
Australian Amalgamated
Terminals Pty Limited (AAT)
submission to Australian
Competition and Consumer
Commission

Application for authorisation of AAT

10 June 2009

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1 Introduction

Australian Amalgamated Terminals Pty Limited (**AAT**)¹ was established in 2002 as a joint venture (**AAT Joint Venture**) of Patrick Corporation Limited (**Patrick Corp**), through a holding vehicle Plzen Pty Limited (**Plzen**), and P&O Ports Limited (**P&O Ports**), through a holding vehicle P&O Wharf Management Pty Ltd (**POWM**),² pursuant to a shareholders' agreement dated 2 December 2002 between AAT, POWM and Plzen (**Shareholders' Agreement**).³

The business of the AAT Joint Venture business was to establish, develop and operate motor vehicle and general cargo handling facilities (**terminals**) at various ports.

At the time of the establishment of the AAT Joint Venture, Patrick Corp and P&O Ports, or their subsidiaries, amongst other activities, operated terminals and conducted business as automotive and general stevedores. Following the establishment of the AAT Joint Venture, former subsidiaries of Patrick Corp, now owned by Asciano Limited, (hereafter, **Patrick**) and P&O Ports continued to operate as automotive and general stevedores, while AAT operated automotive and general terminals.⁴

P&O Ports, now DP World Australia Limited (**DP World**), subsequently divested:

- a 75% share in its automotive and general stevedoring business, P&O Automotive & General Stevedoring Pty Limited (**POAGS**), through a holding company structure, to a consortium of KFM Diversified Infrastructure and Logistics Fund and Kaplan Equity Limited (together, **Kaplan**), Wilh Wilhelmsen ASA, Kawasaki (Australia) Pty Ltd and management;
- a 49% share in POWM to a consortium of Kaplan, Wilh Wilhelmsen ASA, Kawasaki (Australia) Pty Ltd and management.

Plzen is currently a subsidiary of Asciano Limited (**Asciano**). Patrick and POAGS continue to provide automotive and general stevedoring services. AAT continues to operate automotive and general cargo terminals.

On 24 August 2007, the Commission commenced proceedings against AAT, its shareholders, related corporations and certain individuals in relation to alleged breaches of the *Trade Practices Act 1974 (Cth)* (**TPA**) arising in connection with the establishment of the AAT Joint Venture. Pursuant to an agreement between AAT and the Commission, the proceedings against AAT are to be dismissed on the condition that, without any admissions, AAT commence and prosecute an application for authorisation of its conduct in giving effect to the arrangement between its shareholders for the establishment and operation of automotive and general cargo terminals in the ports in which AAT operates.

AAT now seeks authorisation pursuant to Section 88(1) of the TPA to:

¹ At the time AAT commenced operations it was known as Australian Automotive Terminals Pty Limited. It subsequently changed its name to Australian Amalgamated Terminals Pty Limited, to better reflect the fact that AAT's operations extended to general cargo, not simply automotive cargo.

² On 13 December 2002, AAT sent a letter to the ACCC's Mergers and Asset Sales Branch advising of the joint venture, enclosing a press release and briefing paper.

³ The Shareholders' Agreement and the AAT Constitution are attached at **Confidential Annexure A**.

⁴ Notably, in Melbourne, Patrick has continued to operate its stevedoring business out of Webb Dock West, a terminal it operates on an exclusive access basis for the purpose of Patrick's stevedoring business only.

(a) give effect to the AAT Joint Venture, established by section 2 of the Shareholders Agreement,⁵ together with the other provisions of the Shareholders Agreement and the Constitution of AAT; and

(b) engage in conduct under or pursuant to, and in fulfillment of, the AAT Joint Venture,

on its own behalf and on behalf of parties to the AAT Joint Venture and any future parties to the AAT Joint Venture (**Application**).

This submission is filed in support of the Application.

2 Executive summary

The operations of the AAT Joint Venture provide significant public benefits and no public detriment. Accordingly, the Commission should grant authorisation.

AAT operates terminal facilities and provides related services to stevedores and other terminal users – on a multi-user, open-access basis – to facilitate the loading and unloading of automotive and general cargo. AAT currently operates in five ports around Australia. AAT has not refused access to its terminals to any stevedore at any time.

AAT was created – and continues to operate – in the context of broader government policies and commercial forces, including:

- policy decisions of State Governments and port authorities for the use of valuable waterfront land;
- requirements of independent port authorities with respect to the allocation of port land among port users, to maximise benefits to all port users, and to realise commercial returns for corporatised port authorities;
- pressures from the users of stevedores' services (including shipping lines, motor vehicle manufacturers and motor vehicle importers) to enhance efficiencies in the import supply chain across Australia, including with respect to stevedoring and PDI operations; and
- the capital requirements of new terminal capacity and the need to meet those requirements at the lowest possible cost.

AAT's operating principles – necessitated by its ownership structure and by its agreements with certain port authorities – benefit all users. These operating principles provide for:

- non-discriminatory, open access to all licensed stevedores and other users wanting to do business at an AAT terminal, based on a standard, published license application process and published standard terms and conditions;
- published charges, charged equally to all stevedores using and potentially using AAT's facility; and
- procedures for protecting confidential information of stevedore customers from disclosure to the shareholders or board of AAT, or any other third party.

⁵ The Shareholders' Agreement, together with the AAT Constitution, are attached at **Confidential Annexure A**.

Briefly stated, the Commission should grant authorisation for these reasons:

First, AAT's operations facilitate the achievement of greater efficiency in the operation of terminals, including:

- efficiencies arising by reason of the utilisation of the most efficient or lowest cost terminal facilities;
- scale and rationalisation efficiencies by reason of the removal of duplicated infrastructure, systems and other inputs into the operation of the terminal facilities, including:
 - more efficient utilisation of port land: a multi-user terminal may be able to meet all the requirements of industry participants more efficiently than two terminals, either by reason of constraints on port land or fluctuations in the volume of demand (including for example a multi-user terminal which is greater in land size than a single exclusive access terminal, but of lesser land size than two such terminals);
 - the availability of one pool of mobile machinery and equipment and shore cranes, as well as one pool of specialised maintenance labour, maintained on the site;
 - the introduction of one operating system of IT infrastructure, connecting all stevedores, shipping lines and customs, thereby enabling shipping lines to transfer between stevedores without needing to connect to a new IT system or change terminals, and enabling stevedores access to state-of-the-art technology without requiring individual capital expenditure; and
 - the ability to use one set of delivery personnel;
- operational efficiencies, by reason of market participants operating from a new superior terminal facility, including:
 - more efficient logistics by providing a single point of discharge for cargo and of collection for car transporters and pre-delivery inspection (PDI) operators;
 - enabling importers to process vehicles on-wharf at one terminal rather than either moving the vehicle from one terminal to another, or having two processing facilities; and
 - removing the need for stevedores to provide funding for large capital expenditure programs (thereby enabling 'smaller' stevedores to work without the need to lease and operate their own terminals).

Second, AAT's operations facilitate competition by lowering the barriers to entry for a stevedore and other terminal users (e.g., crane operators) wishing to do business at a port where there is an AAT terminal.⁶

⁶ The ACCC has acknowledged the potential procompetitive effect of AAT operations in facilitating entry into the automotive stevedoring market. In *Application for Authorisation by Federal Chamber of Automotive Industries* ("FCAI"), dated 20 April 2005 (A90937), the ACCC granted authorisation for a period of 5 years to the FCAI to allow it to collectively negotiate with "area hire service providers," predominantly P&O Ports and Patrick, but also Toll and AAT. The ACCC commented that the long term exclusive leases of land from port authorities by stevedores for their own access purposes represented a significant barrier to entry. However, the ACCC observed that the establishment by the Port of Brisbane Authority of "a third-party

- as a result of AAT's open access, non-discriminatory regime and its development of terminals, a range of stevedores and other third party users (including non-owners) do business at AAT terminals;
- as a multi-user facility, AAT significantly reduces the capital expenditure and economies of scale required for a stevedore to do business;
- a new entrant stevedore has the ability to enter the market on a contract-by-contract basis. It would be significantly harder for a new entrant stevedore to establish competing operations against incumbent rivals if it had to assume all of the capital and business risk of the entire facility. By reason of AAT's open access, non-discriminatory policies, a stevedore can tender for a shipping contract on the basis of access to an AAT terminal rather than first securing a lease to a suitable terminal;
- by reason of AAT's network of facilities, a stevedore has the ability to compete for national shipping contracts;
- a new entrant's sunk costs associated with entry and exit at a particular port are minimised; and
- at some ports, such as Port Kembla, it is simply not feasible to allocate port land for multiple terminals. In the absence of a multi-user, open access facility, smaller stevedores would be excluded from doing business.

Moreover, the AAT Joint Venture causes no public detriment. Having regard to the possible theoretical counterfactuals (as discussed in Section 8, below), AAT is more efficient and pro-competitive (or at least not any less competitive) than any of the alternative scenarios and unlikely to substantially lessen competition in any relevant market.

3 About AAT

3.1 AAT's Corporate Structure

AAT commenced operations in 2002 and operates pursuant to the Shareholders Agreement and its constitution. See **Confidential Annexure A**. The shareholders have not changed since the establishment of AAT, although the ultimate ownership of these shareholders has changed.

The AAT shareholders and parties to the AAT Joint Venture are:

- Plizen, the ultimate holding company of which is Asciano.

Asciano is the publicly listed holding company for, inter alia, Patrick. Patrick's business includes stevedoring for container, bulk, automotive and general cargo, as well as ancillary services related to those businesses; and

- POWM, owned as to 51% by DP World and as to 49% by KFM Logistics Investments 6 Pty Limited (**Kaplan Consortium**).

access regime for the newly established [AAT] facility," was a factor that "may facilitate entry into the automotive stevedoring market."

