NATIONAL BULK COMMODITIES GROUP INC

RESPONSE TO

QUEENSLAND TRANSPORT

ON THEIR

REVIEW OF PORT COMPETITION AND REGULATION

OCTOBER 2007

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1.0 The National Bulk Commodities Group Inc

This submission is made on behalf of the National Bulk Commodities Group Inc (NBCG). It does not necessarily represent the views of individual members and certainly does not bind individual members.[1] The NBCG is the peak national body representing Australia's bulk commodity shippers and consignees. The aim of NBCG is to represent the collective interests of its members on issues connected with the transportation, storage, loading and/or discharging and shipment of Australia's dry bulk commodities.

Importantly, the principal focus of NBCG is the promotion of efficient and quality maritime services – that are available to Australian shippers at internationally competitive prices. Such prices should reflect transport arrangements that encourage the safe, efficient and equitable shipment of dry bulk commodities and, at the same time, promote compliance with consistent national and/or international regulatory arrangements.

In 2006 the national dry bulk commodity transport task was approximately 625 million tonnes – made up of dry bulk cargoes exported, shipped domestically or imported.

NBCG members' internal research show that in the 12-month period 1 July 2004 to 30 June 2005, 19,773 foreign flag vessels called at Australian ports. Of this total 8,218 were dry bulk carriers and an additional 117 were combination carriers either loading and/or discharging dry bulk cargoes. Consequently 42.15% of all foreign flagged vessel calls at Australian ports were made by dry bulk carriers. To place this figure in context, of the 19,773 foreign flag vessel calls only 3,891 were container vessels.

2.0 Executive Summary

The NBCG is made up of a diverse group of shippers and consignees whose common goal is the safe, environmentally responsible and efficient loading and/or discharging of dry bulk cargoes at competitive prices in an environment that is conducive to "world's best practice". This submission focuses on government provided ports and port services (including government owned and operated ports and port facilities) and non-government port services (such as harbour towage, pilotage and lines but not including privately operated terminals)

The NBCG response is broken down into three categories:

1. Regulatory economic response;

2. Economic efficiency response; and

3. Operational efficiency response.

In addressing the above three issues, the NBCG is mindful that the broad objectives of Queensland Transport's are to ensure that significant ports in Queensland:

- Are managed efficiently and, where appropriate, allow for competition in the port and related infrastructure facility services;

- Maximise the opportunity for competition in upstream and downstream markets, and do not misuse market power; and

- Are subject to economic regulation only where there is a clear need.

Section 3 outlines the NBCG's philosophy with respect to economic and operational efficiency. The NBCG has not engaged a regulatory economist to assist in the drafting of this response, and therefore accepts that its response has some gaps in this category. However the NBCG has a significant pool of intellectual property in areas of economic and operational

[1] For example, it is noted that a number of mineral industry members of the NBCG have contributed to and support the Queensland Resources Council submission to this Review.

efficiency that should add value to Queensland Transport's review of port competition and regulation.

NBCG members are in agreement that government/non-government port services (as defined above) should be continually tested through a competitive tension mechanism. The question posed by the NBCG is how competitive tension is best created in a port where a significant number of such services display the characteristics of natural monopolies? In this response the NBCG suggests solutions that will eliminate the need for regulatory oversight, but still retain a market-based mechanism to maintain competitive tension in port and/or port-related infrastructure facility services, which is the Group's preferred option.

However if regulatory oversight is required the NBCG's position is that it should be light handed in the first instance, the preferred approach of the Prime Minister's Export and Infrastructure Taskforce report (2005). This is also the preferred approach of the COAG Competition and Infrastructure Reform Agreement (as noted on page 8 of the Discussion Paper).

The NBCG acknowledges that there are at least four port authority models in existence in Australia, and three within Queensland. The first is where a port authority provides the infrastructure as well as services to load and/or discharge dry bulk cargoes (e.g. some Gladstone berths) and the second is where the port authority is the landlord and third parties provide the infrastructure and services at a common-user facility (e.g. Dalrymple Bay Coal Terminal and Abbott Point). The third model is where the port and/or its infrastructure are owned or leased by private equity (e.g. Hay Point Coal Terminal and Weipa). The fourth is where the port and its infrastructure are privately owned (e.g. South Australian ports and Geelong).

Provided a public port authority and common-user infrastructure owner maintain an open transparent relationship with their clients the NBCG supports such a model, but acknowledges there are inherent pricing differences, which muddy the waters when a benchmarking exercise is undertaken.

