



29 May 2007

By Email

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

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Dear Sir,

Please find attached a brief submission in response to the FCAI submission dated 21 May 2007. The ACCC website on which the submissions are posted seeks further submissions but does not nominate a closing date.

I trust this submission will be considered forthwith.

Should you require any additional information, I may be contacted at the above or the following:
Email: don.smithwick@poports.com.au

Yours Sincerely,

Don Smithwick

Managing Director

P&O Automotive & General Stevedoring

(In Respect of Draft Determination of Application A91023)

Response to FCAI Submission dated 21 May 2007

Items 2.0 to 2.4 of the FCAI response to the draft determination go to the argument that the FCAI require “regulatory certainty” or it will not be able to communicate & co-ordinate the views of its members. P&O Automotive & General Stevedoring (POAGS) contend that this is not the case as FCAI has actively been involved in the said practice by participating in the protracted negotiations for the establishment of the Port Kembla operation without the “regulatory certainty” they claim to be seeking.

It is our view that:

- FCAI and its membership have no practical experience in stevedoring or port operations and cannot therefore logically provide advice on improving the operational efficiency of those terminals.
- It is the opinion of POAGS that any change to the draft decision would more than likely be interpreted as a de-facto compulsion for the other parties to engage with FCAI and be seen as an additional tool to pressure those parties into conceding issues that they might not ordinarily concede.
- Because an issue is perceived as a positive by the FCAI does not of itself constitute a public benefit and could in fact have the exact opposite effect

Point 3.1 of the submission is incorrect in the assertion that on-wharf processing is unavailable to other PDI providers. The lack of other on wharf providers is a direct response to the market needs of the importers they service. FCAI also concedes in this point that there are considerable variations in members needs and suggest that it would only represent them in areas of uniform needs for all or the majority of its members. POAGS fails to see where this would have any practical application.

Point 3.2 appears to be a contraction of its original position and the area they now propose to be involved in is the ex wharf only component of land transport. This is less than 50% of total movements and is generally of a much lower cost component when compared to other transport movement legs. That said POAGS can only assume that on wharf processing (& direct delivery to dealers) is planned to be expanded by the FCAI members.

POAGS agrees with FCAI that clarification is required in point 4 if ACCC intends to implement the position put in the draft determination.

Point 5 asserts the position that FCAI operates in the interest of its members but does not assert that it will override that interest in the interest of a public benefit. It cannot be assumed that the interests of its members will necessarily be one that produces a public benefit.

POAGS believes that the original application should be denied in its entirety.

Given that this may not be the outcome, the term of any approval should be restricted to not more than two years and the public benefit should be tested at the conclusion of that period and no party should be obliged or compelled to enter into negotiations for model rates and/or terms.