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TITLE: Changing Ownership Strategies for Australian Ports: Some Emerging Issues

ABSTRACT: Microeconomic reform has characterised the Australian maritime sector over the last decade or so. Shipping reform, waterfront reform and the current changing ownership strategies of state governments throughout Australia have focused on enhancing efficiency and competitiveness of Australian ports. Within this environment ports are no longer seen as public utilities but are expected to be market driven profit maximising operations similar to any private sector business venture.

This paper examines a number of different strategies being implemented by state governments and some of the real and/or anticipated benefits that will result.

The paper argues that if government business enterprises are to operate along private sector lines then an appropriate legislative framework must be set in place. The paper looks in some detail at changes in NSW ports where problems are already emerging precisely because the ports were corporatised under an inappropriate legislative structure.

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1: INTRODUCTION

Considerable changes have occurred throughout the 1990s in the ownership structures and management strategies of Australian ports. This has reflected not only the striving for efficiency gains in the port sector but changing government thinking on how to conduct its business operations. The traditional role of Government in the area of transport has been the provider of a public service - essential transport infrastructure was seen as a public utility and was developed by government in order to enable economic development to proceed and to enhance trade. Over the last decade or so there has occurred a change in government thinking. Traditional statutory authorities have been called upon to become efficient, commercially viable and profitable businesses - similar to those in the private sector. As a result Government Business Enterprises (GBEs) have been established which are expected to operate as efficient, commercially viable operations.

If GBEs are to operate efficiently and like private sector operations they must be free from political and central government constraints and this requires an appropriate legislative framework.

This paper examines privatisation and corporatisation of ports as part of an ongoing microeconomic reform programme; it investigates what has driven change in the maritime sector generally as well as changes in government philosophy. The paper discusses briefly the different strategies introduced in Australian states and some of the real and anticipated benefits experienced to date. The paper looks in some detail at changes in NSW ports where corporatisation is well under way but where problems are already emerging precisely because of inappropriate legislation - where conflicts are occurring because, despite expectations that ports like private sector operations are exposed to market forces, political and legislative constraints prevent or inhibit market driven commercial corporate practices.

2: REFORM IN THE MARITIME SECTOR

Changing ownership and corporate structures of ports have been driven by a number of pressures emanating from different directions - from within the industry sector itself and as part of an ongoing microeconomic reform programme; as a result of changing government

philosophy; and in response to exogenous forces - changes in international shipping, for example.

2.1 Industry-driven Reform

Privatisation and corporatisation of ports in Australia is part of an ongoing microeconomic reform programme aimed at commercialising the Australian maritime sector. The move to privatise and corporatise ports have followed as more or less inevitable consequences of earlier maritime reform measures. Shipping reform, initiated by the federal government along the lines recommended by Crawford (1983) introduced measures to revitalise the Australian shipping sector. Shipping reform, however, was widely recognised as only a partial solution to an uncompetitive and costly national shipping industry as an inefficient waterfront also had a major impact on the efficiency of shipping.

The waterfront, and in particular waterfront labour, was subsequently reformed along the lines recommended by the Inter-State Commission (ISC 1989). The aim of the Commission was, in effect, to create a more competitive environment - one in which firms, particularly but not only stevedoring firms, could more effectively control the costs and conditions of their labour inputs. Waterfront reform led to a perceived, if not a totally effective, deregulation of the labour market with the introduction of enterprise based agreements (EBAs) and company based employment.

The Commission also recognised the impediments to efficient port and shipping operations posed by inefficient and monopolistic port authorities and focused on their roles as effective administrative agencies. The Commission raised questions about whether or not there was an effective and legitimate role for the public sector in ports and, if so, what that role should be. The Industry Commission (IC) subsequently argued that port authorities should be granted autonomy from government and bureaucratic interference; that the role of the port authority was essentially a landlord; and that commercial operations were best left to the private sector (Industry Commission 1993).

The port authorities themselves had, for the most part, begun to explore these issues more vigorously and some had taken initiatives not only to rationalise costs and pricing but also to examine more closely structural issues. The upshot was that port administration and the

structural and organisational frameworks of authorities - including questions of ownership - were locked into an agenda for change.

