



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
MARKET REGULATION

June 8, 2006

Ms. Sarah Murphy  
Freshfields Bruckhaus Deringer  
65 Fleet Street  
London EC4Y 1HS  
United Kingdom

Re: Possible Offer for Associated British Ports Holdings plc  
File No. TP 06-78

Dear Ms. Murphy:

We are responding to your June 5, 2006 letter to James A. Brigagliano. Our response is attached to the enclosed copy of your letter to avoid having to recite or summarize the facts set forth in your letter. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your letter.

On the basis of your representations and the facts presented, but without necessarily concurring in your analysis, the United States Securities and Exchange Commission ("Commission") hereby grants an exemption from Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act") to permit the Prospective Purchasers to purchase or arrange to purchase Associated British Ports Holdings plc ("ABPH") Ordinary Shares pursuant to the possible tender offer ("Offer"), particularly in light of the following facts:

- The Offer is required to be conducted in accordance with the City Code on Takeovers and Mergers ("Code") as well as the rules and regulations of the UK Listing Authority ("Listing Rules");
- ABPH, a public limited company incorporated under the laws of England and Wales, is a "foreign private issuer," as defined in Rule 3b-4(c) under the Exchange Act;
- Any purchases of Ordinary Shares of ABPH by the Prospective Purchasers will be subject to the Code; and
- The existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

The Commission grants this exemption from Rule 14e-5 under the Exchange Act to permit the Prospective Purchasers to purchase or arrange to purchase Ordinary Shares otherwise than pursuant to the Offer, subject to the following conditions:

1. No purchases or arrangements to purchase Ordinary Shares, otherwise than pursuant to the Offer, shall be made in the United States;
2. The Tender Offer Documents shall disclose prominently the possibility of, or the intention to make, purchases of Ordinary Shares by the Prospective Purchasers during the Offer;
3. The Prospective Purchasers shall disclose in the United States information regarding purchases of Ordinary Shares to the extent such information is made public in the United Kingdom pursuant to the Code;
4. The Prospective Purchasers shall comply with any applicable rules under United Kingdom law including the Code and Listing Rules;
5. The Prospective Purchasers shall provide to the Division of Market Regulation ("Division"), upon request, a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the Offer, on a transaction-by-transaction basis, including:
  - a. size, broker (if any), time of execution, and price of purchase; and
  - b. if not executed on the London Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;
6. Upon the request of the Division, the Prospective Purchasers shall transmit the information as specified in paragraphs 5.a. and 5.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
7. The Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
8. Representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division in Washington, D.C. or by telephone) to respond to inquiries of the Division relating to their records; and
9. Except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

The foregoing exemption from Rule 14e-5 under the Exchange Act expressed above is based solely on your representations and the facts presented, and is strictly limited to the application of this rule to the proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

In addition, we direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder. The participants in the Offer must comply with these and any other applicable provisions of the federal securities laws. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the

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adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market  
Regulation pursuant to delegated authority,

A handwritten signature in black ink, appearing to read "James A. Brigagliano". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

James A. Brigagliano  
Acting Associate Director  
Division of Market Regulation

Attachment



James Brigagliano  
Division of Market Regulation  
Acting Associate Director  
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OUR REF SCM  
YOUR REF  
CLIENT MATTER NO. 101607-1282

June 5, 2006

Ladies and Gentlemen

Re: Possible Cash Bid for ABPH Ordinary Shares

We are writing on a confidential basis on behalf of our client, a consortium comprised of Goldman Sachs Investments Ltd. (*GSIL*), a company organized under the laws of Bermuda, Borealis Infrastructure Management Inc. (*Borealis*), a company organized under the laws of Canada; InfraCapital Partners L.P., a limited partnership organized under the laws of England and Wales, acting through its manager M&G Investment Management Limited (*InfraCapital*); and an affiliate of GIC Special Investments Pte Ltd. (*GIC SI*), a company organized under the laws of Singapore, (together, the *Consortium*), which intends to form a special purpose company (*Bidco*) organized under the laws of England and Wales for the purpose of making a possible bid (the *Possible Bid*) for all of the issued and to be issued ordinary shares (the *Ordinary Shares*) of Associated British Ports Holdings plc (*ABPH*), a public limited company organized under the laws of England and Wales.

