

The ACCC has received a confidential submission which raised the following issues:

1. The take-or-pay restrictions and priority berthing days in the agreement is likely to have an effect on other ports' abilities to compete with PBPL, because Carnival is the major operator of cruise vessels in Brisbane and Australia (with few non-Carnival cruise vessel visiting Brisbane regularly). The amount of the take-or-pay charges is confidential, but the Applicants have described them as "significant", and Carnival has been granted 100 Foundation Berthing Days in return for these. The significant size of the take-or-pay obligations is likely to significant limit the extent to which Carnival can choose alternative cruise facilities inside or outside of Brisbane.
2. The Applicants have not provided sufficient explanation or details to justify the necessity of the agreement (or the level of the obligations under the agreement) in order for the proposed development to go ahead.
3. There is considerable uncertainty as to whether there will be competition between the proposed development and cruise terminal facilities other than Portside, because:
  - there is considerable uncertainty as to whether the Gold Cost proposed development will proceed
  - plans for an additional cruise terminal in Sydney are at a very early stage
  - Cairns is some distance away from Brisbane, and is considerably smaller with more limited infrastructure and therefore not generally considered large enough for baseporting.
4. Because the agreement is unlikely to strengthen competition (for the reasons outlined above), any operational efficiencies resulting from the agreement are unlikely to be passed through to consumers (and may in fact end up increasing the profits of shareholders and owners based overseas). In any case, the pass through of any benefits should not be double counted because they in fact form part of the claimed benefit of cost savings.
5. The Applicants have not provided a justification for seeking an 18 year authorisation for a project estimated to cost \$158million to construct.
6. The ACCC should impose a condition limiting the take-or-pay commitments to apply only to large cruise ships which are unable to dock at Portside, and reducing the priority berthing days significantly to reflect this.
7. Authorisation should be granted for a period of 5 years maximum.