



Shipping Australia Limited
ABN 61096 012 574

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

Tel: 02 9266 9900
Fax: 02 9268 0230

Shipping Australia's submission to the ACCC in respect of the Australian Amalgamated Terminals Pty Ltd application for authorisations A91141 and A91142

Introduction

Shipping Australia Limited (SAL) appreciates the ACCC's invitation to make a submission in respect of the above applications.

Shipping Australia is a peak shipowner body representing the interests of many Australian and foreign shipping companies and shipping agents in the provision of shipping services to and from Australia and in some limited cases, the carriage of domestic cargo under licence but more commonly under single and continuous voyage permits. The members listed below carry or are directly involved in the carriage of over 80 per cent of Australia's container, car trade and cruising industry as well as over 50 per cent of our break-bulk and bulk trade. The primary focus of Shipping Australia is to provide shipping services that directly lead to the trade facilitation of Australia's international and domestic trade.

Members

AAL Shipping	McArthur Shipping & Agency Company
ANL Container Line Pty Ltd	Mediterranean Shipping Company (Aust)
APL Lines (Australia)	Pty Limited
Asiaworld Shipping Services Pty Ltd	MISC Agencies (Australia) Pty Ltd
Carnival Australia	Mitsui OSK Lines (Australia) Pty Ltd
CMA CGM	NYK Line (Australia) Pty Ltd
Evergreen Marine Australia Pty Ltd	OOCL (Australia) Pty Ltd
Five Star Shipping & Agency Co Pty Ltd	Pacific Asia Express Pty Ltd
Goodman Fielder	PB Towage
Gulf Agency Company (Australia) Pty Ltd	RCL (Australia) Pty Ltd
Hamburg Sud Australia Pty Ltd	Royal Caribbean Cruise Lines
Hapag-Lloyd (Australia) Pty Ltd	Seaway Agencies Pty Ltd
Hetherington Kingsbury Shipping Agency	Sino-Global Shipping Australia Pty Ltd
Inchcape Shipping Services	Svitzer Australia Pty Ltd
Indian Ocean Shipping Agencies	Wallenius Wilhelmsen Logistics
John Swire & Sons Pty Ltd	Wilhelmsen Ships Service
"K" Line (Australia) Pty Limited	
LBH Australia Pty Ltd	
Maersk Australia Pty Ltd	

Contributing members

China Shipping Container Liner Co. Ltd
Hanjin Shipping

Hyundai Merchant Marine
Neptune Shipping Line Pty Ltd
PT Djakarta Lloyd (Persero)
Pacific Forum Line (NZ) Ltd

Shipping Australia also has a similar number of corporate associate members that provide services to the maritime industry in Australia. There are also State Committees serviced by a secretary in each of the mainland States.

AAT leases wharves and cargo storage areas from State owned port authorities (with the exception of the privately owned Flinders Port Corporation in Adelaide) – the AAT Terminals – and AAT licences stevedores to use an AAT terminal to load or unload a vessel berthed at an AAT terminal and to temporarily store cargo at the AAT terminal.

The majority of break-bulk cargo and motor vehicles moving across Australian wharves is imported cargo and this submission will therefore concentrate mainly on imported goods but the matters raised below can be equally applied to exported general goods and motor vehicles.

Many of the problems that have been brought to the attention of SAL have related to the general cargo activities of AAT rather than the provision of services to pure car carriers and Ro-Ro vessels carrying motor vehicles. This is not to say that those members of SAL have not had concerns and are not supportive of the recommendations contained in this submission but there has been more complaints from the general or break-bulk cargo sector of the industry.

The following issues therefore relate essentially to problems associated with the operation of general cargo at AAT Terminals.

Comments on the Executive Summary

AAT has characterised it's creation in the context of, among other things:

- the policy decisions of State governments and port authorities for the use of valuable waterfront land
- requirements of independent port authorities with respect to the allocation of port land among port users, to maximise benefits to port users, and to realise commercial returns for corporatised port authorities.

SAL would assert that these decisions have been taken without consultation with the shipping industry i.e. key stakeholders in the provision of port facilities. In addition, there is clearly an interest in a State owned port corporation valuing its land highly to increase rental payments and improve returns on land tax for example.

