieving value for money;</li> <li>• applying a responsible public procurement approach;</li> <li>• behaving ethically, and embed integrity, probity and accountability; and</li> <li>• being a leader in procurement practice.</li> </ul> <p>As such, the Applicants do not accept Pacific Tug's submission that the tender process will not be conducted fairly.</p>

Please let me know if you have any questions or would like to discuss.

Yours faithfully

**Corrs Chambers Westgarth**



**Eddie Scuderi**

Partner