

18 DEC 2009

DATE RECEIVED

**PORT of  
TOWNSVILLE****PORT OF TOWNSVILLE LIMITED**  
ACN | 130 077 673EMAIL | [info@townsville-port.com.au](mailto:info@townsville-port.com.au)  
WEBSITE | [www.townsville-port.com.au](http://www.townsville-port.com.au)BENWELL ROAD | PO BOX 1031  
TOWNSVILLE | QLD 4810

TELEPHONE | + 61 7 4781 1500

FACSIMILE | + 61 7 4781 1525

LATITUDE 19° 15' S | LONGITUDE 146° 50' E

Contact Officer: Esther Slocombe  
Telephone: 07 4781 1531  
Email: [eslocombe@townsville-port.com.au](mailto:eslocombe@townsville-port.com.au)  
Ref: QCA Submission

11 December 2009

Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

Dear Sir/Madam,

**SUBMISSION REGARDING DECLARATION OF VEHICLE IMPORT SERVICES**

We refer to the above and Queensland Competition Authority's (QCA) request for submissions regarding the application for declaration submitted by the Federal Chamber of Automotive Industries (FCAI) on 17 July 2009. Port of Townsville Limited (the Corporation) is pleased to have the opportunity to make the following submissions in respect to this matter:

**Submission 1 – Interested Party**

The Corporation submits that it is an interested party to this matter as it is a port authority governed by the *Transport Infrastructure Act 1994* (Qld). Under section 70(1)(b) of the *Queensland Competition Authority Act 1997* (Qld) (the Act), port infrastructure is a "facility" for the purpose of Part 5, which relates to third party access regimes. The Corporation is thus duly aware that as a company Government Owned Corporation, its port facilities are capable of being subject to statutory third party access regimes under the Act.

QCA's declaration on 22 October 2009 that the vehicle import services at Fisherman Islands operated by Australian Amalgamated Terminals Pty Ltd (AAT) are "candidate services" for the purposes of the Act is of concern to the Corporation, as it breaks new ground in relation to privately owned (tenant owned) facilities.

We refer to the Port of Brisbane Corporation Limited submission dated 30 September 2009 in regards to FCAI's application and point out that the relationship between the Port of Brisbane and AAT is that of lessor and lessee. The Port of Brisbane owns the land and significant common port infrastructure, such as the wharf, while the AAT owns buildings, plant and equipment and various other assets which constitute the services to which FCAI is seeking access. This lessor – lessee relationship is common to many ports, including the Port of Townsville. The Corporation operates in a synergistic relationship with its tenants to facilitate trade throughput, as the Corporation's assets alone are not sufficient to support the various services which are required at an industrial port.

If the vehicle import services are declared, the Corporation is concerned that there will be flow-on effects such that any tenant owned assets which are inextricably linked with the Corporation's assets are also capable of being declared under the Act. The implications of this on the future level of investment in port infrastructure by tenants are outlined in Submission 2 below.

## **Submission 2 – Costs Outweigh Benefits of Access**

We refer to page 11 of QCA's *Issues Paper: Declaration of Vehicle Import Services at Fisherman Islands (November 2009)* and submit that not only will the AAT incur costs if the services are declared, but the decision will cause significant indirect costs to the greater Queensland port network and the state economy in the long term.

During the Second Reading Speech of the Bill at page 1688 of Hansard it was noted that in relation to statutory third party access regimes, there is the risk that a "potentially predatory business enterprise may come in and seek to extract the goodies from the business". This risk will no doubt act as a disincentive for tenants to continue investing in the construction, maintenance and improvement of port facilities and associated services. The Explanatory Notes to the *Queensland Competition Authority Bill 1997 (Qld)* (the Bill) states at page four that "a key aspect of the market system is that an infrastructure owner is entitled to choose with whom it will deal". If this aspect is taken away under a statutory regime, tenants will have less control over their pricing structures and operational movements. It therefore follows that a Ministerial declaration of the vehicle import services at Fisherman Islands will foster a culture of uncertainty as to future returns and access rights amongst the Corporation's existing tenants, and future potential tenants.

Tenants will also be hesitant to invest significant sums in port infrastructure if there is the potential that they will become subject to increased regulation under statutory third party access regimes or undertakings. Access agreements will impose considerable administrative, operational and financial burdens upon access providers. If an access dispute arises between access seekers and access providers occurs and is referred to the QCA, QCA has the authority under section 117 of the Act to determine the terms and conditions of access. More alarmingly for potential access providers, access providers are subject to significant pecuniary penalties or imprisonment for breaches of access agreements or undertakings.