The Consortium announced on March 27, 2006 (the *Possible Bid Announcement*) that it was considering a possible offer for all of the issued and to be issued share capital of ABPH. The Possible Bid Announcement was not agreed with or recommended by ABPH. On March 29, 2006, ABPH announced that it had received a non-binding indicative offer from the Consortium. Subsequent to that announcement, the Consortium revised its proposal and ABPH announced, on May 23, 2006, that it had received a non-binding proposal from the Consortium at 810 pence in cash per Ordinary Share and that it had agreed to grant the Consortium a limited period to undertake confirmatory due diligence.

There is currently no certainty as to whether the Possible Bid will be made or the form in which it will be made. The Possible Bid is currently structured as a scheme of arrangement (which is a court based statutory procedure in England and Wales, whereby ABPH would request its shareholders to approve in court-convened and general meetings various resolutions resulting in, amongst other things, the cancellation of the Ordinary Shares, the payment of the cash consideration to holders of the Ordinary Shares and the issue of new ordinary shares of ABPH to Bidco). The Possible Bid may be structured (or restructured) as a tender offer if circumstances warrant. In either case, a loan note alternative to the cash consideration offered may be made available to ABPH shareholders for UK



tax purposes (although this alternative would not be available to ABPH shareholders in the United States and certain other prohibited jurisdictions).

We emphasize that the announcement of the Possible Bid was made under Rule 2.4 of the City Code on Takeovers and Mergers in the United Kingdom (the *City Code*). Under this rule, a bidder is permitted to announce that it is considering making a bid. However, such an announcement does not obligate a bidder to make a bid or constitute a bid under the City Code. Only upon the announcement of a firm intention to make a bid (which is not subject to pre-conditions) under Rule 2.5 of the City Code is a bidder obligated to proceed with a bid under the City Code.

Accordingly, and as is permitted for a Rule 2.4 announcement, the Possible Bid Announcement did not state that the Consortium intended to make a bid, merely that it was considering such a bid.

As previously discussed with members of the staff (the *Staff*) of the Securities and Exchange Commission (the *Commission*), we, as US counsel to the Consortium in connection with the Possible Bid and on behalf of the Consortium, are requesting exemptive relief from Rule 14e-5 (*Rule 14e-5*) promulgated under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), allowing Bidco, members of the Consortium, their affiliates or subsidiaries, and any broker or other financial institution acting as their respective agents (including Goldman Sachs International, Lexicon Partners Limited and any other financial institution acting as financial advisor to Bidco or members of the Consortium in connection with the Possible Bid) (collectively, the *Prospective Purchasers*) to purchase Ordinary Shares outside the Possible Bid when otherwise permissible under the City Code and other applicable UK rules and regulations.

## BACKGROUND

### ABPH

ABPH is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. The Ordinary Shares are not registered under Section 12 of the Exchange Act or listed on a US national securities exchange or quoted on NASDAQ, nor is or has ABPH ever been subject to the periodic reporting requirements of the Exchange Act. ABPH does not have a sponsored program in place for American Depository Receipts evidencing the Ordinary Shares.

A successor entity to the British Transport Docks Board, ABPH was floated on the London Stock Exchange in 1983. ABPH provides port facilities and services to ship and cargo owners. Its principal subsidiary, Associated British Ports, is the largest ports group in the United Kingdom, with 21 ports handling nearly 25% of the United Kingdom's seaborne trade. Until May 24, 2006, ABPH owned and operated AMPORTS in the United States, which handles vehicle imports and exports and provides auto-processing services. This business has now been sold. ABPH also engages in property investment and development activities, largely focused on opportunities within its ports.

The Ordinary Shares are listed on the London Stock Exchange. As at December 31, 2005, ABPH's issued share capital amounted to GBP 75.4 million divided into 301.5 million ordinary shares with a nominal value of GBP 0.25 each, with a market capitalization of GBP 1769.8 million.