2.2 Government Philosophy of the Post 1980s.

The push for port reform was also driven by the changes within the government and bureaucratic sectors. In Australia the 1980s was a decade where governments at both federal and state levels came under increasing pressure to perform. This coincided with widespread speculation and examination of the role of governments in commercial operations and focused in particular on the efficiency and cost effectiveness of GBEs. There existed a widespread and growing belief that Australia was over-governed and over regulated and governments were seen to be inefficient and costly. This changing philosophy reflected, by and large, economic recession, increasing unemployment and growing competition within the manufacturing sector from newly emerging industrialising nations in East and Southeast Asia.

State governments were under severe economic pressure and drastic reductions in government spending were called for. An ethos subsequently emerged accompanied by a strong push for deregulation and governments at both state and federal levels came under considerable pressure to either withdraw from commercial activities or to make them profitable.

Particularly within the area of GBEs the push for reform intensified throughout the 1980s and early 1990s. Commercialisation, corporatisation and privatisation became widely accepted government strategies and that government enterprises themselves had to be exposed to market conditions and to competitive forces in order to make them efficient. Within the maritime environment, port authorities which had previously provided a public service, now had to become efficient and competitive businesses operating under 'user pays' principles in order to ensure appropriate returns and maximum cost recovery.

2.3 Response to Changes in International Shipping

A push for efficiency and relative competitive strategic positions within the port environment was also occurring in response to changing global shipping networks and practices. The high cost of shipping, particularly liner shipping, operating in an extremely competitive global environment, had led to considerable changes in international shipping which had a significant impact on ports. The globalisation of liner shipping in the 1980s led to the emergence of round-the-world services and the developments of hub ports and feeder services. Australian

markets had traditionally been served by direct port calls, particularly in the Europe-Australia and the trans-Pacific trades but global changes in shipping led initially to fewer direct calls and subsequently to the beginning of Australian destined cargoes being transhipped via a major Asian hub port. As a result, and for the first time, Australian ports began to see themselves as competitors for niche market services.

3: STATE GOVERNMENT RESPONSES

What, then, have been the policy outcomes to date from these pressures for change? Australian states have, as has been suggested above, subsequently embraced a number of different but closely related strategies - privatisation, corporatisation and commercialisation. Note briefly the fundamental differences between these rather broadly defined strategies -

- Privatisation in this context is the transfer of public assets to the private sector. This can be accomplished by outright sale, by lease or contracting out. It can refer to the sale of an entire port, a port service or port operation - a terminal, for example, or a tug or pilotage operation.
- Corporatisation constitutes the retention of government ownership and the introduction of a corporate and management restructure. A public presence in the port is maintained, albeit much reduced. A government owned corporation is established essentially to undertake landlord functions. The adoption of private sector business principles becomes mandatory and, in most instances, all commercial operations in the port are transferred to the private sector.
- Commercialisation is that process where government retains ownership and control of the ports. The private sector undertakes many, but not all commercial activities. A port authority is maintained - one which operates not exclusively as a landlord but undertakes trade facilitation and other marketing and promotion roles.

All Australian states are presently undergoing port authority reform. Victoria is privatising its regional bulk ports and corporatising the port of Melbourne. With the exception of Western Australia, which is following a commercialisation strategy, and Tasmania, all other states are adopting some form of the corporatisation model. The following section will discuss briefly what strategies are being adopted in each state.

Victoria. Reform of Victorian ports began when the Port of Melbourne Authority and the port authorities of Geelong and Portland were declared Reorganising Bodies under the State Owned Enterprises Act 1992. Under this Act the state's ports were transferred to the Office of State Owned Enterprises.

In 1994 the Victorian Government announced that all four commercial ports would be privatised, but following intense opposition to the proposed sale of the port of Melbourne, government's revised strategy was a dual policy approach - the corporatisation of the port of Melbourne and the sale of the ports of Hastings, Geelong and Portland.

The impact of this strategy is that the port of Melbourne will be a public sector landlord with responsibilities for land within the port boundary. The passing of the Port Services Bill in October 1995 by the Victorian state parliament divided the responsibilities of the Port of Melbourne Authority into three newly formed companies - the Victorian Channels Authority with responsibility for all channels in Port Phillip Bay and the ports of Melbourne and Geelong; the Melbourne Port Corporation, a public sector landlord with responsibility for land and berths within port boundaries; Melbourne Port Services with responsibility for the provision of ancillary services within the port such as cleaning, docking and security.

In January 1996 the Marine Board of Victoria took over responsibility for coordinating the clean up of oil spills in Victorian waters - this will be contracted out to the Melbourne Port Services. The responsibility for dangerous goods and responsibility for marine pollution investigations and prosecutions was transferred to the Environment Protection Authority in March 1996.