It is interesting to contrast the AAT model with that of the provision of terminal and stevedoring services to the container market. In this market State Governments seek to actively encourage competition whereas in the general cargo and auto/ro-ro market State Governments seem to promote minimal competition in the provision of terminal

services. One could draw the analogy with simply having one terminal operator in many ports in Australia with different stevedores servicing the container vessels!

AAT contends that it was created due to pressures from the users of stevedore services including shipping lines etc to enhance efficiencies in the import supply chain across Australia, including stevedoring and PDI operations. Given the arms length relationship between AAT and the indirect customer ie having to work through a third party, being the stevedores, SAL would challenge the assertion that they have met the reasonable requirements of the ultimate customers. Similarly it is mentioned that the capital requirements of new terminal capacity and the need to meet those requirements at the lowest possible cost was another reason for the creation AAT. However, SAL's break-bulk members would challenge that statement on the basis that there is no requirement or commercial imperative to ensure that their capital expenditure is directed to ensure efficiency or cost effectiveness due to AAT's very strong market position.

In the application, AAT states that the Commission should grant authorisation for a number of reasons, including efficiencies arising by reason of utilisation of the most efficient or lowest cost terminal facilities. Again some SAL members would challenge that statement on the basis that their experiences have been that they are the least cost effective terminals. Where those members have used terminals other than AAT for limited operations where possible, cost savings have, for example, exceeded 80 per cent in Brisbane compared to AAT costs and have exceeded 85 per cent savings in Port Kembla when compared to the equivalent AAT costs.

Another reason advanced for granting authorisation was the more efficient utilisation of port land and a multi-user terminal being able to meet all the requirements of industry participants more efficiently than two terminals. However, our break-bulk members are of the view that AAT sets its tariffs at a level which does not have regard to fair and reasonable commercial terms. Port Kembla is an example where rental income increases have been due to CPI in a relatively short period but AAT have increased their charges by over 35 per cent. There is a significant lack of transparency in the AAT model to charges levied by the landlords ie. State Governments through their port authorities, and the translation of these charges by AAT as evidenced by the mismatch described above.

Another reason suggested in the application has been the availability of a pool of mobile machinery and equipment and shore cranes as well as a pool of specialised maintenance labour maintained on the site. However, our break-bulk cargo members suggest this has created a very strong market position for those having to use the AAT terminal. In their view one set of receipt and delivery personnel has not produced a public benefit that could not be provided by the stevedores as evidenced by the example of operations in other ports and such so-called efficiencies have increased costs compared to other potential models and operations prior to the creation of AAT.

Another reason suggested was the introduction of one operating system of IT infrastructure but again there could be cheaper alternatives by other suppliers that could still deliver one operating system.

In terms of operational efficiencies, the comment is made by AAT that their existence removes the need for stevedores to provide funding for large capital expenditure programmes thereby enabling smaller stevedores to work without the need to lease and operate their own terminals. However, it does not appear to SAL to be much room for other stevedores to compete given the very strong position of AAT. It is also mentioned that at some ports such as Port Kembla, it is simply not feasible to allocate port land to multiple terminals. However, our break-bulk cargo members would challenge that on the basis that the port chose to leave the existing facilities to individual stevedores for their exclusive use and control of berthing priorities and there could have been land available if the Corporation had consulted with other potential users and created more than one terminal for this type of operation. In general, our break-bulk members are of the view that the potential competition arising from other sites is clearly overstated by AAT and that they have not been totally responsive to ultimate user's requirements. Given the arrangements with stevedores and the fact that the ultimate user can only deal with the stevedores means that it is extremely difficult to have any normal commercial interaction with AAT as far as those users are concerned.

Liability issues

The Bill of Lading ie. the contract of carriage covering the sea carriage of break-bulk cargo confers certain liabilities upon the sea carrier to take reasonable care of the goods while in its possession and until that contract of carriage has been acquitted. As pointed out in these applications, AAT uses its own labour and equipment to move general cargo from the temporary storage area on the wharf into the hands of the importer and problems arise if an importer files a claim on the shipping company for cargo damage under the terms and conditions of the Bill of Lading. Determining precisely which of the parties should accept the liability for the damage becomes difficult and protracted. If the damage did not occur during sea carriage, SAL members have currently no option but to pursue claims against AAT via the stevedore even though the stevedore may not be the guilty party.

