



## Statement of Issues

24 October 2024

### **AAT (Qube) – proposed acquisition of MIRRAT**

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#### **Purpose**

1. Australian Amalgamated Terminals Pty Ltd (**AAT**), a wholly owned subsidiary of Qube Holdings Limited (**Qube**), proposes to acquire the business and assets of Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) (the **Proposed Acquisition**).
2. This Statement of Issues:
  - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the Proposed Acquisition
  - identifies areas of further inquiry
  - outlines a proposed section 87B undertaking from Qube (**Proposed Undertaking**)
  - invites interested parties to submit comments and information to assist our assessment of the issues and the Proposed Undertaking.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

#### **Overview of ACCC's preliminary views**

4. In considering the Proposed Acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. This Statement of Issues first outlines the ACCC's preliminary views on the competitive effects of the Proposed Acquisition absent a remedy. The ACCC must first identify the potential competitive effects of the Proposed Acquisition

before it can then assess the effectiveness of any proposed remedy. After identifying the ACCC's preliminary competition concerns, the Statement of Issues sets out a proposed remedy offered by Qube intending to address any competition concerns that may arise from the Proposed Acquisition. The ACCC is seeking feedback on both its view on the preliminary competition concerns identified and the remedy proposed by Qube.

6. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there is one "issue of concern" and three "issues that may raise concerns" and two "issues unlikely to raise concerns".

#### **Issue of concern**

7. **Reduced competition in automotive stevedoring and/or pre-delivery inspection (PDI)<sup>1</sup> services at Webb Dock West.** The ACCC's preliminary view is that the Proposed Acquisition is likely to lead to a substantial lessening of competition in markets for the supply of automotive stevedoring and/or PDI services due to Qube's ability and incentive post-acquisition to foreclose downstream rivals of Qube that require access to the terminal, or services it would provide as the terminal operator, at Webb Dock West.
8. The ACCC is concerned that post-acquisition Qube would be able to engage in a foreclosure strategy by raising the prices, lowering the quality of terminal services, and/or restricting access to the terminal and/or related services. Such a strategy could prevent downstream providers of automotive stevedoring and PDI services from competing effectively with a vertically integrated Qube.
9. Reduced competition in these services would likely result in higher prices and/or lower port service quality for cargo owners (i.e. car manufacturers) and shipping lines.
10. The ACCC is seeking feedback on both this competition concern and whether the remedy proposed by Qube mitigates this concern.

#### **Issues that may raise concerns**

11. **Reduced competition in automotive stevedoring and/or PDI services at or across multiple east coast ports.** The ACCC is considering whether the Proposed Acquisition may lead to a substantial lessening of competition in a market(s) for the supply of automotive stevedoring and/or PDI services at or across multiple east coast ports due to the risk of Qube engaging in concurrent foreclosure conduct, including conduct which may not be as overt as price discrimination, at Webb Dock West as well as at its existing terminal operations at Port Kembla and Port of Brisbane. The ACCC is considering whether this concern may eventuate notwithstanding a section 87B undertaking being in place to address the ACCC's competition concerns at Webb Dock West highlighted above on terms similar to the undertaking currently in force at Port Kembla and Port of Brisbane.

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<sup>1</sup> While this Statement of Issues uses the term 'PDI services' for brevity, we consider that this includes services typically offered by PDI operators beyond pre-delivery inspection services, including – for example – road transport services.

12. The section 87B undertaking in place at Port Kembla and Port of Brisbane aims to limit the risks of Qube foreclosing its downstream rivals at those ports, such as through an outright refusal to grant access or overtly discriminatory pricing of terminal services. However, Qube may still be able to engage in other forms of anticompetitive conduct at those ports, such as – for example – unfavourable allocations of berth, yard space and/or equipment. Such steps may not at present be sufficient to lead to significantly higher overall prices and/or significantly lower overall quality in the supply of downstream services at those ports compared to a situation where the operator of those ports was not engaged in such foreclosure conduct.
13. However, the ACCC is concerned that if Qube also operated Webb Dock West and engaged in these forms of foreclosure conduct there at the same time as engaging in such conduct at Port Kembla and Port of Brisbane, the concurrent or cumulative effect of such conduct may be a substantial lessening of competition in the supply of downstream services at all three ports.
14. This could be the case if concurrent foreclosure conduct undermines any supply-side efficiencies that downstream operators can access by operating across multiple ports and/or if such conduct causes an ‘outsized harm’ to customers of downstream operators that contract on a national or multi-port basis.
15. As set out above, reduced competition in markets for the supply of automotive stevedoring and/or PDI services would be likely to result in higher prices and/or lower port service quality for cargo owners (i.e. car manufacturers) and shipping lines.
16. **Reduced competition in automotive stevedoring and/or PDI services at Webb Dock West due to Qube’s access to, and use of, commercially sensitive information of downstream rivals.** The ACCC’s preliminary view is that post-acquisition Qube, as a terminal operator, may have the ability to access and use commercially sensitive information supplied by its downstream rivals (such as rivals’ prices or volumes) which may lead to a substantial lessening of competition in the supply of automotive stevedoring and/or PDI services.
17. As a terminal operator, Qube’s access to the commercially sensitive information of its downstream rivals could undermine rivals’ ability or incentive to compete aggressively or could facilitate anti-competitive coordination between Qube’s downstream businesses and downstream competitors.
18. Such conduct may substantially lessen competition in automotive stevedoring and/or PDI services resulting in potentially higher prices and/or lower port service quality for cargo owners (i.e. car manufacturers) and shipping lines.
19. **Reduced competition in automotive stevedoring and/or PDI services due to tying or bundling terminal services with other services offered by Qube’s downstream businesses.** The ACCC’s preliminary view is that Qube’s ability and incentive post-acquisition to tie or bundle terminal services to or with its downstream automotive stevedoring or PDI services or offer terminal services in a preferred manner if acquired in conjunction with its downstream services, may also lead to a substantial lessening of competition in the supply of automotive stevedoring and/or PDI services.
20. This conduct may lessen competition in downstream markets by hindering rival automotive stevedore or PDI service providers’ ability to compete.

