

Application for Declaration of Vehicle Import
Services at Fisherman Islands by
the Federal Chamber of Automotive Industries
Submission by the Port of Brisbane Corporation
Limited in response to submission by the FCAI
dated 17 March 2010



Allens Arthur Robinson
Level 31
Riverside Centre
123 Eagle Street
Brisbane QLD 4000 Australia
Tel +61 7 3334 3000
Fax +61 7 3334 3444
www.aar.com.au



1. Introduction

This submission is made by the Port of Brisbane Corporation Limited (**Port of Brisbane Corporation**) in response to the submission by the Federal Chamber of Automotive Industries (**FCAI**) dated 17 March 2010 (**FCAI's submission**).

Port of Brisbane Corporation requested that it be entitled to make this submission to address assertions made by the FCAI adverse to Port of Brisbane Corporation in its submission.

Port of Brisbane Corporation does not intend to respond to all of the assertions made by FCAI in its submission. Port of Brisbane Corporation relies on its earlier submission dated 19 January 2010 (**the earlier submission**) in which Port of Brisbane Corporation contended that even if the services sought by the FCAI to be declared are candidate services (which Port of Brisbane disputes), the access criteria in s76 of the *QCA Act* are not satisfied and therefore the Authority should not recommend that the services be declared.

2. Criterion (a)

2.1 ACCC Authorisation

The FCAI asserts in paragraph [2.10] of its submission that the ACCC Authorisation "*is not a relevant consideration for criterion (a)*" given, it is said, the Full Federal Court's approach in *Sydney Airport Corporation Ltd v Australian Competition Tribunal*.

That submission is plainly incorrect. In considering criterion (a), the Authority must compare the outcome with declaration, the factual, to the outcome without declaration, the counterfactual. Both would involve the operation of the ACCC Authorisation. For the reasons outlined on pages 20-21 of the Port of Brisbane Corporation's earlier submission, all of the outcomes sought by the FCAI from declaration are met by the ACCC Authorisation and the Management Agreement.

2.2 Market for automotive stevedoring services in Queensland

The FCAI asserts in paragraph [2.20] of its submission that "*[t]he fact that there has been no independent third party stevedore to use the FI Facility is very strong direct evidence that the barriers to entry are not sufficiently low to permit new entry.*"

Port of Brisbane Corporation notes that, with effect from mid-May 2010, Australian National Stevedores Pty Ltd has commenced break-bulk stevedoring operations from the FI Facility. Whilst Port of Brisbane Corporation acknowledges that that stevedore does not undertake automotive stevedoring services at Port of Brisbane, the entry of that stevedore does demonstrate that there are **not** significant barriers to entry preventing stevedores from accessing the FI Facility.



2.3 Unilateral price increases

Port of Brisbane Corporation denies that the Management Agreement between it and AAT "does not act as a constraint on AAT's prices or the terms on which it provides access".

As Port of Brisbane Corporation outlined on page 25 of its earlier submission, the increases in the FAC charged by AAT are directly attributable to increases in land rental paid by AAT. Whilst the FAC has increased as outlined in the FCAI's submission, the Stevedore Access Charge (**SAC**) (which reflects AAT's non-land based costs) increased over the same four-year period by only 8 percent.

As a real-estate based charge, the amount of the FAC has no bearing on AAT's operational efficiency. The "operational efficiencies" which the FCAI cites in its submission at paragraph [2.26] would operate to reduce the SAC; not the FAC.

3. Criterion (b)

Port of Brisbane Corporation denies that it "lacks expertise and judgment in port facility planning..." as the FCAI asserts at paragraph [3.3] of its submission. Port of Brisbane Corporation constantly reviews trade forecasts, port throughput and anticipated port demand and undertakes long-term planning for future port needs. Port of Brisbane's internal economists and analysts consider that given population growth in south-east Queensland and vehicle purchasing forecasts, the FI Facility will soon near its capacity.

