



**NATIONAL BULK
COMMODITIES GROUP INC**
ABN: 55 495 614 399

31 Loftus Street
BUNDEENA NSW 2230
T: 02 9544 4139
F: 02 9544 4977
E: dale@nbcg.org.au

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Regulation Benchmarking Study
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne Vic 8003
Canberra ACT 2601

Attention: Mr Chris Sayers

Dear Sir

Re: Performance Benchmarking of Australian Business Regulation

The National Bulk Commodities Group Inc (NBCG) welcomes the opportunity to respond to the Commission's request for submission for this inquiry in accordance with the Terms of Reference headings.

The NBCG's response is purely on the basis of its member's interest in the efficient export and/or import of dry bulk cargoes.

The NBCG

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 production, transportation, storage, loading/unloading 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 and safe, efficient, equitable and nationally/internationally consistent regulatory arrangements for shipping. In addition, adequate and reliable rail and road access to key bulk commodity exporting and importing ports is a key factor in companies being able to meet rapidly growing export demand and addressing congestion at ports for both import and export cargoes.

In 2005/2006 the national dry bulk commodity transport task is expected to be approximately 650 million tonnes – shipped internationally, domestically or imported.

NBCG members note 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 there were only 3,891 foreign flag container vessels calls in Australia over the same period.

A list of current NBCG members is attached.

Minimum Effective Regulation

As an overall comment, the NBCG supports an approach to assessing business regulation that is based on high level principles. One important principle involves the concept of “*minimum efficient regulation*”. *Such an approach* emphasises the need for regulation **that can both meet its objectives and do so at least cost**.

For regulation to meet the tests of “minimum effective regulation”, it needs to satisfy a variety of criteria, which the Productivity Commission has emphasised in successive reports over the years:

- > *regulation should not be unduly prescriptive* – it should be specified in terms of performance goals or outcomes and not be proscriptive. It should also be flexible to accommodate different or changing circumstances and to enable businesses and final consumers to choose the most cost effective ways of complying;
- > *regulation should be clear and concise* – it should be effectively communicated, be readily accessible to those impacted by it and must be readily understood by them;
- > *regulation should be consistent* with other laws, agreements and international obligations;
- > *regulation must be enforceable* – however, it should embody incentives or disciplines no greater than are needed for reasonable enforcement and involve adequate resourcing for that purpose. The NBCG has a preference for a reliance on market outcomes. If regulation is thought necessary, preference should first be given to light handed regulation to achieve clear outcomes;
- > regulation needs to be *administered by accountable bodies* in an equitable and consistent manner;
- > regulation should be *monitored and periodically reviewed* to ensure that it continues to achieve its aims.

Regulation which is deficient in meeting these criteria is likely to fail to achieve its objectives, impose unnecessary costs, impede innovation and/or create barriers to efficiency and productivity. In addition, government should not just seek to adopt the best regulatory approach available to address a defined problem. **They should also include an assessment of whether self-regulation, co-regulation or no regulation is the most efficient public policy choice.**

Performance Benchmarking Issues of Interest to NBCG Members

NBCG members compete in an international market that is extremely price sensitive. In Australia commercial activity is dependent on significant levels of capital investment that is sourced or underwritten by shareholders who seek an acceptable level of return for their investment. Therefore decreasing the regulatory burden on business, ensuring that regulation is efficient and providing information for businesses to make decisions about where in Australia to invest and grow their business is of vital concern.

Feasible quantitative and qualitative performance indicators that would provide ongoing assessment and comparison in the Australian maritime industry would include:

1. The concept of competitive tension within the supply chain.
2. Investment particularly in export/import infrastructure that has an impact on maritime productivity (this includes land transport infrastructure as well as infrastructure at the port and intermodal efficiencies between road/rail/port).
3. Maritime skill levels both in terms of quantity and quality.
4. The business environment.
5. Technological innovation including research and development.

Competition

Competitive intensity delivers benefits for consumers and encourages businesses to strive for greater efficiency which has a positive effect on productivity. Indicators that could be used to monitor the competition

driver include:

- > The level of imports and exports in goods and services as a percent of GDP to serve as an indication of the openness of the economy to international trade;
- > The degree of market regulation. For example cabotage and the efficiency of the coastal permit system, which is strongly supported by the NBCG; and
- > Benchmark the level and effectiveness of competitive frameworks in competitor countries.