In the other Victorian ports, the onshore assets in the ports of Geelong, Portland and Hastings will be sold outright. The underwater assets and associated navigational controls for these ports will be retained as public property, however. The first of Victoria's ports to be sold was Portland in February 1996 for \$30m. The successful bidder for Geelong is expected to be announced in May 1996 and industry sources indicate it will reap approximately \$90m - \$30m for the outright sale and \$60m held in reserve.

Victoria's fourteen Associated Ports will be separated from the commercial ports and all non port related assets, such as the World Trade Centre, will be sold. Regulatory responsibilities will be undertaken by the Office of the Regulator General to ensure that non-competitive or monopoly practices are not abused.

New South Wales. Reform of NSW ports began in 1989 with the introduction of the State Owned Corporatisation Act designed to commercialise the public sector. Under this legislation state owned corporations were to be established operating with minimum political and bureaucratic control similar to any other business in the private sector.

The introduction in 1989 of the Marine Administration Act created the commercial ports as separate authorities - the MSB Hunter Ports Authority, MSB Illawarra Ports

Authority and the MSB Sydney Ports Authority. These authorities were designed to operate relatively independently on a day to day basis but remaining under the umbrella of the MSB for capital borrowing and development planning.

In July 1995 with the passing of the Ports Corporatisation and Waterways Management Bill, the ports of Sydney, Port Kembla and Newcastle were corporatised. This has meant the abolition of the MSB and the three port authorities. The further introduction in July 1995 of the State Owned Corporations Amendment Act has established ports not as state owned corporations but as statutory state owned corporations. Under this amended legislation port corporations are exempt public authorities for the purposes of Corporations Law.

The legal and administrative framework for the port corporations is designed to closely mimic that of a private sector company - a board of directors, share capital, issues shares and a memorandum and articles of association. But they are not subject to Corporations Law but to the statute under which they were enacted nor are they registered with the Australian Securities Commission. This means that they do not have the freedom to operate as private sector operations and the political and bureaucratic control, rather than being lessened has, in fact, increased. But the amended legislation has also meant that the corporations are not unlike the former statutory authorities and less like a private company - this is evident in the scope of Ministerial direction, for example, the application of public sector employment, employee board representation and assigning to the Governor-in-Council the power to appoint chief executive officers etc (Symonds Travers Morgan 1995).

Queensland. The Queensland Government embarked on a programme of corporatisation in May 1993 with the passing of the Government Owned Corporations Act and the Transport Infrastructure Act 1994. The ports of Brisbane, Gladstone and Ports Corporation of Queensland were corporatised in July 1994 and in July 1995 the ports of Bundaberg, Rockhampton, Mackay, Townsville and Cairns were corporatised.

Corporatisation for Queensland ports means restructuring them to gain improved performance by adopting or expanding on business concepts used widely in the private sector. Unlike NSW ports, the operation of Queensland ports is more aligned with those of private sector companies and there exists some ability to operate independently. Being government owned some government supervision must be maintained, however, but industry sources indicate that this is normally restricted to strategic directions and business activities of the corporations and the monitoring of performance.

Under the Government Owned Corporations Act each corporation has two Shareholding Ministers representing the owners of the organisation - the government. In the case of port authorities, the Treasurer and the Minister for Transport assume this role. Shareholding Ministers oversee the government's interest in the corporation but independent Boards of Directors are responsible for the operation of the corporation.

Unlike the NSW model, the Queensland port authorities are not exclusively landlords - while the Port of Brisbane Corporation has transferred most of its commercial

functions to the private sector, some of the bulk ports - Gladstone, for example - continue to be engaged in bulk handling operations.

The emphasis of reform in Queensland has been somewhat different and more commercially oriented, compared with some other states, and government has distanced itself from operational matters. Ports do require government approval for capital development and they can, after negotiating with users, set prices. The proviso does exist, however, that if they are under monopoly or near monopoly conditions they will be subject to a level of Shareholding Ministerial reserve power' (Queensland GOE Unit 1995)

Another area in which the Queensland model has differed from other states is its focus on trade growth, rather than on an increase in the rate of return achieved by either a considerable reduction in staff or by the sale of assets. Staff at the Port of Brisbane Authority, for example, was reduced by approximately 15 percent between 1988/89 and 1992/93. This compares with staff reductions of 54 percent at the PMA; 61 percent at MSB; 47 percent at FPA and 44 percent at SA Department of Marine and Harbours.

