

16 March 2018

Ms Hannah Ransom  
Australian Competition and Consumer Commission

**By email:** [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Ms Ransom

**PORT OF BRISBANE AND CARNIVAL APPLICATION FOR AUTHORISATION AA1000399**

We refer to the ACCC's draft determination with respect to the above application dated 1 March 2018 (Draft Determination). We disagree with the ACCC's proposal to allow authorisation for the proposed arrangements and provide our further comments below.

**Arrangement required for development to proceed**

In paragraphs 37 to 41 of the Draft Determination, the ACCC has accepted the Applicant's claim that a type of long term take-or-pay arrangement is required for the development of the cruise terminal to proceed.

Apart from merely stating this to be the case, we do not believe the Applicants have provided substantiation to this claim. Therefore, we disagree with the ACCC's ready acceptance of this claim in the absence of such substantiation. It is noted the ACCC *"also considers that the development could proceed with a different form of take-or-pay contract, that is, the agreement need not be in precisely its current form in order to provide sufficient certainty for the development to proceed"*.<sup>1</sup>

Whilst we agree with the above statement, we would go further to say that there are a myriad of potential methods or arrangements, not limited to take-or-pay arrangements, that might have allowed sufficient commercial case for the development to proceed.

The development (and the purported public benefits resulting from the development) could therefore have been achieved by methods or arrangements other than the proposed arrangement. Again, we submit the Applicants have not substantiated why the development (and purported public benefits) could not have been achieved other than by way of the proposed arrangement.

As stated in previous submissions, the premise that the development is required to be underpinned by a take-or-pay arrangement does not align with the seemingly accepted propositions that *"the use of*

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<sup>1</sup> Draft Determination AA1000399 (1 March 2018), paragraph 40, page 7.

*mega ships is increasingly the most popular form of cruising*<sup>2</sup> and there is a “*trend towards mega cruise ships*”<sup>3</sup>.

We therefore propose that ACCC reconsider the position on the Applicant’s claim that a type of long term take-or-pay arrangement is required for the development of the cruise terminal to proceed

### **Restrictions**

We welcome the ACCC’s proposed refusal to allow preferential access rights on the potential future second berth of the development.

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<sup>2</sup> Ibid, Summary, page i.

<sup>3</sup> Ibid, Paragraph 73, page 13.