Investment

Investment in physical capital increases productivity levels and growth. The following indicators could be used to monitor investment:

- > The level of macroeconomic stability. For example the volatility in short-term interest rates and the expected rate of return business requires to invest;
- > Government investment as a percentage of GDP;
- > Business investment as a percentage of GDP; and
- > The investment in infrastructure and the quality and performance of the infrastructure. One useful measure for ports would be to measure the level of congestion at each port.

Skills

Higher skill levels are vital with regard the implementation of new technology, generation of new ideas and procedures and adjusting to economic and social change. Of concern to the NBCG is the worldwide shortage of skilled personnel who are attracted to a career in the dry bulk industry.

- > Determine the demand for, as well as the supply of skills in the local maritime industry;
- > Determine the level of on-going learning and training; and
- > Determine the level of management quality and experience and compare this with competitor countries.

Business Environment

There needs to be a culture that is positive and which encourages new business opportunities and entrepreneurs. Therefore it would be necessary to measure the ease of starting a new business and the barriers involved; to determine the ease of overcoming barriers to growth and the ability of business entities to increase productivity and growth.

- > Measure entrepreneurial activity;
- > Cost and time to start-up a new business; and
- > Productivity growth of smaller businesses.

Technology

Growth in productivity depends on new technologies which supply industry with better products and services and ways of supplying them. Examples of indicators to monitor new technology would include:

- > Expenditure on Research, Development and Demonstration as a percent of GDP;
- > Number of patents granted annually; and
- > Measure time taken to clear ships at each port (arrival and departure).

Additional Issues of Interest to NBCG Members

The NBCG is cognisant of the reduction in regulation in those areas of the transport chain in which it has a pecuniary interest.

An important aspect of Australia's recent waterfront reform process has been the trend for port authorities to adopt the 'landlord' model of operation, under which they undertake only core activities, with the more contestable waterfront services, such as stevedoring, supplied commercially. However, in Australia, the distance between ports, the volume of vessel calls, contestability of market and the need to invest significant funds to support infrastructure costs, may reduce competitive tension amongst the port's infrastructure providers

In a natural monopoly, it is recognised that effective competition can still come from the threat of other providers entering the market if the incumbent operator sets prices too high or provides an inappropriate/inadequate quality of service. The extent to which such competition or "contestability" (eg for the towage market) at a particular port restrains the behaviour of an incumbent operator will depend on the barriers to entry to the relevant market. In circumstances of market contestability not generating efficient prices or quality, various options are available. For example, there is the option of periodic competitive tendering for the market or price regulation.

When low volumes prevent sustainable contestable outcomes the regulators or market managers can apply competitive tension through the exclusive licence process. NBCG members have experienced the benefits of this process at several Australian ports. The NBCG is of the opinion that no exclusive licence should be issued for more than seven years.

In the vast majority of Australian ports a significant percentage of the services provided are supplied by a Port Authority whose only shareholder is the relevant State Government. The State Government is also responsible for providing a range of services (pilotage and navigation aids) that have a material impact on a port's efficiency.

Without either competitive tension or regulation the only instrument at the disposal of NBCG members when reviewing cost outcomes is benchmarking. However, the NBCG acknowledges that benchmarking will only provide an overview of pricing (and costs) at like ports.

To create an aura of competitive tension the NBCG is of the opinion that benchmarking has to be augmented by the creation of a financial model or models to verify the assumptions identified during the benchmarking exercise.

Recognising that benchmarking, coupled with the development of financial models, is capable of creating a competitive environment, the NBCG has embarked on its own benchmarking and financial analysis regime when members felt cost adjustments required more intensive scrutiny.

Benchmarking Benefits for NBCG Members

From a commercial prospective NBCG members recognise that in-house benchmarking will deliver:

1. An overview of the costs associated with the loading and/or discharging of dry bulk cargoes at Australian ports;
2. An alternative mechanism, when coupled with financial modelling, to maintain competitive tension; and
3. Authentic data that will enable members to negotiate improved port pricing outcomes.

Consequently NBCG members support the concept of benchmarking and recognise the commercial benefits this activity delivers.