### Issues unlikely to raise concerns

21. The ACCC's preliminary view is that the Proposed Acquisition is unlikely to substantially lessen competition in the supply of automotive terminal services along the east coast, or in Victoria. This is because the ACCC considers that east coast automotive port terminals are generally not substitutable, owing to their physical distance and high road transport costs which prevents cargo owners switching terminals/ports and re-directing vehicles via land.
22. Furthermore, the ACCC's preliminary view is that the Proposed Acquisition is unlikely to substantially lessen competition in the supply of general cargo terminal services in Melbourne or Victoria. Webb Dock West and Appleton Dock are primarily designated to handle different types of cargo. Leasing arrangements at Appleton Dock expressly prevent AAT servicing Roll-on Roll-off (**RoRo**) vessels without the consent of Port of Melbourne Operations (**POMO**). Appleton Dock does not compete closely with MIRRAT for general cargo. The general cargo that is processed at Webb Dock West is primarily cargo that has been co-shipped on RoRo vessels and which is mostly incidental to the RoRo cargo that is processed at MIRRAT. Furthermore, information from market participants also indicated that there are other general cargo terminals, including at the Port of Geelong and the Port of Portland, that could act as effective competitive constraints on Qube's ability and incentive to increase prices or reduce service quality for general cargo terminal services at Appleton Dock. Therefore, the Proposed Acquisition is unlikely to substantially lessen the actual or potential competitive constraint between Webb Dock West and AAT's Appleton Dock.

### Proposed Undertaking

23. MIRRAT operates the RoRo automotive terminal at Webb Dock West subject to a section 87B undertaking accepted by the ACCC on 27 March 2014 (**the MIRRAT Undertaking**). The MIRRAT Undertaking commenced on 1 January 2018 and expires on the date that MIRRAT ceases to operate Webb Dock West, which may occur on or before 30 June 2040, subject to ACCC's written confirmation.
24. Qube has proposed to vary its court-enforceable undertaking currently in place for its operations at Port Kembla, Port of Brisbane and Appleton Dock to cover Webb Dock West in relation to the Proposed Acquisition (**Proposed Undertaking**). The Proposed Undertaking will require AAT to not discriminate between terminal users by implementing open access and berthing principles, to provide for certain price and non-price dispute resolution processes, to ring-fence certain confidential information, and to periodically report on its compliance with the undertaking. It also provides for independent oversight (including by an independent auditor) and imposes restrictions on AAT's ability to introduce or change certain tariffs.
25. The ACCC is also consulting on Qube's Proposed Undertaking. It is seeking views on whether the Proposed Undertaking addresses the competition concerns raised by the Proposed Acquisition as outlined above.
26. The ACCC has not yet formed a view whether this undertaking adequately addresses its competition concerns.

## Making a submission

27. The ACCC invites submissions from interested parties, particularly on the key issues listed below.
- The likelihood the Proposed Acquisition would give Qube the ability and incentive to discriminate in favour of its downstream businesses (automotive stevedoring and/or PDI services) at Webb Dock West, impacting the ability of rivals to provide a competitive constraint. Please provide examples of how such behaviour is likely to occur and the potential effects of such behaviour.
  - The likelihood that Qube's common operation of east coast automotive terminals (Webb Dock West in combination with Port Kembla and/or Port of Brisbane) may, notwithstanding an undertaking to address the ACCC's competition concerns at Webb Dock West on terms similar to the undertaking currently in force at Port Kembla and Port of Brisbane, enable Qube to engage in concurrent foreclosure or discriminatory strategies across multiple ports, leading downstream rivals to lose scale efficiencies or otherwise face higher costs. Please provide examples of how such behaviour is likely to occur and the potential effects of such behaviour.
  - The likelihood the Proposed Acquisition would result in Qube having access to the commercially sensitive information of its downstream competitors (such as competitors' prices or volumes). Please provide examples of what information Qube would have access to as a result of becoming the terminal operator at Webb Dock West that would not already be available from public sources and the potential effects if Qube uses that information to assist its downstream businesses.
  - The likelihood that, post-acquisition, Qube would be able to hinder rival downstream operators by offering a tied or bundled service at Webb Dock West as a result of Qube's presence in terminal operation, automotive stevedoring, and PDI services.
  - Whether and to what extent the Proposed Undertaking, or an amended undertaking, would address the preliminary competition concerns identified in this Statement of Issues, or other competition concerns identified in your response.
28. The ACCC has not yet formed a concluded view as to the nature and extent of the preliminary competition concerns with respect to the Proposed Acquisition, or whether they are capable of being addressed by the Proposed Undertaking or any other possible remedy. The market consultation process should not be taken as an indication that the ACCC will accept the Proposed Undertaking or that any remedy will be capable of satisfying its competition concerns.
29. The ACCC may decide to not accept or require changes to the Proposed Undertaking depending on the nature and extent of any concerns raised during the market consultation process. The ACCC will only accept the Proposed Undertaking if it is satisfied that it will sufficiently address its competition concerns, and after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the Proposed Undertaking (or failure to do so).

30. Interested parties should provide submissions by 5pm AEDST on 7 November 2024. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: *Submission re: AAT/Qube's proposed acquisition of MIRRAT.*
31. The ACCC anticipates making a final decision on 12 December 2024. However, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at [www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews](http://www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews).

### **Confidentiality of submissions**

32. The ACCC will not publish submissions regarding the Proposed Acquisition. 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 CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

### **About ACCC 'Statements of Issues'**

33. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.
34. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

### **The parties**

#### **MIRRAT**

35. MIRRAT's ultimate parent company 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.
36. MIRRAT only operates the automotive/RoRo terminal at Webb Dock West. It does not conduct any other terminal operations in Australia.

#### **Qube**

37. Qube, through its wholly owned subsidiary AAT, operates automotive cargo terminals at Port of Brisbane and Port Kembla, as well as a general cargo terminal at Appleton Dock in Port of Melbourne. 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.

38. 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.
39. In addition to being a terminal operator, Qube provides general stevedoring, automotive stevedoring and PDI services at each of its eastern seaboard ports. It provides general and automotive stevedoring through its affiliated entity 'Qube Ports'. Qube provides PDI services through its 50% interest in K Line Auto Logistics which owns and operates PrixCar Services (**PrixCar**).
40. Qube, through AAT, operates the terminals at Port of Brisbane, Port Kembla and Appleton Dock subject to a section 87B undertaking accepted by the ACCC (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 commenced on 23 November 2016 (and was varied on 25 June 2018) and has no end date.
41. The full text of the existing AAT Undertaking can also be found on the [ACCC's section 87B undertakings register](#).

