



ASIAWORLD

SHIPPING SERVICES PTY LTD

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Australian Consumer & Competition Commission
GPO Box 3131
Canberra ACT 2601

Attention Dr Richard Chadwick

2 November 2009

Dear Dr Chadwick,

RE AAT APPLICATIONS A91141 & A91142

Thank you for your letter dated 19 October enclosing the draft determination in the application for authorisation submitted by AAT.

In general we believe a lot of progress has been made in resolving the issues relating to concerns expressed by us and other shipping lines as well as end users in relation to the AAT facilities. In responding to the draft we would like to make some comments firstly by way of clarification of the ACCC evaluation.

4.52 Whilst we agree with the concept that one terminal handling all break bulk vessels is more efficient than stevedores individually managing berths, the reality in Brisbane was that the number of berths was reduced from a potential of six combining both Maritime and Hamilton facilities to just three at Fishermans Island. The situation in Port Kembla, although providing fewer berths than would have been available in Sydney Harbour, is not so critical especially where shipping lines have the alternative of using Newcastle to service Sydney clients. The industry concerns at the time in the case of Brisbane were a) the terminal facilities negotiated between the port of Brisbane and AAT would not provide sufficient wharf length for the anticipated ship numbers and b) the laydown and storage area would be insufficient at times of pressure. Both of these fears were proven in peak periods giving industry concern that there is no room for cargo growth. In addition the industry was promised that berth number four in Fishermans Island would be available as an overflow for break bulk cargo but this option was denied at the time of moving to Fishermans Island by the Port of Brisbane. It is for these reasons the industry insists on being able to have greater input into for the decision-making process for any such future arrangements.

4.58 Using a single national stevedore is not so critical for the break bulk industry and often shipping lines spread the stevedoring task as a matter of policy. The reason container lines look to a national stevedore is because of their need to meet berthing windows which is a critical pre-requisite at container terminals. The alternative of having Port authority controlled common user berths for general cargo is still a workable proposition as evidenced by Fremantle and Adelaide.

4.67 In the tables listed it is evident that the SAC percentage increases were considerably lower than the FAC increases. It should be noted that in most cases the SAC portion was an inclusive price in stevedoring contracts hence industry's concern that the higher portion of increase was passed on to end users.

4.84 It is our view that having Port authorities overseeing AAT pricing is a matter of concern, especially when the Ports Authorities levy significant increases themselves in their rental charges to AAT. The Port of Brisbane was primarily responsible for significant increases in recent AAT price increases because it raised rents by some 160% on AAT over a three-year period commencing in 2008. Leaving this task to the port authorities will provide even less protection for end users in a situation where a port is privatised, which is now a distinct possibility in the case of Brisbane.

4.85 There are in fact three stevedores operating out of the AAT terminal in Port Kembla one of which is not an AAT shareholder, but it is also not a new entrant to stevedoring since the formation of AAT.

Attachment D

We have no objections to the process regarding access conditions; however we feel there are some areas where the dispute resolution process may run into difficulties. The step by step process outlined in the draft concerning disputes is not itself of concern; however it must be considered that the only parties having a legal contractual relationship with AAT are the stevedores who have access to their terminals. It would follow therefore that resolution of any dispute would need to be ratified by the contractual parties in each case otherwise any dispute agreement between AAT and an end user could give rise to further claims between parties otherwise involved in the process.

In reality small claims such as truck waiting times, futile trips etc would best be resolved between AAT and the end user involved. However should the claim relate to cargo damage any negotiation between AAT and the end user could prejudice the traditional process for settling Maritime claims. We would also question whether a claim that is settled between AAT and an end user for instance for cargo damage would be legally valid. If not, it could give rise to another party, for example the insurer acting for the receiver of the cargo, taking action for the same claim against the shipping line. The critical issue in most cargo claims is the determination of where and under what conditions the damage occurred. Damage to cargo can occur pre-loading, during loading, in transit, during discharge or after discharge and in AAT terminals. It is the last two of these options that needs to be resolved between the stevedore and AAT before a cargo claim can be properly settled. In our opinion therefore such disputes would have to be suitably ratified and released through the contracting parties i.e. AAT and the stevedore.

We have already instigated discussions with AAT on some issues we have with their tariff structure and we are working towards resolution where, once agreed, the general tariff would be altered to reflect a more equitable treatment of particular cargo passing through the terminal. These matters apply to most lines using the AAT facilities.

We congratulate the ACCC on the thoughtful approach and effort in preparing the draft determination and believe a lot of headway has already been made between AAT, shipping lines and end-users. The concept of keeping the authorisation to period of five years for further review and over not granting automatic authorisation for new terminals is an important element in this procedure.

We will be happy to discuss any aspects of this response with you or attend any conferences arranged in the process of finalising this matter.

Yours sincerely



Ken Fitzpatrick
Managing Director