

## STATEMENT OF REASONS

1. The Authority has formed the view that the services which are the subject of the Federal Chamber of Automotive Industries' (FCAI) application, as revised on 15 September 2009, are a candidate service under Part 5 of the *Queensland Competition Authority Act 1997* (the QCA Act).
2. In forming this view, the Authority has given consideration to FCAI's application dated 17 July 2009 as amended in September 2009, as well as the submissions received from Asciano Limited, Australian Amalgamated Terminals Pty Ltd (AAT) and the Port of Brisbane Corporation Ltd (PBC), all dated 30 September 2009.

### FCAI's Application

3. The FCAI has asked the Authority to recommend declaration of motor vehicle import services provided at the Fisherman Islands facility (the FI service) under section 77(1) of the QCA Act.
4. The FCAI has described the FI service to include (without limitation):
  - (a) scheduling and berthing of ships containing motor vehicles;
  - (b) discharging motor vehicles from ships;
  - (c) storing of motor vehicles;
  - (d) moving motor vehicles within the facility;
  - (e) loading motor vehicles onto car carriers;
  - (f) transferring motor vehicles to on wharf pre-delivery and inspection (PDI) facilities;
  - (g) cleaning and inspecting motor vehicles; and
  - (h) complying with customs and other government requirements for motor vehicles.
5. FCAI stated that the facility used to provide these services (i.e. the FI facility) is the area of land at the port of Brisbane which is leased from PBC to AAT, as the facility operator.

### Requirements of the QCA Act

6. Section 77(1) of the QCA Act permits a person to ask the Authority to recommend that a particular 'candidate service' be declared by the Ministers (the Premier and the Treasurer).
7. Before considering FCAI's application in relation to the access criteria in s.76 of the QCA Act, the Authority has considered whether the FI service is a candidate service. If the FI service is not a candidate service, then the Authority cannot recommend declaration.
8. In this regard, the Authority notes that a 'candidate service' is relevantly defined to mean:

*a service for which the facility used, or to be used, to provide the service is a **public facility**; or ...[emphasis added]*

and where a public facility is defined to mean:

*a facility owned (whether legally or beneficially and whether entirely **or in part**) by the State or a government agency, and includes a facility owned by a water authority. [emphasis added]*

## The Authority's Considerations

9. The key issue is whether the FI facility is a 'public facility' for the purposes of the definition of 'candidate service'. FCAI says the FI facility is a public facility. AAT contends the opposite as does PBC.
10. PBC says, among other things, that it is the owner and lessor of the land from which AAT conducts its business. PBC also said that, in its view :  
  
*...the "facility" used in providing the "service" comprises of both the land and below-ground improvements owned by the Corporation and the above-ground improvements, machinery and plant and equipment owned by AAT. The "service" cannot be provided by using the Corporation's assets alone.*
11. AAT said, among other things, that, as required under the Agreement to Lease, AAT has expended a substantial amount to construct improvements at the FI facility including:
  - (a) buildings for cargo storage, amenities, a maintenance garage and office facilities;
  - (b) the installation of security systems and IT systems;
  - (c) AQIS-approved wash facilities; and
  - (d) security fencing for the PDI facilities.
12. AAT submitted that it also provides forklifts and cranes, dock trucks, vans and utilities.
13. Nonetheless, PBC is a 'government agency', where government agency is defined in the schedule to the QCA Act to mean, among other things, a government owned corporation. This was accepted by AAT in its submission.
14. For these reasons, the Authority has formed the view that the FI facility used to provide the FI service is at least **partly** owned by a government agency and consequently satisfies the definition of a 'public facility' under Part 5 of the QCA Act.
15. The Authority has therefore concluded that the FI service is a 'candidate service' as defined by the QCA Act.