## Industry background

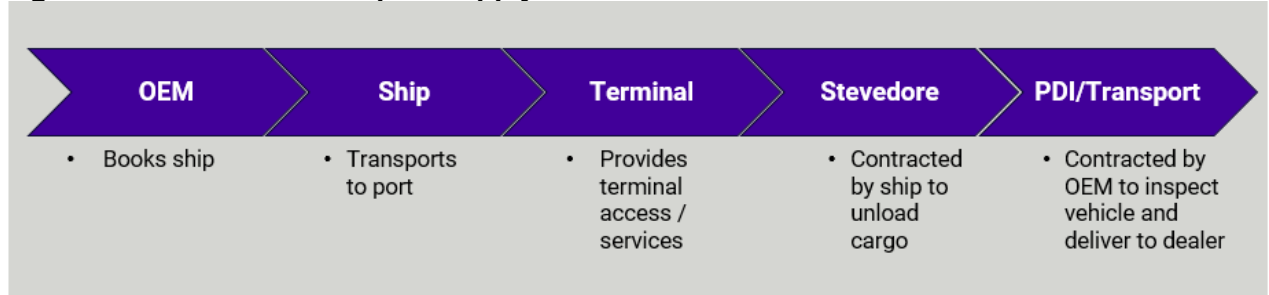
### Automotive trade at the Port of Melbourne

42. The Port of Melbourne consists of several major docks, including Webb Dock West.
43. Melbourne's automotive trade occurs at Webb Dock West. It is a three-berth terminal dedicated to processing cargo transported on 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 PDI operators close to the Terminal's lease area.
44. On occasion, Webb Dock West 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

45. The supply chain for imported vehicles being transported by shipping lines on RoRo vessels is summarised as follows and in Figure 1:

**Figure 1: Automotive transport supply chain**



Source: ACCC

- **Car manufacturers and original equipment manufacturers (OEMs)** - sell the vehicles to end consumers. They contract with shipping lines for transport and delivery of vehicles to the automotive/RoRo terminal.
  - **Stevedores** - contracted by shipping lines to load cargo on and off vessels. Stevedores are licensed by the terminal operator to access the terminal.
  - **The automotive/RoRo terminal operator** - responsible for the day-to-day operation of the terminal including managing vessel arrival, temporary storage of cargo, and 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. PDI operators are licensed by the terminal operator to access the terminal.
46. Automotive stevedoring services at Port of Melbourne are supplied by only two parties: LINX and Qube Ports. They also each supply automotive stevedoring services at the other two east coast ports (Port of Brisbane and Port Kembla).
47. There are several suppliers of PDI services at Webb Dock West including PrixCar, Autocare, AutoNexus and Ceva Logistics. These suppliers are also active at other east coast ports.

### General cargo trade at the Port of Melbourne

48. 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.
49. 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.
50. Although the Appleton Dock is also subject to the AAT Undertaking, the ACCC granted [a waiver of the obligations with respect to the Appleton Dock](#) between 25 June 2018 and 25 June 2024. The waiver was granted as AAT asserted that



the waiver would enable it to grow its general cargo business at Appleton Dock and compete effectively with the Port of Geelong.

## The proposed acquisition

51. Qube is proposing to acquire the business and assets of MIRRAT. MIRRAT operates the automotive/RoRo terminal at Webb Dock West (Port of Melbourne).
52. The Proposed Acquisition would change the nature of vertical integration in the automotive delivery supply chain at Port of Melbourne.
53. MIRRAT is vertically integrated on the shipping side as it is the terminal operator of Webb Dock West and its parent company (WW) operates shipping vessels that use Webb Dock West. This relationship raises certain risks to competition that led MIRRAT to offer the MIRRAT Undertaking at the time of the acquisition of the terminal which was accepted by the ACCC.
54. The Proposed Acquisition, should it proceed, would mean that Qube (instead of WW) becomes vertically integrated at Webb Dock West, but with interests in downstream automotive stevedoring and PDI services rather than in shipping. The Proposed Acquisition therefore gives rise to a different type of vertical integration that may impact competition in different markets.

## Future with and without the acquisition

55. In assessing a proposed acquisition under section 50 of the CCA, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the 'with' position) to the likely future state of competition if the acquisition does not proceed (the 'without' position) to determine whether the Proposed Acquisition is likely to substantially lessen competition in any market.
56. The ACCC's assessment of the effectiveness of the Proposed Undertaking (see further discussion at paragraph 102 onwards of this paper) is conducted having regard to the competition concerns that may arise if the Proposed Acquisition proceeds. Consequently, the ACCC's assessment of the future 'with' the Proposed Acquisition in this SOI assumes that no undertaking is in place.
57. Consistent with the ACCC's approach set out in its Merger Guidelines<sup>2</sup>, the ACCC is considering a likely future state of competition 'without' the Proposed Acquisition (the counterfactual) that would be similar to the state of competition prevailing at the time of the Proposed Acquisition, that is, the status quo. In this transaction, the status quo is one in which MIRRAT continues to operate the Webb Dock West (**status quo counterfactual**). In the status quo counterfactual, the existing terms of the MIRRAT Undertaking that applies to terminal services at Webb Dock West are assumed to be in force.
58. A terminal operator may have the ability to engage in the exercise of market power due to the terminal being a monopoly asset. Automotive terminal facilities

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<sup>2</sup> See ACCC (2017), Merger Guidelines, November 2017. A copy is available at <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF>

at the Port of Melbourne (and other Australian ports) are not presently subject to any state and/or federal regulatory pricing and/or access determinations. The ACCC is continuing to consider the regulatory status of sole operator terminals at Australian ports more generally.

59. The ACCC's review of the competition concerns arising from the Proposed Acquisition and consideration of any undertaking to remediate those concerns relates to the harms which may arise due to Qube's acquisition of MIRRAT, in the context of the operation of Webb Dock West as a monopoly asset.