Section 4 addresses the Discussion Paper questions. The NBCG suggests that a model in which a port and its infrastructure facility services are either privatised or publicly owned should not in itself result in a loss of economic or operational efficiency. The section sets out the reasoning behind this statement.

Section 5 provides Queensland Transport with a summary of the NBCG's position.

3.0 Competition - the NBCG's philosophical position

The NBCG's philosophical position is that, where effective competition can be established and maintained through market based mechanisms, there should be sufficient competitive tension in all up-stream and downstream markets. Ideally this tension should be applied by having more than one player competing in each market. However, we are aware that the degree of competition is limited by among other factors, high entry and exit costs and economies of scale.

When considering how to enhance port sector competition, the NBCG believes that there are two general strategies available - structural and regulatory - and clearly the preferred strategy is the one that results in more competition.

In large robust markets there is extensive competition and so prices reflect market efficiencies. Therefore efforts should be directed to structural enhancements that address any market failures.

Competition becomes increasingly likely where markets are open to new entrants and there is transparency of market signals. The more the system can be structured to promote the discovery power of markets to drive and maintain improved efficiency, the more competitive pressure there is, the less the need for regulatory intervention.

However, the desirable outcome will be diluted where there are market imperfections. Some of the structural remedies the NBCG can identify are listed below. The NBCG is aware that the availability of some options are largely dependent on suitable land sites for port expansion as well as sufficient volumes to justify capacity expansion however, as world trade increases significantly, this latter factor is becoming less an issue.

Where market imperfections exist, the first response should be light handed regulation. Therefore the NBCG would like competitive tension in port infrastructure to be achieved by one or more of the following:

- Facilitating more than one service provider competing in market at any one time through structural enhancement;
- Through international price competition;
- Through price monitoring in conjunction with a vigorous benchmarking regime;
- Through the use of exclusive licences providing regular opportunities for new entrants to compete for tenders (i.e. regular contestability); and
- Through transparent negotiation with service providers where full disclosure is mandatory.

3.1 More than one provider competing in the market through structural enhancement

Examples of key structural remedies are:

- Introduce new berth and/or terminals. For example the introduction of a third container terminal at Melbourne or a second grain loading facility at Adelaide.
- Divide operations within the terminal and the port.
- Engage in short term operating agreements where privatising infrastructure facilities are not appropriate.

3.2 International price competition

The commercial drivers that ensure prices in Australia remain competitive are driven by the international market. All dry bulk commodities that are exported from Australia are priced on international markets. Should a supplier of port-related infrastructure facility services look to increase prices too far, the NBCG suggests that there need to be sufficient countervailing remedies available to shippers and/or consignees to ensure this situation is not allowed to highjack the competitive position of the client. To some extent the infrastructure dry bulk service providers have addressed the problem of providing sufficient capacity through ports by introducing their “take or pay” contracts. For monopoly port facility providers, their position is monitored by Australian competition policy pricing and access rules.

3.3 Price monitoring coupled with benchmarking

The NBCG suggests that this option is a fallback position where market contestability is limited to one port service provider (for natural monopoly reasons) or to contestability leading to only one service provider for a period of time (eg. harbour towage tender for seven years). The NBCG draws the Department’s attention to the approach in South Australia whereby the Essential Services Commission of South Australia (ESCOSA) monitors regulated services and compares these with similar services provided in selected ports in other jurisdictions. The NBCG recommends a similar process may be appropriate in Queensland.

In such a way, light handed monitoring can be undertaken without having to resort to expensive presentations as well as capturing valuable executive time.

In August 2002 the Productivity Commission published a report entitled: Economic Regulation of Harbour Towage and Related Services. This report recommended that in ports where towage services were a natural monopoly, competition for the port (or exclusive licensing) would be one avenue port authorities could use to ensure competitive tension in the harbour towage industry could be maintained.

While the NBCG continues to support this concept, the reality is that its implementation hasn't proceeded in the manner envisaged by the Productivity Commission. The process still has significant teething problems with port authorities relying heavily on feedback from their port's major users who are themselves the recipients of significant rebate arrangements. With the acquisition of Adsteam Marine Limited by Svitzer Australia industry now has a situation where a port's biggest customer could be the parent of Svitzer Australia.

