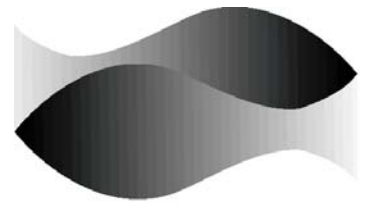


12 November 2004

Ms Nevenka Codevelle
National Competition Council

via email: info@ncc.gov.au



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Dear Ms Codevelle,

**Submission from Ocean Watch to the National Competition Council
on an Application under Part iiiA Trade Practices Act 1974 by
Services Sydney Pty Ltd**

This letter sets out the comments from Ocean Watch Australia Ltd's (Ocean Watch) in relation the National Competition Council's draft recommendation that the transportation and interconnection services provided by each of the North Head, Bondi and Malabar Reticulation Networks be declared for a period of 15 years.

Ocean Watch is an environmental, non-government organisation sponsored by the commercial seafood industry to represent the environmental interests of industry with respect to protecting and restoring fish habitats, improving water quality and promoting sustainable fisheries.

Ocean Watch is in agreement with the National Competition Council (NCC) that Services Sydney's application adequately satisfies all relevant criterion under Part iiiA Trade Practices Act 1974. Ocean Watch believes that Service's Sydney 's proposal offers far superior environmental outcomes than Sydney Water initiatives to date, however stresses that the best environmental outcomes will be achieved through implementation of a viable strategic, holistic integrated approach involving re-use of effluent, enhanced environmental flows and a much higher level of treatment, which may not necessarily be achieved through competition (HRC 2003; HNMF 2004).

Sydney's dam levels fell below 43% in October, an all time low. However, falling dam levels are not the only concern. Rivers are over-extracted, starved of environmental flows and are thus showing signs of serious decline such as reduced numbers of native fish and increased frequency and severity of algal blooms. This has negative economic implications for commercial users and also limits recreational use of waterways. Our oceans and beaches receive 450GL of poorly treated (primary) sewage each year, placing public health at risk, adversely affecting aquatic marine life (e.g. from endocrine disruptors that enter the waterways via the sewage network) and industry (e.g. disruptions to some fish species migrations and populations) and by simply wasting a precious undervalued resource. Energy intensive desalinisation plants proposed by the NSW government are not the answer in terms of ecological sustainable development. Sydney needs to be smarter with respect to the way it uses its limited water supply. We should clearly be looking towards options that encourage advanced treatment and reuse of

effluent for domestic, agricultural and industrial uses so as to reduce the pressures on the dwindling environmental flows.

Sydney Water's Environmental Performance and Proposed Initiatives

According to the Peak Non Government Organisations (PENGOS) 4 Report (2004), *Sydney's Water ~Going to Waste?:*

"Sydney Water's Progress toward sustainability is too slow, with weak demand management and recycling strategies and implementation."

Sydney Water has failed to meet demand management targets set for 2001/2 and is making poor progress in achieving 2004/5 and 2010/11 demand targets. Current initiatives proposed under Water Plan 21 are a far cry from addressing security of supply and demand targets. These initiatives will do nothing more than maintain the status quo with respect to addressing the issues, particularly with respect to the three major sewage treatment plants and outfalls for Sydney. Collectively these outfalls are the State's largest polluter (discharging 450GL of effluent into the ocean every year).

Sydney Water has a poor track record in recycling effluent with only a mere 2% of total water used being recycled.

Sydney water needs to lift its game in terms of demand management and commitment to increase recycling of water. The current monopoly does not create a climate for change nor provide an incentive for that change to occur.

Comments on criterion to be met under Section 44G(2) Trade Practices Act 1974

6 s. 44G(2)(a) – that access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for service

Ocean Watch is in overall agreement with the NCC that access to the transportation and interconnection services for each facility would promote competition in both the Sewage Collection Market and the Recycled Water Market. Services Sydney has provided sufficient evidence to support this.

If effluent is treated to a potable standard, not only will competition be generated from industrial and agricultural markets, but also from drinking water markets within the Sydney Catchment. Sydney residents receiving water from the North Richmond Reservoir (which pumps water from the Hawkesbury River) are already drinking treated effluent, not to mention residents overseas, in particular Londoners who drink recycled water that is recycled up to ten times over.