This does not mean that the Port of Brisbane Authority has been indifferent to financial returns. It does mean, however, that it has relied on revenue growth rather than cost reductions to drive improved performance. It also means that revenue growth has come from increases in trade and changes in trade mix rather than price increases.

South Australia. Corporatisation of South Australian ports followed the passing of the Public Corporations Act 1993 and the South Australian Ports Corporation Act 1994. Unlike both the NSW and Queensland models South Australian ports have been corporatised under a single corporation - the South Australian Ports Corporation (PortsCorp). PortsCorp was established in 1994 and is now responsible for all South Australian commercial ports taking over assets of the former Marine and Harbours Agency and the commercial operation and development strategies of the former Department of Marine and Harbours. Government has minimum day to day involvement in the running of PortsCorp although, being a corporation, it is subject to the control and direction of the Minister.

The Board of Directors, which is not elected but nominated by the Minister, is the governing body and answers directly to the Minister for Transport. Unlike other states, where reform has been almost exclusively Treasury driven, Treasury is not represented on the PortsCorp Board - although there is a Treasury observer present at Board meetings.

The Board is currently undertaking a series of reviews of PortsCorp activities. One of the early recommendations to the Minister for Transport has been the privatisation of grain loading facilities.

Western Australia. The Western Australian Minister for Transport has rejected both the privatisation and corporatisation models and is pursuing a strategy of

comercialisation. Under this strategy ports will remain statutory authorities with trade facilitation being a major role - landlord responsibilities, however, will also be retained. Investigations are currently underway whether some commercial operations should be privatised. While statements on the role of ports and strategies have been released by the Minister, details of administrative and structural change are not yet available. The emphasis on port authority reform has focussed on a coordinated approach amongst a number of relevant government departments, with the Minister and central government agencies retaining control.

In Western Australia, as in all states and under all reform strategies there has occurred a separation of commercial from non commercial operations. This will mean a more cost reflective pricing system. It also means that some non commercial loss making activities will no longer be cross subsidised, as has occurred in the past. In the future they will be funded separately by Treasury.

Tasmania

At the time of writing Tasmanian ports continue to operate as statutory authorities. Northern Tasmanian ports are intensely competitive and, in many instances, resources are under- utilised. Rationalisation of ports has been Labor Party policy in the past but the issue has been too sensitive politically to implement. The current state government is investigating whether or not to corporatise the state's ports but final strategies have not been decided upon.

4: INTERIM RESEARCH FINDINGS

Privatisation and corporatisation of Australian ports is in its infancy and, as a result, while some impacts can be measured, others can only be speculated upon. Irrespective of the different strategies adopted by the states, all focus on the transfer of commercial operations to the private sector and all have separated the commercial operations from community service obligations. In addition, implicit and explicit in all strategies, is the view that the private sector is more efficient and ownership and corporate change will lead to more competitive port operations. Is this so?

There exist some sound arguments for and against private ownership of ports. In the past the rationale for private ownership, on the one hand, has been that private owners operate a port more efficiently because economic survival depends on long-run profitability. Private ports, consequently, are perceived to be more responsive to user needs, more aware of costs and more innovative than public sector ports where operating losses are absorbed by governments in any event.

Arguments for the retention of ports as public sector operations, on the other hand, is that governments traditionally play a developmental role and provide facilities and services which may or may not realise full cost recovery except in the long term. In addition, in order to generate and sustain trade and associated economic activities, governments are held responsible for the provision of essential port facilities and services - it is frequently argued that this is more appropriately provided by the public sector. Indeed the Industry Commission (1993) argued that

‘seaports are integral parts of the nation’s transport system. Their location has had a major influence on the development of Australia’s capital infrastructure. Their operation then and development have implications which extend beyond the interest of any single entity or group of firms and as such there is a public interest in the development and maintenance of the major ports and facilities. This public interest in ports is the overriding rationale for the establishment and/or maintenance of public port authorities’.