Where there is a clear natural monopoly element to harbour towage, the NBCG is of the view that regular competitive tendering for the towage service in the port is still the Group's preferred option. A set of transparent evaluation tables, once offers have been submitted, should be circulated by port authorities to ensure price and service objectives remain the major areas of comparison.

Queensland Transport must be cognisant of the costs involved in preparing a towage tender for a significant port. Based on the experience of NBCG members the cost for each tendering entity to prepare a robust tender document would exceed $A300,000. Prior to committing this amount of funding an interested towage entity has to convince themselves that the outcome will be judged on competitive merit for the benefit of all port users.

3.5 Transparent negotiation with third party service providers (eg. of pilotage, towage and lines)

Because exclusive towage licensing has not delivered the reforms and price offsets the NBCG had hoped for, the Group is now looking at an alternative platform for price and service negotiations.

The Group refers to this as transparent negotiations where the service provider makes available to their client i.e. a representative or representatives of the person who ultimately settles the invoice (whether it is the ship operator, charterer, shipper or consignee) - their cost structure, operating arrangements, capital outlays and vessel movements to ensure an informed debate is possible.

In adopting the NBCG's suggestion of a transparent negotiation process service providers i.e. Queensland Transport, MSQ, port authorities and private service providers should provide their clients with:

- A formal procedure or "cookbook" process that sets out the objectives of the negotiations;

- Negotiation commencement time lines. The NBCG suggests 45 days prior to the proposed introduction date ; and

- Arguments to justify any proposed price increases and/or service reductions recognising that price and service are values that primarily influence NBCG members.

The NBCG recently was involved in consultation with Maritime Safety Queensland (MSQ) on pilotage fee increases. Whilst the final outcome is unknown, the NBCG was heartened to experience an open transparent process, which was satisfactory from a sharing of information point of view.

The NBCG would suggest that following its experience with the pilotage fee increases, the arrangements agreed to with MSQ could form the template for all future price and service delivery discussions where the quantum of capital invested is less than $A50.0m per port.

It should be noted that this arrangement would only apply to third party service providers whose pricing and service delivery is not directly influenced by the international market.

As an aside, the NBCG notes that the Tasmanian Port Authority has recently purchased the Tasmanian harbour towage assets of North Western Shipping and Towage Pty Ltd. The Tasmanian Port Authority is now the towage provider at Tasmanian ports. The NBCG would support such an outcome if it was duplicated in small Queensland ports provided such arrangements passed the NBCG's open and transparent accountable test and there were demonstrable operational and/or pricing benefits for customers.

4.0 Answers to Queensland Transport's questions

The following answers are given in response to the questions asked in Queensland Transport's Discussion Paper.

4.1 Page 7 – Planning by Ports

Representative bodies such as the NBCG have much to contribute to port planning, port efficiency and pricing and should be invited to the table more frequently.

Whilst it seems self evident that controversy and acrimony can be greatly reduced by adequate consultation, such a straight forward strategy is often overlooked. The NBCG offers the dredging of the departure channel at Hay Point as an example of good planning. In this instance the Ports Corporation of Queensland (PCQ) consulted widely on the objectives of the dredging work and the likely increase in harbour dues to fund this work. The result: a seamless acceptance of the work and its tariff implications.

The NBCG accepts that the strategic port land model used in Queensland is achieving its goal. However, unless there is public consultation aimed at reducing regulatory requirements and ensuring consistency in the administration of strategic port land consistency in the administration of such land will not be achieved.

In this regard the NBCG notes that conflict is inevitable in ports where port authorities and/or State Government have allowed residential subdivision to encroach close to or into land formally set aside for port activity. Infrastructure that handles dry bulk cargoes is vulnerable to post development residential "not in my back yard" (NIMBY) pressure. Consequently planning bodies (State Government, port authorities and Councils) must be cognisant of the value dry bulk cargoes make to the nation's economic wellbeing and allowance made for the inevitable future increase in trade.

4.2 Page 8 – Right to earn a commercial return without exploiting monopoly power

The questions posed in this block are contentious and will enlist a range of responses. The NBCG's responses are:

- Port and related infrastructure facility competition can be increased for dry bulk shippers and/or consignees by ensuring any new common-user facilities coming on-stream are operated efficiently.