## **Previous ACCC decisions**

### **Qube Holdings Limited's proposed acquisition of 50% interest in AAT**

60. On 23 November 2016, the ACCC decided not to oppose the acquisition by Qube of the remaining 50% interest in AAT from a Brookfield-led consortium, giving Qube 100% ownership of AAT. At that time, AAT operated the RoRo terminals at Port Adelaide, Port of Melbourne, Port Kembla and Port of Brisbane. Prior to the acquisition, AAT operated under an ACCC authorised joint venture between a related entity of Qube and a related entity of Brookfield. Absent the undertaking, the ACCC considered that the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition at each of the four ports in the markets for the supply of automotive stevedoring, the supply of vehicle pre delivery inspection services and the supply of general cargo stevedoring. This conclusion reflected the risk that AAT would discriminate between terminal users, possibly foreclosing entry and/or the expansion of third-party stevedores or PDI operators, and/or have access to commercially sensitive information provided to AAT by terminal users, using it to favour its own downstream businesses.
61. More information about this matter can be found on the [ACCC's public informal merger reviews register](#).

### **MIRRAT's proposed acquisition of long-term lease to operate Melbourne automotive terminal**

62. On 27 March 2014, the ACCC decided not to oppose the acquisition by MIRRAT of the long-term lease to operate the Melbourne automotive terminal, after accepting a court-enforceable undertaking (MIRRAT Undertaking). Absent the undertaking, the ACCC concluded that MIRRAT would have an increased ability and incentive to discriminate against rival automotive shipping lines and other terminal users that MIRRAT may compete with in future and provide preferential treatment to its related entities in the market for the supply of automotive terminal services in the Melbourne region.
63. More information about this matter can be found on the [ACCC's public informal merger reviews register](#).

### **Separate proposed acquisitions of long-term lease arrangements of automotive and RoRo terminal facilities at the Port of Fremantle**

64. In April 2015, both Victoria Quay International RoRo Terminal Pty Ltd's (VQIRT) and AAT separately sought to acquire a long-term lease of a new automotive and roll-on roll-off (RoRo) terminal on Victoria Quay at the Port of Fremantle.

65. The ACCC considered each acquisition separately.
66. On 2 April 2015, the ACCC announced its decision not to oppose the proposed acquisition by VQIRT after accepting a section 87B undertaking. The ACCC concluded that, in the absence of the undertaking, VQIRT would have an increased ability and incentive to discriminate against rival automotive shipping lines and other terminal users that VQIRT or its related entities may compete with in future, and provide preferential treatment to its related entities in the market for the supply of automotive terminal services in the Fremantle region. More information about this matter can be found on the [ACCC's public informal merger reviews register](#).
67. On 23 April 2015, the ACCC announced its decision not to oppose the proposed acquisition by AAT after accepting a section 87B undertaking. The ACCC concluded that, in the absence of the undertaking, AAT would have an increased ability and incentive to discriminate against actual or potential rival automotive stevedores or PDI operators, and provide preferential treatment to entities associated with its shareholders, in the market for the supply of automotive terminal services in the Fremantle region. More information about this matter can be found on the [ACCC's public informal merger reviews register](#).
68. Ultimately, neither transaction took effect.

## Market definition

69. The ACCC's preliminary view is that the markets likely to be relevant for assessing the competition effects of the Proposed Acquisition are:
  - the supply of automotive terminal services
  - the supply of general cargo terminal services
  - the supply of automotive stevedoring services
  - the supply of PDI services.
70. The ACCC's preliminary view is that the relevant geographic dimension of the market for automotive terminal services is the Port of Melbourne. This is consistent with most of the information obtained by the ACCC through its public review to date that ports do not generally compete with each other for automotive cargo throughput.
71. The ACCC has not formed a concluded view on the relevant geographic dimension of the market(s) for automotive stevedoring or PDI services. These services may be either port specific or supplied on a broader geographic basis, for example eastern seaboard-wide. This is in part because it may depend on the extent of the efficiencies, if any, available to customers from multi-port contracting, as well as to service providers from operating across multiple ports.
72. For general cargo terminal services, the ACCC's preliminary view is that there is a state-wide market in Victoria. This is consistent with market feedback in which other Victorian ports (e.g. Port of Geelong, Port of Portland) are generally regarded as substitutes for general cargo terminal services.

The ACCC invites comments from market participants on its preliminary views about the identification of the relevant market(s). In particular market participants may wish to comment on:

- whether there are other ports along Australia's eastern seaboard that provide a competitive alternative for the services that are supplied at Webb Dock West or Appleton Dock
- whether there any other services that are relevant to the ACCC's consideration.

### **Issue of concern: Reduced competition in automotive stevedoring and/or PDI services at Webb Dock West**

73. The ACCC's preliminary view is that the Proposed Acquisition is likely to lead to a substantial lessening of competition in markets for the supply of automotive stevedoring services and/or PDI services at Webb Dock West.
74. The Proposed Acquisition would result in Qube operating the terminal at Webb Dock West, giving it a further interest in the automotive delivery supply chain at the Port of Melbourne. This is in addition to its existing interests in downstream markets for the supply of automotive stevedoring (Qube Ports) and PDI services (PrixCar).
75. The ACCC is concerned that Qube, as the terminal operator with control over price and non-price terms of access to the terminal and terminal services, would likely have the ability and incentive to foreclose its downstream rivals in markets for the supply of automotive stevedoring and/or PDI services. This could be done by raising the prices or by lowering the quality of terminal services provided to its downstream rivals, or by restricting access to the terminal and/or to other services provided by the terminal. For instance, Qube could:
- increase stevedore access charges payable by a rival stevedore and/or increase charges for services that might be procured by a rival PDI operator such as storage,
  - restrict or lower the quality of downstream rivals' access to Webb Dock West and to other services provided by the terminal in relation to:
    - allocation of berth priority and berth location
    - allocation of vehicle booking slots/truck access
    - allocation of equipment, storage and/or yard space.
76. Restricting access to Webb Dock West could prevent downstream rivals from competing at all while other forms of conduct could raise downstream rivals' costs and lead them to raise their prices or reduce the quality of their services, rendering them less competitive.
77. The resulting reduced competitive constraint on Qube by its downstream rivals would allow Qube to profitably raise the price or reduce the quality of its own downstream services. By bringing about an increase in prices and/or fall in quality across both its own and its downstream rivals' services, Qube's conduct would likely substantially lessen competition in one or more markets for the supply of automotive stevedoring and/or PDI services.

