



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2009/1097  
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19 October 2009

Mr Craig Faulkner  
Chief Executive Officer  
Australian Amalgamated Terminals Pty Limited  
PO Box 5129  
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Dear Mr Faulkner

**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.

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