For the year ended December 31, 2005, ABPH reported revenue of GBP 434.9 million, compared with GBP 439.5 million for the year ended December 31, 2004; reported operating profit of GBP 171.1 million, compared with GBP 111.3 million in the year ended December 31, 2004; and



reported undiluted earnings per share of GBP 0.327 compared to undiluted earnings per share of GBP 0.188 in the year ended December 31, 2004. As of December 31, 2005, ABPH had consolidated net assets of GBP 950.6 million.

Given the nature of holdings in ordinary shares of English companies and English law, the Consortium does not have access to specific information regarding the holders of the Ordinary Shares. However, based on public information available from Citywatch (an equity ownership database which identifies the beneficial owners behind nominee shareholdings in UK companies), the Consortium believes that US holders own approximately 10.09% of the Ordinary Shares and there are no shareholders owning more than 10% of the Ordinary Shares (although no information is available regarding shareholders who in aggregate hold approximately 7.18% of the Ordinary Shares).

### **The Consortium**

Bidco (upon incorporation) and the members of the Consortium are foreign private issuers as defined in Rule 3b-4(c) of the Exchange Act.

Borealis is the exclusive infrastructure manager of the Ontario Municipal Employees Retirement System (*OMERS*), which is one of Canada's largest and most sophisticated pension funds (with net assets of approximately C\$41 billion as of December 31, 2005) providing pension services to about 355,000 members on behalf of 900 municipalities. OMERS has a AAA credit rating. Borealis is owned by OMERS.

Borealis identifies, invests in, builds and manages infrastructure assets that provide competitive and stable rates of return over a long investment horizon. At the end of 2005, Borealis managed approximately C\$2.7 billion in infrastructure equity investments.

GIC SI is the private equity investment arm of the Government of Singapore Investment Corporation Pte Ltd. It manages a diversified global portfolio of investments in private equity, venture capital and infrastructure funds, as well as direct investments in private companies. Operating out of offices in Singapore, London, New York, San Francisco and Beijing, GIC SI is one of the largest private equity investors worldwide.

The Government of Singapore Investment Corporation Pte Ltd is a global investment management company established in 1981 to manage Singapore's foreign reserves. It invests internationally in equities, fixed income, money market instruments, real estate and special investments. It manages more than US\$100 billion.

GSIL is an affiliate of The Goldman Sachs Group, Inc. (*GS*), which is a leading global investment banking, securities and investment management firm that provides a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments and high-net-worth individuals. GS has significant experience in principal investment and financing. It is anticipated that following the date of this letter, GSIL will transfer its interests in Bidco to the Goldman Sachs Infrastructure Fund, which is in the process of being established.

InfraCapital is the infrastructure fund of the Prudential Group and is established to make investments in essential cash generative infrastructure assets, including electricity and gas transmission and distribution networks, water and sewerage companies, and transport infrastructure



including ports. The Prudential Group is a major global institutional investor with GBP 234 billion of funds under management (as of December 31, 2005) and is a long term investor in the infrastructure sector. InfraCapital is completely separate from the equity investment arm of the Prudential Group.

#### BACKGROUND TO THE POSSIBLE BID

As indicated above, the form of the Possible Bid is not yet certain. The Consortium currently intends to effect the Possible Bid by means of a scheme of arrangement, to which the requirements of Regulation 14E do not apply. Should, however, the Consortium proceed by manner of a tender offer for the Ordinary Shares, it expects that the offer would be structured as a single offer made concurrently under a single document in all jurisdictions in which it is extended. The Consortium's current intention would be to allow for participation by US holders of Ordinary Shares in ABPH. The tender offer would be structured to comply with (i) the rules and regulations of the Financial Services Authority and the London Stock Exchange, (ii) the City Code and (iii) except as otherwise requested herein or subsequently requested from the Commission, the requirements of Section 14(e) of the Exchange Act and the rules and regulations promulgated thereunder. The offering documents (the *Tender Offer Documents*) would comply with the rules and regulations of the UK Listing Authority, the City Code and the Exchange Act.