The Kaplan Consortium comprises KFM Diversified Infrastructure and Logistics Fund and Kaplan Equity Limited (together, **Kaplan**), Wilh Wilhelmsen ASA, Kawasaki (Australia) Pty Ltd and management.

DP World's business includes the operation of container terminals and associated services. It also retains a minority stake in POAGS, which provides automotive and general stevedoring services.

A corporate structure diagram is set out in **Appendix A**.

3.2 Overview of AAT's business⁷

AAT develops and manages port terminal facilities and equipment, and provides services in relation to these facilities, for stevedoring and PDI processing of automobiles. AAT's head office is located in Port Melbourne. AAT's head office oversees the operations of the terminals, regulatory compliance and maritime security, manages relationships with stakeholders and performs ancillary administrative and financial functions. AAT's management structure is set out in the organization charts attached at **Appendix B**.

AAT currently operates terminals at Port Kembla, New South Wales; Fisherman Islands, Brisbane, Queensland; Webb Dock West, Melbourne, Victoria; Outer Harbor, Adelaide, South Australia; and Bell Bay, Tasmania.⁸ A discussion of each of these terminals in the context of the development of the relevant ports is set out in **Section 5** below.

At each of these terminals, AAT provides services to port users on an open-access basis, offering services and access to the terminal to all users complying with certain license conditions, on non-discriminatory terms. AAT keeps each user's commercially sensitive information confidential. Port users deal either directly with AAT or through intermediate service providers with access to the terminal.

The principal services (**Terminal Services**)⁹ that AAT generally provides include:

- facility development and maintenance;
- facility access – provision of a cargo lay down area suitable for the purposes of the discharge or loading of cargo, clearance by Australian Customs and Border Protection Service (**Customs**) and Australian Quarantine Inspection Service (**AQIS**), and for release to and loading on transport for delivery to the importer, or for receipt of export cargo from transport;
- stevedore access – provision of access for stevedoring purposes (to licensed stevedores) including the provision of all equipment (excluding loose tools and specialised equipment), employee amenities, service vehicles and cargo

⁷ Annexure 1, clause 1 of the Shareholders' Agreement describes AAT's initial business objectives and aims. These aims and objectives have evolved over time. Since its establishment, general cargo handling has become a more significant part of AAT's business and most of AAT's terminals around Australia provide services in relation to both automotive and general cargo.

⁸ Between December 2002 and 17 November 2008, at which time the terminal was closed to vessel traffic, AAT operated GIAT in Port Jackson. Services that AAT provided at GIAT were Facility Access, Stevedore Access, Quarantine washing and inspections services, PDI sublease premises and storage. When the terminal closed, vessels that previously stopped at GIAT moved to the AAT terminal at Port Kembla.

⁹ Not all of the listed services are available at all AAT terminals; availability of a particular service is subject to availability of resources at each AAT terminal. See Section 5, below.

management systems which identify all manifested cargo for the terminal, which is linked by electronic data interchange (**EDI**) to Customs and AQIS;

- IT systems – including a cargo management system (**Unitrack**). Unitrack is similar to an inventory system identifying all cargo manifested for discharge/load at a terminal, linked to Customs and AQIS to enable communications with them, as well as comprehensive descriptions of bill of lading identification, cargo classification and description, identities of consignee and consignor, identifying marks and weight and volume measurements;
- receival and delivery – including clerical and manual processing services required for the proper loading and unloading of cargo to or from road, water or rail transport. The manual services include identification of the correct cargo, verifying authority to collect it and the loading of the cargo to take it from the terminal;
- storage services – storage is permitted subject to a charge, in the event that cargo is not removed within the timeframe allowed specified under the facility access terms;
- subletting of space to PDI operators;
- provision of mobile machinery and equipment on a user pays basis, or included within the stevedore access charge (**SAC**), including:
 - crane hire for vessel unloading and crane lifts for heavy cargo to or from transport (user pays);
 - transit buses (SAC);
 - fork trucks (SAC);
 - wharf tugs/ramp runners (SAC);
 - utes (SAC); and
 - trailers (SAC).
- ancillary services, including:
 - quarantine cleaning (cleaning to the standard required by AQIS);
 - quarantine inspection;
 - customs clearance message receival;
 - reefer monitoring (i.e., regular monitoring of the temperature of refrigerated containers);
 - unpacking of general cargo from a ship's cargo trailers (**Mafi**);
 - berth hire;
 - manifest data entry on Unitrack;
 - yard planning;
 - first aid (through security personnel); and

- other amenities, including power and water.

All terminals offer security 24 hours per day, 7 days per week, under the supervision of the Department of Transport and Regional Security (Commonwealth) pursuant to the Maritime Security Regulations, which includes surveillance by security personnel, closed circuit televisions and security lighting and fencing.

3.3 AAT's corporate governance policies

The AAT Board has adopted the following corporate governance policies:

- Corporate Governance Principles;
- Compliance Policy;
- Trade Practices Compliance Policy;
- Staff Compliance Policy;
- Trade Practices Compliance Guide for Site Managers;
- Annual Review of AAT Tariff Procedure; and
- Application for Price Variation, Price on Application Procedure.

Copies of these policies are attached at **Appendix C**.

3.4 Protection of confidential information

Protection of confidential information with respect to customers is governed by AAT's Confidentiality Policy, which forms part of AAT's Compliance Policy as attached in **Appendix C**. The policy contains guidelines for directors, management and employees to ensure that:

- certain confidential information about AAT's customers is not disclosed to the shareholder directors;
- appropriate procedures are in place to maintain the confidentiality and integrity of certain confidential information;
- the risks of conflicts of interest arising in relation to the positions of shareholder directors is minimised; and
- AAT complies with the provisions of the TPA.

In addition, section 3.2(d) of the standard AAT stevedoring licence agreement (at **Appendix I**) contains provisions requiring AAT to ensure that certain confidential information is not disclosed to any other person except where disclosure is required for the purposes of determining a dispute or as required by law or for any audit of AAT's records or reporting by AAT to the port corporations. Section 3.2(c)(iii) provides that confidential information received by stevedores from the centralised computer be kept completely confidential.

4 Overview of other industry participants

There are many participants in the supply chain in which AAT operates:

4.1 State Governments

State Governments, including the Governments of Queensland, New South Wales, Victoria, South Australia and Tasmania, own parcels of land that are or may be designated as port land upon which terminals may be built and at which AAT may provide terminal services.

4.2 Ports

(a) Sydney Ports Corporation

Sydney Ports Corporation (**SPC**) is a state-owned corporation established in 1995 under the *Ports & Maritime Administration Act 1995 (NSW) (PMA Act)*. Under the PMA Act, SPC is responsible for port management and operations in Port Jackson and Port Botany.

(b) Port Kembla Port Corporation

Port Kembla Port Corporation (**PKPC**) is a statutory corporation with responsibility for the management of the port of Port Kembla under the PMA Act.

(c) Port of Brisbane Corporation

The *Port of Brisbane Authority Act 1976 (QLD)* established the Port of Brisbane Authority to centralise planning and management of all port facilities in the Brisbane area. In 1994, the Port of Brisbane Authority was corporatised and became the Port of Brisbane Corporation (**PBC**).¹⁰

(d) Port of Melbourne Corporation

Port of Melbourne Corporation (**PoMC**) is a statutory corporation under the *Port Services Act 1995 (Vic)*, as amended in 2003, responsible for the management and development of the Port of Melbourne. It controls various parcels of land and shipping channels around Port Phillip Bay and the Yarra and Maribyrnong Rivers, including berths at Webb Dock, among other locations.

(e) Tasmanian Ports Corporation Pty Ltd

The Tasmanian Ports Corporation Pty Ltd (**Tasports**) is fully owned by the Tasmanian Government. The company was created following the amalgamation of the state's four port companies – Hobart Ports Corporation Pty Ltd, Port of Launceston Pty Ltd, Port of Devonport Corporation Pty Ltd and Burnie Port Corporation Pty Ltd – on 1 January 2006.

(f) Flinders Ports Pty Limited

Flinders Ports Pty Limited (**Flinders Ports**) is a private corporation which has leased part of the port land and operated part of the port waters of Port Adelaide since 2001 when the government of South Australia privatised the business of the South Australian Ports Corporation.

¹⁰ In 2007, PBC changed status from a statutory corporation to an ASIC listed company Government Owned Corporation (**GOC**).

4.3 Australian Customs and Border Protection Services (Customs)

Customs is responsible for clearing the imported and exported goods subject to AQIS clearance. Clearance is notified by EDI message to AAT's Unitrack system. Customs also provides roving and specific surveillance. It is responsible for issuing licences to premises that are customs warehouses for cargo under bond.

4.4 Australian Quarantine Inspection Service (AQIS)

AQIS approves the importation of goods (and food export), separate to Customs, subject to inspection for any contravention of quarantine requirements. AAT has AQIS permanently on site at Port Kembla and Fisherman Islands and a visiting presence at other locations. All imported goods are quarantined until released by AQIS.¹¹

4.5 Australian Maritime Safety Authority (AMSA)

AMSA is largely involved with the inspection of vessels and their equipment to ensure the vessel working is safe. AMSA has powers to prevent vessels from discharging or loading and retain vessels within the port.

4.6 Department of Infrastructure and Regional Transport (DOTARS)

DOTARS is responsible for the security of the Maritime Security Zones in Australia. Accordingly, maritime land holders such as AAT are required to comply with the applicable security regulations. AAT is required to submit a security plan with respect to each site for approval. Site security is audited by DOTARS on a regular basis with penalties for breaches of security for companies and individuals.

