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Dear Interested Party

Re: ACCC seeking your views: AAT's (Qube's) proposed acquisition of the business and assets of MIRRAT

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on Australian Amalgamated Terminals Pty Ltd (**AAT**)'s, a wholly owned subsidiary of Qube Holdings Limited (**Qube**), proposed acquisition of the business and assets of Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) (the **proposed acquisition**).

AAT operates automotive cargo terminals in the Port of Brisbane and Port Kembla, as well as a general cargo terminal at Appleton Dock at the Port of Melbourne. Qube is an Australian provider of import and export logistics services. MIRRAT's ultimate parent is Wallenius Wilhelmsen ASA, which is a global shipping and logistics provider. Further details are provided at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we seek your views on whether the proposed acquisition:

- would result in Qube having the ability and/or incentive to favour its own businesses at the expense of its competitors at various levels of the automotive transport supply chain connected to the Port of Melbourne;
- would result in a loss of actual or potential competition for automotive terminal services along Australia's eastern seaboard as a result of AAT(Qube)'s common ownership of all three automotive terminals in Brisbane, Port Kembla and Melbourne;
- would reduce competition for terminal services at Appleton Dock, where AAT(Qube) is currently licensed to operate the terminal, primarily as a general cargo facility;
- whether an undertaking by AAT (Qube) containing commitments regarding its conduct at MIRRAT has the potential to remedy any competition concerns.

Both AAT (Qube) and MIRRAT operate their RoRo terminals subject to court enforceable undertakings to the ACCC. These undertakings require the parties not to discriminate between terminal users in favour of a related body corporate, to ring-fence confidential information of terminal users, to apply published and non-discriminatory berthing principles and provide a right for certain stakeholders to refer price and non-price disputes to an independent expert. AAT (Qube) has proposed amending its existing undertaking to

cover MIRRAT. Details of the existing undertakings, alongside background to the automotive trade at the Port of Melbourne are provided in **Attachment A**.

Further issues you may wish to address are set out in **Attachment B**.

Please note the ACCC has not yet formed a view as to the nature and extent of any competition concerns arising from the proposed acquisition.

Further, the ACCC has not formed a view regarding the parties' proposal to vary and withdraw their respective court enforceable undertakings. The ACCC would only consider accepting a remedy through an undertaking made pursuant to section 87B of the *Competition and Consumer Act 2010* (including but not limited to consenting to the parties' proposal or accepting a new undertaking from Qube/AAT) if the ACCC was satisfied that the remedy would sufficiently address a likely substantial lessening of competition arising from the proposed acquisition.

The market consultation process should not be taken as an indication that the ACCC will accept any remedy from the parties or the proposed approach to the existing undertakings.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010*. Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

Please provide your response by **4pm on 12 July 2024** via email with the title: *Submission re: AAT / MIRRAT*. If you require more time to respond, please let us know.

If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact mergers@accc.gov.au. Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

Confidentiality of submissions

The ACCC treats sensitive information it receives during a merger review as confidential, and will not publish your submission. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, we will notify you in advance where possible so that you have an opportunity to be heard. Therefore please clearly indicate if any information you provide is confidential. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Morag Bond
General Manager
Merger Investigations

Attachment A

Background

Automotive trade at the Port of Melbourne

The Port of Melbourne consists of several major docks, including Webb Dock West.

Melbourne's automotive trade occurs at the Terminal at Webb Dock West. It is a three berth Terminal dedicated to processing cargo transported on Roll-on Roll-off (**RoRo**) and Pure Car Carrier (**PCC**) vessels. These vessels principally carry standard automobiles as well as "high and heavy" (HH) vehicles, such as buses, tractors and other heavy wheeled and tracked vehicles. It occupies 187,000 square metres and has a 14,500 car storage space across both inside and outside carparks as well as an area for Pre-Delivery Inspection (PDI) operators close to the Terminal's lease area.

