

The Commission received a confidential response to the Applicants' submission of 19 December and the Commission's draft determination from an interested party.

The following extracts were provided for the public register.

The submission outlined several key characteristics of the Australian cruise market relevant to the ACCC's consideration of the proposed arrangement:

1. Summer is the key cruising season in Australia (October to April).
2. Brisbane is the closest homeport on the Eastern Seaboard of Australia to the most popular cruise destinations for Australia; namely the South Pacific islands of New Caledonia and Vanuatu.
3. The original opening of Portside enabled the cruise industry to introduce a shorter (7-8 night) cruise with repetitive departure dates (the minimum effective duration out of Sydney to the South Pacific is 8-9 nights).
4. Weekend departure dates drive higher ticket prices due to the guest convenience factor.
5. The proposed development will represent the ONLY berth capable of offering a reliable and fully serviced homeport facility. Portside inevitably will cease to operate once 90% of its business is lost to the Luggage Point Facility; the proposed Gold Coast facility is highly unlikely to be operationally viable as a homeport for large cruise ships.
6. Short (3-4 night) domestic cruise itineraries are significantly impacted by additional operating costs and tax burdens (including GST) as well as restrictions on the operation of the ship's onboard revenue activities.

The submission summarized the key drivers of a commercially effective and sustainable deployment:

1. The ability to operate for a full summer season (October to April); approximately 15-20 cruises thereby justifying the market entrant's significant expenditure in advertising and selling costs.
2. The ability to deliver cruises of between 8 and 11 nights duration; these cruise durations deliver the highest combination of ticket revenue and on-board revenue per passenger.
3. The ability to operate cruises departing on a weekend, which offer both the greatest guest convenience (one week off school or work) and higher yields for the cruise line.
4. The ability to offer separate Christmas and New Year cruises. These are peak season cruises driven by heavy family demand and generate in the region of 40% yield premiums. A combined Christmas/New Year cruise is less appealing and is commercially sub-optimal.

Given that background we remain deeply concerned that anyone who holds pre-emptive rights to 4 days out of 7 will be able to develop a series of itineraries that will

pose insurmountable commercial and operational barriers to any other competitor entering the Brisbane market.

If commercial barriers stem from competitors having more attractive ships with better amenities and destination offerings that is of course acceptable and to be welcomed. However, when, as with the proposed arrangement, barriers to entry are constructed by erecting preferred access arrangements to the only berth in Brisbane and in the case of large cruise ships, the whole of Queensland, we believe this cannot be necessary to secure the development of the Terminal. Nor is it in the public interest.

We further contend that anyone holding pre-emptive rights over 4 berthing slots can strategically design their itineraries to cause disruption to potential competitors:

- by selecting the most commercially advantageous days (Friday/Saturday/Sunday) for their first 2 berth priority days; and
- by selecting the 3rd and 4th days on a variable basis from week to week thereby impacting the ability of a competitor to establish a consistent and reliable pattern of departures.

Under the proposed arrangement, the 3 days remaining for competitors would result in a deployment pattern that would be both:

1. Suboptimal – without any weekend departures; and
2. Irregular – sailings departing on different days every week, with erratic durations.

This unacceptable deployment pattern would have lower consumer demand and produce uncompetitive commercial results compared to other global deployment opportunities. As a result it is unlikely that a competitor would homeport a ship in Brisbane.

We believe that restricting preferential rights to 3 days (rather than 4) will leave new entrants the choice of up to 4 days per week to develop viable itineraries over the cruise season. In addition, to provide a more level playing field to new entrants, one of the four remaining slots for competitors should be available on a weekend (Friday, Saturday or Sunday). This would ensure commercial viability whilst also reducing the ability of Carnival to disrupt itineraries of new entrants. Setting aside a regular weekend day, on the same day every weekend would enable a competitor to operate in the 7 night cruise market or a combination of cruises less than 21 days (3 x 7 nights) which is the common pattern for cruise itineraries in the industry.

At the conclusion of part 4 of the applicant's submission of 19 December, the following paragraph appears:

*“Further, there is nothing anti-competitive about Carnival receiving reasonable and proportionate preferential rights for its significant commitment to the New Cruise facility. The opportunity to make a similar commitment was provided to other operators which elected not to take up that opportunity. In the circumstances where other cruise operators have chosen not to deploy ships using existing cruise facilities, and not to invest in the construction of a new cruise facility capable of accommodating larger ships, the basis for cruise operators to argue that Carnival has benefited from some kind of anti-competitive advantage is without foundation.”*

The preferential rights Carnival would get under the proposed arrangement would foreclose competition in Brisbane. This foreclosure cannot be justified because the preferential rights proposed exceed what is commercially necessary. The PBPL does not require the level of underwriting demanded as there will be more than enough demand for cruise berths at Luggage Point to justify their investment. The claim that the extent of the preference sought by Carnival is proportionate is unpersuasive, for the same reason. As demonstrated above, giving Carnival pre-emptive rights for 4 days would enable competition to be blocked by Carnival. The remaining 3 berthing days will not be commercially viable and will not allow new entrants to compete effectively in the Brisbane market.

The reference to the other operator being offered the opportunity to enter into a similar arrangement and declining that offer is irrelevant. The relevant question is whether or not the proposed pre-emptive rights for 4 days would lessen competition and to an extent that is not outweighed by public benefit.

## **CONCLUSION**

The degree of preferential access sought by the applicants exceeds that which on balance could be permitted to override the public interest in establishing a competitive cruise industry supplying cruises to and from Brisbane. A new entrant will require access to a viable series of berthing days during the summer cruise season. The proposed preferential arrangements of 4 slots out of 7 (or 57% of the available berths in Brisbane each week) will preclude such access and exceeds what is reasonable and necessary and will prevent competitors from entering the Brisbane market. It is impossible to develop a commercially viable series of itineraries where the incumbent can determine and manipulate which berthing days are available to competitors.

There is no other major cruise port such as Brisbane in the world where the only cruise berth is underpinned by such an anti-competitive arrangement as that proposed by the applicants for authorization. In the absence of reasonable access to the new Luggage Point terminal, the proposed arrangements would preclude effective competition by new entrants against the Carnival Corporation in Brisbane. That cannot be in the public interest.