4.7 Stevedores

The following stevedores operate at AAT terminals:

- (a) Patrick Stevedores (wholly-owned subsidiary of Asciano) operates at all AAT's terminals providing automotive and general stevedoring services;
- (b) POAGS provides automotive and general stevedoring services at all AAT terminals;
- (c) Illawarra Stevedores Pty Limited, privately owned, operates at Port Kembla at both AAT and Jetty 6. It provides general stevedoring services;
- (d) CPOL, jointly owned by Tasports and POAGS, operates at Bell Bay providing general stevedoring services; and
- (e) Australian National Stevedores (**ANS**) (associated with ANL Container Line) operates at Bell Bay providing general stevedoring services.

4.8 Shipping Lines

The following shipping lines berth at AAT Terminals:

¹¹ Some AQIS clearances are straightforward, for example, clearances of brand new hard goods with no visible sign of contamination, other clearances require close inspection of the cargo, for example, inspections of containers or second hand machinery and vehicles.

- (a) Kawasaki Kisen Kaisha Ltd (**K Line**), Mitsui OSK Lines (**MOL**), Nippon Yusen Kaisha (**NYK**) Line

K Line, MOL and NYK Line are all shipping lines based in Japan. They offer service networks of Pure Car Carriers (**PCC**) and/or Pure Car & Truck Carriers (**PCTC**) for imported and exported vehicles and mobile machinery (and minor break bulk cargo). They call at all AAT terminals, with the exception of Bell Bay (and Mitsui also does not call at Webb Dock West). They form a consortium known as the “3Js Consortium,” through which they offer each other slot chartering opportunities on each voyage.

- (b) ANL Container Line (**ANL**)

ANL is part of the European-based CMA CGM container line. Until 1998, ANL was owned by the Commonwealth Government. ANL offers a daily service between Melbourne and Bell Bay and has utilised the AAT terminal at Bell Bay on an as-needs basis, such as when its own berth (or crane) is undergoing maintenance. ANL also deals with AAT as agent for Toyofuji (see below).

- (c) Toyofuji Shipping Co Ltd (**Toyofuji**)

Toyofuji is jointly owned by Toyota Motor Corporation, Fujitrans Corporation and Toyota Transportation Co Ltd. Based in Japan, Toyofuji provides a fortnightly service from Japan to Australia to import Toyota vehicles. Toyofuji calls at AAT’s terminals at Fisherman Islands and Port Kembla.

- (d) Wallenius Wilhelmsen Logistics (**WWL**)

WWL is a Norwegian based PCC and/or PCTC and ConRO (container and roll-on roll-off cargo) operator of vessels. WWL carries cargo including vehicles, machinery, containers, MAFI, and heavy cargo on a regular service to Australia (and around the world). It calls at AAT terminals at Fishermen Islands and Port Kembla.

- (e) Other shipping lines carrying general cargo

Other shipping lines carrying general cargo and calling at AAT terminals include:

- Austral Asia Line B.V (**AAL**) – AAL calls at AAT’s terminals at Fisherman Islands and Port Kembla, carrying cargo including containers, steel, heavy lifts and project cargo, as well as machinery and boats, between Australia and South East Asia;
- Gearbulk Australasia – calls at AAT Terminals at Fisherman Islands, Port Kembla and Bell Bay;
- Pacific Forum Line – calls at AAT’s terminal at Fisherman Islands;
- Neptune Shipping – calls at AAT’s terminal at Fisherman Islands;
- Pacific Asia Express – calls at AAT’s terminal at Fisherman Islands;
- Pacific Orient Sea Transport Pty Limited (**POST**) – ship charterers and agents based in Singapore providing some services with general cargo calling at Fisherman Islands and Port Kembla;
- Swire Shipping (**Swires**) – Swires calls at AAT’s terminal at Port Kembla and Fisherman Islands. Swires operates a number of services from South East Asia, New Guinea, the islands, New Zealand and the US carrying cargo including containers, steel, timber and project cargo.

- (f) Shipping agencies

Shipping agencies provide services to shipping lines based overseas. Their services include managing the shipping lines' Australian businesses, negotiating contracts with customers (e.g., manufacturers) and suppliers (e.g., stevedores), and providing marketing and support services.

Shipping agents doing business with AAT include:

- Seaway Agencies Limited (**Seaway**)

Seaway provides shipping agency services in Australia to five shipping lines, including the following shipping lines that berth at AAT terminals:

- (A) Hoegh Autoliners (including Kiwi Car Carriers) (**Hoegh**) – based in Norway and provides a PCC and/or PCTC service with imported vehicles and mobile machinery, berthing at AAT terminals at Fisherman Islands and Port Kembla.
- (B) Sofrana – operates a general cargo service, focused on the South Pacific (Australia, New Zealand and the South Pacific Islands) and calls at Fisherman Islands and Port Kembla.

- Asiaworld Shipping Pty Limited (**Asiaworld**)

Asiaworld is an agent for Spliethoff of Amsterdam (**Spliethoff**) carrying, inter alia, containers, steel, heavy lifts and project cargo as well as machinery and boats. Spliethoff calls at Fisherman Islands and Port Kembla.

4.9 Manufacturers/shippers

The following manufacturers of vehicles export cars to Australia on vessels that berth at AAT Terminals: Toyota; GM Holden; Honda; Nissan; Mazda; Kia; Hyundai; Mercedes Benz; BMW; Chrysler; Ford; Isuzu; UD Trucks; Caterpillar; Massey Ferguson; and John Deere.

Toyota and GM Holden also export cars manufactured in Australia from AAT terminals.

Steel manufacturers who import steel to Australia through AAT Terminals include CMC Australia Pty Limited, Stemcorp, OneSteel Limited and BlueScope Steel Limited. BlueScope also exports from AAT's terminals, to the extent there is capacity overflow from its own terminals.

4.10 Importers

All the major motor vehicle, truck and machinery manufacturers listed above are also represented as importers.

4.11 Federal Chamber of Automotive Industries (FCAI)

FCAI is the peak industry organisation representing the automotive industry in Australia. FCAI's membership comprises that domestic passenger motor vehicle manufacturers and all major international brands that import and sell passenger, light commercial and four-wheel drive vehicles, and motor cycles, in Australia.

4.12 PDI Operators

PDI operators provide services to importers of motor vehicles, including surveying any vehicle damage, ensuring vehicles are built to specifications, mechanical testing, fitting accessories, cleaning and washing vehicles, and performing any rectification services to

repair any damage. These services may be performed at PDI facilities located on or off wharf.

- (a) Patrick Autocare is owned by Asciano and NYK. It performs PDI services both on and off wharf in Australia. It leases either land or land and buildings at all AAT Terminals, except Bell Bay. It also assists with land transport of vehicles to dealers;
- (b) Car Compounds Australia (**CCA**) is owned by Asciano and MOL. It is operated separately to Patrick Autocare. CCA does not hold any leases at AAT's terminals;
- (c) Prixcar Services Pty Ltd (**Prixcar**) is owned by K Line, DP World and subsidiaries of the Toll Group. All Prixcar PDI facilities are off-wharf. However, Prixcar is currently in discussion with AAT in relation to a sublease at Port Kembla;
- (d) Autonexus is owned by Inchcape Australia Limited, a wholly-owned subsidiary of Inchcape plc. It offers a range of services including PDI services. All of its facilities are off-wharf; and
- (e) CEVA Logistics provides off-wharf PDI services to Mazda.

5 Port development and AAT's terminals

Prior to the establishment of AAT, there were no private terminal operators providing terminal services in Australia. Generally, stevedores leased terminals from port corporations from which they conducted their own stevedoring business on an exclusive basis. With some limited exceptions, third parties were not permitted access to the stevedores' vertically-integrated terminals. In some cases, ports operated common user facilities, from which any third party could stevedore cargo of any description.

In the 1990s and early 2000s State Governments and port corporations corporatised and/or privatised their ports, requiring them to operate on commercial terms. Concurrently, state governments sought to maximise the benefits of valuable waterfront real estate, including by rationalising the use of scarce port land, which had higher value uses than for port operations. In this context, AAT was established.

5.1 Port Jackson (Sydney Harbour)

Port Jackson (Sydney Harbour) is under the statutory control of SPC, a state-owned corporation established in 1995 under the PMA Act. Under the PMA Act, SPC is responsible for port management and operations in Port Jackson (and Port Botany).

SPC holds freehold title to parcels of land around Port Jackson and Port Botany, including all of the wharves in those areas, transferred from the Maritime Services Board after SPC was formed in 1995. Since the 1970s, the area of land designated for port activities in Port Jackson has decreased to make way for other developments, including residential and commercial developments. A map of Port Jackson is attached at Appendix D.1.

Historically, SPC generally preferred to lease port land for a designated purpose to enable a lessee to operate the terminal, rather than operate it on a common user basis.¹²

¹² See Statement of Greg Martin, filed in the Proceedings, 4 November 2008 (Martin Statement) at para 41. See Appendix E.1.

Under the lease model, the lessee takes responsibility for the maintenance and operation of the area. SPC may operate a terminal as a common user facility in cases where cargo volumes are low and where a number of users can properly share the facility.

As SPC's Chief Executive at the time, Greg Martin, has stated, SPC preferred to lease the automotive terminal at Glebe Island rather than operate it on a common user basis for a number of reasons including:

- management of automotive terminal services is not one of SPC's core businesses;
- if SPC was to operate the terminal on a common user basis, it would need to manage the terminal at all times, including when the terminal is idle. It is considered more convenient and productive for SPC to allocate these functions to a dedicated terminal operator;
- there were a number of experienced terminal operators that SPC considered might be willing to lease the site; and
- receiving and delivering cargo on the wharf required a high level of scheduling management, best performed by a dedicated terminal operator, due to the location of two PDI operators located within the terminal adjacent to the wharf.¹³

Prior to AAT's commencement, automotive stevedoring operations in Port Jackson, Sydney, were divided between P&O Ports working at Glebe Island Automotive Terminal (**GIAT**),¹⁴ and Patrick at Darling Harbour. Until 2003, P&O Ports also operated a general cargo terminal at White Bay, which handled a small number of containers and some cars for WWL.¹⁵ There was no terminal available in Port Jackson to which an independent stevedore could obtain access to service a ship.

