



PO Box 4303, Geelong Retail, Geelong Vic. 3220  
Registered Office: Suite 4, 259 Whitehorse Rd., Balwyn, Vic. 3103  
Telephone: +61 3 5277 2822 Fax: +61 3 5277 2855  
E-mail: [info@steelaus.com.au](mailto:info@steelaus.com.au) Web: [www.steelaus.com.au](http://www.steelaus.com.au)

September 16, 2009

Attention: ACCC - Ms Sharon Clancy  
Via email: [Sharon.clancy@accc.gov.au](mailto:Sharon.clancy@accc.gov.au)

Dear Sharon

1. Following further consultation with relevant member companies I would like to provide the following comments in response to the AAT communication of 17 August 2009 to the Commission and to offer a practical proposal for the Commission's consideration on Authorisations as they apply to importing ASA member companies.
2. As indicated in my previous letter to the Commission, affected ASA member companies have been encouraged by the CEO of AAT that a mutually beneficial and obligatory relationship can result from this current transaction.
3. Central to ASA concerns is the AAT para 2.3 response to the Commission in their submission of 17 August 2009.
4. That para 2.3, non confidential version, reads, amongst other things:
  - 4.1 "AAT does contract with parties other than stevedores".
  - 4.2 "Moreover, AAT does not consider that the lack of a contractual relationship with a particular port user is a barrier to resolving issues and anomalies raised in good faith".
  - 4.3 "In all AAT terminals, AAT deals directly with consignees in relation to storage and quarantine issues";
  - 4.4 "Any relevant port user with respect to cargo that is damaged or lost while the cargo is in AAT's custody. In these situations, AAT directly corresponds with the relevant party and will report and record all incidents where cargo is damaged when it is in AAT's custody".
5. Even if there is no substantial evidence to support such a claim it is not unreasonable to claim that when there is little or no incentive for any entity to compete the inevitable consequence is that the only beneficiaries are that entity's share holders.

*The independent voice for a truly competitive Australian market for steel users*  
**FREE CALL: 1800 648 786**



- 5.1 The AAT Brisbane model for example is effectively a captive market situation for not only AAT's predominant shareholders but also AAT's landlord, the Port of Brisbane Corporation.
  - 5.2 The issues we have, however, can be addressed and resolved as indicated by our letter to Mr Faulkner of AAT – copy enclosed.
  - 5.3 Essentially, the ASA position on AAT's applications for Authorisation, however, is that commercial reality dictates that we do not throw the baby out with the bathwater.
6. Nor do we accept what can be termed a 'straw-man' type relationship or agreement with AAT on the inward delivery of steel cargo.
  7. The CEO of AAT, Mr Faulkner expressed in our meeting that the steel break bulk cargo is an important ingredient in AAT's business model.
  8. As stated in previous communications and discussions with the Commission our steel cargo issues with AAT are very different to those of, say, the FCAI.
  9. Our issues with AAT are not merely related to pricing, in that our more critical issues involve AAT's level and standard of service.
  10. An important factor is that our importing members do not have any direct commercial relationship with AAT by way of an enforceable contractual agreement.  
  
In essence the current contractual structure is aiding and abetting a monopolistic business model with limited accountability by the key (no choice) service providers on both pricing and service levels.  
  
Using Brisbane as an example the factual experience of members has been significant price increases driven by a remote landlord and thus by AAT.
  11. The ASA is proposing therefore that a condition for Authorisation be a structural change to existing commercial arrangements by providing for ASA importing members to contract directly with AAT on the receipt and delivery component of the inward cargo transaction.
  12. This provision would require the importing party to advise AAT in advance of the incoming volumes and types of steel cargos.
  13. This structural change could be implemented by the Commission allowing the respective parties, namely AAT and ASA, a period of say 60 days to:



- 13.1 Create a mutually acceptable service level agreement which both parties then submit to the Commission within the designated time frame.
  - 13.2 Request the Commission to accept the agreement as an Undertaking and for the Commission to investigate any breach of that Undertaking.
14. The ASA has focused on the AAT Brisbane situation which provides AAT with a substantial degree of market power. As Australian importers, our understanding is that part of the Trade Practices Act, as amended in July 2001, is relevant to our situation.
15. In proposing this provision for a structural change in direct commercial relationships the ASA is not proposing such an agreement would breach:-
- s 45; Anti-Competitive Agreements
  - s 47; Anti-Competitive Exclusive Dealing
- 15.1 Our motivation is to ensure there is a more accountable and productive relationship with the terminal operator AAT and to ensure there is no misuse of market power. An Undertaking by AAT would provide ASA company importers with the protection we consider is intended by the Trade Practices Act – s 46; Part X.
  - 15.2 Our position is influenced by the reality that the Commission is unlikely to undo a monopoly and the fact that AAT's predominant shareholders are the stevedore companies it mostly deals with on steel cargo at Brisbane but also Port Kembla and Melbourne.
16. As importers, our present structure on inward overseas cargo comprises:
- 16.1 ASA importer contracts with shipping company to load cargo; to provide ocean transport; to arrange discharge (unloading) of ocean vessel at designated Australian Port.
  - 16.2 Shipping company contracts with a stevedoring company to sort and stack the steel cargo on the wharf/terminal according to consignee's Bill of Lading.
  - 16.3 AAT contracts with the stevedore company to receive, store, deliver the sorted and stacked steel cargo.
17. In summary, our members' experiences have been:
- Negligible accountability for service levels at the port, terminal.
  - Shipping companies claim frustration from lack of access to relevant terminal service providers.



- In the case of the Brisbane Port Terminal AAT's shareholder stevedores create a barrier for access to either, AAT or its landlord, Port of Brisbane Corporation.
- Stevedore companies are not performing the functions they are paid to perform.

18. As indicated previously ASA member companies are more than prepared to pay for services provided those services are actually provided in an accountable and acceptable manner.

We do note, however, that the Port of Brisbane Corporation has a captive tenant and the issue of land values and rent is more a policy one for the Queensland Government rather than the Commission.

18.1 Other issues we do have on prices and charges which can be addressed in our proposed Service Level Agreement are:-

No charge or a reduced rate for charges applying when the importing consignee does not require the AAT service on R&D.

- Negotiable arrangements on storage charges, on a case by case basis rather than a take it or leave it approach.

19. The ASA is committed to working with AAT to achieve an acceptable Undertaking by way of an enforceable Service Level Agreement.

20. As expressed, the ASA is proposing a 60 day period to submit the joint agreement to the Commission.

21. The ASA requests the Commission to include this proposal in the its consideration of the AAT Authorisations as we believe it falls within the provision of third party rights.

Sincerely,

**M.J. Howard**  
CEO



AUSTRALIAN STEEL ASSOCIATION INC.  
A0020339V ABN 24 762 435 928

PO Box 4303, Geelong Retail, Geelong Vic. 3220  
Registered Office: Suite 4, 259 Whitehorse Rd., Balwyn, Vic. 3103  
Telephone: +61 3 5277 2822 Fax: +61 3 5277 2855  
E-mail: [info@steelaus.com.au](mailto:info@steelaus.com.au) Web: [www.steelaus.com.au](http://www.steelaus.com.au)

15<sup>th</sup> September 2009

Mr Craig Faulkner  
Chief Executive Officer  
Australian Amalgamated Terminals  
Unit 11, 3 Westside Avenue,  
Port Melbourne Vic 3207

Dear Craig,

**Re: AAT / Australian Steel Association**

Thank you for our recent meeting. Following up on actions, we confirm that the Australian Steel Association (ASA) member companies will endeavour to provide forecasts to facilitate more effective provision of port facilities and services. As you would appreciate this will involve the consolidation of otherwise commercially sensitive data, but we will initiate this process promptly with our members.

We are encouraged by the AAT offer to deal directly and contract with relevant parties, (steel importers), however, we also note that the ACCC authorisation process has highlighted the need for clear separation of the tasks performed, accountability and transparency as to who are the contracting parties at all stages of the supply chain.

To this end we consider that a mandatory requirement of the ACCC authorisation process should be to ensure accountability of pricing and proposed price increases by all relevant service providers with annual review by the ACCC or by a mutually agreeable third party.

Whilst we do not agree with the present rate of price increases, we acknowledge the initiation of dialogue as a positive step and consider that with clarity and accountability in all stages of port facility management, stevedoring and transport clearance of imported steel we should be able to achieve a mutually acceptable outcome. We propose that the positive intent that we discussed be captured in a mutually developed Service Level Agreement encompassing the key areas of forecasting, material storage and handling, claim procedures, pricing review and port facility development.

We look forward to working with AAT to this end.

Regards,

Merton J Howard  
Chief Executive Officer  
Australian Steel Association Inc

Cc: ACCC - Sharon Clancy  
[Sharon.clancy@acc.gov.au](mailto:Sharon.clancy@acc.gov.au)

*The independent voice for a truly competitive Australian market for steel users*  
FREE CALL: 1800 648 786