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SAL16033

16 June 2016

Ms Kate Boyd
Australian Competition and Consumer Commission
GPO Box 3131
Canberra, ACT 2601

via email: mergers@accc.gov.au

Dear Ms Boyd

Re: Submission re. IFM Consortium / POM

Reference: ACCC letter 57217 of 1 June 2016

1. Shipping Australia limited (SAL) is pleased to make a submission on this matter and particularly to provide our associations opinions on:

   a. whether the proposed acquisition would lessen competition between any of the ports in which IFM already holds an interest (Port Botany, Port Kembla and the Port of Brisbane) and the Port of Melbourne (**PoM**)

   b. whether IFM's limited interest in or control over Port Botany, Port Kembla and the Port of Brisbane would prevent any lessening of competition

   c. whether the regulatory regimes at the PoM, Port Botany, Port Kembla and the Port of Brisbane would prevent any lessening of competition.

Background

2. SAL is a peak shipowner association with 34 member lines and shipping agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international trade and container trade as well as over 70 per cent of our break bulk and bulk trade. A number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees. A list of our members is available at https://shippingaustralia.com.au/list-of-members/

3. A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of shipowners and shipping agents. SAL also provides secretariat services to the many liner companies and agencies who are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the Australian Competition and Consumer Act 2012. These

agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades.

Summary

4. On 30 March I had discussions with representatives of IFM (Mr Tim Blood and Mr Quentin Law) where they informed me that IFM was intending to bid as part of a consortium on the PoM and could acquire up to a 55% interest. They confirmed their 26% share in the Port of Brisbane and their current 35% share in NSW Ports owning the leasehold over Port Botany and Port Kembla. They also stated that they would give an undertaking not to exercise majority shareholder power in the PoM no matter what level of interest they acquired.

5. SAL members have been fully consulted and their consensus position, with no dissentions, is that they are concerned that any level of ownership of IFM in the Port of Melbourne is likely to:

a. reduce competition between ports, particularly the competition between Melbourne and Sydney for exports from southern NSW,

b. undermine the price surveillance of the Port of Melbourne undertaken by the Victorian Essential Services Commission which relies on benchmarking of the other major Australian container ports, Brisbane and particularly Sydney, and

c. influence any price monitoring or review that does occur in Brisbane and Sydney by enabling price increases at these ports to be made in concert and with full awareness of the intended price increases in PoM.

6. There will be even further anti-competitive effect if the Ports of Melbourne and Brisbane are eventually more closely connected by the long heralded inland rail link. This is likely to occur within the terms of the respective leases.

7. To put it simply:

a. any IFM ownership interest in PoM would lessen competition between for exports between Botany/Kembla and Melbourne and would lessen any future competition that would otherwise exist once the proposed inland rail links the major east coast ports,

b. IFM's limited interest in or control over Port Botany, Port Kembla and the Port of Brisbane would not have any real effect in preventing the lessening of such competition,

c. the regulatory regimes at the Port Botany, Port Kembla and the Port of Brisbane are too weak to have any effect of preventing lessening of competition and the proposed regulatory regime in Melbourne, whilst more comprehensive would be influenced and undermined by coordinated pricing increases across the three ports which could occur with cross ownership.

Discussion

8. SAL members do not consider that the undertaking by IFM not to exercise majority shareholder power provides any protection against the anti-competitive impact of IFM having shareholdings in all the major east coast ports. It is a well-known fact that most boardrooms operate on full and frank discussion and an aim to gain consensus decisions – only a small percentage of board decisions actually go to a vote, but every member of a Board is able to speak on matters under review. Thus any anti-competitive effect of cross ownership is unlikely to be diminished by this undertaking.

9. There have been a number of port privatisations in Australia and SAL is not philosophically opposed to privatisation. In principle, private companies are considered more agile than Government owned enterprises, can obtain financial backing for expansion of infrastructure and can have a longer term perspective than governments who's policies can be influenced by short election cycles. Therefore they are more able to develop infrastructure to meet demand in a timely matter that provides a pathway to growth and effective return on investment. However, under private ownership pricing must be controlled either by effective commercial competition or by appropriate regulation.

10. The privatisation of the Port of Brisbane and the ports of Port Botany and Port Kembla have already resulted in what our members consider are unreasonable price increases; some relating to land rents, others in relation to wharfage charges. Our members are particularly upset that there was no effective, independent price control mechanism built into the privatisation process at these ports. It is possible that the low level of price oversight was a result of the state governments' endeavouring to maximise the sale price for their ports. Transport for NSW has advised SAL that they do monitor port prices and the only circumstance in which a state government will review the price increases is if they are regularly seen to be excessive. But this judgement is made in relation with other major ports – so if they all increase excessively, then that will not trigger any Government intervention, and if there is common ownership between the ports then it is easy for them each to increase their charges excessively in order to assist.

11. Even the fairly comprehensive pricing review regime for PoM intended to be undertaken by the Victorian Essential Services Commission will be influenced by coordinated price increases across the three ports of Brisbane, Botany/Kembla and Melbourne. The regime will use benchmarking against the other major ports – Sydney and Brisbane, so if the same owner could influence the prices at these ports they will be more likely to be able to achieve greater rises in Melbourne.

12. Over the past 3 years we have seen price rises in excess of CPI in Brisbane and Botany/Kembla despite parlous economic conditions for shipping. Price restraint does not seem to be in the vocabulary of private port owners and I have been personally told by a port Chairman that they have to provide the expected returns to shareholders.

13. The major ports are in monopoly situations for provision of services and land rents to tenants who need to be at the port and Sydney and Brisbane have scant or nil Government oversite of their pricing. The price rises for land rents in ports are usually benchmarked across the major east coast ports so price distortion is likely to occur if there is common ownership across the three ports.

14. For imports, the ports of Brisbane, Botany/Kembla and Melbourne are geographical monopolies as the destination for most imports is within 100km of the port. However when built, it is possible that inland rail could increase the competition between ports. Common ownership between the ports would inhibit such competition.

15. The clearest trade competition we currently see between ports is a slight competition between Sydney and Melbourne for exports from southern NSW. This is evidenced by the current PoMC gradual reduction in export wharfage in an attempt to recover export volumes lost to Botany following the introduction of Melbourne Port Licence Fee in 2012. This is minor in the overall context but nice to see in any case. Such competition is unlikely to continue if there is common ownership between Botany and Melbourne.

16. There may be some competition in transhipment wharfage charges, this would also be reduced with common ownership across the three major container ports.

17. IFM taking and ownership position in PoM would be bad for competition – tending to link all the charges/rent/fee regimes so that there could be no independent benchmarking within Australia.

Yours sincerely

Rod Nairn
Chief Executive Officer