Port of Brisbane Corporation considers that, by 2013/14 the FI Facility will be nearing its capacity. This is supported by the figures cited by the FCAI in paragraph [3.5] of its submission. Whilst Port of Brisbane Corporation does not agree with the FCAI's forecasts,¹ those forecasts show that by 2013/14, the FI Facility (assuming it has a capacity of 250,000 vehicles) will be 90 percent utilised. Using the same figures, in 2014/15 capacity utilisation will increase to 94 percent.

Port of Brisbane Corporation considers that it is prudent and necessary to commence construction of Port West. Contrary to FCAI's assertions Port West is not currently "swamp land". Port of Brisbane Corporation has spent very significant amounts in preparing the Port West site and reclamation and earthworks have been completed such that construction of Port West can commence immediately.

Further, the FCAI's assertion that "RoRos will not be able to get through to berth at Port West" (at paragraph [3.12]) is incorrect. Port of Brisbane Corporation expects that all Pure Car Carriers (PCCs) and all Pure Car/Truck Carriers (PCTCs) will be able to berth at Port West. These vessels comprise approximately 80% of all car-carrying vessels accessing Port of Brisbane. Further, recent hydrological and hydrographic research by Port of Brisbane Corporation indicates that a greater proportion of vessels than first thought will be able to access Port West once constructed.

¹ For example, the FCAI's estimation of 2009/10 throughput is at least 10 percent less than the actual throughput for that period.



At paragraph [3.14] of its submission, the FCAI asserts that "[i]t is not practicable to use the General Purpose Berth or the Grain Berth for motor vehicles. There is no lay down area at either location..." This is incorrect.

In respect of the Grain Berth:

- (a) the wharf has been modified to accommodate car-carrying vessels;
- (b) there is approximately 4 hectares of paved lay down area immediately adjacent to the berth which can store up to 2,000 vehicles.

This berth has been used on many occasions to unload car-carrying vessels.

In respect of the General Purpose Berth:

- (a) construction of the berth has been recently completed and it can accommodate car-carrying vessels;
- (b) there is approximately 2 hectares of paved lay down area immediately adjacent to the berth.

Port of Brisbane Corporation denies that "it informed FCAI and shipping lines that there are no alternatives to the FI Facility" as it has stated in written correspondence to shipping lines that the Grain Berth and the General Purpose Berth are available to unload vehicles.

Lastly, Port of Brisbane Corporation denies that it has "a complete lack of understanding of the automotive trade". Port of Brisbane Corporation arguably has the most advanced and efficient berths, wharves and supporting infrastructure for the importation of vehicles of any Australian port. Port of Brisbane Corporation acknowledges the typographic error as highlighted in paragraph [3.16.1] of the FCAI's submission. However, Port of Brisbane Corporation does not accept that the matters outlined in paragraphs [3.16.2] or [3.16.3] of FCAI's submission are errors by Port of Brisbane Corporation as:

- (a) the PDI operators do all have "lease agreements or licence arrangements" with AAT. This is a requirement of the Management Agreement; and
- (b) AAT does not physically discharge vehicles from vessels. The functions to which the FCAI refers to in its submission are planning functions only.

In any event, these matters do not demonstrate "a complete lack of understanding" of the automotive trade".

4. Criterion (d)

The FCAI asserts at paragraph [4.1] of its submission that the Authority should not take into account the costs of adding a **third** layer of regulation to the FI Facility. In considering criterion (d), the Authority must have regard to the objects of Part 5 of the QCA Act which are to promote the economically efficient operation of, use of and investment in, infrastructure by which services are provided, with the effect of promoting competition in upstream and downstream markets: s 69E of the QCA Act.

Port of Brisbane Corporation repeats the submissions made in its earlier submission that, in light of the terms of the Management Agreement and the ACCC Authorisation, a further layer of regulation (by way of declaration under the QCA Act) will not:



-
- (a) result in lower prices for the services which the FCAI seeks to have declared; or
 - (b) materially promote competition in any related market.

Declaration will merely add administrative and compliance costs as a result of unnecessary further regulation. Declaration will not have any additional benefits but will burden AAT with additional regulatory costs. Therefore, declaration **would** be contrary to the public interest.