P&O developed GIAT in 1992 as a dedicated automotive terminal. GIAT could not accommodate general cargo because it did not have suitable undercover storage facilities. P&O operated GIAT on a "closed access" basis which means that P&O provided the stevedoring and yard functions at the facility for its shipping clients only. GIAT was a 9 hectare facility. Patrick's facility at Darling Harbour was a multipurpose facility over 15 hectares. Patrick's terminal was also closed access, except for a limited sharing arrangement negotiated between Patrick and P&O after the closure of White Bay, where P&O could stevedore its clients at Darling Harbour for payment of a fee to Patrick.

Prior to the establishment of AAT, the PDI operators in Sydney were PrixCar, which had an on-wharf facility at GIAT, and Patrick Autocare, which had an on-wharf facility at Darling Harbour. Ships would only stop at one or other of GIAT and Darling Harbour and would discharge all of their cars at that terminal. This caused a problem for the PDI operators, as short truck movements were required to shift vehicles between terminal to relocate vehicles to the contracted PDI operator. Short truck movements are inefficient given the loading and unloading times and the potential for damage to the vehicles.

¹³ Id. at 45.

¹⁴ At that time, GIAT was known as the Glebe Island Motor Vehicle Terminal (**GIMVT**); its name did not change to GIAT until the establishment of AAT. For the purpose of this submission, GIAT refers also to GIMVT, as it was known prior to AAT.

¹⁵ GIAT could not accommodate WWL's Con-Ro vessels because of their size. When Patrick won WWL's business in 2000, those ships were stevedored at Darling Harbour. They are now handled by POAGS at AAT's terminal at Port Kembla.

The business of AAT commenced in December 2002, with the awarding of a lease by SPC to AAT to operate a dedicated automotive terminal at GIAT, for a ten year term with an option to renew of not less than 5 years.

AAT was established to develop and operate GIAT in response to the indications from SPC as to its preferred outcome for the tender process, including GIAT be operated as a dedicated facility accommodating all stevedoring and PDI operators on a multi-user and open-access basis. SPC considered that the single operator, multi-user model was a more efficient use of the site. Due to the triangular shape of the site and the positioning of berths, it was more efficient for one operator to control the site and use the areas behind the wharf to be used for storage and processing, than to divide the site between multiple operators.¹⁶

Also, SPC considered AAT preferable to the alternative tenders submitted by Patrick and P&O. If either Patrick or P&O were awarded the GIAT lease, SPC was concerned that the unsuccessful party may have been excluded from the automotive import trade in Sydney after 2006, when it was anticipated that Patrick's lease in Darling Harbour would terminate.¹⁷

GIAT was purposely designed for vessels carrying roll-on and roll-off (**RORO**) cargo. Two types of RORO vessels include PCC and PCTC vessels. The terminal consisted of berth facilities for up to two vessels at any one time, an open 12 hectare site with parking slots for 5,000 vehicles and an area subleased to PDI operators.

The lease between AAT and SPC contained a restriction on use limited to vessels capable of handling RORO cargo and packet tankers.¹⁸ The lease also contained various terms imposed on AAT to safeguard the open-access, non-discrimination principles and to allow SPC to supervise AAT's pricing, including requirements that AAT:

- meet minimum throughput requirements;
- provide pricing information to SPC that "fairly represent[s] the recovery of [AAT] charges";
- provide full disclosure to SPC of published access and storage charges payable by any existing or prospective third party operation (stevedoring and PDI) annually, or on request at any time;¹⁹
- publish facility access fees, stevedoring access fees and storage charges;²⁰
- provide to SPC a copy of access charges annually, and any updates or increases to charges within 5 business days of the change;
- conduct itself in a non-discriminatory manner in granting access to and occupation of the premises to third party operators for the purpose of stevedoring operations or PDI activities; and

¹⁶ Martin Statement at 70. See Appendix E.1.

¹⁷ Id. at para. 70.4.

¹⁸ However, AAT never obtained business in relation to packet tankers.

¹⁹ The purpose of such disclosure was expressed as enabling benchmarking of the total cost of importing a motor vehicle through Sydney compared with costs in competitor ports.

²⁰ AAT is not obliged to disclose confidential PDI subcontract arrangements.

- enter into any arrangement with a proposed third party licensee on the terms of AAT's pro forma access requirements (approved by SPC) or with SPC's consent (which would not be withheld if the pro forma access requirements were met).

AAT's investments at the site consisted of developing leasehold improvements such as expansion of the paved area, buildings, amenities, a PDI shed, AQIS-approved wash facilities, security infrastructure (including CCTV and lighting, a gatehouse and truck lock security) and some hardstand development. AAT also implemented a common IT system for the terminal so that shipping lines would not have to change IT systems in the event they wished to change stevedores. The IT system was implemented at all AAT terminals.

However, in October 2003, the NSW Government announced its Ports Growth Plan,²¹ outlining the following main policy objectives:

- Sydney Harbour would continue handling construction materials (e.g., cement, gypsum, soda ash), passenger cruises and oil cargo;
- General and automotive cargo would move to Port Kembla;
- Port Botany would be expanded for container growth trade; and
- Newcastle would be designated as an overflow port for container trade after Port Botany reaches capacity.

In November 2008, in accordance with NSW Government policy, GIAT was closed and AAT's business was relocated to its multipurpose facility (automotive and general cargo) at Port Kembla.

5.2 Port Kembla

Port Kembla Port Corporation (**PKPC**) is a statutory corporation with responsibility for the management of the port of Port Kembla under the *Ports & Maritime Administration Act 1995* (NSW).

Traditionally, Port Kembla was a bulk goods port that handled steel, coal and grain. In 2003, AAT engaged in discussions with the PKPC in relation to the possibility of establishing a multi-user general cargo facility.

Subsequently, the NSW Government released the NSW Government Ports Growth Plan in October 2003, requiring the relocation of general cargo and car stevedoring to Port Kembla as leases expired. The announcement indicated that car imports would remain in Port Jackson until at least 2012.

However, AAT was concerned that there was insufficient certainty of future tenure at GIAT to justify long-term capital commitments at the GIAT site. Because AAT could not get adequate assurance from either SPC or the NSW Government about extending the lease at GIAT, and because AAT was concerned about the viability of a stand-alone general cargo terminal at Port Kembla, AAT began discussions with PKPC about moving all of its trade from GIAT to Port Kembla. The parties reached agreement and by the end of 2008, AAT had moved all of its Port Jackson operations to the AAT Terminal at Port Kembla.

²¹ NSW Maritime, NSW Ports Growth Plan – Summary Sheet, www.maritime.nsw.gov.au/ports_plan.html

(a) AAT's operations at Port Kembla

AAT has operated at Port Kembla, progressively since May 2007, providing the entire range of Terminal Services outlined in **Section 3.2**. AAT's terminal at Port Kembla covers 40 hectares. The terminal is operated as a multipurpose facility for automotive and general cargo leased from PKPC.

AAT's main terminal at Port Kembla consists of berths 105, 106 and 107. The terminal has capacity for 7,000 vehicles, 1,500 hundred containers (triple stacked) and 15,000 square metres of cargo shed space as well as open air general cargo areas. In addition, Berth 103 is a satellite berth in the inner harbour with 5,000 metres square cargo shed space and additional open air general cargo areas. A map of Port Kembla is attached at **Appendix D.2**.

As set out in **Confidential Annexure B**, to date AAT has invested a significant amount of capital in making improvements to AAT's Port Kembla terminal, including the following:

- pavements;
- construction of cargo buildings, a link span, maintenance garage, office space and amenities;
- security infrastructure, including lighting, CCTV, security gates, boundary fencing and a new security gatehouse; and
- cranes, forklifts, dock trucks, vehicles and vans.

(b) AAT's agreements with PKPC

AAT's lease and related agreement with PKPC together with a summary of relevant terms thereof, are attached as **Confidential Annexure C.1**

Notably, with respect to AAT's Port Kembla terminal, the lease and related agreements provide for a significant degree of oversight by PKPC, including:

- the lease term is 20 years, with two 10 year renewal terms that are subject to PKPC being satisfied that AAT meets certain conditions including minimum throughput and capital expenditure requirements;²²
- AAT must process all third party operator applications in an efficient and expeditious manner that does not discriminate and allows those parties to access the premises on the terms set out in the relevant terms/licences;
- AAT must not discriminate in respect of the fees and charges it levies;
- any variation by AAT to the tariff schedule requires AAT to provide 30 business days notice to PKPC and each third party user;
- any variation to the tariffs must be based on the units of pricing agreed, or otherwise may only be varied based on objective units of measure such as weight, length, time, volume, rate or action, with PKPC's prior written consent;
- AAT is required to display, and provide copies of the amended tariff;

²² Generally, the minimum throughput requirement is 2 million revenue tonnes per year.

- starting from 2009, AAT is required provide PKPC with an audit report after the end of each audit period, which must include charges levied on certain AAT entities;
 - AAT must coordinate the berthing of shipping vessels in accordance with the berthing priority code developed and controlled by PKPC; and
 - the lease may be terminated where AAT fails to meet its obligations with respect to either non-discrimination or minimum throughput.
- (c) Alternative or potential alternatives to AAT's terminal in Port Kembla.

