11 January 2007

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir

I refer to the Commission's letter of 15 December 2006 (reference A91023) regarding an application for authorisation from the Federal Chamber of Automotive Industries (FCAI). Thank you for the opportunity to provide comment.

1. FCAI's application

We understand that FCAI is seeking authorisation to enable it to coordinate and disseminate the views of its members and liaise with various parties regarding the development of motor vehicle import/export port facilities. The conduct is proposed to include the development of model terms and conditions of use for these facilities.

The Port of Brisbane Corporation (PBC) notes that the application contains no identification of the relevant market, nor does it seek to analyse the effects of FCAI's proposal upon competition in the relevant market. In view of the general nature of the conduct for which authorisation is sought, this makes it difficult to respond to the application.

PBC also notes that the case studies sought to be relied upon by FCAI as examples of the claimed "inefficiencies" which FCAI's proposed conduct will (allegedly) overcome do not relate in any way to the Port of Brisbane.

In preparing this response, PBC has relied upon the comments in paragraphs 6.4 and 6.8 – 6.12 of the application.

2. Comments of PBC

Under the Integrated Planning Act 1997, PBC is the assessment manager for assessing and approving developments on strategic port land. All new development is assessed against the Land Use Plan and other supporting planning documents. The Land Use Plan divides the port's landholdings into precincts, and sets out specific development intent, performance criteria, indicative land uses and corporate actions for each precinct to ensure that development occurs in an efficient, timely and controlled manner.

PBC has allocated land for a number of existing motor vehicle facilities, including:
Berth and terminal facilities that are managed by AAT (a joint venture between Patrick and DP World) under a lease and management agreement with the Corporation, which includes an overflow area for short term storage. The facilities are provided on a common user basis where:

- Common assets are shared to achieve the most efficient operation;
- Access is provided to all accredited stevedores;
- Standard published rates are overseen by the Corporation; and
- Berthing priorities are set by the Corporation.

Storage facilities at Fisherman Island, which includes a multi-user area currently occupied by Prixcar and Patrick Autocare under short term tenure and a short-term storage area that is currently at Expression of Interest stage (Whimbrel Street South). The multi-user facility operates and the Whimbrel Street South facility is earmarked to operate under short term tenure to facilitate flexibility and competition in the provision of services; and

- Pre Delivery Inspection (PDI) facilities operated by Prixcar and Patrick Autocare.

In addition, PBC has earmarked substantial motor vehicle facilities at Port West, which will include storage facilities and PDI facilities. These facilities will become available from 2008. We therefore believe the Corporation has undertaken substantial steps to facilitate effective competition for wharf and motor vehicle processing facilities at the Port of Brisbane.

PBC consults with relevant peak industry bodies on all of its significant port developments as a matter of course. This includes FCAI in relation to trade related motor vehicle infrastructure/developments. While there are some benefits in being able to deal directly with one party, PBC does not hold any specific view as to whether or not the proposed collective coordination arrangement will deliver the net public benefits anticipated by FCAI. PBC points out that there is no reason given in the application (see paragraphs 5.12 and 5.18) for why the individual members of FCAI (given the scale of those entities) are not able to take the steps proposed to be undertaken by FCAI on their behalf. Indeed, for commercial-in-confidence reasons, it might be preferable from the perspective of both the Corporation and FCAI’s members to have discussions in the absence of FCAI in certain circumstances.

PBC notes for completeness that even if FCAI’s application for authorisation is granted:

(a) PBC is not obliged to deal with FCAI exclusively (or at all) in relation to developments at the Port of Brisbane and PBC is entitled to deal with any party it sees fit in relation to such developments; and

(b) any model terms and conditions developed by FCAI would not be binding upon PBC unless PBC agreed to those terms (and PBC would not be obliged to so agree).

I would appreciate it if you could keep us informed of the progress of this matter. The relevant contact is Darryl Mutzelburg, Acting General Manager Business Development (ph. 07 3258 4796 or darrl.mutzelburg@portbris.com.au).

Yours sincerely

Jeff Coleman
Chief Executive Officer