78. Further, to the extent that any such conduct would likely lead downstream rivals to lose customers and thereby lose scale economies or other efficiencies, this could lead to further increases in downstream rivals' costs and prices, or further falls in the quality of their services, and potentially force them to exit. Any and all of these consequential effects (not necessarily just the forced exit of rivals) would likely exacerbate the lessening of competition attributable to Qube's conduct. This would be likely to result in higher prices and/or lower service quality for cargo owners (i.e. car manufacturers) and shipping lines.

**Raised barriers to entry in automotive stevedoring and/or PDI services**

79. The markets for the supply of automotive stevedoring and PDI services are concentrated. The Proposed Acquisition is likely to raise a strategic barrier to entry in each of the markets for automotive stevedoring and/or PDI services. If a potential new entrant into either market considers it likely that Qube would foreclose them, then they are likely to be deterred from entering that market. Therefore, this strategic barrier could limit the potential for the threat of new entry to constrain Qube's downstream businesses after the acquisition.

The ACCC invites comments from market participants on the ACCC's preliminary views in relation to Qube's ability and incentives to foreclose its rivals in the supply of automotive stevedoring services and/or PDI services at Webb Dock West.

In particular, market participants may wish to comment on the following:

- how vigorously do existing stevedores and PDI operators compete with each other for each of their respective services
- whether the height of barriers to entry will materially increase in the supply of automotive stevedoring and/or PDI services at Webb Dock West as a result of Qube operating Webb Dock West
- if Qube were to acquire the terminal rights, the types of behaviour that Qube could engage in to raise the costs of downstream rivals or prevent or hinder them from competing
- to the extent that rivals' products or services are rendered less competitive, how would customers of rivals be likely to respond (for example, the extent to which customers might switch to an alternate service provider, and if so, which one(s))
- the degree to which higher prices for terminal services are avoidable (for example, in the face of higher storage fees, the extent to which PDI operators can cost-effectively access off-port storage).

**Issue that may raise concerns: Reduced competition in automotive stevedoring and/or PDI services at or across multiple east coast ports**

80. The ACCC's preliminary view is that the Proposed Acquisition may lead to a substantial lessening of competition in a market or markets for the supply of automotive stevedoring and/or PDI services at or across multiple east coast ports due to the risk of Qube engaging in concurrent foreclosure conduct at

Webb Dock West as well as at its existing terminal operations at Port Kembla and Port of Brisbane. The ACCC is considering whether this concern may eventuate notwithstanding an undertaking by Qube to address the ACCC's competition concerns at Webb Dock West highlighted above has been offered on terms similar to the section 87B undertaking currently in force at Port Kembla and Port of Brisbane.

81. The section 87B undertaking in place at Port Kembla and Port of Brisbane aims to limit the risks of Qube foreclosing its downstream rivals at those ports, such as through an outright refusal to grant access or overtly discriminatory pricing of terminal services. However, Qube may still be able to engage in other forms of anticompetitive conduct at those ports including conduct which may not be as overt as price discrimination, such as – for example – unfavourable allocations of berth, yard space and/or equipment.
82. Such foreclosure conduct by Qube at either or both Port Kembla or Port of Brisbane might raise downstream rivals' costs (and hence their prices) and/or otherwise hinder them from competing with Qube's downstream businesses. This would, in turn, lead to downstream rivals being less effective competitors and losing some sales to Qube. These forms of foreclosure conduct may not be sufficient at present to lead to significantly higher overall prices and/or significantly lower overall quality in the supply of downstream services at those ports compared to a situation where the operator of those ports was not engaged in such foreclosure conduct.
83. However, the ACCC's concern is that if Qube also operated Webb Dock West and could engage in such conduct there at the same time as engaging in such conduct at Port Kembla and the Port of Brisbane, the concurrent or cumulative result of such conduct may be a substantial lessening of competition in the supply of downstream services at all three ports.
84. There might be several channels where such conduct by Qube concurrently at Webb Dock West, Port Kembla and the Port of Brisbane could substantially lessen competition in downstream markets, even though such conduct at only one or two of the ports currently operated by Qube might not.
85. First, the ACCC considers that suppliers of automotive stevedoring and/or PDI services may benefit from economies of scale or other supply-side efficiencies and be able to access these efficiencies when operating at Webb Dock West as well as at one or more other east coast ports. That is, a competing automotive stevedore and/or PDI supplier may be able to achieve efficiencies when operating across multiple east coast ports in a similar way that it could if it had a similar total sales volume, but just at a single port. Under these conditions, foreclosure conduct, including less overt foreclosure conduct, by Qube towards its downstream rivals at a third east coast port in addition to similar conduct at Qube's existing terminal operations may cause its rivals to lose overall volumes sufficient to undermine their scale efficiencies in a way that such foreclosure conduct at just Port Kembla and/or Port of Brisbane would not achieve. As a result of the loss of such efficiencies, downstream rivals may be compelled to substantially raise their prices and/or lower their service quality, impacting their own downstream customers.
86. In this context, the ACCC notes the potential importance to downstream rivals' scale efficiencies of the high vehicle volumes handled at Webb Dock West.