4.1 Efficiency

Arguments in favour of port reform has, without exception, been on the basis of efficiency and the creation of a more competitive port environment. There is no doubt that there are benefits to be gained as a result of reform

The separation of commercial from non commercial operations, for example, should eliminate cross subsidisation. Profitable operations have, in the past, frequently cross-subsidised loss making and non commercial operations in Australian ports - the Port of Melbourne Authority, for example, cross subsidised losses incurred in Associated Ports in 1991 in the order of \$10.5m (Port of Melbourne Authority 1991/92). It has also been widely recognised over a long period of time that NSW bulk exporters, particularly coal shippers, cross subsidised other, less profitable, areas in the ports. Reform should result in a more equitable pricing structure.

Similarly, the removal of Community Service Obligations from port authority budgets and their separate funding by Treasury in all states will further reduce cross subsidies and result in a more cost reflective pricing system for port services. The Victorian Government has

anticipated that reform in that State will lead to a reduction in port charges - in the order of some 15 percent.

The sale or transfer of non core port assets is also likely to relieve ports of financial burdens. The transfer of the World Trade Centre in Melbourne to the Victorian Department of Finance pending sale, for example, will relieve the Port of Melbourne Authority of a considerable burden. The Centre had an estimated market value of \$30m in 1992 despite the fact that the Authority had borrowed \$90m for its construction. Not only was there a significant gap between the market value of the site and the actual cost of construction, but the Centre was a chronic loss maker incurring a loss in any one year in the order of \$14m (Report of the Victorian Commission of Audit 1993).

It is at this stage too early to assess whether reform will lead to operational efficiency gains in the ports generally. Reform, it has been argued, will make ports more efficient. But does ownership determine efficiency? Is private ownership inherently good?

It is not the case that private ports are necessarily more efficient than public ports. The port of Singapore, for example, one of the most efficient in the world has been developed and operated solely as a public sector operation. And in Australia there are some highly efficient public sector port operations. The R.G. Tanna Loader, for example, one of the most efficient coal loading facilities in the world, is owned and operated by the Gladstone Port Authority. Evidence also indicates that some public sector operations have been highly inefficient and have only become efficient when privatised - such as the Port Kembla coal terminal (Everett 1995).

Other empirical studies point to either inconclusive or contradictory evidence. Trace (1986), commenting on relative efficiency of public and private enterprises in the UK in the airlines, ferries and hovercraft industries, found an increasing market share occurred once the transfer from public to the private sector was complete. Duncan and Bollard (1992), in their study on the impact of New Zealand reform, found the evidence to be controversial and not clearcut, although changing ownership from state to private had led to different standards of performance. Domberger (1992), on the other hand, argued that whether the transfer of

ownership is necessary and/or sufficient for performance improvements remains the subject of some debate. Indeed, he points out that some research findings indicate that publicly owned enterprises that are subjected to competitive forces can outperform privately owned ones in the same industry.

Are ports more efficient operating as corporations rather than as authorities? Once again, there does not appear to be some innate virtue in corporatising ports. Evidence indicates that efficiency improvements were considerable in NSW after 1989 when reform was initiated by the MSB. A reduction in MSB numbers - from 3,388 in 1984/85 to 650 in 1994/95 led to some substantial productivity improvements. Revenue earned per employee between 1984/85 and 1994/95 increased from \$79,500 to \$344,100 - an improvement of some 332 percent (Hayes 1995). Operating losses of \$30m in 1988/89 were turned around to an operating surplus of \$90m in 1992/93 (MSB Illawarra Ports Authority 1993). It must be remembered, however, that these improvements occurred in the initial reform period and preceding the corporatisation of ports. This suggests that improvements were due to reform generally and the adoption of a more appropriate and business oriented corporate culture rather than corporatisation as such.

In addition, corporatisation of ports is about the reform of former port authorities and while this may achieve efficiency gains within the authority itself, it is questionable how reform of an authority into what becomes essentially a landlord can lead to overall efficiency gains within the port. The private sector undertakes virtually all commercial functions in most ports - this means that efficiency gains are beyond the scope of port authorities or port corporations. The port corporations are landlords and the efficiency of their tenants' operations will be determined by internal and market factors and not by a government landlord. Indeed Robinson (1993) has argued that the landlord port model is a 'dangerous diversion from clear thinking' focusing on who should perform the port functions rather than first clarifying what those functions should be.

In addition, Aiken and Capitonio (1995) argue that Pareto efficiency, the allocation of scarce resources to their best possible use, dictates that governments attempt to conduct their businesses through entities adopting private sector precepts. GBEs, however, operate frequently in monopoly markets providing essential goods and services. Community service

obligations are imposed by parliament to ensure the general population has at least some form of equal access. And appropriate adjustments to “corporate behaviour” may need to take into account the purposes for which these entities were established by government. The authors suggest that ‘if any of these entities can exist without any government intervention for welfare, then they may legitimately be privatised’.