The following port land provides, or potentially could provide, a terminal handling cars in competition with AAT's Port Kembla terminal:

- Port Kembla berth 104 may be used by PCC vessels to discharge motor vehicles, but is currently used for export grain vessels;
- additional terminals could be developed at Port Kembla. On 24 July 2008, the Minister for Ports and Waterways announced a proposal for a new terminal facility including 7 new berths, which could be established as an automotive terminal;
- the FCAI has given consideration to establishing an alternative automotive terminal at Newcastle; and
- container terminal operations in Port Botany where there are 7 berths that could be used for automotive stevedoring.²³

In addition, in Port Kembla, general cargo may also be stevedored at:

- Jetty 6 (owned by PKPC and operated by Port Kembla Gateway Pty Limited); and
- BlueScope's terminal – currently BlueScope receives general cargo for third parties to the extent that it arrives on a ship chartered by BlueScope; BlueScope has also indicated that it may seek general cargo business more broadly.

5.3 Port of Brisbane

The *Port of Brisbane Authority Act 1976 (QLD)* established the Port of Brisbane Authority to centralise planning and management of all port facilities in the Brisbane area. In 1994, the Port of Brisbane Authority was corporatised and became the PBC.

Prior to AAT's commencement at Fisherman Islands, P&O stevedored vessels at Hamilton. Hamilton was a multipurpose, vertically-integrated terminal leased by P&O that handled cars, steel, timber, and bulk cargo (such as fish meal, soda ash, fertilizer and soya bean meal). P&O had one shipping line client delivery motor vehicles at Hamilton, K-Line. K-Line's major customer was Toyota. Toyota's PDI operator, Patrick

²³ The terminals listed above include terminals that have been used in the past for handling cars or are suitable operationally for handling cars now or in the future. Terminals currently used for container operations have also been identified as there is no operational reason why container terminals cannot be used for automotive stevedoring. Minimal work is required to convert a container terminal to an automotive terminal. Moreover, although AAT's terminal facility at Port Kembla is the only port land in New South Wales currently designated for handling cars, there are several terminals or parcels of port land that have been used in the past or could be used in the future for handling cars. Cars may also be imported in containers that are designed for car transport. For example, Great Wall cars in China is planning to make its first shipments of cars to Australia in containers, including to Port Botany.

Autocare, was 800 metres from Hamilton, requiring the unregistered imported cars to be driven on Macarthur Road.²⁴

Patrick's terminal in Brisbane was Maritime Wharf, also a vertically integrated terminal, from which Patrick stevedored cars and other cargo. Patrick's main shipping line clients at Maritime were Mitsui O.S.K Lines, Nippon Yusen Kabushiki Kaisha (**NYK**), Toyofuji Shipping Co. Ltd, Hoegh, Kiwi Car Carriers, Wallenius Wilhelmsens Logistics and Eukor Car Carriers Inc. In contrast to Hamilton Wharf, Maritime Wharf was located closer to both PDI operators.

There were no other terminals in Brisbane from which a third-party stevedore could stevedore automotive cargo.

In 2000, PBC approached Patrick and P&O to encourage them to give up their leases and relocate their operations to Fisherman Islands, further away near the mouth of the river; Hamilton and Maritime Wharves were close to the city and were subject to environmental and operational restrictions. It was intended that the Hamilton and Maritime Wharves could be redeveloped for residential use. Shipping lines preferred berthing at Fisherman Islands, as Hamilton and Maritime Wharves required ships to travel further upriver to deliver their cargo. It was also more efficient for importers for all terminals to be located together.

Due to the lay out of Fisherman Islands, it was not practical to divide up the terminal for automotive stevedoring between different stevedores. As part of PBC's plan to create cargo precincts, PBC identified Berths 1 and 2 as its preferred berths to handle automotive cargo because immediately behind Berths 1 & 2, PBC proposed to build (and subsequently did build) a "flyover ramp" (across the rail corridor) and an additional 34 hectares of car storage area.

(a) AAT's operations at Fisherman Islands

AAT has operated Fisherman Islands berths 1, 2 and 3 since 2 January 2006, initially under a permit to occupy from the PBC. The lease of the terminal commenced in May 2006 for a term of ten years, permitting AAT to use the terminal to operate an automotive and general cargo and container processing facility. AAT's leases and agreements with PBC, together with a summary of the relevant terms, are attached at **Confidential Annexure C.2**.

AAT operates the terminal as a multi-user facility handling cars, containers and general cargo (excluding dry and wet bulk), providing all of the Terminal Services outlined at **Section 3.2**.

The AAT terminal encompasses a 26 hectare site, including 11 hectares of laydown area and a 6 hectare PDI facility subleased to Patrick Autocare and includes 4,300 vehicle slots, 1,500 TEU container slots (triple stacked), shed space of 15,000 square metres, open air general cargo areas, an off-wharf cargo overflow area, and bridge access to additional PDI areas leased to PDI operators. A map of the Port of Brisbane is attached at **Appendix D.3**.

²⁴ A waiver from the Queensland Motor Vehicle Authority had to be obtained to drive the cars from the terminal to Patrick Autocare.

AAT developed the layout for the site, including the logistics of how the imported cars would move around the site, the PDI locations of operators, as well as determining ship berthing priorities according to the rules established by PBC.

In addition, as noted in **Confidential Annexure B**, AAT has made significant investments in developing the site. These improvements include:

- buildings for cargo storage, amenities, a maintenance garage and office facilities;
- installation of security infrastructure, including CCTV, security gates, boundary fencing, lighting and a new security gatehouse;
- AQIS-approved wash facilities;
- landscaping;
- minor pavement works;
- provision of 25 forklifts, two cranes (one mobile and one quay crane), dock trucks, vans, utilities; and
- PDI facilities.

(b) AAT's agreements with PBC

Under the lease, PBC imposes a variety of obligations on AAT to ensure AAT provides open access on a non-discriminatory basis, including requiring that AAT:

- allow qualified stevedores and PDI operators access subject to payment of relevant charges and compliance with stevedore access terms;
- advise PBC prior to publishing user charges, general access terms and stevedore access terms;
- provide PBC 14 days written notice if there are any changes to user charges (apart from rental charged to sub-lessees) or general access terms;
- obtain prior written consent from PBC before changing stevedore access terms;
- limit user charges to those "that would reasonably be expected to be imposed on Users having regard to certain matters...";
- impose access terms that are "reasonable in light of all relevant factors";
- disclose to PBC's CEO details of how charges are calculated, and meet with PBC annually to discuss the user charges, general access terms and stevedore access terms;
- not unfairly discriminate between different users;
- manage the berthing priority rules developed and controlled by PBC; and
- submit any dispute between AAT and PBC in relation user charges or provisions of the general access terms or stevedore access terms to an appropriately qualified expert for determination.

(c) Alternatives or potential alternatives to AAT's Fisherman Island terminal

The following port land in Brisbane could potentially provide for alternatives to the AAT terminal:

- Berths 4, 5 and 6 at Fisherman Islands currently operated by DP World as a container terminal;
- Berths 7, 8, 9 and 10 at Fisherman Islands currently operated by Patrick as a container terminal;
- Berths 11 and 12 at Fisherman Islands are currently under development and will be operated by Hutchison Port Holdings;
- GP2 - PBC is building a general purpose berth named GP2 which is next to Fisherman Islands; and
- Port West – PBC proposes to build a dedicated automotive terminal at Port West with 2 or 3 berths. The site is 90 hectares in size and only 7 km from the port at Fisherman Islands. Landside construction has already commenced. See **Appendix L**.

General cargo may also be stevedored at other terminals in the Port of Brisbane, including Pinkenba, owned by PBC, and also PBC's GP2 terminal, currently under construction. Recently, OneSteel hired the Pinkenba facility at which it berthed and unloaded a vessel that it had chartered.

5.4 Port of Melbourne

Port of Melbourne Corporation (**PoMC**) is a statutory corporation under the *Port Services Act 1995 (Vic)*, as amended in 2003, responsible for the management and development of the Port of Melbourne. It controls various parcels of land and shipping channels around Port Phillip Bay and the Yarra and Maribyrnong Rivers, including berths at Webb Dock, among other locations. A map of the Port of Melbourne is attached at **Appendix H**.

PoMC generally prefers to lease port land rather than manage common user terminals as it considers leased land to be more productive, allowing operators to customise operations and infrastructure to maximise efficiency and productivity and facilitate private sector investment in port infrastructure. The lease model also means that legal risks for compliance with safe use of land, occupational health and safety and environmental obligations are transferred to the lessee of the land.²⁵

Webb Dock East (**WDE**) has been leased to Patrick since before AAT commenced operations. Patrick continues to operate as a multipurpose vertically-integrated terminal, at which it stevedores containers and automotive and general cargo. In addition, two PDI operators (Patrick Autocare and CCA) are located at Webb Dock East.

Webb Dock West (**WDW**) originally was developed by Strang Stevedoring (**Strang**), which operated the terminal on a vertically integrated basis and stevedored cars from

²⁵ See Statement of Stephen Bradford, dated 12 November 2008, in **Appendix E.2**, at para 23.

there on K Line and NYK vessels.²⁶ Strang assigned its lease over WDW to Toll Ports Pty Limited.

Toll Holdings Limited, or its affiliated companies (**Toll**), stevedored PCC vessels at WDW. Toll operated the site on a vertically integrated basis. Accordingly, the viability of Toll's business depended on Toll's stevedoring contracts, and was affected by insufficient and fluctuating utilization levels. In 2005, when Toll assigned its lease over WDW to AAT, Toll had been in default of its throughput obligations under the lease with PoMC for approximately 12-18 months and was simply using WDW to store vehicles.

