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7 December 2009

**By email**

Mr E.J. Hall  
 Chief Executive  
 Queensland Competition Authority  
 GPO Box 2257  
 Brisbane QLD 4001  
 Email: [ports.submissions@qca.org.au](mailto:ports.submissions@qca.org.au)

Dear Mr Hall,

**FCAI - Application for declaration of motor vehicle import services at Fisherman Islands**

I refer to your letter dated 5 November 2009 inviting P&O Automotive & General Stevedoring (**POAGS**) to comment on the Federal Chamber of Automotive Industries' (**FCAI**) application for declaration of certain motor vehicle import services at Fisherman Islands under Part 5 of the Queensland Competition Authority Act 1997 (the **QCA Act**).

By way of background, POAGS is a supplier of stevedoring logistics and port management services. POAGS' operations in Australia consist of on-wharf, port precinct facilities in all Australian capital city ports and bulk and general stevedoring operations in 24 Australian ports, together with cargo storage, materials handling and distribution operations in all Australian states.

POAGS is owned by a consortium of shareholders composed of international shipping companies and investors, through a holding company. This consortium also owns, through a separate holding company, 49% of P&O Wharf Management Pty Ltd (**POWM**), with DP World owning the other 51%. POWM owns 50% of the shares in Australian Amalgamated Terminals (**AAT**). The 17 July 2009 FCAI submission incorrectly states that POAGS owns 45% of AAT.

POAGS provides automotive and general stevedoring services for various shipping lines berthing at the AAT facility at Fisherman Islands. POAGS obtains access to the AAT FI facility pursuant to a standard licence agreement and on standard published tariffs and charges.

POAGS has two general comments in relation to the FCAI application:

- Firstly, the scope of the services that FCAI has listed in its application for declaration go beyond the use of the AAT FI facility and include the services provided by those parties that use the facility, such as stevedores (including POAGS), shipping lines, PDI operators and transport companies. POAGS assumes that it is not proposed that services provided by users of the AAT facility be declared. This matter should be clarified as a matter of urgency, to ensure that the declaration inquiry process is properly targeted.
- Secondly, as a commercial matter, there is no practical way in which declaration of the AAT facility services would have any impact on competition in stevedoring, shipping, transport, PDI or other associated markets, let alone in the market for importation or supply of motor vehicles.

These points are briefly expanded on below. If it would assist the Authority, POAGS would be available to meet and provide further information in relation to these matters.

### Scope of FCAI's Application

The FCAI's application lists a series of activities which it states constitute the FI service.<sup>1</sup> Most of these activities (or services) are undertaken by users of the AAT's facilities at Fisherman Islands. In the ordinary course, they are activities undertaken by the parties that would be "access seekers" in the event that the use of the AAT facility at Fisherman Islands was a declared service.

The table below sets out the parties that undertake each of the activities (or providers of the services) identified by the FCAI as constituting the FI service.

Activity/Service	Provider
Scheduling of ships containing motor vehicles	Port of Brisbane Corporation ( <b>PBC</b> ) and Maritime Safety Queensland ( <b>MSQ</b> )
Berthing of ships containing motor vehicles	PBC, MSQ, Tug Operators, Linesman
Discharging motor vehicles from ships	Patrick General Stevedoring ( <b>PGS</b> ) and POAGS
Storing of motor vehicles	AAT
Moving motor vehicles within the facility	Patrick Autocare ( <b>PAC</b> ), PrixCar and AAT
Loading motor vehicles onto car carriers	PAC, Toll, CEVA and other independent small volume transport operators
Transferring motor vehicles to on wharf pre-delivery and inspection ( <b>PDI</b> ) facilities	PAC and PrixCar
Cleaning and inspecting motor vehicles	PAC, PrixCar, AAT, AQIS, Marine Surveyors and shipping lines
Complying with customs and other government requirements for motor vehicles	PAC, PrixCar, AAT, PGS, POAGS, car transport operators, customs agents and shipping lines, PBC
Any other purpose associated with motor vehicles	Uncertain [Note: An open ended service declaration is not appropriate.]

FCAI's revised submission to the Authority dated September 2009 (September Submission), states the initial unloading of vehicles from the ship and PDI services is not subject of the FCAI's application for declaration.<sup>2</sup> This just confuses the issue as many of the remaining activities (or services) are clearly services provided by the users of the AAT facility, not AAT.

There can be no basis under Australian infrastructure access principles, as reflected in the QCA Act, to impose access regulation on the users of the relevant "monopoly infrastructure". This point seems so obvious as not to warrant extensive discussion. The scope of the services sought to be declared should be clarified. From POAGS perspective the relevant service should be the use of the AAT Fisherman Islands facility for the purpose of conducting one or more of the above activities (or providing those services). Any declaration should be expressly limited to services provided by AAT. If FCAI is seeking a broader declaration, then it should explain why declaration of the services provided by the users of the AAT FI facility is consistent with the principles of "monopoly" access regulation.

### Declaration would have no meaningful effect on competition in any market

POAGS is one of the largest users of AAT's FI facility. AAT operates the facility on a multi-user, open access basis, and is required to do so under the terms of its lease. Further, AAT has recently been authorised by the ACCC on conditions that require it provide access to its facilities and which contain an arbitration mechanism in the event of a dispute. Declaration under the QCA Act would not increase the ability to gain access to AAT's FI facility.

<sup>1</sup> See section 2.2 of the FCAI's clarification submission dated September 2009.

<sup>2</sup> See section 2.3(a) of the September Submission.

It would, however, provide a third layer of regulation in relation to access to the facility, potentially resulting in inconsistent outcomes, forum shopping and increased cost. POAGS is particularly concerned that declaration would result in increased regulatory cost which would be passed through to it, with no benefit. In that way, declaration would clearly be contrary to the public interest.

It is notable that the application is not made by any party seeking access to the facility. The essence of the FCAI application is that it wants to be able to regulate AAT's prices. That is both unnecessary and not a relevant basis for declaration of the facility. It is unnecessary because AAT's prices at Fisherman Islands are subject to scrutiny by both the Port of Brisbane and by an independent review body under the terms of the conditions of authorisation granted by the ACCC. Declaration would simply result in a third layer of scrutiny of AAT's prices.

Further, POAGS can not see how declaration and the prospect of a third level of scrutiny on AAT's prices would have any meaningful impact on competition in any of the markets in which it operates. POAGS notes the submission of Asciano's dated 30 September 2009 that the services listed as constituting the FI service are provided in a competitive market with alternative providers available for a number of the services. The ACCC has concluded that the markets for the provision of PDI services, shipping and transport services relating to vehicle importation and exporting are competitive.<sup>3</sup>

FCAI have suggested that declaration would promote competition in the importation and supply of motor vehicles. POAGS can not see how that could possibly be the case. It does not appear to be the true objective of the FCAI application and no supporting evidence is provided. Declaration has been sought by the FCAI representing the industry as a whole, not by one car importer or supplier because they want to enhance competition with other importers or suppliers.

POAGS is very concerned that declaration of the FI service would result in unnecessary and multiple levels of costly regulation for no benefit. POAGS does not support declaration under the QCA Act.

Yours sincerely,



Donald Smithwick  
Managing Director  
P&O Automotive & General Stevedoring Pty Ltd

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<sup>3</sup> ACCC, *Application for Authorisation Lodged by FCAI (No.91023) – Determination*, 6 June 2007, [6.115].