



## **Port of Brisbane Pty Ltd & Carnival – application for authorisation AA1000399 Interim authorisation decision 2 November 2017**

### **Decision**

The Australian Competition and Consumer Commission (the ACCC) has decided not to grant interim authorisation in respect of the application for authorisation lodged by the Port of Brisbane Pty Ltd (PBPL) and Carnival (together, the Applicants) on 11 October 2017.

Interim authorisation was requested by the Applicants in relation to a licence agreement between them, under which Carnival will be bound by take or pay obligations for a new cruise ship terminal to be constructed by PBPL, in exchange for which they will receive certain priority berthing rights from PBPL (the proposed arrangements).

### **The application for authorisation**

The Applicants seek authorisation for the proposed arrangements for a period of 18 years. The Applicants requested interim authorisation but do not intend to give effect to the proposed arrangements until the construction of the proposed new cruise ship terminal is completed in 2020.

### **The authorisation process**

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

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The Applicants requested interim authorisation on the basis that:

- the grant of interim authorisation does not raise material competition risks
- the proposed development is likely to result in significant public benefits which far outweigh any lessening of competition, and

- there will be no changes to the market or competitive landscape as a result of interim authorisation.

PBPL advises that it will not commence construction works on the proposed development until it receives interim or final authorisation, because it requires some level of comfort that the proposed development will be supported by Carnival through the terms of the agreements.

The Applicants submit that, if interim authorisation is granted, the surcharging stages of the project will commence in November 2017. If interim authorisation is not granted, the Applicants advise the surcharging works will not commence and the project will be subject to a 12 month delay to the construction program (because of availability of the dredge required to complete the surcharging works).

### **Reasons for decision**

In deciding not to grant interim authorisation, the ACCC considers that:

- interim authorisation is not required for PBPL to commence construction works. As the Applicants do not intend to engage in the proposed conduct for which they sought interim authorisation until 2020, there is no basis for a grant of interim authorisation because there is no proposed conduct for which authorisation is required and no urgency in respect of an interim authorisation,
- the ACCC is required to make a final determination in respect of the Applicants' application for authorisation well before 2020, and
- the ACCC has not had the opportunity to fully consult on or consider any substantive issues of public benefit or detriment to the public. The decision not to grant interim authorisation has not been influenced one way or the other by those issues and should not be taken as indicative of the ACCC's likely final decision in relation to whether or not authorisation will be granted.

### **Next steps**

The ACCC will continue with its public consultation on the application and expects to issue a Draft Determination on the application for authorisation in January or February 2018.