In such circumstances, the Tender Offer Documents would be mailed to all holders of record of the Ordinary Shares, as appropriate, including those with addresses in the United States. Language prohibiting the forwarding of the Tender Offer Documents by custodians, nominees, trustees and others to beneficial owners with addresses in the United States would not be included in the Tender Offer Documents. In the absence of such a prohibition, it is expected that the record owner would forward the Tender Offer Documents to the beneficial owner. As a result, we would expect that each beneficial owner of the Ordinary Shares that resides in the United States would, if the offer was made, receive the Tender Offer Documents and thereby the notice described below with respect to the possibility of purchases of the Ordinary Shares outside of the offer.

The Tender Offer Documents would be mailed to all record holders of the Ordinary Shares in the United Kingdom and the United States no later than 28 days after the date of the announcement of the tender offer (the *Announcement Date*), as required by Rule 30.1 of the City Code. The tender offer would remain open for acceptance for not less than 20 US business days after it was made (upon mailing the Tender Offer Documents) and for such additional period or periods as may be determined by the Consortium and as may be mandated by the provisions of Regulation 14E under the Exchange Act or the City Code. To comply with the City Code, however, a tender offer must lapse unless it becomes or is declared unconditional as to acceptances by midnight on the 60th calendar day after mailing or such later date as to which the Panel on Takeovers and Mergers (the *Panel*), which administers the City Code, may agree.

If the tender offer became or was declared unconditional as to acceptances, the offer would, in order to comply with Rule 31.4 of the City Code, be required to remain open for acceptances for at least 14 calendar days following the date on which it would otherwise have expired and could remain open for such longer period as the Consortium deems appropriate. In addition, Rule 31.2 of the City Code requires that notice of the termination of any subsequent offer period must be given not less than 14 calendar days prior to such termination. An institution operating in the United Kingdom would act as the UK receiving agent to receive tenders of Ordinary Shares pursuant to the tender offer.



Pursuant to Rule 31.7 of the City Code, the tender offer would have to become or be declared wholly unconditional (i.e., all conditions to the offer have been satisfied or, where permissible, waived), no later than 21 calendar days after the date the offer had become or been declared unconditional as to acceptances (unless the Panel agrees to a later date).

If the tender offer became or was declared wholly unconditional, all Ordinary Shares validly tendered during the offer would be accepted and paid for by Bidco within 14 calendar days of the later of the date when the offer became wholly unconditional and the date of receipt of an acceptance which was complete in all respects.

#### **PURCHASES OUTSIDE THE TENDER OFFER AND RULE 14E-5**

In the United Kingdom, purchases outside an offer are permitted, subject to certain limitations, and such purchases are quite common in connection with tender offers for UK companies. Under the City Code, the Prospective Purchasers would be permitted to purchase Ordinary Shares in the open market or otherwise before and during the conduct of, but outside, the tender offer, subject to certain limitations including as to price (as described below).

Subject to certain exceptions, Rule 14e-5 prohibits a covered person from directly or indirectly purchasing or arranging to purchase any securities to be acquired in a tender offer for equity securities or any securities immediately convertible into, exchangeable for or exercisable for such securities, except as part of the tender offer. This prohibition applies from the time an offer is publicly announced until it expires. Rule 14e-5 defines a covered person as (i) the offeror, its dealer-managers, and any of their respective affiliates, (ii) any advisors of the foregoing whose compensation is dependent on the completion of the offer and (iii) any person acting in concert either directly or indirectly with any of the foregoing (*Covered Persons*).

As indicated above, the Consortium wants to maintain the flexibility to allow US-based holders of the Ordinary Shares to participate in the tender offer. At the same time, in the event that the Staff construes the Possible Bid Announcement as a “public announcement” within the meaning of Rule 14e-5, the Prospective Purchasers want to be in a position to purchase the Ordinary Shares at any time they are permitted to do so under the City Code and other applicable UK rules and regulations. Since the publication of the Possible Bid Announcement, neither Bidco nor members of the Consortium have made any such purchases and no such purchases have been made on their behalf.

Purchases of the Ordinary Shares outside the offer by the Prospective Purchasers would not fall within any of the excepted activities specifically outlined in Rule 14e-5. Accordingly, in the absence of exemptive relief, if the Staff takes the view that the Possible Bid Announcement constitutes the “public announcement” of an offer, purchases of the Ordinary Shares outside such offer would be prohibited.