- This question assumes that a port authority will automatically own and manage a new dry bulk facility. This may not be the case. However should a port authority elect to own and operate a facility the NBCG is of the opinion that such an arrangement should be commercial and the authority's rate of return be determined by an independent authority – the Queensland Competition Authority or ACCC. However if a port authority was assigned this challenge, then the NBCG advocates that any subsequent tariff would only be levied after industry consultation. Such a consultative process would involve industry and be predicated on the port authority exchanging forecasts on: revenue, capital and operating costs.

- The NBCG is aware that the threat of price monitoring does provide a constraint on monopoly power behaviour (countervailing pressure).

- The NBCG recognises that as most high value common-user services provided in a port on a daily basis are monopolistic the quid-pro-quo for the service provider would be a compulsory requirement for the beneficiary to engage in transparent negotiations with users. Such a position will not always be embraced, but the alternative is a continuous stream of allegations asserting that the service provider is misusing their natural monopoly market power.

- Guidance by an accepted authority (ACCC or Queensland Competition Authority) in the commercial charters for port authorities would be welcomed by the NBCG and will assist with transparent negotiations should Queensland Transport elect to trial this recommendation.

4.3 Page 9 – Conflicts of interest arising from:

Queensland port authorities are natural monopolies thus pricing increases inevitably impact users. Where significant price increases are being considered, the NBCG recommends customers should be consulted to:

- Ensure the increases are warranted;

- Provide transparency; and

- Enable customers to make necessary adjustments to their contractual arrangements.

With respect to pricing by port service providers, the NBCG notes that prices should normally fall as volumes increase. Such price reductions can be achieved through the more efficient use of assets. If this is not happening, then the NBCG suggests service providers should explain to stakeholders the reasons why these savings are not being passed on to customers.

4.4 Page 9 – Additional comments

The NBCG suggests the following in relation to the role of Queensland port authorities which are aligned to Queensland Transport's review, but not addressed elsewhere in its Discussion Paper:

- The need to identify an impartial umpire where disputes can be arbitrated and/or rates of return identified. The NBCG recommends that this role is outsourced to the most appropriate competition regulator **to ensure timeliness of decisions and national consistency**.

- **The NBCG recommends that the Productivity Commission is given a countervailing role in the maintenance of competitive tension in ports by conducting a review of all major ports charges every five years.** Whilst the NBCG acknowledges that this suggestion is time consuming and costly, it will in itself provide a balance to critics who allege that ports are acting as monopolists.

- **The use by Queensland port authorities of the transparent negotiation process**: The exclusive licence process in towage for a set period will provide for contestability in the initial and subsequent tender process and should achieve the sound outcomes envisaged by the Productivity Commission. Where such tendering results in only one bid or the lowest tenderer is not awarded the contract, this can result in a loss of confidence in this process. Therefore where there are no other means of applying competitive tension the NBCG recommends that transparent negotiation on service provision and pricing with representatives of dry bulk shippers and/or receivers (as well as other stakeholders) should be trialled.

- There is an urgent need to codify port charges. When undertaking a national benchmarking exercise it is extremely difficult (and expensive) to compare port charges on an "apples to apples" basis. In this respect Flinders Port have produced a schedule of charges that are consistent in name (if not value) across all the ports this company owns. **The NBCG recommends that Queensland Transport adopts this same approach whereby port charges are identified by the same name in all Queensland ports.** The NBCG acknowledges that the value of these charges will vary from port-to-port.

- The future: **The NBCG has identified a need for new technology to be embraced** (eg. high speed bulk handling equipment, under keel clearance technology) which in itself can provide effective competition not only within the port sector, but also with ancillary services such as the speed of communications and the introduction of very high speed broadband.

5.0 Summary

The summarised position of the NBCG with respect to Queensland Transport's Discussion Paper is:

- The NBCG supports the concept of maintaining continuous competitive tension in all government provided port services and private provision of towage and similar services;

- Continuous competition can be achieved through a combination of international and port service provision (eg. towage) competitive pressures: through licensing for the port allowing opportunities at defined intervals for contestability of a tendered service: through transparent negotiation: and through price monitoring coupled with "in depth" benchmarking where necessary;

- The NBCG supports the Business Council of Australia's policy that there should be "effective competition in all contestable (non network) market segments";

- That Queensland Transport implements a State based policy whereby all port charges in Queensland are commonly named and refer to identical services in the same way irrespective of geographical location of the port and the ownership arrangements of either the port or infrastructure facilities; and

- The NBCG offers no objection to its response being posted on Queensland Transport's website.