

COPY OF LETTER SENT TO ATTACHED LIST.



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: N92776  
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1 February 2007

«Name»  
«Position»  
«Address»

Dear «Salutation»

**GeelongPort Pty Limited exclusive dealing notification N92776  
- interested party consultation**

**Introduction**

The Australian Competition and Consumer Commission (ACCC) received an exclusive dealing notification from GeelongPort Pty Limited (GeelongPort) on 19 January 2007.

The notification was lodged because GeelongPort proposes to:

...provide access to Lascelles Wharf at Geelong Port on condition that potential port users use GeelongPort's figee cranes for the purpose of unloading fertiliser and other dry bulk cargoes.

The ACCC is currently conducting a public consultation process regarding this notification. As a potentially interested party, you are invited to comment on the issues outlined in this letter.

**Background**

The ACCC is the independent Australian government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

Exclusive dealing involves one trader imposing restrictions on another trader's freedom to choose with whom, in what or where they deal. Exclusive dealing is generally prohibited under the Act.



However, the Act allows businesses to obtain immunity from legal action for exclusive dealing conduct in certain circumstances. One way businesses may obtain immunity is by lodging what is known as a 'notification' with the ACCC.

Having lodged a notification, GeelongPort receives immediate immunity. The ACCC may act to remove the immunity afforded by exclusive dealing notifications such as the one lodged by GeelongPort if it is satisfied that:

- in all the circumstances the conduct would, or would be likely to, result in a substantial lessening of competition; and
- the conduct has not resulted or is not likely to result in a benefit to the public or the benefit to the public would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.

### **GeelongPort's notification**

GeelongPort's exclusive dealing notification and supporting submission is enclosed. A copy of the notification is also available at the ACCC website [www.accc.gov.au](http://www.accc.gov.au) by following the links 'Public registers', 'Authorisations and notifications registers' and 'Exclusive dealing notifications register'.

GeelongPort believes the relevant market for assessing the impact of the proposed conduct is the market for port services.

In support of its notification, GeelongPort claims the notified conduct will be beneficial to port users and the public because:

- the use of purpose-built figee cranes reduces unloading and shipping time, therefore increasing Geelong Port's operational efficiency
- figee cranes minimise environmental risks by reducing the amount of dust and other harmful substances released into the environment
- it will promote investment at the port.

GeelongPort also submits the proposed conduct will only restrict users of 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. As such, GeelongPort suggests that the proposed conduct is likely to have minimal effect on competitive activity in the relevant market.

## **Request for submissions**

To assist the ACCC in its consideration of this matter it would be helpful to obtain your comments on GeelongPort's claims. Please note, the ACCC recommends that you refer to GeelongPort's notification and supporting submission before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available on its public register and website.

Persons lodging a submission with the ACCC may request that information included in a submission be excluded from the public register. If you wish to request that any information in your response to this letter be excluded from the public register by reason of its confidential nature, please refer to the enclosed guidelines. If the ACCC decides to exclude any information from the public register, the ACCC may take it into account even though it is not publicly available.

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

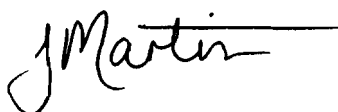
Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on (02) 6243 1211.

If you intend to provide a submission in relation to the above notifications, please do so by **Monday, 19 February 2007**.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of this matter. We would appreciate the provision of email contact details to facilitate future correspondence in respect of this notification. You may forward this letter to any other party who may wish to make a submission to the ACCC regarding the notification.

This letter has been placed on the ACCC's public register and website. If you wish to discuss any aspect of this matter, please contact Ms Jaime Martin on (03) 9290 1477 or at [jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au).

Yours sincerely



David Hatfield  
Director  
Adjudication Branch



**Exclusive dealing notification N92776 – GeelongPort Pty Ltd**

**Initial consultation – list of interested parties**

1. Hi-Fert Pty Ltd
2. Interfert Australia Pty Ltd
3. Impact Fertilisers Pty Ltd