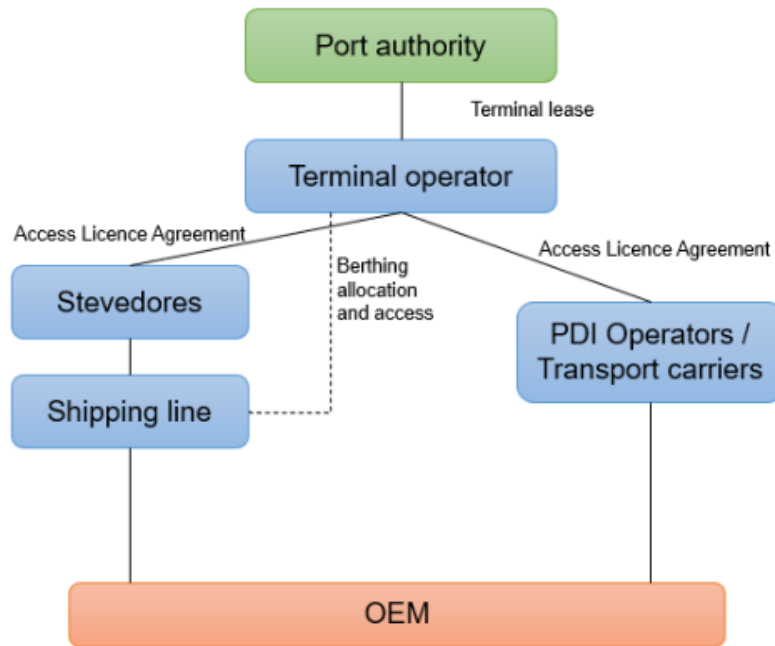
On occasion, the Terminal also receives and processes general non-automotive cargo. This occurs when general or break bulk cargo is co-shipped alongside HH vehicles on a RoRo vessel and usually where the freight is packed on specialised RoRo wheeled trailers that permit the cargo to be rolled on and off the vessel.

Supply chain for automotive cargo at the Port of Melbourne

The supply chain for imported vehicles being transported by shipping lines on RoRo vessels is summarised as follows:

- **Car manufacturers and original equipment manufacturers (OEMs)** - contract with shipping lines for transport and delivery of vehicles to the automotive/RoRo terminal at Webb Dock West.
- **Stevedores** - are contracted by shipping lines to load cargo on and off vessels when they are berthed at the terminal at Webb Dock West.
- **The automotive/RoRo terminal operator** - is responsible for the day-to-day operation of the terminal which includes managing the arrival of vessels, providing temporary storage for cargo and facilitating access to the terminal by stevedores, mooring service providers and PDI operators.
- **Transport carriers/PDI operators** - after a vehicle has been unloaded into the port terminal and is cleared by customs and quarantined to leave the terminal, PDI operators inspect and load the vehicles on specialised trucks for delivery to car dealers or to the PDI operators' facility for storage or value add processing.
- **Car manufacturers and original equipment manufacturers (OEMs)** - are the ultimate consignee of automotive shipments which then sell the vehicles to end consumers.

The contractual relationships in the automotive logistics supply chain can be broadly depicted as follows:



Source: AAT (Qube)

General cargo trade at the Port of Melbourne

Appleton Dock is a general cargo terminal at the Port of Melbourne, which handles general cargo, break bulk cargo, project cargo and some containerised cargo. It is operated by AAT (Qube). AAT (Qube) manages berthage, wharf space and delivers services to third-party stevedoring companies.

AAT operates at Appleton Dock under rolling, short term licence arrangements. Appleton Dock is licensed such that it is prohibited from being used to handle automotive cargo. AAT is only permitted to handle 'overflow' automotive or RoRo vessels at Appleton Dock where it obtains the prior written consent of the Port of Melbourne Operations Pty Ltd.

The facilities are operated under an open-access basis subject to a s87B undertaking accepted by the ACCC in 2016 (**AAT Undertaking**). Any stevedore or transport operator may apply to have access to the site to service their customers. The access is on a non-discriminatory basis so that all parties are provided services to the same level. Stevedores or transport operators seeking access to the terminal can apply through AAT who will provide a stevedore licence or permit access to approved applicants.

Proposed acquisition

AAT (Qube) is proposing to acquire the business and assets of MIRRAT. MIRRAT operates the automotive/RoRo terminal at Webb Dock West (Port of Melbourne), subject to a section 87B undertaking accepted by the ACCC on 27 March 2014 (**MIRRAT Undertaking**).

MIRRAT

MIRRAT's parent is Wallenius Wilhelmsen ASA (**WW**). WW is a Norway-based global provider of RoRo shipping and vehicle logistics and operates automotive terminals in Europe, the UK, the US and the Asia-Pacific.

MIRRAT only operates the automotive/RoRo terminal at Webb Dock West. It does not conduct any other terminal operations in Australia.

The MIRRAT Undertaking was accepted by the ACCC in relation to MIRRAT's acquisition of a long-term lease to operate the Webb Dock West RoRo terminal at Port Melbourne. The undertaking commenced on 1 January 2018 and expires on the date that MIRRAT ceases to operate the Terminal, which may occur on or before 30 June 2040, and the ACCC confirms this in writing.

The MIRRAT Undertaking includes a provision regarding change of control of MIRRAT's business (that is, the operation of the RoRo terminal at Webb Dock West).

Under the change of control provision, MIRRAT may only implement a change of control of the operation of the automotive terminal at Webb Dock West to another person or entity if that person or entity has given a s87B undertaking to the ACCC that:

- requires it to comply with the same obligations as are imposed on MIRRAT pursuant to the MIRRAT Undertaking, or
- on terms that are otherwise acceptable to the ACCC,

unless the ACCC has notified MIRRAT in writing that a s87B undertaking under the change of control provision is not required.