Additional points

SAL members consider it is misleading on page 17 of the AAT application under item c) of the fourth bullet point, to cite Port Botany container terminal operations as representing a competitive alternative to Port Kembla for automotive stevedoring. For all practical purposes and intent this is primarily a container terminal precinct and to suggest otherwise could be considered misleading.

On page 20, section 5.3, AAT examines areas in Brisbane that could potentially provide alternatives to the AAT terminal and reference is made to the Port West facility. In SAL's view this is not relevant as the AAT lease expires at the earliest date this potential facility would be operational. It is not really relevant to this application to suggest that this potential facility could be in competition with AAT.

On page 24, for example, in relation to AAT tariffs the correct comment is made that the stevedoring Access Charge is a charge for AAT equipment and other resources used for stevedoring cargo yet our break bulk members question why such charges are levied when cargo is carried direct to or from the vessel or truck when none of the

AAT equipment or other resources are used? Again, on page 25 section 6.3 it is mentioned that charges are calculated on revenue tonnes but our understanding is that AAT have a different interpretation of that term and its application compared to general industry usage which is in AAT's favour.

On page 26, section 6.4, reference is made to the Port of Brisbane Corporation oversight of AAT's charges that such fees and charges must not exceed those imposed by users of other wharves and fees and charges imposed for the use of similar wharves in other ports. This is very difficult to reconcile with the fact that AAT charges in Brisbane for general cargo are substantially higher than the charges at their facilities in other ports and are higher at all their facilities compared to charges at alternative facilities in other ports.

The public benefits outlined on page 29, section 8.3, for example do not really line up with the situation in the port of Fremantle where the port operates common user berths and they are a good example of alternatives to the AAT concept. The mention of one pool of machinery does not necessarily create a public benefit when outside machinery hire companies are competing with each other and could provide a more commercially realistic option.

On page 30 and 31, under section 8.3(b), AAT states that they lower barriers to entry for stevedores and other third parties. Our general cargo members are of the view that it is possible for port companies to provide multi-user facilities where stevedores provide all of the staff and equipment necessary as they do in ports other than Brisbane and Port Kembla. It is suggested that such stevedores could invariably operate at lower costs than those currently levied by AAT.

On page 32, section 8.4 mention is made that port corporations provide significant oversight over AAT's charges in terms of access, capital expenditure and facility requirements. Relevant members of SAL would challenge that statement on the basis that in their view port companies have proved to be ineffective in providing oversight for these charges and in this submission examples have been given of savings that have been available in Brisbane and Port Kembla in using terminals other than those of AAT.

Recommendations

Despite all the issues raised above that have arisen since the establishment of AAT, SAL does not advocate trying to dismantle the existing system or terminals. What SAL does recommend is that this authorisation is made strictly contingent on:

- a. a definite authorisation period such as five years and then for it to be reviewed in terms of the activities of the applicant under these authorisations
- b. that there be a review if there is any significant change of shareholding in the company
- c. That no further sites be acquired by AAT without a public tender system and following detailed consultation with the likely direct and

indirect users of that new site. SAL is in a position to facilitate such industry consultations and would be pleased to be of assistance in that respect.

- d. That ACCC establish a price monitoring system for the period of the authorisation
- e. AAT also consult with indirect users of its terminals on both pricing and operational issues.
- f. AAT take a more proactive approach to dealing with damage to cargo under their care

As a general comment, we would recommend that the ACCC examine overseas comparisons of any similar arrangements to determine whether a better alternative or modified operational model could be applied in Australia by AAT. It is not suggested that this delay the granting or refusal of authorisation but rather a general review may assist the Commission in its determination.

Shipping Australia would be pleased to provide any elaboration required in relation to the above comments or to assist the Commission in providing material in support of those comments. Any requests for clarification should be directed to my email at russell@shippingaustralia.com.au.

Mr Llew Russell, AM
Chief Executive Officer
Shipping Australia Limited