



DP World Australia Limited and Patrick Stevedores Operations Pty Ltd - applications for authorisation A91238–A91240 – request for interim authorisation

REASONS

DECISION

1. The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation with respect to applications for authorisation A91238–A91240 lodged by DP World Australia Limited and Patrick Stevedores Operations Pty Ltd on 2 July 2010.
2. Interim authorisation commences immediately, and will remain in place until the date the ACCC's final determination comes into effect or unless revoked earlier.

THE APPLICATIONS

3. On 2 July 2010 the ACCC received applications for authorisation A91238–A91240 from DP World Australia Limited (DP World Australia) and Patrick Stevedores Operations Pty Ltd (Patrick) (together 'the Applicants').
4. DP World Australia and Patrick each operate a container terminal at the Port of Fremantle (the Port). They seek authorisation for a proposed agreement regarding some aspects of truck carrier access, and the operation of a Vehicle Booking System (VBS), for their container terminals at the Port.
5. In particular, DP World Australia and Patrick propose to make available preferential treatment to truck carriers engaged in 'dual runs' (i.e. where the truck both delivers a container and collects a container during the same run) at the Port. Under the agreement, DP World Australia and Patrick will agree some of the terms on which the preferential treatment will occur.
6. DP World Australia and Patrick seek authorisation for 5 years.
7. Further information regarding the application is available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister.

BACKGROUND

8. Since 2001, the WA Government has been concerned about road congestion around the Port, and the negative impact of this upon community amenity in areas surrounding the Port. The WA Government has conducted reviews of freight movements throughout the Port and the Perth metropolitan area. The Department of Transport (formerly the Department for Planning and Infrastructure) has chaired the Transport Forum WA (the Forum) which is focused on progressing initiatives aimed at improving road use around the Port. The participants in the Forum are representatives of the road transport industry, Fremantle Ports, DP World Australia and Patrick.
9. The Forum considers that if truck carriers could be encouraged to engage in 'dual runs' whereby a truck delivers a container to the Port and collects a container from the Port during the one trip, road congestion around the Port would be significantly reduced. The arrangements for which authorisation is sought result from the work of the Forum, led by the WA Government.
10. In order to implement the proposed arrangements, amendments are required to the VBS currently used at the Port which is owned and operated by 1-Stop Connections Pty Ltd (1-Stop). The VBS is a web-based online slot booking system designed for container terminals to organise truck carrier access for the purpose of receiving and delivering shipping containers. Access to the VBS is available only to registered truck carriers through the 1-Stop website.
11. In essence, in order to implement the proposed arrangements, a new type of slot (known as a 'Port Slot') will be added to the range of slots available in the VBS and a dual booking screen will be created so that truck carriers would be able to view and book the Port Slots available at each terminal at the same time.
12. The Applicants have asked 1-Stop to commence developing the high level design for the necessary changes to the VBS that the proposed arrangements will require. This is likely to take four months.
13. The next step will involve 1-Stop developing the functionality in the VBS to facilitate the introduction of Port Slots. This is likely to take an additional 2-3 months and it will involve considerable investment by the Applicants.

THE AUTHORISATION PROCESS

14. The ACCC can grant statutory protection from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangements results in a net public benefit.

INTERIM AUTHORISATION

15. Section 91 of the Act allows the ACCC to grant interim authorisation for the purpose of enabling due consideration to be given to an application for authorisation.
16. The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

17. Upon receipt of the applications for authorisation, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation.
18. The ACCC has received public submissions from the following interested parties in relation to the request for interim authorisation:
 - **Australian Quarantine and Inspection Service** which has no objection to the applications, including the request for interim authorisation.
 - **Customs Brokers & Forwarders Council of Australia Inc.** considers that it is appropriate for interim authorisation to be granted to allow the Applicant's to trial the proposed arrangement to determine whether the likely outcomes can be extrapolated to the claimed benefits.
 - **Freight and Logistics Council of Western Australia** (the Council) which supports the request for interim authorisation. The Council believes interim authorisation will allow the Applicants to rapidly commence progress on the proposed arrangements and realise the benefits that the Council expects to result from the proposed arrangements.
 - **Jayde Transport** which supports the request for interim authorisation to enable system development to proceed.
 - **Mr Gary Davies** does not support interim (or substantive) authorisation being granted to the applications. While Mr Davies considers that it is appropriate that two-way truck loading is encouraged, he believes that the proposed arrangement will favour the large road transport companies that have a substantial network of container importers and exporters, to the detriment of small or owner-driver transport companies.
 - **Ports Australia** which supports the request for interim authorisation. Ports Australia submits that the initiative will promote increased efficiency and productivity in port operations and is closely aligned with the type of initiative advocated in the National Ports Strategy. Ports Australia considers that the granting of interim authorisation will essentially trigger preparatory work, such as further development of software, essential to the two-way loading scheme's implementation. Ports Australia noted that in the longer term, new entrant stevedores would need to have an option of being party to the two-way loading system.
 - **Transport Forum WA Inc. (TFWA)** supports the request for interim authorisation. TFWA considers that interim authorisation will enable the proposed initiative to be progressed and the expected benefits to be achieved.

- **Victorian Transport Association** (the VTA) which strongly supports the Applicants' request for interim authorisation. The VTA considers that interim authorisation will enable DP World Australia, Patrick and 1-Stop to proceed with the development of the port-wide time-slot matching functionality. This, in turn, will allow individual transport operators to make better operational decisions about the optimal use of their road transport assets through two-way loading opportunities.
- **Western Australian Port Operation Task Force** (the POTF) which submits that interim authorisation will provide sufficient confidence for the Applicants to proceed with system development. The POTF understands that, even if interim authorisation is granted, actual implementation of the dual running initiative will not occur before the ACCC makes its final determination.

REASONS FOR DECISION

19. In making this decision to grant interim authorisation, the ACCC has considered:

- Interim authorisation will provide the Applicants with sufficient certainty to proceed with, and fund, the second phase of the development of the VBS.
- Interim authorisation will enable the public benefits associated with more efficient use of the roads in and around the Port of Fremantle, as identified by the Transport Forum WA, to be realised sooner.
- The development of the VBS is unlikely to be completed before the ACCC issues its final determination in this matter and as such, granting interim is unlikely to alter the status quo for Port users.
- Amendments to the VBS which occur while interim authorisation is in place can be unwound if the ACCC decides not to grant final authorisation.

20. The ACCC accepts that the possibility of another container terminal operator commencing operations at the Port of Fremantle during the term of the interim authorisation is unlikely. However, the issue of access to the VBS by new entrant container terminal operators will be an important consideration during the ACCC's assessment of the substantive applications for authorisation.

RECONSIDERATION OF DECISION

21. The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.