The full text of the MIRRAT Undertaking can be found on the [ACCC's s87B undertakings register](#).

AAT / Qube

AAT (Qube) operates automotive cargo terminals in Port of Brisbane and Port Kembla, as well as a general cargo terminal at Appleton Dock in Port of Melbourne. AAT (Qube) previously held the lease at Webb Dock West and operated the former RoRo terminal at the site until its lease expired on 31 December 2017.

Qube is Australia's largest integrated provider of import and export logistics services with national operations that provide a broad range of services across multiple aspects of import-export supply chains. Its port-related activities include facilities management, stevedoring, processing, and delivery. It manages and develops strategic properties such as inland rail terminals and related logistics facilities. It provides road and rail transport of freight to and from ports, operation of container parks, customs and quarantine services, warehousing, intermodal terminals, and international freight forwarding.

Qube and its subsidiary AAT operate subject to the AAT Undertaking. The AAT Undertaking was accepted in relation to Qube's acquisition of a 50 per cent shareholding in AAT, resulting in Qube holding 100 per cent of AAT. The AAT Undertaking applies in respect of AAT's operation of automotive and/or RoRo terminals at Port Kembla and Fisherman Island, and the general cargo terminal at Appleton Dock at Port Melbourne. The AAT Undertaking commenced on 23 November 2016 (and was varied on 25 June 2018), and has no end date.

The full text of the AAT Undertaking can also be found on the [ACCC's s87B undertakings register](#).

The parties' proposed approach to s87B undertakings

The proposed acquisition will give rise to a Change of Control for the purpose of the MIRRAT Undertaking (described above). AAT does not propose to enter a section 87B

undertaking with identical terms to the MIRRAT Undertaking.

Instead, AAT (Qube) proposes that its operation of the Terminal would be subject to the AAT Undertaking already in place for its existing terminals.

In summary, the AAT Undertaking provides that:

- AAT must not discriminate between terminal users and must comply with open access conditions and berthing allocation rules,
- AAT must ring fence confidential information of terminal users and parties who have applied to become terminal users,
- AAT must comply with a price dispute resolution process, which includes the appointment of an ACCC approved independent price expert,
- AAT and Qube must comply with a non-price dispute resolution process, and
- AAT and Qube must provide for the effective oversight of their compliance with the undertaking (including by an ACCC approved independent auditor).

In certain circumstances, the AAT Undertaking provides that the ACCC may review its terms.

To satisfy the Change of Control provision in the MIRRAT Undertaking, Qube seeks the ACCC's consent to vary the AAT Undertaking to also cover the operation of the RoRo terminal at Webb Dock West from the date of completion of the proposed acquisition. Qube submits that its proposal to vary the AAT Undertaking should be acceptable to the ACCC to address any potential competition concerns arising from the proposed acquisition. Separately, Qube considers such a variation also satisfies the Change of Control provision of the MIRRAT Undertaking.

Qube has also proposed additional clauses to be included in the AAT Undertaking. The ACCC is still considering the appropriateness of additional clauses.

If the ACCC consents to Qube's proposed variation, MIRRAT seeks the ACCC's consent to withdraw the MIRRAT Undertaking from the date of completion of the proposed acquisition.

The ACCC has not formed a view regarding the parties' proposal to vary and withdraw their respective s87B Undertakings. The ACCC would consult further on any significant changes to the obligations currently contained in the MIRRAT or AAT Undertakings. Further, the ACCC would only consider accepting a remedy through a s87B undertaking (including but not limited to consenting to the parties' proposal or accepting a new undertaking from Qube/AAT) if the ACCC was satisfied that remedy would sufficiently address a likely substantial lessening of competition arising from the proposed acquisition.

Attachment B

The ACCC seeks your views on the questions in this attachment. The more information we have, the better we can assess the impact of the proposed acquisition. However, if you are unsure of any questions, or do not have specific knowledge about some of the questions, you can leave them blank. You can also include any other information you think is relevant.

Where possible, provide specific examples to support your views.