(a) AAT's operations at Webb Dock West

AAT has operated WDW since 1 July 2005. AAT acquired the lease and improvements known as WDW from Toll Holdings Limited, upon the granting of consent by PoMC, as lessor, to the assignment on 30 June 2005. The lease that AAT acquired commenced on 1 January 1998 for a term of ten years, plus a ten year option to extend (this option has been exercised).²⁷

Under the lease, AAT is required to operate the terminal as an automotive and general cargo terminal, and must meet minimum throughput requirements.²⁸

The terminal has 6,000 vehicle slots, a PDI sublease area, and a pontoon berth. In addition to the purchase price that AAT paid to Toll for assignment of the lease and berthing license, AAT has invested significant amounts upgrading WDW since it acquired the lease, including further shade cloth construction, and upgrading the hardstand area, with one hectare of additional paving.

The services provided by AAT at WDW are berthing infrastructure, facility access for import and export vehicles, stevedore access, PDI sublease premises and storage.²⁹

The lease for the WDW terminal does not contain provisions concerning non-discrimination and open access unlike some of the other leases. However, AAT conducts its business on the same principles as applicable at other AAT terminals, as noted on the AAT website relating to WDW, attached at **Appendix F**:

[t]he new facilities will be operated as an open-access regime. Any stevedore or PDI operator may apply to have access to the site to service their customers. The access is on a non-discriminatory basis so that all parties are provided services to the same level. Stevedores or PDI operators seeking access can apply through AAT who will provide a stevedore licence or PDI sub-lease as applicable. Tariffs are published and are available to all parties seeking access to the site. The tariff will be displayed at the site and will be published on the website.

²⁶ WDW has light paving only which means it is not suitable for use as container terminal or a general cargo terminal.

²⁷ A copy of AAT's agreements with PoMC, and a summary there of, is set out in **Confidential Annexure C.3**.

²⁸ For the year ended 30 June 2006, the throughput requirement was 45,000. For the first six months after AAT acquired the WDW lease, no vessels berthed at WDW, but subsequently some vessels did berth and AAT handled approximately 35,510 imported vehicles for the year. It was advised by PoMC that its lease may be terminated if the necessary volumes were not reached for the year ending 30 June 2007. AAT is now meeting its throughput requirements.

²⁹ In addition, AAT provides an invoicing and cargo management system service for certain cargoes discharged or loaded by K Line/POAGS at WDE operated by Patricks. AAT has no other involvement in WDE.

The application of the open-access, non-discrimination principles is further reinforced in AAT's Port of Melbourne business plan. See **Confidential Annexure D**. Furthermore, AAT's stevedoring licence agreements for WDW provide that AAT will not discriminate against any stevedore in relation to any matter under the stevedore's agreement with AAT.

(b) Alternative or potential alternative terminals

The following port land provides or could potentially provide alternatives to WDW in the Melbourne area:

- Patrick holds long term leases for container, general cargo and automotive terminals at WDE and competes with AAT's terminal at WDW;
- Appleton Dock, leased by POAGS³⁰, can operate as a general cargo terminal, and subject to development, an automotive terminal;
- Victoria Dock, which is leased by Westgate Ports, is capable of handling general cargo and small PCCs and previously was used as an automotive export terminal;
- 28/29 South Wharf in Melbourne previously was used for handling PCCs – it is now operated by PoMC as an open access berth, and can handle general cargo and could handle cars;
- DP World's and Patrick's container terminals at Swanson Dock (East and West) could handle general cargo or be converted to automotive terminal operations;
- Geelong – the Lasalles wharf is capable of handling general cargo and PCCs; and
- Port of Hastings – the port plan for this port includes provision for general and automotive stevedoring.

5.5 Port of Adelaide

Flinders Ports is a private corporation which has leased part of the port land and operated part of the port waters of Port of Adelaide since 2001 when the government of South Australia privatised the business of the South Australian Ports Corporation.

Flinders Ports acquired a 99-year lease over land including port infrastructure, and a port operating agreement for ports. The agreements covered Port Adelaide and the terminal area in which AAT operates. A map of the Port of Adelaide is attached at **Appendix D.5**.

Flinders Ports is subject to the state-based access regime under the *Maritime Services (Access) Act 2000 (SA) (MSA)* which provides for access to South Australian ports and maritime services on fair commercial terms and for the monitoring of pricing of essential maritime services. MSA requires Flinders Ports, among other things, to provide berths for vessels, including at common user Berths 1-4, 16-20 and 29 in the Port Adelaide Outer Harbor. It is also required to publish prices for a range of service including the provision of port facilities for loading and unloading vessels at a port.³¹ The majority of vehicles imported into South Australia are unloaded at the common user Berths 1 and 2 operated by Flinders Ports.

³⁰ POAGS currently leases Appleton Dock on a month-to-month basis.

³¹ See Statement of Vincent Tremaine, filed 17 November 2008, Appendix E.3, at paras 14-16.

Prior to AAT's sublease, the area adjacent to Berths 3 and 4 was divided and subleased separately to companies related to P&O and Patrick for the purpose of exporting Holden and Mitsubishi vehicles. As the CEO of Flinders Ports has stated:

"[t]his arrangement was an inefficient use of the limited land available because one area could reach capacity while the other area could have spare capacity."³²

Since 10 May 2004, Flinders Ports has sub-leased to AAT the combined area of land adjacent to Berths 3 and 4.

(a) AAT's operations at Port of Adelaide

Since May 2004, AAT has operated the Port of Adelaide Automotive Terminal (**PAAT**) under a lease from Flinders Ports over land adjacent to berths 1, 2, 3 and 4. AAT does not have a lease or licence over the berths. **Confidential Annexure C.4** contains a copy of AAT's agreements with Flinders Ports, and a summary of the relevant terms.

PAAT is primarily used to export vehicles, and secondarily to import vehicles, to the extent that there is insufficient capacity available at the common user, Berths 1 and 2 of the Outer Harbor, operated by Flinders Ports Limited.

Currently, AAT has a contract to export from PAAT vehicles manufactured by GM Holden. PAAT has provision for 3,000 vehicle slots and a PDI sublease area. AAT has invested in leasehold improvements such as buildings, amenities, a shade cloth structure, security infrastructure, gatehouse and truck lock security and some hardstand development. AAT's total investment costs at PAAT are set out in **Confidential Annexure B**.

Although there is no provision in AAT's lease with Flinders Port addressing non-discrimination, AAT operates the terminal consistent with its business model to operate on an open-access, non-discriminatory basis. Furthermore, AAT's stevedoring licence agreements for PAAT provide that AAT will not discriminate against any stevedore in relation to any matter under the agreement.

5.6 Bell Bay, Tasmania

Tasports is owned by the Tasmanian Government. The company was created following the amalgamation of the state's four port companies – Hobart Ports Corporation Pty Ltd, Port of Launceston Pty Ltd, Port of Devonport Corporation Pty Ltd and Burnie Port Corporation Pty Ltd – on 1 January 2006.

Tasports is responsible for the operations and management of all ports in Tasmania including the Port of Bell Bay. Bell Bay is the only international container port in Tasmania with a regular service. Tasports controls shipping movements, berth and shed allocations, cargo storage areas and equipment requirements. A map of Bell Bay Port is attached at **Appendix D.6**

Bell Bay Cargo Terminal is located in the Port of Bell Bay. The port is adjacent to a major Tasmanian industrial estate and is a major port for domestic and international bulk good as well as container services. The terminal is designed as a container and general cargo terminal that can handle RORO, general cargo and container type vessels. The terminal has one berth (No 5 Berth), able to handle vessels up to 200 metres in length.

³² Id at para 45.

Prior to AAT commencing operations at Bell Bay, No 5 Berth was leased by P&O. The leased area was 25,000m² with a quay length of 210 metres. P&O had positioned a Deer Park gantry crane at the berth while a Patrick owned Gottwald crane was also positioned on the berth. Ships operated by AAA, Swires and Gearbulk were loaded and unloaded at the berth.

(a) AAT's operations at Bell Bay

AAT has operated Bell Bay Terminal since 2003 under a sub lease from POAGS over berth 5. The head lease is between Port of Launceston Authority and originally with P&O Ports, since assigned to POAGS. AAT's Bell Bay Terminal handles general cargo and containers.

AAT's lease with Tasports and a summary of the relevant terms is contained in **Confidential Annexure C.5**. Relevantly, the lease requires AAT to provide Port of Launceston Authority (now Tasports) with details of AAT's charges and variations thereto from time to time. When directed to do so by Tasports, AAT is required to allow third parties access to AAT's terminal. Moreover, AAT's stevedoring license agreements for Bell Bay provide that AAT will not discriminate between stevedores.

AAT's investment at Bell Bay is set out in **Confidential Annexure B**. The investment included the provision of two cranes, one mobile and one quay crane (and associated equipment), for the servicing by stevedores of vessels calling at berth 5.

Services provided by AAT at Bell Bay are Facility Access, Crane Use (on a wet hire basis to licensed stevedores), berth hire and storage.

Alternatives to AAT's Berth No 5 at Bell Bay for handling general cargo are Berth 6 (a common user berth), and ANL's berth, which handles general cargo.

6 AAT's pricing

6.1 AAT's tariffs

AAT's current tariff schedules are attached at **Appendix G** and are published on AAT's website at <http://www.aat.auz.biz/tariffs>.

Tariff schedules are set for each AAT terminal facility, generally with respect to three types of cargo -- automotive, container and general cargo -- for the following functions:

- Facilities Access Charge (FAC) – a charge for the use of the terminal space and other resources used for the laydown of cargo for export or import, charged to the stevedore, if there is no separate agreement with users;
- Stevedoring Access Charge (SAC) – a charge for equipment and other resources used for stevedoring cargo, charged to the stevedore;
- Vessel lay up – charged to the shipping line;
- Wharf storage – charged to the consignee;
- Services, including fresh water, second-hand motor vehicle handling fees and quarantine services;
- Crane Hire – charged to the stevedore or the cargo interests depending on use;

- Receival and delivery – charged to the stevedore (although some general cargo may be received/delivered under the hook and so receival and delivery is not charged);
- Mafi/unpack – charged to the stevedore.