87. Second, the ACCC notes that many customers of automotive stevedoring and PDI services contract with suppliers on a national or multi-port basis, likely because of transaction cost savings. This provides advantages to suppliers of these services that operate across multiple ports. In these circumstances, concurrent foreclosure by Qube could lead to customers of downstream rivals experiencing outsized harm due to a compounding or ‘snowballing’ of the inconveniences and imposts stemming from foreclosure at Webb Dock West in addition to at one or both of the other east coast ports. For example, customers may no longer see Qube’s downstream rivals as viable options and may become much more vulnerable to Qube raising its own downstream prices and/or worsening its own service quality. This snowball effect represents a second channel through which concurrent foreclosure could substantially lessen competition in downstream services.
88. Higher prices and/or lower quality offered by Qube’s downstream rivals would allow Qube to profitably raise the price and/or lower the quality of its own services in downstream markets for the supply of automotive stevedoring and/or PDI services.
89. Qube’s foreclosure conduct may therefore substantially lessen competition in markets for the supply of automotive stevedoring and/or PDI services at Webb Dock West and one or more other east coast ports, or in broader east coast markets. Reduced competition in any of these markets would be likely to result in higher prices and/or lower port service quality for cargo owners (i.e. car manufacturers) and shipping lines.
90. This concern is similar to, but distinct from, the ACCC’s issue of concern raised above, in that this concern relies on the common operation of Webb Dock West and one or both of Port Kembla and/or Port of Brisbane, as opposed to vertical foreclosure that may arise from Qube’s operation of Webb Dock West alone.

The ACCC invites comments from market participants on the ACCC’s preliminary views. In particular, market participants may wish to comment on the following:

- whether operating at Webb Dock West and one or more other east coast ports allows automotive stevedores and PDI operators to compete more effectively, including by being able to access scale economies or other efficiencies
- the extent to which automotive stevedores and PDI operators contract with customers on a multi-port or national basis
- the likelihood that conduct may be engaged in by Qube at Webb Dock West and one or more of the east coast ports, the combined effect of which may affect rivals’ ability to compete effectively, including as a result of affecting their economies of scale or other efficiencies when operating at those ports. Identify the type of conduct and circumstances when this may occur.

## **Issue that may raise concerns: Reduced competition in automotive stevedoring and/or PDI services at Webb Dock West due to Qube’s access to, and use of, commercially sensitive information of downstream rivals**

91. The ACCC has also identified a preliminary concern that post-acquisition Qube, as a terminal operator, may have the ability and incentive to access and use commercially sensitive information supplied by its rival automotive stevedores or PDI service providers (such as prices or volumes). The ACCC is concerned that this may lead to a substantial lessening of competition in automotive stevedoring and/or PDI services.
92. As a terminal operator, Qube’s access and use of this information could undermine downstream rivals’ ability or incentive to compete aggressively or could facilitate coordination. For example, Qube’s access to such information may give it the ability to pre-empt or quickly undercut competitors’ procompetitive actions and so may discourage them from fully pursuing competitive opportunities. Alternatively, access to competitors’ commercially sensitive information may facilitate coordination between Qube’s downstream businesses and downstream competitors, by increasing the visibility of competitors’ actions and responses to Qube’s downstream conduct.
93. For example, it is possible that Qube as the terminal operator, could gain access to invoices issued by a rival automotive stevedore to that stevedore’s shipping line customers. This might occur in the course of a dispute between a shipping line and the terminal about fees charged by the terminal, given it is the automotive stevedore that recovers certain fees from shipping lines on behalf of the terminal. Such invoices may contain information that is commercially sensitive to the stevedore, such as pricing information.

The ACCC invites comments from market participants on the ACCC’s preliminary views. In particular, market participants may wish to comment on the following:

- what information is generally regarded as commercially sensitive information that is not otherwise available in the public domain that Qube, if it became the terminal operator, would have access to.
- how would the information identified above likely benefit Qube’s downstream businesses if it was available to Qube.
- identify the likely impact on rivals to Qube’s downstream businesses as a consequence of Qube’s access to such information.
- identify any examples of confidential information obtained as a terminal operator being used by MIRRAT or Qube / AAT to the detriment of competition that you are aware of.



## **Issue that may raise concerns: Reduced competition in automotive stevedoring and/or PDI services due to tying or bundling terminal services with other services offered by Qube’s downstream businesses**

94. The ACCC’s preliminary view is that Qube, as the terminal operator, may have an ability and incentive to tie or bundle terminal services to or with its downstream automotive stevedoring or PDI services, or offer terminal services in a preferred manner if acquired in conjunction with its downstream services, leading to a substantial lessening of competition in the supply of automotive stevedoring and/or PDI services. This is because such conduct would be likely to raise rivals’ costs or otherwise hinder downstream rivals’ ability to compete and constrain Qube’s downstream activities.
95. For example, Qube might seek to induce shipping lines to use its downstream automotive stevedore services by offering those shipping lines preferred treatment when calling at Webb Dock West (for example, in respect of berth priority and/or allocation). Such preferred treatment might reduce delays and/or costs that the shipping line might otherwise expect to face.
96. This conduct may lessen competition in downstream markets by hindering or limiting rivals’ ability to compete with and constrain Qube in these downstream markets. To the extent Qube’s tying or bundling conduct leads to rival downstream suppliers of automotive stevedoring and/or PDI services losing or being unable to attract customer volumes, such rivals may lose scale efficiencies. A loss of such efficiencies could lead downstream rivals to face higher costs of service and compel them to raise the price and/or lower the quality of their services. This would, in turn, allow Qube’s downstream businesses to raise the price and/or lower the quality of their own services. Reduced competition in either of these markets would be likely to result in higher prices and/or lower port service quality for cargo owners (i.e. car manufacturers) and shipping lines.
97. Generally, we note that Qube’s ability to tie or bundle services is affected by the typical commercial relationships between relevant parties. For example, we understand that:
- shipping lines choose and contract with automotive stevedores
  - OEMs choose and contract with shipping lines and PDI service providers
  - PDI service providers, where necessary, choose and contract with providers of storage and certain quarantine services<sup>3</sup> (noting that some PDI operators already undertake off-wharf quarantine services).

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<sup>3</sup> Quarantine treatment services can only be offered at accredited/licensed facilities called Approved Arrangements (AA). Department of Agriculture, Fisheries and Forestry (DAFF) regulations only allow for one AA to be registered at a single address. As MIRRAT holds an AA at 46 Koorunga Way, no other operator can offer services under their own license at the terminal. There are a number of other providers that offer quarantine services off-wharf at their own premises. Access to the terminal is not required for operators to supply quarantine washing services.

The ACCC invites comments from market participants on the ACCC's preliminary views and in particular in relation to:

- the potential tying or bundling of terminal services with other services, the types of services that could be tied or bundled and the attractiveness of such offers to customers
- the ability or incentives of a terminal operator to offer tied or bundled services
- the likely effect of tied or bundled services on competition in downstream services.