However NBCG members recognise that producing a benchmark model does not necessarily lead to the desired outcomes. For example, when a supplier has market dominance in several Australian ports a benchmarking exercise in itself may not indicate abuse of market power.

What are the alternatives? The NBCG suggests that a benchmarking exercise is the first step in determining whether there are distortions in port pricing. Once a model has been developed some of the detail should be further examined. Whether the candidates for examination are selected at random or selected through the spread of their activities is an issue. The NBCG approaches this task on an issue by issue basis. The outcomes indicate that the goal of maintaining competitive tension in port related services is still some way off.

Quantitative and Qualitative Performance Indicators and Reporting Framework Options

The NBCG, when benchmarking, uses a range of quantitative and qualitative measures that would be recognized both nationally and internationally. The structure of the exercise takes into account regulatory regimes across all levels of government and could be easily adopted in an alternative regulatory jurisdiction.

The collation and understanding of port operational procedures and costs is the key to understanding the drivers that influence each benchmark component. It is the ability to analyse the information obtained through the benchmarking exercise that determines the value of the application.

When using the benchmarking technique to determine the competitiveness of an operation in Australia against a similar port in another international jurisdiction, care must be taken in interpreting any variances. Obviously there will be many economic indices that will have to be considered as well as a number of local productivity considerations that will enable the analyst to compare results on an apples to apples basis.

Benchmarking Benefits for Regulators

The NBCG suggests that the benefits for a regulator are:

1. The process assist the regulator understand the cost pressures a trade experiences in an environment where there is an absence of or limited contestability; and
2. Should the activity of a service provider, operating within a natural monopoly, require the regulator to regulate this activity in a "light handed" manner, then benchmarking becomes a tool which is an acceptable alternative to a review.

Cost of Benchmarking and/or Financial Modeling

The NBCG's experience shows that collating and analysing benchmarking data is costly, because the availability of data is not always readily available. In addition there is a shortage of personnel who are capable of putting together a matrix of maritime port costs. Australia has a significant skill shortage in this field.

Commercial entities, regulators and port authorities usually outsource their benchmarking requirements or, in the case of a regulated entity, their regulatory request or response. The NBCG suggests that the following table is indicative of the costs associated with a benchmarking exercise linking between four and eight ports:

The costs identified in Table 1 cover outside consultancy services, but do not include an allowance for in-house support. The difficulty with trying to quantify in-house support is the development of a credible hourly rate. The NBCG suggests that there would be sufficient variations in the in-house rate between different commercial entities that an average rate would be meaningless. Suffice to say the hours used to calculate the above gross figures would be duplicated by each entity's support staff.

Activity	Benchmarking Costs	Financial Modelling Costs
Australian Ports	Between \$40,000 and \$60,000	Between \$50,000 and \$40,000
Overseas Ports	Between \$100,000 and \$140,000	Between \$60,000 and \$75,000
Australian and Overseas Ports	Between \$90,000 and \$120,000	Between \$100,000 and \$150,000

Table 1 Source: NBCG

By way of comparison the NBCG is aware that the outsourcing cost for a regulated industry to prepare a price variation application is likely to exceed \$300,000.

When collating data for an international port more often than not the accuracy of this information is dependent on the collator actually visiting the port to insure the integrity of the exercise is maintained.

Conclusion

A summary of the NBCG's position with respect to Performance Benchmarking is:

1. That benchmarking is a cost effective light handed alternative to a regulatory review.
2. That benchmarking should, in sensitive cases, be supported by a set of financial models.
3. That a set of qualitative and quantitative performance indicators covering such disciplines as competition, investment, skills, business environment and technology should be developed to assist the Regulator understand the commercial activity, which it regulates.

Yours faithfully
For National Bulk Commodities Group Inc

Dale Cole
Executive Chairman

NATIONAL BULK COMMODITIES GROUP INC

List of Members:

AWB Limited

BHPB Freight Pty Ltd

Minerals Council of Australia

Queensland Alumina Limited

Queensland Sugar Limited

Rio Tinto Shipping Pty Limited

The Grain Pool of Western Australia

Xstrata Copper Refineries Pty Ltd

List of Associate Members:

Central Queensland Port Authority

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Inchcape Shipping Services Pty Ltd

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Ports Corporation of Queensland

Sanko-Kisen (Australia) Pty Limited

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Western Bulk Carriers (Australia) Pty Ltd