6.2 Price on Application (POA) rates

As noted above, AAT’s policy for considering POA rates is attached at **Appendix C**.

AAT tariffs are a simplified structure of rates applied to the particular cargo class. However, because different types of cargo may be delivered at AAT multipurpose terminal facilities, price on application (POA) rates were added to be made available for “Project or “Heavy Lift” cargo; that is, cargo of an unusual dimension, such as wind turbines, generators and other non-standard cargo outside the terms of the contract that the stevedore has with the shipping line.

Until 2008, POA requests could be made to either the site manager, the AAT Commercial Manager, or the AAT CEO. In 2008, that process changed so that POA requests could be made to the Commercial Manager only.

The POA rate may be set at AAT’s discretion, based on what it considers appropriate in light of the costs involved. There are three standard bases for charging Project or Heavy Lift Cargo:

- convert the revenue tonne of the cargo to container equivalents (based on container volume) and apply the FAC and SAC to the number of container equivalents. This method may be applied for regular shaped cargo, cargo that is either skid mounted or cargo that has lift hooks;
- apply a one-off rate (non-advertised) to the revenue tonnes for the FAC and SAC;
- apply the published rates for general cargo. This basis may apply where Project Cargo is the only cargo being unloaded and the revenue tonne value is low.

6.3 Methodology for setting tariffs

As noted above, AAT’s policy for reviewing tariffs is attached at **Appendix C**.

Categories of tariffs for a particular facility, and the initial schedules, were set in consultation with the board of directors, based on guidance by the board of directors as to the return on capital required.

Generally, AAT’s objective in pricing is to sustain a return after productive costs, both capital and revenue, such that the return on capital for an asset, being a terminal and the associated business, recovers an allocation of central costs and a return on replacement value of the asset over the life of the asset.

Tariffs are reviewed on an annual basis for each terminal facility. The date of commencement of the revised tariff is dependent on the lease date for each facility. The respective port authority for the terminal facility will send AAT a notice indicating the rent increase for the next year.

AAT’s commercial manager reviews AAT’s forecast costs, including the rent increases, and predicted volumes, and makes a recommendation for the tariffs based on costs and volumes anticipated for the particular terminal to AAT’s Chief Executive Officer.

The Chief Executive Officer reviews the recommendation and makes a final decision on the proposed tariffs, taking into account his or her judgment as to what the market will bear and forecast volumes for the next year.

AAT publishes the tariff schedules and provides two months' notice of the changes.

AAT's agreements with PKPC and PBC partly determine the procedure with respect to the setting of AAT's tariffs for its facilities in Port Kembla and Fisherman Islands, respectively. The relevant provisions are described below.³³

6.4 PBC oversight of AAT charges at Fisherman Islands, Brisbane

As noted above, with respect to AAT's terminal facility at Fisherman Islands, PBC has substantial oversight with respect to AAT's charges as follows:³⁴

- AAT will advise PBC of all User Charges (fees imposed on users of the wharves, including stevedores and PDI operators) (**clause 7.1(a)(i)(B)**);
- AAT will not change User Charges (apart from rental charged to sub-lessees) without giving PBC 14 days written notice (**clause 7.1(b)**);
- User charges must not exceed the fees, expenses and other charges that would reasonably be expected to be imposed on Users having regard to certain matters including legitimate business interests of AAT and users; the actual cost to AAT of providing the services; the efficient and profitable operation of PBC; fees and charges imposed by users of other wharves; and fees and charges imposed on users of similar wharves in other ports (**clause 7.1(d)**);
- Review of Charges and Certification: PBC and AAT will meet to discuss, inter alia, the User Charges, each calendar year (**clause 7.2(a)**);
- Details of charges: if the amount of User Charges are questioned, details of how charges are calculated are to be disclosed to PBC's CEO (**clause 7.3**); and
- Any dispute between PBC and AAT on the User Charges will be expertly determined (**clause 7.4**).

6.5 PKPC oversight of AAT charges at Port Kembla terminal

The Management Deed between PKPC and AAT with respect to AAT's terminal facility at Port Kembla also provides for PKPC to have substantial oversight over AAT's charges, requiring that:

- AAT adopt tariff schedules in accordance with the units of measurement set out in Schedule 3 to the Management Deed or are objective units of measurement such as weight, length, time, volume, rate or action (including a lift, more or inspection) (**clause. 16.3(a)**);
- AAT provide notice of 30 business days to the PKPC and users of the facility of any price changes consistent with the agreed unit measures (**clause. 16.3(a)**); and

³³ In addition, Sydney Ports Corporation (**SPC**) required AAT annually to provide SPC with copies of all access charges to stevedores and PDI operators, or within 5 days of the increase or update to charges taking effect. Clause 25.4 of the Lease between SPC and AAT with respect to Lots, 1, 2 and 3 of Glebe Island.

³⁴ See **Confidential Annexure C.2**

- if AAT wishes to vary the units of pricing adopted in the Tariff Schedule other than in accordance with clause 16.3(a), it must not do so unless PKPC has provided its prior written consent to that variation (**clause 16.3(c)**).

7 AAT's customers

7.1 Stevedoring licenses

Any stevedore wishing to do business at an AAT terminal may do so subject to obtaining a stevedoring license with AAT. To obtain a stevedoring license, a stevedore must:

- complete an application form available from the website or a terminal;
- obtain public liability insurance with coverage and provide AAT with a copy of the policy;
- provide copies of risk assessments (OHS) of tasks expected to be performed on site;
- provide general details of vessels and cargo types the stevedore expects to service to ensure the vessels and cargo can be handled at the terminal³⁵; and
- provide credit reference details for credit trading approval.

A copy of a current pro forma stevedoring license is set out at **Appendix H**. Relevant terms of AAT's stevedoring licenses include:

- AAT may not discriminate between stevedores using AAT's facility;
- the access license is non-exclusive, meaning that other stevedores may access the facility concurrently;
- the stevedore's right of access includes the right to use AAT Mobile Equipment and to use the stevedore's own approved stevedoring equipment; access to the car park; allocation of yard slots for stacking cargo; access to operational cargo control computer systems; use of office space; use of barcode scanners; use of amenities; and use of machinery, clerical and waterside services;
- information obtained from the central computer systems is confidential access to the manifest is limited to AAT's facility people and must be kept confidential; any information extracted from manifests made available to AAT must not include details of consignors or consignees;
- AAT will do all things necessary to comply with the interberth priority rules;
- a request to AAT for access by the stevedore must include the dates access is required, the name of the vessel, its size and positions of ramps intended to be used, mobile equipment that is requested and any additional equipment to be used;
- fees and charges for access and equipment must be paid within 14 days of invoice;

³⁵ See **Confidential Annexure C.1**.

- a graduated, escalating dispute resolution procedure, ultimately requiring an unresolved dispute to be determined by an expert, namely, a retired Federal Court Judge, unless the dispute is about calculation of fees due based on the manifest, in which case it shall be determined by an accountant.

A schedule of AAT's current stevedoring licenses is set out at **Appendix I**.

7.2 Contractor safety agreements

Third parties other than stevedores – such as crane operators – wanting access to an AAT terminal may do so if they enter into a contractor safety agreement.

Broadly, the agreement relevantly addresses the following:

- occupational health, safety and environmental requirements that apply to contractors performing works on AAT sites;
- various insurance requirements required by the contractor; and
- job safety analysis or risk assessment required to be undertaken by the contractor,

in addition to terms and conditions relating to adherence to AAT's policies and procedures, termination, dismissal and details of any sub-contractor the contractor may use.

A copy of the pro forma agreement is attached at **Appendix J**. A schedule of third parties currently party to such agreements with AAT is attached at **Appendix K**.

8 The Public Benefits of AAT Joint Venture

8.1 Context of application

As noted above, the application is made in the context of an agreement to settle proceedings conditional upon AAT seeking authorisation.

While AAT considers that the application may be unnecessary because its activities do are unlikely to substantially lessen competition, the language of Section 88(1) permits the Commission to grant authorisation nevertheless.³⁶ Section 88(1) of the TPA refers to the ability of the Commission to grant an authorisation to a corporation to “give effect to a provision of a contract, arrangement or understanding where the provision is, or *may be*, an exclusionary provision or has the purpose, or has *or may have* the effect, of substantially lessening of competition”(emphasis added).

Accordingly, the fact that AAT is making the application does not mean that giving effect to the AAT Joint Venture or otherwise engaging in conduct under, pursuant to or in fulfillment of the AAT Joint Venture would or is even likely to contravene Part IV of the TPA.

³⁶ *Re Applications by Australasian Performing Rights Association* (1999) ATPR ¶41-701 at 42,937 (ACCC is empowered to grant authorisation irrespective of whether it is necessary).

8.2 Relevant markets

As outlined above, AAT develops and operates terminal facilities, and provides related services to stevedores for the loading and unloading of automotive and general cargo within a broader market for terminal services. Automotive and general cargo stevedoring are provided within a broader market for stevedoring services.

AAT's Terminals operate within broader markets in the Brisbane region, the Sydney region, the Melbourne region, the Adelaide region and the Launceston region.

Prior to AAT, Patrick and P&O did not provide automotive terminal services in competition with each other, but rather operated their own terminals as inputs into their own provision of stevedoring services.

8.3 Public benefits

The public benefits of the AAT Joint Venture are significant. In particular, AAT's operations facilitate:

- the achievement of greater efficiencies in the utilisation of scarce port land, and the operation of terminals, enabling investment in existing and new, more efficient terminals; and
- the promotion of competition by lowering the barriers to entry for a stevedore and other users wishing to do business at a port where there is an AAT terminal.