## **Issues unlikely to raise concerns: the supply of automotive terminal services at Port of Melbourne and the supply of general cargo terminal services in Victoria**

### **Automotive terminal services**

98. Some market participants expressed concern that the Proposed Acquisition would remove a second automotive terminal operator from the east coast such that automotive terminal users (at Melbourne and at the other automotive terminals in Brisbane and Port Kembla) would no longer have the ability to 'benchmark' prices between Qube and another automotive terminal operator. However, the ACCC's preliminary view is that there is no information available to suggest benchmarking has been or could be used to place competitive constraints on Qube.
99. The ACCC's preliminary view is that the Proposed Acquisition is unlikely to substantially lessen competition in the supply of automotive terminal services along the east coast, or in Victoria. This is because the ACCC considers that the east coast automotive port terminals at each of Port of Brisbane, Port Kembla and Port of Melbourne are generally not substitutable, owing to their physical distance and high road transport costs, which prevent cargo owners switching terminals/ports and re-directing vehicles via land.

### **General cargo terminal services**

100. The ACCC examined whether the Proposed Acquisition could increase Qube's ability and/or incentive to increase prices or reduce service quality for general cargo terminal services at Appleton Dock.
101. The ACCC's preliminary view is that the Proposed Acquisition is unlikely to substantially lessen competition in the supply of general cargo terminal services.
102. Webb Dock West and Appleton Dock are primarily designated to handle different types of cargo. Leasing arrangements at Appleton Dock expressly prevent AAT servicing RoRo vessels without the consent of POMO. Appleton Dock does not compete closely with Webb Dock West for general cargo. The general cargo that is processed at Webb Dock West is primarily cargo that has been co-shipped on RoRo vessels and which is mostly incidental traffic to the RoRo cargo that is processed at Webb Dock West. Based on current information, the ACCC considers that the Proposed Acquisition is unlikely to substantially lessen the actual or potential competitive constraint between Webb Dock West and AAT's Appleton Dock.

103. Furthermore, information from market participants also indicated that there are other general cargo terminal substitutes including at the Port of Geelong and the Port of Portland that could act as competitive constraints on Qube's ability and incentive to increase prices or reduce service quality for general cargo terminal services at Appleton Dock.

## **Proposed undertaking**

### **Change of Control for the purposes of the MIRRAT Undertaking**

104. MIRRAT currently operates Webb Dock West subject to the MIRRAT Undertaking. The MIRRAT Undertaking commenced on 1 January 2018 and expires on the date that MIRRAT ceases to operate Webb Dock West, which may occur on or before 30 June 2040, and the ACCC confirms this in writing.
105. The MIRRAT Undertaking was offered to address risks to competition arising from MIRRAT's vertically integrated interests (i.e. on the shipping side). The MIRRAT Undertaking requires MIRRAT not to discriminate between terminal users in favour of its vertically integrated interests by ring-fencing confidential information of terminal users, applying published and non-discriminatory terminal access and berthing principles and provides a right for certain stakeholders to refer price and non-price disputes to an independent expert.
106. 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).
107. 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 section 87B 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 section 87B undertaking under the change of control provision is not required.
108. The full text of the existing MIRRAT Undertaking can be found on the [ACCC's section 87B undertakings register](#).
109. Qube submits that the Proposed Acquisition will give rise to a Change of Control for the purpose of the MIRRAT Undertaking.

### **Qube's proposed undertaking**

110. Qube does not propose to enter a section 87B undertaking with identical terms to the MIRRAT Undertaking.
111. Instead, Qube proposes to offer a variation of the AAT Undertaking, so that it also applies to the operation of the RoRo terminal at Webb Dock West. Qube considers that the provisions in the AAT Undertaking should constitute terms

which are otherwise acceptable to the ACCC. Consequently, 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.

112. 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.
113. Qube's Proposed Undertaking includes the following commitments:
- AAT must not discriminate between terminal users and must comply with open access conditions (clause 5 and Schedule 1) and berthing allocation rules (clause 7 and Schedule 2)
  - AAT must ring fence confidential information of terminal users and parties who have applied to become terminal users (clause 6)
  - AAT must comply with a price dispute resolution process, which includes the appointment of an ACCC approved independent price expert (clause 10 and Schedule 5)
  - AAT and Qube must comply with a non-price dispute resolution process (clause 11 and Schedule 6)
  - AAT and Qube must provide for the effective oversight of their compliance with the undertaking (including by an ACCC approved independent auditor) (clause 9).
114. Qube's Proposed Undertaking includes several additional obligations that do not currently exist in the AAT Undertaking. Qube submits that these additions are intended to improve the certainty, transparency, clarity, and coverage of the Price Dispute Resolution Process, as well as additions intended to provide certainty around changes to existing pricing and vehicle booking services at Webb Dock West as a result of the Proposed Acquisition.
115. A copy of the proposed section 87B undertaking with proposed variations in redline submitted by Qube is available at the Mergers Register on the ACCC's website at [Qube Holdings Limited \(Qube\) - Melbourne International RoRo & Auto Terminal Pty Ltd \(MIRRAT\)](#).

### **Preliminary views on Qube's Proposed Undertaking**

116. The ACCC has not formed a view on whether Qube's proposal to vary the AAT Undertaking would be sufficient to resolve the preliminary competition concerns identified in this Statement of Issues.
117. As the ACCC has previously noted in the *Joint statement on merger control enforcement*,<sup>4</sup> it is widely recognised that complex behavioural remedies that create continuing economic links and dependencies are unlikely to recreate the

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<sup>4</sup> See also [Joint statement on merger control enforcement - ACCC, UK CMA and German Bundeskartellamt - 20 April 2021](#)

pre-merger competitive intensity of the market, can raise significant circumvention risks, and can quickly become outdated as market conditions change. In some circumstances they can also distort the natural development of the market. Behavioural remedies also place a burden on competition agencies and businesses by necessitating extensive post-merger monitoring of companies and their conduct.