Rules 6.1 and 6.2 of the City Code provide protections similar to those provided by Rule 14e-5, making, we believe, exemptive relief appropriate in the circumstances of the tender offer, by requiring that the tender offer’s price, if and when the offer is made, be increased to not less than the highest price paid outside the tender offer by Bidco or members of the Consortium or their concert parties, as defined in the City Code.

Under Rule 8.1 of the City Code, any purchases by Bidco or members of the Consortium outside the tender offer would be required to be disclosed on a next-day basis to the public through a Regulatory Information Service and to the Panel. Disclosures of these purchases attract significant





publicity by their very nature and they are disseminated on dealers' trading screens throughout the London market.

The Commission has granted a number of exemptions from Rule 14e-5 and Rule 10b-13 (the predecessor to Rule 14e-5) to permit such purchases by offerors and persons acting on behalf of offerors. We believe the exemptive relief requested herein under Rule 14e-5 is consistent with that granted by the Commission in similar situations in the past, including the letter regarding the offer by WPD Limited for Hyder plc (available May 31, 2000), the letter regarding the offer by Schlumberger Limited for Sema Group plc (available February 15, 2001), the letter regarding the offer by Vinci for TBI plc (available August 23, 2001) and the letter regarding the offer by Cinven Limited for Fitness First Plc (available April 9, 2003). Further, we believe exemptive relief in the context of a possible offer is consistent with that granted by the Commission in the letter regarding the possible offer by Bank of Ireland for Abby National plc (available October 16, 2002) and the letter regarding the possible offer by Anheuser-Busch Companies, Inc. for Harbin Brewery Group Limited (available May 7, 2004).

In addition, we note the existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

In our view, there are serious doubts as to whether the jurisdictional predicate for the application of the Exchange Act—namely that there be a purchase of a security “by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange”—would be satisfied if the Prospective Purchasers made purchases of, or arrangements to purchase, Ordinary Shares outside the United States. We nonetheless apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5 pursuant to Rule 14e-5, on the conditions set forth below. We have been requested by the Prospective Purchasers to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such a purchase of Ordinary Shares outside the United States in the absence of such exemptive relief.

#### REQUESTED EXEMPTIVE RELIEF

Based on the foregoing, we respectfully request that the Prospective Purchasers be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases of Ordinary Shares outside of the possible tender offer by any Prospective Purchaser that would otherwise be prohibited by Rule 14e-5, subject to the following conditions:

- (a) no purchases or arrangements to purchase Ordinary Shares, otherwise than pursuant to the tender offer, will be made in the United States;
- (b) disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the tender offer, will be included prominently in the Tender Offer Documents (when and if distributed);
- (c) the Prospective Purchasers shall disclose in the United States information regarding such purchases to the extent such information is required to be made public in the United Kingdom pursuant to the City Code;



- (d) the Prospective Purchasers shall disclose to the Division of Market Regulation of the Commission (the *Division of Market Regulation*) upon request, a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the offer, on a transaction-by-transaction basis, including: (1) size, broker (if any), time of execution, and price of purchase and (2) if not executed on the London Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- (e) upon request of the Division of Market Regulation, the Prospective Purchasers shall transmit the information specified in (d)(1) and (d)(2) above to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (f) the Prospective Purchasers shall comply with any applicable rules of UK organizations, including the City Code and the rules of the London Stock Exchange;
- (g) the Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the tender offer;
- (h) representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division of Market Regulation in Washington, D.C. or by telephone) to respond to inquiries of the Division of Market Regulation relating to such records; and
- (i) except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

#### CONCLUSION

Pursuant to Regulation 200.81, we respectfully request on behalf of the Consortium that this exemptive request and the response be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the Staff is advised that all of the information in this letter has been made public. This request for confidential treatment is made on behalf of the Consortium for the reason that certain of the facts set forth in this letter have not been made public.

In compliance with Securities Act Release No. 6269 (5 December 1980), seven additional copies of this letter are enclosed.

In view of the short timetable, we respectfully request that the Commission issue the requested exemptive relief as soon as practicable. If you require any further information or have any questions, please contact Sarah Murphy at +44 20 7832 7429 or Doug Smith at +44 20 7716 4752.

Very truly yours

Sarah Murphy