



**SUBMISSION TO
THE REVIEW OF PORT
COMPETITION
AND
REGULATION IN NSW**

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The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing the automotive industry in Australia. Our membership comprises the four domestic vehicle manufacturers as well as importers of all major brands of passenger, light commercial, four wheel drive vehicles and motorcycles in Australia.

The FCAI makes the following comments in response to the key issues raised in the August 2007 Issues Paper headed *Review of Port Competition and Regulation in NSW*". In addition, the Chamber has provided for reference, FCAI's application to the ACCC seeking authorisation in respect of the development of car import / export port facilities which was lodged with the Commission in December 2006 and a report prepared by the FCAI addressing importation of motor vehicles into NSW dated July 2005.

Degree of competition between State owned port corporations

The automotive industry's experience is that competition is restricted by government policy and the application of the NSW Ports Growth Plan. The industry is in the process of being relocated from Port Jackson to Port Kembla. Trade from Darling Harbour will be relocated from October 2007 with the balance of trade from Glebe Island scheduled to follow in September 2008.

The decision was taken by government to relocate automotive imports from Port Jackson to Port Kembla before the expiration of the existing leases without any consultation with the automotive importers. Because of the area of land and infrastructure required to support the importation process, the industry has no option but to import through the Port where these facilities are provided. This is not necessarily the optimal location or facility for the industry.

Industry considered that the Port of Newcastle offered a sound alternative to Port Kembla which members were keen to explore. There was substantially more available land and a more suitable road and rail infrastructure in place. However the option could not be fully explored under the government's policy framework.

Competitiveness and commerciality of stevedoring services

The shipping lines nominate which stevedore will discharge the vessel. AAT is the facility manager at both Glebe Island and Port Kembla and has responsibility to provide suitable infrastructure. Currently P&O Ports

and Patricks are the providers of stevedoring services to the industry. FCAI is not aware of any regulated provider arrangements and the competitive arrangements are currently the subject of an ACCC inquiry.

In 2006, the FCAI made application to the ACCC for approval to establish model terms and conditions and to collectively negotiate with stevedores and AAT on port related issues. Approval was granted in 2007 for a period of 5 years. A copy of the application has been provided. The application sets out in detail the balance of power and commercial arguments in support of the application.

Competitiveness and commerciality of logistics services

The automotive industry has three main logistics providers in NSW – Toll, Patrick Autocare and Ceva Logistics (formerly TNT). Rail is currently not utilised in Port Jackson for movement of imports from the Port, however the infrastructure will be in place for rail to be an alternative form of transport from Port Kembla to Sydney and possibly into rural locations.

Vehicle importers individually negotiate contracts for their distribution and logistical requirements. The transporting of motor vehicles requires the use of specialised trailers and drivers must be trained in the appropriate manner to safely load and freight motor vehicles to minimize damage and risk of injury. Freight charges are a significant cost factor. Road infrastructure and proximity to customer base influence the cost structure.

Impact of regulation on port services

The relocation of the car importation activities consistent with the NSW Ports Growth Plan was subject to satisfactory commercial arrangements being negotiated between Port Kembla Port Corporation and lessees. These negotiations took place with AAT and the stevedores without importers being party to the negotiation process. Such significant decision making should require adequate consultation with the importers to ensure their needs are adequately considered.

The FCAI is concerned that the exclusion of port users from these negotiations may lead to a less than optimal outcome and result in logistical inefficiencies.

Competitiveness and commerciality of prices

Transparency built into the pricing structure of Ports and those service providers in monopoly and duopoly positions would enhance port users' awareness as to the fee structure and subsequent fee increase. At present, price increases are passed on through shipping lines to the importers with little or no explanation or opportunity to challenge. Ports should take a more active role in price surveillance of facility managers and stevedores to ensure that their monopolistic stake in the port is not abused.

Commerciality of terms and conditions

The basis of the FCAI application to the ACCC to authorise collective negotiation with stevedores and the facility management provider, was that the importers were individually unable to negotiate commercial terms and agreements. There are no contractual arrangements between the parties and costs are passed on to the importer through arrangements with shipping lines. Authorisation granted by the ACCC does not in itself allow effective negotiation to take place. This depends on the service providers entering into such negotiations in good faith and with a willingness to participate constructively with the end users.

Reliance on the Trade Practices Act to resolve potential disputes is time consuming and costly. Given the absence of competition in this area, there should be some mechanism to negotiate on terms and conditions and mediate without violating the TPA to ensure a cost effective pricing structure is in place at ports.

Extent of restrictions to competition

The offering of exclusive leases by port authorities under existing planning arrangements does not provide any scope for new entrants to establish new port facilities. The scarcity of port land and infrastructure requirements also provides a barrier to new entrants as do existing contractual arrangements between shipping lines and stevedores that tend to be negotiated across all Australian Ports rather than single port of entry.