118. The ACCC has previously accepted behavioural remedies in section 87B undertakings aimed at addressing competition concerns arising from vertical integration at RoRo terminals, including the existing AAT Undertaking and MIRRAT Undertaking. However, the ACCC is aware of various issues experienced by terminal users that may have an impact on competitors' ability to compete in downstream markets but may not breach the relevant undertaking.
119. In addition, due to the nature of operations at port terminals, it will not always be possible for terminal users, or those responsible for monitoring access to a terminal, to clearly identify whether discrimination has occurred. Over time, such discrimination may have a significant impact on rivals' costs and/or the quality of their operations and, consequently, their ability to compete in downstream markets.
120. If the ACCC considers that the competition concerns arising from the Proposed Acquisition can be remedied by a section 87B undertaking, the ACCC may accept it. The ACCC will not accept a variation to an existing undertaking or any undertaking at all if it is not satisfied that it will address the ACCC's competition concerns, and will only accept an undertaking after consideration of the monitoring and compliance costs and any risk to competition associated with the implementation of the Proposed Undertaking (or failure to do so), including in circumstances where the ACCC has accepted similar undertakings in the past.
121. Consultation on the Proposed Undertaking should not be taken or considered as an indication that the ACCC is likely to accept in this matter. The ACCC will continue to consider the draft undertaking, or any other undertaking that may be offered, and assess whether it may be capable to address the ACCC's competition concerns.

The ACCC invites comments from market participants on Qube's proposed section 87B undertaking. In particular, market participants may wish to comment on the below matters. Please provide supporting reasons and examples to illustrate your views.

**Whether the proposed Open Access Conditions address the ACCC's competition concerns**

- whether, and if so, the extent to which the proposed Open Access Conditions in clause 5 and Schedule 1 (Open Access Conditions) are likely to prevent AAT from increasing any prices for access to Webb Dock West and other terminal services to Qube's rival downstream businesses in stevedoring and PDI, for the entire duration of the Proposed Undertaking.
- whether, and if so, the extent to which the proposed Open Access Conditions are likely to prevent AAT from preferencing, in any form, Qube's downstream interests in stevedoring and PDI services when providing them access to Webb Dock West and other terminal services, for the entire duration of the Proposed Undertaking.

- whether, and if so, the extent to which the proposed Open Access Conditions are likely to prevent Qube from any tying or bundling of automotive terminal services with other services at Webb Dock West, for the entire duration of the Proposed Undertaking.

**Whether the proposed confidentiality and ring-fencing obligations address the ACCC's competition concerns**

- whether, and if so, the extent to which the proposed confidentiality and ring-fencing obligations in clause 6 are likely to prevent Qube (through AAT) from accessing in any way the commercially sensitive information of Qube's rival downstream businesses in stevedoring and PDI services, for the entire duration of the Proposed Undertaking.

**Whether the Berthing Allocation Rules address the ACCC's competition concerns**

- whether, and if so, the extent to which the proposed Berthing Allocation Rules in clause 7 and Schedule 2 are likely to prevent AAT from preferencing, in any form, Qube's downstream interests in stevedoring and PDI in determining the berthing of vessels, for the entire duration of the Proposed Undertaking.

**Whether the dispute mechanisms address the ACCC's competition concerns and provide for independent oversight**

- whether the proposed Price Dispute Resolution Process in clause 10 and Schedule 5 sufficiently covers the reference tariffs, which are either payable by rival downstream businesses in stevedoring and PDI services or which may affect which downstream businesses in stevedoring and PDI services are selected by customers such as shipping lines, OEMs or cargo owners.
- whether, and if so, the extent to which the proposed Price Dispute Resolution Process in clause 10 and Schedule 5 is likely to provide an avenue for raising and resolving any disputes where AAT may be introducing or increasing any prices for access to Webb Dock West and other terminal services to Qube's rival downstream businesses in stevedoring and PDI services such that rivals face higher costs.
- whether, and if so, the extent to which the proposed Non-Price Dispute Resolution Process in clause 11 and Schedule 6 is likely to provide an avenue for raising and resolving any disputes where AAT may be:

- preferencing, in any form, Qube's downstream interests in stevedoring and PDI services when providing them access to Webb Dock West and other terminal services.
- preferencing, in any form, Qube's downstream interests in stevedoring and PDI including road transport services in determining the berthing of vessels.
- accessing in any way the commercially sensitive information of Qube's rival downstream businesses in stevedoring and PDI services.
- bundling automotive terminal services with other services.

- whether, and if so, the extent to which the ad hoc independent auditing obligations in clause 11.2 are likely to provide an avenue for raising and resolving any complaints about AAT and/or Qube's compliance with the Proposed Undertaking.

**Whether the reporting obligations provide for a sufficient level of independent oversight**

- whether, and if so, the extent to which the proposed Self-Compliance Reports obligations (including the KPIs) in clause 8 and Schedule 3 are likely to provide a sufficient level of reporting for detecting non-compliance with the Proposed Undertaking for the entire duration of the undertaking.
- whether, and if so, the extent to which the proposed annual reporting for the Independent Audit obligations in clause 9 are likely to provide a sufficient level of reporting for detecting non-compliance with the Proposed Undertaking for the entire duration of the undertaking.
- whether, and if so, the extent to which non-compliance with each of the obligations in the Proposed Undertaking is likely to be detected.

**Any risks that could affect implementation or limit the effectiveness of the proposed section 87B undertaking**

- whether it is clear which behaviours the AAT must and must not engage in, in order to comply with the obligations in the Proposed Undertaking, and if there are any areas of uncertainty/ambiguity.
- whether there is any conduct/matter which is not captured by the drafting of the Proposed Undertaking which should be captured, in order to ensure the ACCC's competition concerns are addressed.
- whether, and if so, the extent to which the Proposed Undertaking is likely to distort development of markets (absent an undertaking) for the supply of automotive stevedoring and PDI services, at Webb Dock West and/or across multiple east coast ports.

**If you consider that the Proposed Undertaking may address your concerns with improvements, we invite comments on what improvements may be made.**

**Any additional information or comments that you consider relevant to the ACCC's consideration of the proposed section 87B undertaking.**

## **ACCC's future steps**

122. As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues, the proposed section 87B undertaking offered by Qube, and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) by no later than 5pm AEDST on 7 November 2024.
123. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues and on the proposed undertaking.

124. The ACCC intends to publicly announce its final view on 12 December 2024. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.