According to this reasoning there is a valid argument in favour of privatising some ports and they are likely to become more efficient as a result. Victorian regional ports, for example, consist essentially of privately owned and operated bulk facilities, vertically integrated with other associated corporate activities and dedicated to a relatively small number of trades. These facilities are already efficient operations and the retention of a public sector port authority does little to enhance internal efficiency - it simply adds one more tier to decision making in the port hierarchy.

But in the case of corporatised ports the issues are not straight forward and while corporatisation should enhance internal efficiency of the corporation itself, it is not clear whether this will enhance efficiency in the port generally. Corporatisation is about the reform of port authorities - public sector bodies which have been transformed into government owned businesses. But irrespective of reform and the manner in which management has been restructured, they remain public sector agencies and retain ‘a public interest in the development and maintenance of the major ports and their facilities’ (Industry Commission 1993). Irrespective of how they are restructured, corporatised ports **are** government responsibility, they **do** have social and welfare obligations and they **cannot** be absolved from these responsibilities - private sector emulation cannot negate this.

4:2 Competition

Many of the arguments in favour of reform focus on competition - that, quite simply, privatised and corporatised ports will be more competitive.

Indeed an essential feature of micro-economic reform is the concept of competition. Competition and the striving for it has become the driving force for change in Australian industries, including ports. Australian industries, the Hilmer report (1993:1) argued

‘have no choice but to improve the productivity and international competitiveness of its firms and businesses ... Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improve choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole’.

The Australian governments’ competition policy has not recommended ownership changes *per se* nor has it included strategies to corporatise ports as such. What it is attempting to achieve is the establishment of government instrumentalities within the context of a more competitive environment generally. Ports within this context are encouraged to be competitive and by creating a non-protectionist environment generally, place them on a similar footing as any other private sector organisation.

In what way can privatisation and corporatisation strategies enhance competition between ports? How much competition exists between Australian ports and how competitive can they really become?

Some competition does already exist between Victorian ports - up to 20 percent of Geelong cargo is ‘discretionary’ - that is it can be shipped through either Portland or Melbourne. Portland competes with Geelong and Adelaide for cargoes such as woodchips, grain, fertilisers and live sheep - each port using different marketing strategies and pricing policies to attract trade. Geelong also competes with Hastings for some petroleum products.

In other states there are also some instances of inter port competition. In Western Australia, for example, where Bunbury and Fremantle compete for alumina and steel billets and Port Hedland and Dampier compete for iron ore exports and the servicing of offshore oil and gas platforms. Some competition between NSW ports also exists although this tends to be restricted to break bulk cargoes such as timber which can be shipped through either Newcastle or Port Jackson.

Clearly, bulk cargoes will for the most part move to the closest terminal - accessibility to ports and the cost of land transport will determine this. But it is the increasing flexibility of

movement for containerised cargoes provided by new intermodal and shipping arrangements that is inducing some competition between capital city ports.

To what extent will privatisation, corporatisation and commercialisation strategies engender competitive actions. The privatisation of Victoria's bulk ports should lead to more aggressive marketing strategies and this should lead to efficiency improvements. In other states to what extent have corporatisation strategies provide the framework for competitive port managements? Does ownership, or a revised corporate structure, make a port more competitive? While a more appropriate business oriented corporate structure will almost certainly improve internal efficiency of a port, corporatisation does not mean that it will make the port more competitive.

There are two important issues which are widely and mistakenly assumed to be synonymous - one deals with competition while the other deals with efficiency. One is governments' competition policy which aims, *inter alia*, to remove unfair advantages enjoyed by a public sector body. It sets out the macro framework for Australian industries to become more competitive, irrespective of ownership. The other is efficiency which has been the subject of shipping and port reform since the early 1980s. This is being pursued by state governments at a micro level by way of ownership changes and the adoption of more effective management strategies.

But a mistaken assumption exists which links port efficiency with competitiveness and while the two are not mutually exclusive, one does not necessarily follow the other. While efficiency may be a necessary condition for competitiveness it is not a sufficient condition and it does not follow that an efficient port is a competitive port.

