



**Australian
Competition &
Consumer
Commission**

Our Ref: C2009/1097
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19 October 2009

*This letter, with enclosures,
was sent to the
attached list of interested
parties. SC*

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Dear

20/10/09

**Australian Amalgamated Terminals Pty Limited (AAT) - applications for authorisation
A91141-2 & A91181-2 - draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for authorisation lodged by AAT on 10 June 2009 and 5 August 2009.

Draft determination

A copy of the ACCC's draft determination is attached. For the reasons set out in its draft determination, the ACCC proposes to grant conditional authorisation for five years to AAT, P&O Wharf Management Pty Limited and Plzen Pty Limited to give effect to section 2 of the Shareholders Agreement, together with the other provisions of the Shareholders Agreement and the Constitution of AAT, being provisions that establish and constitute the AAT joint venture, but only to the extent that those provisions allow the parties to engage in certain conduct at AAT's terminals.

The proposed conditions are set out in the draft determination. One condition will provide a mechanism for stevedores to seek access to AAT's terminals (the access condition). Another condition requires AAT to provide terminal end-users with a dispute resolution process (the dispute resolution condition).

Next steps

Once the ACCC issues a draft determination, the applicant or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **3 November 2009**.

If a pre-decision conference is called, it will be held in Melbourne in the **week commencing 9 November 2009**. Further details will be provided should a pre-decision conference be requested.

Alternatively, you are invited to make a written submission in response to the ACCC's draft determination. Submissions should be lodged by **3 November 2009**. The ACCC's ability to take into account submissions provided after this date may be limited because under section 90(10) of the Act, the ACCC must determine an application for authorisation within 6 months of receiving an application otherwise the ACCC is deemed to have granted the authorisation.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

The ACCC welcomes submissions addressing the operation of the proposed conditions of authorisation.

With respect to the proposed **access condition**, the ACCC invites submissions on the following issues:

- Is the scope of the proposed access condition appropriate?
- Does the definition of 'access dispute' cover all matters that should appropriately be considered an access dispute between AAT and a stevedore?
- Does the definition of 'port terminal services' cover all items that a stevedore may require to be given access to by AAT?
- Are the proposed timeframes appropriate?
- Can the proposed access condition operate in tandem with existing processes at ports, and particularly those provided in AAT's agreements with certain port authorities?

With respect to the proposed **dispute resolution condition**, the ACCC invites submissions on the following issues:

- Is the scope of the proposed dispute resolution condition appropriate?
- Is the definition of 'terminal end user dispute' appropriate?
- Is the definition of 'terminal end user' appropriate?
- Are the proposed timeframes appropriate?
- Can the proposed dispute resolution condition operate in tandem with existing processes at ports, and particularly those provided in AAT's agreements with certain port authorities?

Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

10 June 2009	Lodgement of initial applications and supporting submission.
15 June 2009	Public consultation process begins.
19 October 2009	Draft determination.
3 November 2009	Deadline to request a pre-decision conference.
3 November 2009	Deadline for submissions on draft determination.
Week commencing 9 November 2009	Pre-decision conference, if called.
December 2009	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter please do not hesitate to contact Sharon Clancy on (02) 6243 1217.

Yours sincerely

Dr Richard Chadwick
General Manager
Adjudication Branch

Applications for authorisation lodged by AAT A91141-2 & A91181-2
Interested parties consulted 19 October 2009

AAL
Anglo Ports Pty Ltd
ANL
ARC Strang Pty Ltd
Asiaworld Shipping
Australian Container Freight Services
Australian Customs and Border Protection Service
Australian International Container Terminals Ltd
Australian Maritime Safety Authority
Australian National Stevedores
Australian Peak Shippers Association
Australian Quarantine Inspection Service
Australian Steel Association Inc
AutoNexus
BKC Distribution and Haulage
BlueScope Steel Ltd
BMW
Boat Transport
Brailey's Transport
Bureau of Infrastructure, Transport and Regional Economics
Capital P&O Stevedores
Caterpillar
Century Customs Services Pty Ltd
Ceva Logistics
CEVA Logistics
Chalmers
CMC (Australia) Pty Limited
Complete Global
Cridland Katte
Darryl Dickenson Transport
Darwin Port Corp
Department for Transport, Energy and Infrastructure SA
Department of Infrastructure, Energy and Resources
Department of Transport VIC
Dept Infrastructure Transport & Regional Devel
Federal Chamber of Automobile Industry
Flinders Ports
Ford
Freightplus
Gearbulk Australasia
George Turner Customs
GH Holden Ltd
Hetherington Kingsbury
Hoegh Autoliners
Hogan's Heavy Haulage
Honda
Hunt Specialised Transport
Hutchinson Port Holdings
Hyundai Motor Company Australia Pty Ltd
Interport
Isuzu
John Deere
K Line
Kia Motors Australia
Kuehne- Nagel
Maritime Union of Australia
Massey Ferguson/AGCO Australia Limited - Head Office
Megalift Pty Ltd
Mercedes-Benz Australia/Pacific Pty Ltd
Milne Dunkley
Mitsubishi Motors Australia
Mitsui OSK Lines
Nationwide Transport & Logistics Pty Ltd
Nationwide Transport Solutions
Neptune Shipping
Newcastle Stevedores
Nissan Motor Co
NSW Maritime
NTL
NYK Line
OneSteel Limited Head Office
P&O Automotive & General Stevedoring
P&O Wharf Management Pty Limited
Pacific Asia Express
Pacific Forum Line
Pacific Orient Sea Transport Pty Limited
Patrick Autocare
Patrick Port Services
Patrick Stevedoring
Port Kembla Gateway Pty Ltd
Port Kembla Port Corp
Port of Brisbane Corp
Port of Melbourne
Ports Australia
POST
Prix Car
Prixcar
Puegeot
Queensland Competition Authority
Queensland Transport
Russells Transport
Seaway
Sherbourne International Freight
Shipping Australia
Skelton
Sofrana
SOFRANA Unilines
Stemcor Australia Pty Ltd
Strang Stevedoring Australia P/L
Subaru
Swire Shipping
Sydney Ports
T J Clark and Sons
Tasmanian Ports
The Institute of Arbitrators & Mediators Australia
Toll Logistics
Toll Shipping
Toll Transport
Toyofuji Shipping
Toyota
UD Trucks Australia
Wallenius Wilhelmsen
Wymess Transport