

**Submission in Relation to the Application by DP World Australia
Limited & Patrick Stevedores Operations Pty Limited -
Authorisations: A91238 - A91240**

The arrangement advocated in the application will clearly have a significant detrimental affect on competition in relation to road transport companies serving the container trades at Fremantle.

The State Government has already interfered in the market place for container transport at Fremantle by providing a tax-payer funded subsidy to the rail operator in relation to all containers transported on the rail network. That subsidy is currently \$45 per twenty foot container and \$90 per forty foot container. The subsidy disadvantages the trucking industry generally by interfering in the competitive relationship between road and rail transport for containers at Fremantle. The arrangement in the application will further disadvantage some road transport companies, which could ultimately result in their demise. The disadvantaged companies are likely to be small or owner-driver companies that are not supported by a large customer base of container importers and exporters.

Clearly, the arrangement proposed in the application will favour the large road transport companies that have a substantial network of container importers and exporters. The arrangement requires road transport companies to have a substantial balance of clientele that generate fairly similar volumes of import and export containers. The possibility and practicality of that requirement for small or owner-driver companies is disputable.

The empty container parks and other commercial activities at Rous Head, which are located on land leased from Fremantle Ports, generate a significant level of truck traffic on Inner Harbour access roads. That traffic compounds the social and environmental impacts on the neighbouring port community of trucks serving the container trades. The truck survey mentioned in the application included trucks visiting the empty container parks. Therefore, the actual percentage of trucks entering container terminals at Fremantle that carried a container in one direction only was not accurately established in the 2009 truck survey. Operationally, the potential exists for the majority, if not all, of the empty container parks at Rous Head to be located elsewhere. A review of the leasing policy associated with land at Rous Head could result in a situation that provides two of the five public benefits being claimed in the application, namely:

- reducing the traffic around the Port and an improvement in community amenity; and
- an improvement in the ability of the Port to handle larger throughput.

Interestingly, the largest percentage of trucks operating on the Perth metropolitan road network is associated with the transport of building materials. 100% of those trucks naturally travel unladen in one direction without any moves to interfere in that market place. However, in relation to container transport, notwithstanding

that 72% of trucks are allegedly laden in two directions with only 28% of trucks laden in one direction, industry parties are desperate to reward the road transport companies associated with the former while, consequentially, punishing those companies associated with the latter.

DP World Australia owns a 50% interest in P & O Trans Australia (POTA) and activities conducted by that company include:

- port containerised transport;
- empty and full container parks;
- container freight stations;
- landbridge rail services;
- rail terminals;
- warehousing; and
- local distribution.

While Patrick, which is an associate company of Asciano, offers ship to shore container handling services, it also provides container road transport through its operation Port Logistics. The company offers a complete range of land based services to shipping lines, freight forwarders, customs brokers, importers and exporters. Its function is to manage the movement of import and export containers between the wharf, container parks and inland terminals utilising road and rail transport. POTA and Port Logistics are substantial companies offering trucking services to the container trades at Fremantle.

Both DP World and Patrick are vertically integrated companies that operate container terminals at Fremantle with associated companies provide trucking service to and from those terminals. A potential already exists for DP World and Patrick to provide preferential treatment to POTA and Port Logistics; the arrangement proposed in the application formalises and legitimises that potential.

The proposal in the application has the potential to significantly lessen competition in the downstream market of container stevedoring at Fremantle.

The vehicle booking system (VBS), which is managed by 1-Stop, is a mechanism that was introduced to control the orderly arrival of trucks at terminal gates. It allows container terminal operators the opportunity to minimise the allocation of resources to the road transport/terminal interface. It is now also being used as a mechanism to punish road transport companies that, on occasions, are unable to comply with the requirements of that control. Road transport companies serving the container trades at Fremantle already experience difficulties obtaining slots for container pick-up or delivery at terminals. The arrangement proposed in the application will exacerbate the difficulties for some trucking companies by giving preferential treatment to those road transport companies fortunate enough to have clientele bases that allow them to secure two-way loading.

1-Stop, which is a collaboration involving DP World and another associated company of Asciano, essentially controls the operation of trucking companies serving the container trades at Fremantle and elsewhere through the VBS. 1-Stop benefits from financial penalties where trucks are unable to comply with the requirements of that control. The arrangement proposed in the application is plainly an additional assault on the ongoing operation and survival of owner-driver companies and a mechanism to further enhance the dominate position held by the large trucking companies of which POTA and Port Logistics are prominent members.

It is appropriate that two-way truck loading is encouraged. However, there are other ways to persuade trucking companies to adopt two-way loading, where possible and practicable, without, amongst other adverse impacts, jeopardising the future of small and owner-driver trucking companies. The unbridled enthusiasm of DP World and Patrick to encourage two-way loading of container trucks could be better expressed through a comprehensive and sustained education and advertising campaign organised jointly by the companies.

The application advocates an arrangement that:

- is anti competitive;
- breaches various elements of the Trade Practices Act 1974;
- will discriminate against smaller road transport companies, in particular, owner-driver companies;
- potentially delivers DP World and Patrick with the opportunity to formalise and legitimise preferential treatment of their associated trucking ventures; and
- has the potential to significantly lessen competition in the downstream market of container stevedoring.

Those adverse affects heavily outweigh any alleged public benefits from the arrangement proposed in the application. Accordingly, the ACCC should deny both interim and final authorisation of the application of DP World and Patrick to collude and provide preferential treatment to the trucks of road transport companies fortunate enough to be able to engage in two-way loading of container at Fremantle.

Road transport companies able to engage in two-way loading of their trucks ostensibly already have a significant advantage in the market place for port related container transport.

Finally, it is important to note that the claimed public benefits are essentially outcomes that have dubious public benefit, if any at all.

- *Increased truck utilisation* does not benefit the public per se; it improves the productivity of the trucks and should provide the road transport company with a competitive pricing advantage in the movement of containers at Fremantle.

- *A reduction in the traffic and an improvement in community amenity around the Port of Fremantle* does not benefit the public; the public being defined as the people, the populace, the community, society, everyone, the nation. The benefits are reserved to a relatively small section of the community neighbouring the Port of Fremantle.
- *Environmental benefits*- sure less trucks on the road benefits the environment, but the public benefit is remote, indirect and, in the scheme of things, negligible.
- *Lower costs and increased convenience for industry participants* - these are industry and not public benefits - there is no guarantee that the public will be included in sharing the benefits of lower costs - more likely share holders will benefit from lower costs for the road transport companies.
- *A more optimal method of allowing the Port of Fremantle to handle larger throughput*. This is a direct benefit for the Port of Fremantle and not a direct benefit to the public.

The claims of public benefit are neither realistic, convincing nor persuasive.