



**Shipping Australia Limited**  
ABN 61 096 0120574

**Head Office**  
Level 6, 131 York Street, Sydney NSW 2000  
PO Box Q388, Sydney NSW 1230

Tel: (02) 9266 9900  
Fax: (02) 9268 0230

[www.shippingaustralia.com.au](http://www.shippingaustralia.com.au)

17 January 2007

FILE No:
DOC:
MARS/PRISM:

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

**Attention:** Gina E'ttorre

Dear Ms E'ttorre,

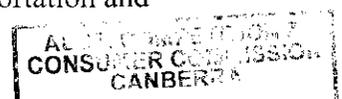
**Federal Chamber of Automotive Industries Application for Authorisation**

I refer to the ACCC's letter dated 15 December, 2006 (your reference A91023; Contact Officer, Gina D'E'ttorre) seeking submissions on the application for authorisation from FCAI in relation to development of car import/export port facilities. We appreciate the agreement of the Commission to extend the deadline for submissions for SAL from 15 January to 17 January.

A number of members of Shipping Australia carry motor vehicles and/or motor vehicle parts but in particular NYK, MOL and K Line as well as Wallenius Wilhelmsen Lines are heavily involved in the carriage of fully built up motor vehicles.

The statement is made in the application for authorisation that it is unlikely that the proposed conduct will breach Section 45 and Section 45A of the Trade Practices Act, 1974 (Cth) on the basis that individual FCAI members will independently make a decision about whether or not to ultimately use a new or existing facility for the importation of motor vehicles and will independently negotiate the terms and conditions for the use of a facility. However, agreement could be reached during discussions within FCAI in relation to the use of a particular facility which could well impact on the provision of competitive services and thus the potential is certainly there for a possible breach of Section 45 and Section 45A.

The argument for authorisation essentially involves debate about the decision by the NSW Government to relocate the motor vehicle trade from Glebe Island at Port Jackson to Port Kembla and Shipping Australia has sympathy with the point made by the FCAI that the industry was not aware of any feasibility study undertaken on which that decision was based. Shipping Australia has also complained about that process. However, this application goes well beyond that particular issue and seeks to apply for authorisation on a broad scale to coordinate the process for the development of, terms and condition of use of, both new and existing facilities, for the importation and



exportation of motor vehicles into and out of Australia, including without limitation, berths, lay down areas, storage areas, pre-delivery inspection facilities and train and truck loading and unloading facilities. However, the scope of the FCAI submission concerns all Australian ports not just those in New South Wales and we would be grateful if you could advise if our understanding in that respect is not correct. In particular the FCAI is seeking authorisation to undertake certain activities collectively with relation to only new facilities but yet, in the general application, reference is also made to the existing facilities.

Shipping Australia is very concerned with the words “without limitation”, particularly in relation to prices and this is commented upon below.

If this authorisation is too broad then there is the real potential that it will lead to an anti-competitive outcome in terms of certain service providers only being endorsed by FCAI to carry out specific activities which may lead to a restricted number of providers being endorsed. This would clearly lead to the potential for inflated or a limited range of pricing issues and options.

Turning specifically to the application, we would comment on specific items as follows under;

- Item 1.3.4 mention is made of liaising with shipping Lines and we would request that in all matters that could directly or indirectly impact on shipping Lines, then such Lines should be the subject of consultation before any particular course of action is decided upon.
- Item 1.3.8 in terms of intent and item 3.2.8 in terms of implementation refers to the establishment of model terms. We had understood this to be the establishment of conditions relating to the use of the facility but in terms of prices we understood the components that make up a particular cost was to be the subject of FCAI consideration. We do not support FCAI establishing maximum prices as being conducive to facilitating competition even by individual members. We would be opposed to FCAI being authorised to develop prices over and above the authorisation granted on 20 April 2005 by the ACCC to enable FCAI, over the following five years to collectively conduct negotiations for the terms and conditions of the supply of area hire services provided by stevedoring companies and/or other area hire service providers (ie price and non-price terms and conditions but for the supply of area hire or site occupation services only). Shipping Australia would not support model terms in terms of prices, extending beyond the supply of these services.
- Item 1.19 refers to area hire and it should be noted that such facilities are provided by either the port operating company in the case of a common user terminal or by the terminal management company under a leased private berth scenario.
- Item 3.1 - coordination and development of facilities; this item refers to berths as one item and any discussion relating to berths should again be addressed to initially and fully with the shipping Lines as any

predetermined or indicative suggestion from a user such as FCAI could compromise any subsequent negotiations in the use provision, access and cost of berths. In particular, SAL sees little benefit in the FCAI having any input into this matter on a “without limitation” basis.

Similarly, in item 3.2.6 FCAI is seeking authorisation to direct users of such facilities about the appropriate design of such facilities. However, it is not mentioned that FCAI represents only one cargo segment utilising port facilities and even in the case of the new Port Kembla facility, for example, car imports will represent approximately 55% of all estimated volume using that facility. There is the issue of FCAI possibly exerting real influence regarding other users of port facilities.

In conclusion, the requirement of “without limitations” for both existing and new facilities could well provide for an uncontrolled and unstructured approach to the overall market in terms of the intent and process and importantly the outcome. Whether that outcome would be more or less competitive is a very moot point with such a broad based authorisation application. Shipping Australia feels that a more defined, structured and targeted approach eg. defining what specific model terms would be for new facilities only and restricting the impact of authorisation to those measures necessary for individual car importers to make a decision about relocation to new facilities, on the limited basis outlined above, would allow Shipping Australia to endorse this authorisation.

We would be happy to elaborate upon the views raised above if so required.

Yours sincerely



Llew Russell  
Chief Executive Officer