5 s. 44G(2) (b) – that it would be uneconomical for anyone to develop another facility to provide the service

Ocean Watch is in agreement that it would be uneconomical for anyone to develop another facility to provide the transportation and interconnection services provided by North Head, Bondi or Malabar Reticulation Networks.

Notwithstanding the astronomical cost of duplicating the network, the costs to consumers and service providers would be higher if two networks were in operation. Providing access to the existing network should encourage economies of scale.

- 7 s. 44G(2)(c) - *that the facility is of national significance, having regard to:*
- i. *the size of the facility; or*
 - ii. *the importance of the facility to constitutional trade or commerce; or*
 - iii. *the importance of the facility to the national economy*

Each facility does provide a service essential to the health and safety of a significant population base (i.e. 20% of Australia's population).

Considering Sydney accounts for 30% of Australia's Gross Domestic Product, Ocean Watch agrees with the NCC that the facility is of importance to the national economy.

Thus, Ocean Watch is satisfied that each facility meets criterion I) and iii) i.e. are of national significance and thus satisfies criterion (c).

- 8 s. 44G(2)(d) – *that access to the service can be provided without undue risk to human health or safety*

Ocean Watch is in agreement with the NCC so long as the competitor is subject to similar regulations for health and safety that applies to Sydney Water and provided sufficient flow is left in the system to ensure full operational functionality. (refer NCC recommendation discussion point 8.8)

- 9 s. 44G(2)(e) – *that access to the service is not already the subject of an effective regime*

Sydney Water agrees that the IPART regulatory arrangements do not constitute an effective access regime for the transportation service.

Ocean Watch is in agreement with the NCC that the transportation and interconnection services provided by each of the North Head, Bondi and Malabar Reticulation Networks are not the subject of an effective access regime. Thus criterion (e) is satisfied in respect of each application.

- 10 s. 44G(2)(f) – *that access (or increased access) to the service would not be contrary to the public interest*

Obtaining access to the service would most certainly be in the benefit of public interest, in terms of providing beneficial environmental outcomes, including the increased availability of water for environmental flows which are not only essential for the dilution of nutrients in our waterways, but also play a crucial role in the functioning of natural processes such as in fish passage and recruitment and reduction of ocean pollution. There is some evidence to link ocean pollution to changes in fish migration patterns, disease, infection and threats to public health etc. For any new entrant to the service, measures must be in place to ensure that potential adverse effects are avoided.

Ocean Watch agrees with the Council that the application for declaration satisfy criterion (f) as access to the transportation and interconnection services provided by each of the North head, Bondi and Malabar Reticulation Networks would not be contrary to the public interest

Additional comments

- 44F(3) - *Application not in good faith*

Ocean Watch agrees with the NCC that the application has been submitted in good faith.

44F(4) - Consideration of alternative facilities

Ocean Watch agrees with the NCC that it is not economical for anyone to develop another facility that could provide part of the transportation or interconnection services provided by the North Head, Bondi or Malabar Reticulation Networks.

Section 44F is not satisfied in respect of Service's Sydney's application for declaration

44H(8) - Duration of declaration section

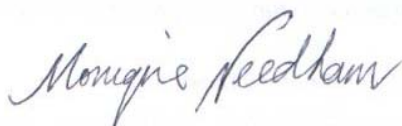
Services Sydney requests a timeframe of 50 years for business certainty etc however NCC recommends a period of 15 years for the transportation and interconnection services provided by each of the North Head, Bondi and Malabar Reticulation Networks. We believe that 15 years is mostly likely a suitable timeframe. This shorter timeframe will encourage rapid implementation of the proposal, which is critical given the severity of the issue facing Sydney over the next 20 years with its ever-increasing population and water usage patterns.

Conclusion

Ocean Watch supports the NCC draft recommendation that the transportation and interconnection services provided by each of the North Head, Bondi and Malabar Reticulation Networks be declared for a period of 15 years.

Please do not hesitate to contact me on 02 9660 2262 should you require further information. Thank you for the opportunity to comment.

Yours sincerely



Monique Needham
Fisheries Habitat Officer
Ocean Watch Australia Ltd

References

HRC, 2003. *Healthy Rivers for Tomorrow*. Healthy Rivers Commission, November 2003.

HNMF, 2004. *Water and Sydney's Future: Balancing the Values of Our Rivers and Economy*. Hawkesbury-Nepean Management Forum, March 2004.