SUBMISSION

BY

DALE COLE & ASSOCIATES PTY LTD

TO

ESSENTIAL SERVICES COMMISSION OF SOUTH AUSTRALIA

ON

SHOULD PRICE REGULATION CONTINUE?

PORTS PRICE REVIEW:

DISCUSSION PAPER NO. 1

MARCH 2003

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1.0 Executive Summary

Dale Cole & Associates Pty Ltd (DCAL) has assisted in the preparation of a number of submissions associated with the maritime industry. This involvement can be summarised as follows:

- June 1999 – Reviewed Coastal Tankers Limited port cost regime at all New Zealand ports, which are hosts to their tanker fleet
- September 1999 – Surveyed and valued Sydney Port Corporation's maritime fleet
- November 1999 - Exclusive Towage Licence for the port of Gladstone
- January 2000 - Preparation of a Towage Licence for the Maritime & Ports Authority of Fiji
- February 2001 - Exclusive Towage Licence for the port of Fremantle (Inner & Outer Harbour)
- February 2002 - Shipping Australia Limited's response to the Australian Competition and Consumers Commission (ACCC) when Adsteam Marine Limited sought a notification to increase towage rates at five of the seven declared ports.
- April 2002 - Shipping Australia Limited's response to the Productivity Commission's inquiry into the Economic Regulation of Harbour Towage and Related Services
- May 2002 - Preparation of an Exclusive Towage Licence for an Australian Port Authority
- December 2002 – Preparation of a Submission to reform coastal shipping in Fiji

1.1 Chapter Two

Reviews the difficulty regulatory authorities have when evaluating price increase applications. For an applicant there is a significant cost associated with an application and the regulatory authority is always handicapped by its inability to see behind the figures submitted by the applicant. Based on the proposition that essential maritime services will continue to be monitored, an alternative to the methodology used by declared companies when making an ACCC notification has to be found. This submission explores a range of alternatives, which may appeal to ESCOSA.

There is no doubt that few if any commercial entities deliver efficient economic services when operating within a monopolistic environment. DCAPL argues that the ports of South Australia, and Australia for that matter are so small in volume terms, that contestability is not an option for the majority of services regulated under Section 4 of the MSA Act.

Having identified the need for regulation DCAPL has sought to identify the most appropriate form, which will offer stakeholders the assurance of being transparent and effective, but at the same time cost efficient for the entity being regulated.

1.2 Chapter Three

Advocates changes to Section 4 of the MSA Act, which should increase the competitive attractiveness of South Australian ports.

1.3 Chapter Four

Responds to the questions and comments raised by ESCOSA in their discussion paper No. 1.

2.0 An Alternative Regulatory Regime

2.1 MSA Act - Excluded Essential Maritime Services

Section 4 of the MSA Act excludes the following services from the definition of Essential Maritime Services:

- Towage;
- Bunkering;
- Provisioning;
- Waste removal;
- Pilotage;
- Providing for the storage of goods;
- Providing access to land in connection with other Maritime Services; and
- Stevedoring.

2.2 MSA Act - Included Essential Maritime Services

Section 4 of the MSA Act includes (by reason of their non exclusion) the following Essential Maritime Services:

- Harbour dues;
- Surveys
- Lines Launch;
- Mooring gangs; and
- Wharfage.

The barriers to entry for surveys, lines launches and mooring gangs are reasonably low. DCAPL suggests that the most effective form of economic efficiency for these three essential services is contestable entry and, as a consequence, these three services should not be regulated.

With respect to Harbour Dues and Wharfage, DCAPL recommends that these two essential services continue to be regulated by ESCOSA. The suggested regulatory regime should take into account the need for a transparent and simplified notification process as well as a public interest declaration.

2.3 Regulatory Regime for Essential Maritime Services

Because Harbour Dues and Wharfage are easily benchmarked, DCAPL proposes that a notification to increase Harbour Dues and/or Wharfage rates should be accompanied by a comparative table showing the rates for similar services at ports within Australasia, which have similar:

- Levels of capital expenditure;
- Export/import tonnages;
- Vessel calls; and
- Geographical features.

The attraction of this suggestion is that there are many Australasian ports, which can be compared with the seven proclaimed South Australian ports. Therefore a benchmarking exercise of this magnitude can be undertaken quickly and inexpensively.

2.4 Regulatory Regime for a Benchmark Pass

Should the exercise determine that the notifying port's Harbour Dues and/or Wharfage rates are below the mean of the comparable ports rates, then an argument for an increase will have been substantially established. Supporting documentation can then provide cost increase arguments, revenue shortfall and/or proposed capital expenditure objectives? In addition the notification would include stakeholder comments as well as a public interest declaration.

It is envisaged that a "Benchmark Pass" notification would be relatively "thin" – say ten pages.

2.5 Regulatory Regime for a Benchmark Fail

Should the benchmarking exercise determine the notifying port's Harbour Dues and/or Wharfage rates are above the mean of comparable port rates, then the notifying port must present a more substantial argument to ESCOSA justifying the notification. Such a notification would focus on cost increases, revenue shortfalls and/or proposed increased capital expenditure programs. This submission will contain comment from industry stakeholders and a public interest declaration.