If potential and existing tenants at regional Queensland ports are deterred from investing in new and expanded facilities, the costs of operating port infrastructure will ultimately be transferred to the State.

## **Submission 3 – Obligation to Act Commercially**

The Port of Townsville was converted from a statutory Government Owned Corporation to a company Government Owned Corporation on 1 July 2008 so that the Corporation could operate, as far as practicable, on a commercial basis and in a competitive environment.

The Corporation has an obligation to its shareholding Ministers; the Hon. Andrew Fraser M.P., Treasurer and Minister for Employment and Economic Development and the Hon. Rachel Nolan M.P., Minister for Transport, under its Statement of Corporate Intent 2009 - 2010 to act commercially and competitively to promote a sustainable economic future for the Port.

The Corporation submits that the best commercial interests of the Port will not be served if a precedent is set such that tenants' services are capable of being declared under the Act, and consequently subject to third party access agreements and undertakings.

## **Submission 4 – Declaration Contrary to Public Interest**

We refer to page 11 of QCA's *Issues Paper: Declaration of Vehicle Import Services at Fisherman Islands (November 2009)* and submit that a declaration of the vehicle import services would be contrary to public interest due to the widespread negative economic impacts it would cause. Specifically, section 76(3)(e) of the Act states that when considering access criterion for the purposes of making a declaration, QCA and Ministers must have regard to economic and regional development issues, including employment and investment growth.

As of 1 July 2009 a revised Queensland ports structure was implemented to ensure that Queensland ports operate on a commercial basis. Queensland has five port corporations, which contribute significantly to Queensland's economy each year. This contribution was highlighted by the *Queensland Ports Trade Statistics Report 2009*, released by the Department of Transport and Main Roads in November 2009. This report revealed that total throughput for all Queensland ports during

the 2008 - 2009 exceeded 245 million tonnes. It is undeniable that these ports play an important role in the economic and regional development of the State. As landlords, port authorities have an incentive to attract new tenants and encourage market growth. This task will become increasingly difficult if tenants are reluctant to invest in the port industry.

If existing and potential tenants are hesitant to continue investing in port infrastructure, this position has the potential to seriously constrain the development of Queensland ports given the current economic climate. It will affect their ability to service growth in trade, which will produce various flow-on effects within their respective communities, such as restricting growth in employment opportunities and increased prices charged to consumers. It is difficult to imagine how this forecast reflects positively for 'economic and regional development issues'.

#### **Submission 5 – Failure to Satisfy Section 76 Criterion**

The Corporation submits that the vehicle import services at Fisherman Islands do not satisfy the criterion stipulated in section 76(2)(d) of the Act on the basis that to declare the services would be against the public interest, for the reasons outlined in Submission 4 above.

Under section 80(2) of the Act, QCA must recommend that a candidate service not be declared by the Ministers if it is not satisfied about all of the access criteria for the service.

#### **Submission 6 – ACCC Determination**

In June 2009 and August 2009, AAT lodged applications for authorisation of what is referred to as "the AAT joint venture". On 3 December 2009 the Australian Competition and Consumer Commission (ACCC) granted authorisation to AAT to operate its facilities under the joint venture arrangement under three conditions regarding price review, stevedore access and dispute resolution. The price review condition imposes a process of price review which allows terminal users to object to price increases proposed by the AAT, and involves an independent review of whether proposed increases are reasonable and justified.

We refer to page 8 of QCA's *Issues Paper: Declaration of Vehicle Import Services at Fisherman Islands (November 2009)* and submit that as the ACCC has already imposed conditions upon AAT in relation to access and pricing, a second level of regulation by QCA under an access agreement or undertaking is unwarranted.

#### **Submission 7 – Existing Open Access Arrangement**

FCAI's submission dated 30 September 2009 states at page one that "as the AAT operates the Fisherman Islands Cargo Terminal as an open-access facility, it would be more than willing to provide access to any entity that requests access". As an existing open access arrangement is currently in place, it is difficult to justify the need for a Ministerial declaration of the vehicle import services.

#### **Summary**

The Corporation submits, on the grounds outlined in the Submissions 1 – 7 above, that QCA should not recommend that the vehicle import services at Fisherman Islands be declared for the purposes of third party access under Part 5 of the Act.

Yours faithfully,

  
**Barry Holden**  
**CHIEF EXECUTIVE OFFICER**