Background

1. Provide a brief description of your business or organisation (e.g. original equipment manufacturer / car manufacturer, shipping line, stevedore, pre-delivery inspection operator, transport carrier, interested third party).
2. Please outline your interest in the proposed acquisition.
3. If your organisation is a current customer/ user of any of the automotive/RoRo terminals at the Port of Melbourne, Port Kembla in New South Wales, or Fisherman Islands in Queensland, please provide details regarding:
 - a. the terminal(s) used;
 - b. the volume of automotive cargo you have loaded/unloaded at each terminal in the past 12 months;
 - c. the frequency of your use of each terminal;
 - d. how you currently procure services at each terminal and who you procure services from;
 - e. how would procurement be expected to change because of the proposed acquisition.
4. If your organisation is a current customer/ user of Appleton Dock at the Port of Melbourne, please provide details regarding:
 - a. the volume of general cargo you have loaded/unloaded at the terminal in the past 12 months;
 - b. the frequency of your use of the terminal;
 - c. how you currently procure services at the terminal and who you procure services from;
 - d. how would procurement be expected to change as a result of the proposed acquisition.

Relevant markets

The ACCC is currently considering the likely competitive effects of the proposed acquisition in the following markets along Australia's eastern seaboard:

- the supply of automotive terminal services;
 - the supply of general cargo terminal services;
 - the supply of vehicle Pre-Delivery Inspection (**PDI**) services;
 - the supply of automotive stevedoring services;
 - the supply of vehicle transport logistics services.
5. The ACCC seeks your views on whether the above markets are the relevant markets for considering the impact of the proposed acquisition.
 6. The ACCC seeks your views on what geographic market is relevant to the supply of these services. Do services at one or more ports on the eastern seaboard provide a competitive alternative to customers of MIRRAT or vice versa? Should the geographic market be restricted to individual or groups of ports?

Automotive terminal services at the Port of Melbourne

7. What effect do you consider the proposed acquisition would have on competition for the supply of:
 - a. automotive terminal services;
 - b. automotive stevedoring services;
 - c. vehicle transport logistics services.
8. Do AAT's existing terminals in Brisbane, Port Kembla or Melbourne compete with MIRRAT?
9. Can customers of MIRRAT switch (or threaten to switch) to import some or all of their vehicles through AAT's terminals in New South Wales or Queensland in response to price or non-price changes at MIRRAT (or vice versa)?
10. To what extent could AAT use its common ownership of the three RoRo terminals in New South Wales, Victoria and Queensland, post acquisition to raise prices/lower quality of services at each of the terminals?
11. Please provide details of any concerns you may have about access to the AAT-operated automotive/RoRo terminal at Webb Dock West following the acquisition. Is there a risk that Qube could frustrate non-affiliated companies, which operate at the following levels of the automotive supply chain, access to the terminal?
 - a. shipping;
 - b. terminal operations;
 - c. stevedoring;
 - d. pre-delivery inspection;
 - e. land based logistics service providers / transport carriers, including trucking, rail and warehousing.

12. Please comment on the extent to which Qube would have the incentive and ability to bundle the terminal service at the AAT-operated terminal automotive/RoRo terminal at Webb Dock West with other services provided by Qube in the downstream automotive logistics supply chain and the implication of any such strategy.
13. Please comment on whether customers of AAT at the automotive/RoRo terminal at Webb Dock West would switch to alternative providers of automotive terminal services at other Australian eastern seaboard ports if there was an increase in prices or reduction in service levels and quality after the proposed acquisition.
14. Please comment on the barriers to entry and/or expansion in the supply of automotive stevedoring services. In responding, you may wish to have regard to the following:
 - a. regulatory or legal barriers;
 - b. the extent of sunk costs or capital requirements; and
 - c. any other barriers to entry/expansion.
15. To what extent could an alternative bidder for the automotive/RoRo terminal at Webb Dock West readily enter to provide automotive stevedoring services at the Port of Melbourne?
16. To what extent could AAT use its common ownership of automotive/RoRo terminals across the east coast (in Brisbane, Port Kembla, and Melbourne) to strategically operate these assets as a 'network' to discriminate against potential rivals and/or self-preference its interests (including the interests of its associated parent entity, Qube) in the downstream automotive logistics chain?

General cargo terminal services at the Port of Melbourne

17. What effect would the proposed acquisition (whereby AAT would be the sole operator of both MIRRAT and Appleton Dock both potentially governed by a single undertaking as currently proposed by AAT) likely have on the level of competition for the supply of general cargo services at the Port of Melbourne?
18. To what extent are there alternative providers of general cargo terminal services at the Port of Melbourne or at other Victorian ports, such as the Port of Geelong?

Proposal to vary the AAT Undertaking

19. Qube proposes to vary the existing AAT Undertaking so that the obligations will also apply to the operation of the automotive/RoRo terminal at Webb Dock West if the proposed acquisition is completed. To what extent would Qube's proposal address the competition issues that you foresee arising from the proposed acquisition?
20. Please provide any additional information or comments that you consider relevant to the ACCC's consideration of whether a s87B undertaking is appropriate to remedy the competition issues that may arise from the proposed acquisition.

Other

21. Please provide any other comments or information that you consider may be useful to the ACCC in its assessment of the competitive effects of the proposed acquisition.