

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

1. A terminal on the eastern side of the Sir Leo Hielscher Bridges in Brisbane which can accommodate the world's largest cruise ships is necessary to realise the growth potential of the cruise industry in Brisbane; however the proposed agreement between PBPL and Carnival goes well beyond what is reasonably required to justify the investment by PBPL and will result in serious anti-competitive detriment because it makes it unlikely that any competing cruise operator will be able to successfully enter the Brisbane-based cruise market.

2. The extent of the take-or-pay commitments and berthing priority rights will create a major barrier to entry for any competitor in Brisbane, and as a result Brisbane is unlikely to attract large international cruise operators other than Carnival. The use of mega ships is a growing trend worldwide but the access of these ships to the new facility will be effectively blocked by the proposed agreement. Under the agreement, Carnival will be able to choose the best days in the calendar as well as the majority of the available days throughout the season and the year. The take-or-pay agreement will:

a. preclude the ability of other operators to build viable deployments over the summer, because there will be insufficient available berthing days (maximum 3 per week as Carnival will have preferential access to four) which will also be irregular from week to week and as such inferior in quality and difficult to build itineraries (particularly 7 day itineraries) around.

b. not recognise the commercial reality that weekend days, and days surrounding the weekend, are much more commercially valuable. Carnival will be able to take advantage of this by dominating weekends and surrounding days.

c. allow Carnival to game their future bookings in such a way as to make the remaining berthing dates unattractive to competitors.

d. prevent any competitor being able to home base ships in Brisbane successfully, because the key factor in building a viable homeport itinerary is the availability of turnaround days. Any competitor will be unable to offer sufficiently attractive itineraries to effectively compete.

3. Carnival has the additional competitive benefit of being the established operator for cruises from Brisbane, including entrenched marketing and sales positions, and a greater knowledge of existing customers.

4. Preferential treatment for Carnival on a possible future second berth cannot be justified as Carnival will already have a dominant market position established through the arrangements relating to the first berth. The first right of refusal on a second berth would accentuate Carnival's dominance by erecting a further significant barrier to entry for any potential or existing competitor.

5. The competition offered by other terminals is misrepresented in the application, because:

a. in the event the agreement is authorised, Portside is likely to close because all of Carnival's mid-sized and smaller ships will go to the new facility under the agreement, and no other cruise operator has ships of a size which can dock at Portside. Portside will no longer be under any legal obligation to the State of Queensland to operate a cruise terminal and will be free to redevelop the terminal site.

- b. Townsville and Cairns cannot be accessed by mega liners due to physical constraints. Even under the proposed development plan for Cairns, most mega liners will be excluded.
- c. terminals such as Moreton Island, Yorkey's Knob and the Whitsundays are ports of call only.
- d. all proposals to date for developing cruise terminals on the Gold Coast have failed to get beyond initial concept stages and none is viable.