Competitiveness in a port environment is not necessarily determined by ownership as such or by the corporate culture. It may be determined by a number of other factors. The conditions for ports approaching the 21st century to become more competitive may be driven not by internal, local or national forces, but by global trends in shipping and the ability of ports to respond to these changing conditions.

The relative competitive position of a port is also determined by an efficient land transport system. A port will be competitive if a shipper has a choice of ports and a choice of ports is

dependent not upon ownership *per se* or corporate structure but upon access and that is determined by an effective land transport system.

5: APPROPRIATE LEGISLATIVE FRAMEWORK?

Reform of port authorities has been driven by the necessity for ports to become efficient - by exposing them to market forces and by separating commercial operations from social responsibilities. The Victorian state government has adopted the privatisation model - the sale of its regional ports to achieve these objectives. In other states governments have opted to retain ownership and to restructure ports along market driven, private sector lines.

Successful implementation of this strategy, however, requires a special type of legislative framework - one in which ports can operate as private sector companies and, as the Industry Commission recommended, independent from political or central government control (1993). In some states, NSW for example, appropriate legislation has not been set in place and it is likely that this will impact negatively on internal efficiency and certainly on relative competitiveness. Despite the fact that the NSW Minister for Ports has argued that corporatisation was 'about giving the ports a regional and commercial focus ... and the independence to allow them to control their own destinies' (Second Reading Speech) this has not occurred - indeed NSW ports have little room to operate independently and are subject to increasing political control.

In what way has corporatisation legislation inhibited port development, performance and competitiveness? And how is the revised corporate structure likely to restrict entrepreneurial management strategies? Prior to corporatisation, all NSW ports were under the umbrella of the former Maritime Services Board of NSW (MSB). This comprised a head office with responsibility for corporate strategy and planning, finance and marine safety. The Board was managed by a Chief Executive who reported to the Portfolio Minister. Within this structure there existed four subsidiary port authorities functioning on a day to day basis with relative operational independence. There was one political master and one bureaucratic tier in the system.

The corporatisation of NSW ports has led to the separation of operational and regulatory responsibilities with the creation of a number of bureaucracies - with the Minister holding a

pivotal position in each. In addition, a rather more complex bureaucratic structure has been established which has not only resulted in a revenue loss for the corporations, but has made it increasingly difficult for ports to be entrepreneurial and pro active.

Responsibility for port operations has been vested in the three newly established port corporations - the Sydney Ports Corporation, the Newcastle Port Corporation and the Port Kembla Port Corporation. These corporations are the landlords of the state owned dry land port assets.

The Marine Ministerial Holding Corporation (MMHC) was established simultaneously which controls the underwater assets in the port and the non-core port assets previously held by the MSB and the port authorities.

At the same time a central regulatory body was established, the Office of Marine Safety and Port Strategy (OMSPS), this is the office of the Minister and is the conduit between the port corporations and the Portfolio Minister. This office, on behalf of the Minister, determines how port corporations operate. It issues five year licences to the port corporations to undertake port related functions - navigation and pilotage, for example - licences which are presently, but not necessarily, issued to port corporations. Port corporations undertake their functions under a renewable licence - tenure has thereby been removed. It can be argued that this is consistent with competition policy and that the corporations will perform efficiently else their licences will not be renewed or revoked.

Apart from the additional bureaucratic structure, corporatisation in NSW has meant that ports now have two political masters - the Shareholding Ministers and the Portfolio Minister and within this structure the potential for conflict is inherent. The Shareholders, one of whom is the Treasurer, are concerned with profitability and return on government assets while the Portfolio Minister is responsible for efficiency and the operations of the port. But it is the Portfolio Minister who, in a sense, determines profitability for the Shareholders as it is the Portfolio Minister who sets port prices. Industry sources indicate that conflict already has emerged between the Shareholders and the Portfolio Minister over profitability and return on assets. Conflict has also arisen over the size of the OMSPS. This is considered a top heavy,

largely superfluous bureaucratic structure with numbers far exceeding requirement, costly and eroding profits.

The establishment and maintenance of a large bureaucratic structure, such as the OMSPS has also eroded revenue of the port corporations. A newly imposed charge, the Port Cargo Access Charge, will be levied to maintain the Office. This, however, is not an additional charge on shippers, nor is it funded by Treasury. It replaces, in part, wharfage which previously was revenue flowing to the port authorities. This means that some income of the port corporations has been hived off in order to support an additional bureaucratic structure.

