

Form G

Commonwealth of Australia
Trade Practices Act 1974 - Section 93(1)

**Exclusive dealing
notification**

N92776

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sections 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice:
GeelongPort Pty Limited (ACN 003 996 594)
- (b) Short description of business carried on by that person:
Port Operator
- (c) Address in Australia for service of documents on that person:
Clayton Utz, Level 25, 250 St George's Terrace, Perth, Western Australia 6000
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
Vessel unloading services
- (b) Description of the conduct or proposed conduct:
GeelongPort Pty Limited proposes to provide access to Lascelles Wharf in Geelong Port on the condition that potential port users use Geelong Port's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes which may potentially constitute exclusive dealing under section 47(2)(d) (see attached submissions).
3. Class or classes of persons to which the conduct relates:
Shipping companies and vessel charterers for vessels using Lascelles Wharf in Geelong Port to unload fertiliser and other dry bulk cargoes.
- (a) Number of those persons:
 - (i) At present time:
Approximately three shipping companies and vessel charterers use Lascelles Wharf in Geelong Port to unload fertiliser and other dry bulk cargoes in each 12 month period.

(ii) Estimated within the next year:

Based upon historical figures and current projections, approximately three shipping companies and vessel charterers are expected to use Lascelles Wharf in Geelong Port to unload fertiliser and other dry bulk cargoes in the next calendar year.

(b) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses

Hi-Fert Pty Ltd, GPO Box 2236, Melbourne Victoria 3001;

Interfert Australia Pty Ltd, PO Box 3078, Port Adelaide South Australia 5015;

Impact Fertilisers Pty Ltd, PO Box 294, Moonah Tasmania 7009

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Paul Gribble care of Clayton Utz

GPO Box P1214 PERTH WA 6844

Phone: (08) 9426 8493

Dated: 18/11.....2007

Signed by/on behalf of the person giving this notice



(Signature)

Paul Gribble

(Full Name)

Clayton Utz

(Organisation)

Partner

(Position in organisation)

Submissions by GeelongPort Pty Limited to the Australian Competition and Consumer Commission in support of a Notification of Exclusive Dealing

Conduct to which Notification Relates

1. GeelongPort Pty Limited ("**GeelongPort**") proposes to provide access to Lascelles Wharf in Geelong Port on the condition that potential users use Geelong Port's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes from vessels (if figee cranes are available for use).
2. This conduct may potentially constitute exclusive dealing under section 47(2)(d) of the *Trade Practices Act 1974* ("**the Act**") in that it may be characterised as full line forcing or tying.
3. GeelongPort notes that the supply of services on the condition that port users acquire other services (i.e. use of figee cranes) from GeelongPort may not necessarily fall under section 47(2) of the Act. See, eg, *Monroe Topple & Associates v Institute of Chartered Accountants of Australia* (2001) ATPR (Digest)).

Public Benefit

4. GeelongPort has carried out substantial improvements of the port's facilities for the benefit of all port users. These improvements have included the purchase of two purpose-built shore based figee cranes and associated hoppers for use at Lascelles Wharf.
5. GeelongPort considers that offering potential users of the Lascelles Wharf in Geelong Port a package of services which includes access to the wharf and use of Geelong Port's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes will be beneficial to port users and the public for following reasons:
 - (a) the use of purpose-built, figee cranes reduces unloading and shipping time and thereby increases Geelong Port's operational efficiency;
 - (b) figee cranes minimise environmental risks by reducing the amount of dust and other harmful substances released into the environment; and
 - (c) the income generated by use of the port's figee cranes assists in ensuring GeelongPort's economic viability which is a pre-condition to providing necessary infrastructure for expansion to the operations of the port (see *Geelong Port - Strategic Use Plan - Final Report, Volume 1 - 21 July 2003*).
6. GeelongPort submits that there is an obvious public benefit in increasing the operational efficiency of the nation's port facilities and promoting investment in port infrastructure.

Effect on Competition

7. GeelongPort believes that the relevant market for the purposes of assessing the effect (if any) on the proposed conduct is the market for port services.
8. The proposed conduct will only restrict users of the Lascelles Wharf in Geelong Port who might wish to unload fertiliser and other dry bulk cargoes using the vessel's equipment rather than the purpose-built, figee cranes.
9. The proposed conduct has a limited scope in that it only applies to Lascelles Wharf users wishing to unloading fertiliser and other dry bulk cargoes if figee cranes are available for use.

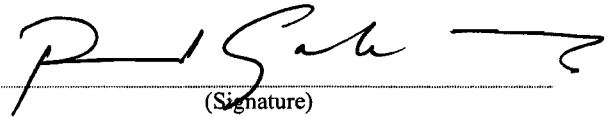
10. As such, GeelongPort believes that the proposed conduct is likely to have a minimal effect on competitive activity in the relevant market. Nor are there any other public detriments of any materiality.

Conclusion

11. Accordingly, the public benefits associated with the proposed conduct will outweigh any detriment arising from the limited requirement that users Lascelles Wharf users wishing to unloading fertiliser and other dry bulk cargoes use the purpose-built, figee cranes if those figee cranes are available for use

Dated: 18/1.....2007

Signed by/on behalf of the person giving this notice



(Signature)

Paul Gribble

(Full Name)

Clayton Utz

(Organisation)

Partner

(Position in Organisation)