It is envisaged that the "fail" notification will be more substantial than a "pass" notification, but will still be limited to no more than twenty pages.

3.0 Suggested Improvements to MSA Act

3.1 Additional Maritime Services to be Included in the MSA Act

It is recognised that the vast majority of the maritime services provided at South Australian ports are monopolistic, because the volume of business at each port is insufficient to attract cost efficiencies through the contestability mechanism.

In order to reassure stakeholders that South Australian ports are offering their "best price" it is suggested that that the following services are added to the MSA Act and are subject to the same disciplines outlined in Chapter 2 of this submission. These services are:

- Wharfage;
- Loading charges;
- Pilotage;
- Towage.

For ships calling in a South Australian port for wheat the two most significant costs (for the ship operator/charterer) are towage and pilotage. In Adelaide, these two cost centres represent 42.15% of total port costs for a 20,000 DWT ship and 35.28% for a 50,000 DWT ship, whilst the percentages are significantly higher at other South Australian "out ports".

When non-wheat cargoes are modelled, the above percentages are reduced when stevedoring costs are added to the port costs regime. Regardless of the type of cargo handled or the identity of the business entity responsible for meeting these expenses, towage and pilotage costs contribute significantly to a port's (South Australian) economic efficiency.

3.2 Harbour Towage

Interested stakeholders are awaiting the Federal Government's response to the Productivity Commission's review of Economic Regulation of Harbour Towage and Related Services. The commissioner undertaking the review handed his report to the Federal Treasurer in August 2002 and the Treasurer's response is now overdue.

The exclusive licence towage tenders to date (Bunbury, Gladstone, Fremantle) plus a number of desktop studies, have shown that the exclusive licence mechanism can deliver significant gains in economic efficiency without damaging service levels.

An argument can be sustained that cost efficiencies at all South Australian ports can be achieved if towage services were contested using the exclusive licence mechanism.

Because there would be a conflict of interest between the towage provider and some privately owned South Australian ports, it is recommended that ESCOSA act as the tendering principle and conduct each port's tendering process.

No doubt, if this recommendation were to be adopted, the MSA Act would have to be amended to reflect this suggestion.

4.0 Answer to ESCOSA Questions

4.1 Page 12

The charges identified under the FPD are, in the view of DCAPL, self-explanatory.

DCAPL has no comment about the amount charged for each service.

4.2 Page 13

Services associated with bulk loading/discharging and stevedoring (where there is no contestability) should be included under the definition of Essential Maritime Services. Using the suggested “blue print” for towage and pilotage a competitive tendering process “for the port” could be applied to stevedoring, however bulk loading/discharging facilities may not lend themselves so easily to the competitive processes (owner operated) therefore these facilities should be regulated by ESCOSA.

In the excluded category, does ESCOSA include oily wastewater removal as waste removal? If not it is suggested that this service be added to the list of services included in the Essential Maritime Service definition and tendered out on a “for the port” basis.

Mooring should not be included, as it can be easily separated out and the service either opened to contestability or a licence issued through a “for the port” tender process. Because of the likely conflict between port ownership and service providing, management of mooring tenders should be undertaken by ESCOSA.

It is suggested that the time scale for “for the port” licences are no less than five years or more than ten years.

4.3 Page 14

If the provision of storage facilities is not subject to normal contestable pressures, then storage should be included in the range of services, which are tendered on a “for the port” basis with management of the process vested with ESCOSA.

4.4 Page 22

In providing Essential Maritime Services there is a sustainable argument, which states that low volume ports are natural monopolies. Because there are six smaller South Australian ports which are privately owned, the concept of different ports competing for shipping volumes is difficult to visualise. Therefore the need for ESCOSA to maintain price regulation for Essential Maritime Services in South Australia is necessary unless ports agree to a regime of licensing appropriate Essential Maritime Services “for the port”. Because of conflict of interest issues, DCAPL suggests ESCOSA is the only agency, which would be accepted as an impartial umpire.

DCAPL argues that benchmarking of similar services at comparable Australasian ports should apply.

4.5 Page 25

DCAPL has desktop models, which benchmark the Essential Maritime Services costs at similar Australasian ports.

The problem for a provider of Essential Maritime Services in a regulated environment is the cost associated with rate increase applications. Unless a transparent system of application is adopted (similar to the system advocated in this submission), then the cost of each application could easily exceed six figures.

4.6 General Comments

In the third paragraph, Page 17, ESCOSA looks at whether the level of competition in and efficiency of the delivery of Essential Maritime Services to determine whether there are such concerns and whether they are best addressed by price regulation.

DCAPL suggests that price regulation is the answer when the introduction of tendering “for the port” is not feasible. Tendering “for the port” has the capacity to deliver cost efficiencies as well as setting service level benchmarks comparable to “world’s best in class”.

All service level efficiency concerns can be addressed at the tendering and licence issue stages. The upside of a “for the port” tendering process is the knowledge that it will deliver efficient prices as well as efficient costs.