Further revenue loss for the corporations has arisen from the transfer of all 'non-core' port related assets to the MMHC. A rather narrow definition has been adopted as to what constitutes 'core' - this is almost exclusively cargo related. This definition has meant a loss of revenue for the corporations as revenue generating assets, such as the casting basin in Port Kembla and the cruise ship berth in Darling Harbour, neither being directly cargo related, have been transferred to the MMHC.

Apart from a loss of revenue the establishment of the OMSPS and the MMHC also has marketing and promotion implications for the corporations. There is no surplus land to which the corporation has immediate access, for example. Indeed if port land is vacant for more than a year it is transferred to the MMHC. Consequently under the reformed system, port corporations do not hold land for future development - indeed should they require land for developmental purposes, Ministerial approval is mandatory.

Has port authority reform thrown the baby out with the bath water? As far as ownership of port assets are concerned have we moved between two extremes? The former port authorities held vast assets. Industry sources have indicated that they were widespread and in some instances it was not known precisely what assets the MSB held. In other instances some assets had very little relevance to the operations of a port while others were derelict or land was held for decades or more on the speculation that it may be required one day - these all had very serious pricing and asset valuation implications. Under the new regime ports do not hold assets which may aid in future promotion or marketing strategies of the corporation.

Port corporations under the revised structure do not only have the responsibility to render a service efficiently, they have the responsibility for strategic planning, they have the responsibility for marketing the port, to promote and facilitate trade, to operate as efficiently as any comparable business, to maximise the net worth of the State's investment, to exhibit a sense of social responsibility, to ensure that port safety functions under the marine legislation are carried out properly (Port Corporatisation and Waterways Management Bill 1995). Ports under this revised structure have the responsibility to operate commercially and are responsible for business development but there are legislative constraints in all but the most mundane routine operation. Ports, within this environment, are to be competitive - but they cannot price competitively, indeed they cannot set prices; they cannot enter into contractual arrangements; they cannot dispose of assets; they cannot develop new infrastructure - these all require Ministerial approval.

If ports cannot operate independent of government intervention, if they cannot be entrepreneurial in approach, if they cannot control their own destinies how commercial can they, in fact, be? And if they are not free from political and bureaucratic interference can we expect them to operate like a private business venture? Is it in any way meaningful to compare them with business operations in the private sector?

NSW ports, under present corporatisation legislation, cannot operate like private companies and it is a nonsense to suggest that they can. Indeed amended legislation specifically determined that political control would be maintained - in some instances it has been intensified. Under legislation introduced by the previous coalition government, ports were to be established as state owned corporations subject to Corporations law and registered with the Australian Securities Commission (State Owned Corporations Act 1989). Under amended legislation, however, introduced in 1995 by the newly elected Labor government, ports became statutory state owned corporations. This tightened rather than reduced political control - ports under amended legislation were not registered with the Australian Securities Commission and were not subject to Corporations Law but subject to the statute under which they were enacted.

Can ports then, indeed can any government owned business, given the existing legislative and political constraints, operate commercially and competitively? To a certain extent they can but it is naive to suggest that they are, or can be, similar to those operations in the private

sector. There is a fundamental difference between private enterprise and government ownership - between private and public sector models. Government businesses have an obligation not only to perform profitably. There are social obligations to fulfil and political constraints imposed and it is naive to suggest that these can be ignored. We have a number of government owned quasi port companies where performance is assessed according to economically rational criteria but where managers and administrators must tow the political and bureaucratic line.

6: CONCLUDING COMMENTS

Attempts to reform the waterfront are not new! Nor are the concepts of privatisation and corporatisation which, in their many forms and guises, have emerged from time to time for a century or more. The current movement, Wettenhall (1990) indeed suggests, is a semantic distortion and 'represents the umpteenth wave in a long series of efforts to make government business behave commercially'.

Operating commercially means freedom from political constraints and appropriate legislation. Privatisation models such as those being implemented by the Victorian Government, remove government from ownership responsibilities and operations of the ports and they become subject to regulatory regimes similar to any other private sector business. Under a corporatisation regime, however, government has specifically chosen to retain ownership of businesses but attempted to make them commercially viable operations by restructuring them by emulating private sector corporate and management practices. It is unrealistic, however, and naive to suggest that they are, or can be, identical with those in the private sector when they operate within a legislative structure which mitigates against market efficiency. The aim of reform is to reduce or eliminate political interference - present legislation in NSW has increased this.

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