(a) AAT realises efficiencies

AAT's operations promote greater efficiency in the operation of terminals, enabling investment in new, more efficient terminal facilities. As outlined in **Confidential Annexure B**, AAT has invested a significant amount of capital in order to develop and operate its terminals. Indeed, at Port Kembla, the arrangements between AAT and PKPC provide for minimum capital expenditure by AAT.

Moreover, AAT also promotes efficiencies by directing such investment to the most efficient or lower cost terminal facility. It is not unusual for joint ventures, particularly in the port industry, to operate common user facilities. For example, the Port Kembla coal terminal is the single coal terminal operated by a joint venture between industry participants, in return for a fee. Another example is the Port Kembla Grain Terminal, the only grain terminal in the region, operated by Graincorp, charging a fee to users for handling grain.

In addition, AAT achieves scale and rationalisation efficiencies by reason of the removal of duplicated infrastructure, systems and other inputs into the operation of the terminal facility, including:

- more efficient utilisation of port land, where either by reason of constraints on port land imposed by the government or the port corporation, or due to the volume of demand, a multi-user terminal may be able to meet all the requirements more efficiently than two terminals (including for example a multi-user terminal which is greater in land size than individual exclusive access terminals, but of lesser land size than two such terminals). At Port Kembla, concentrating all terminal services for automotive cargo was the only logical solution in light of the port layout;
- the need for only one pool of mobile machinery equipment and shore cranes on the site, as well as one pool of specialised maintenance labour, rather than each stevedore needing to have its own pools. In addition, where there are many different industry participants with access to the wharf, the provision of plant, equipment, cranes and vehicles from a single provider with established

maintenance and OHS systems creates a safer and more manageable industrial environment than a third party supplying equipment on an *ad hoc* basis;

- implementation of a single operating system of IT infrastructure, connecting all stevedores, shipping lines and Customs, enabling shipping lines to transfer between stevedores without needing to connect to a new IT system or change terminals, and enabling stevedores access to state of the art technology without the individual capital expenditure. Relevantly, a single facility also allows Customs and AQIS to be more productive in their surveillance requirements, having only one facility to monitor;
- one set of receipt and delivery personnel to handle manual and clerical processing functions for the receipt and delivery of cargo.

Further, AAT results in operational efficiencies, including:

- more efficient logistics by providing a single point of discharge for cargo and collection for car transporters and PDIs;
- enabling importers to process vehicles on-wharf at one terminal, rather than either moving the vehicle from one terminal to another, or requiring two processing facilities;
- removing the need for stevedores to provide funding for large capital expenditure programs (enabling 'smaller' stevedores to tender for work without the need to lease and operate their own terminal).

The efficiencies realised by AAT significantly reduce operating costs, particularly for smaller or new entrant stevedores. Absent AAT, the funding required for large capital expenditure programs would be prohibitive for smaller or new entrant stevedores on an individual basis.

(b) AAT lowers barriers to entry for stevedores and other third parties

AAT's operations facilitate competition by lowering the barriers to entry for a stevedore and other third parties wishing to do business at a port where there is an AAT terminal.³⁷

First, as a multi-user facility, AAT significantly reduces the capital expenditure and economies of scale required for a stevedore to do business. Given that a new entrant need not expend significant capital on cranes and other equipment this is specific encouragement to new entrants, particularly where they are building their business.

In addition, external crane operators, transport companies, ships agents, customs agents and cargo surveyors subject to contractor safety agreements and maritime security requirements have non-exclusive access to compete for business on the terminal without

³⁷ Indeed, the ACCC has previously acknowledged the potential procompetitive effect of AAT operations in facilitating entry into the automotive stevedoring market. In *Application for Authorisation by Federal Chamber of Automotive Industries* ("FCAI"), dated 20 April 2005 (A90937), the ACCC granted authorisation for a period of 5 years to the FCAI to allow it to collectively negotiate with "area hire service providers," predominantly P&O Ports and Patrick, but also Toll and AAT. The ACCC commented that the long term exclusive leases of land from port authorities by stevedores for their own access purposes represented a significant barrier to entry. However, the ACCC observed that the establishment by the Port of Brisbane Authority of "a third-party access regime for the newly established [AAT] facility," was a factor that "may facilitate entry into the automotive stevedoring market."

any restrictions caused by a requirement of association with an already-established party with access to the site.

Second, as a result of AAT's open access, non-discriminatory regime and its development of terminals, as noted above, a variety of stevedores (including non-owners) can do business at AAT terminals.

At no time has AAT rejected any applications for stevedoring licences at its terminals. AAT provides access to all accredited stevedores. There is a published price schedule for use of each terminal which is applicable to all stevedores. Particularly at Fisherman Islands and Port Kembla, the port corporations oversee AAT's pricing and terms upon which AAT provides access to stevedores.

Third, a new entrant stevedore has the ability to enter the market on a contract-by-contract basis. It would be significantly harder for a new entrant to establish competing operations against incumbent rivals if it had to assume all of the capital and business risk of the entire facility, including the lease costs. Relatedly, a new entrant's sunk costs associated with entry and exit are minimised. Stevedores will have access to significant infrastructure, including computer and clerical systems, and associated plant and equipment without the inherent capital costs associated with those assets.

Finally, at some ports, such as Port Kembla, it is simply not feasible to allocate port land for multiple terminals. In the absence of a multi-user, open access facility, smaller stevedores would be excluded from doing business.

8.4 The counterfactuals

To assess the public benefit against the public detriment, the Commission applies the future "with and without" test. Possible theoretical counterfactuals to AAT are as follows:

- 1 Operation by vertically integrated automotive/general cargo stevedoring companies, which enter into exclusive leases of land from the port and provide all support services themselves (**scenario A**);
- 2 Operation by vertically integrated automotive/general cargo stevedoring companies on a multi-user basis (**scenario B**); and/or
- 3 Operation by an independent third party, such as a port authority, who manages a common user facility for use by all automotive/general stevedores (**scenario C**).

AAT's operations are more efficient and pro-competitive (or at least not any less competitive) than any likely alternative scenarios and unlikely to substantially lessen competition for the reasons set out below:

First, in light of Government policy and port development planning as outlined above in Section 5, Scenario A, where Patrick and P&O continue to operate from the same terminals as previously, is not a likely counterfactual:

- at Port Jackson, SPC indicated that the lease of Darling Harbour would not be renewed, and also indicated a preference for single, multi-user terminal, and subsequently the NSW Government decided to move automotive stevedoring out of Port Jackson;
- there was no terminal operator at Port Kembla prior to AAT, and the terminal layout does not currently allow for two terminals handling cars;

- in Brisbane, the decision of PBC to locate an automotive terminal at Fisherman Islands led to the closure of Maritime and Hamilton;
- in Melbourne, WDE continues to be operated by Patrick and POAGS continues to occupy the terminal at Appleton Dock, but in recent years has elected not to stevedore automotive cargo there.

Second, under any scenario, in the absence of regulation or port lease conditions, no operator would be subject to any control over its charges and could choose to provide such additional facilities and services as it wishes to in conjunction with any such access to the terminal it provides. However, as noted above, port corporations provide significant oversight over AAT's charges, terms of access, capital expenditure and facilities requirements.

Third, in no port has AAT resulted in a reduction in the number of operators of automotive terminals:

- In Port Jackson, Patrick continued at Darling Harbour until the termination of the Darling Harbour lease and the government decision to move automotive terminal operations to Port Kembla. The AAT JV was in part a response to the SPC's plans for Glebe Island;
- In Port Kembla, there was only ever one and was only likely to ever be one automotive terminal by reason of the terminal layout;
- In the Port of Brisbane, it was PBC's decision to locate one automotive terminal at Fisherman Islands that led to the closure of Maritime and Hamilton Wharves and resulted in the reduction to one terminal, not the AAT JV. AAT was in part a response to the prospect of consolidation of operations at Fisherman Islands;
- In Melbourne, AAT did not result in any consolidation. AAT operates Webb Dock West (acquired from Toll), Patrick operates Webb Dock East and P&O (now POAGS) has retained Appleton Dock.

Fourth, AAT has a similar incentive to maximise the return from its operations, including the supply of terminal and associated services, as any other terminal operator would have. Even if it were to charge a monopoly level price for the supply of terminal services and associated services (and as explained above, it is constrained by factors including port regulation, and potential alternative terminals), it would not lessen competition, and by reason of its efficient open access model may enhance competition compared to the alternatives:

- Compared to scenario A, AAT provides access on a multi-user user basis and so makes it easier for new stevedores to do business;
- Compared to scenario B, AAT:
 - has no incentive to favour its own stevedore operations (which it does not have) over another stevedore;
 - has no incentive to favour one owner over another owner;
 - provides access to third parties on identical terms to those on which it provides access to its owners;
 - may charge a price which extracts the greatest economic return that it can for its operations, but has no greater incentive to do so than a vertically integrated operator;

- Compared to Scenario C, AAT:
 - is equivalent to an independent operator, in that its operating rules and ownership structure ensure that it is unable to favour owners over third parties, and cannot, under its operating rules favour any stevedore over another and all third parties have access on the same basis; and
 - may charge a price which extracts the greatest economic return that it can for its operations, subject to the constraints of the ports, but has no greater incentive to do so than an independent terminal operator.

In addition, as noted in Section 5 above, there are several alternative and potential alternative terminals in each port available for loading and unloading automotive and general cargo.

Moreover, all of the public benefits outlined under Section 8.3 above are more likely to be achieved under AAT than under any of the counterfactuals outlined above.

9 Conclusion

In conclusion, it is submitted that:

- (a) there are significant public benefits that flow from the AAT Joint Venture, including
 - (i) the efficiencies - including operational, scale and rationalisation efficiencies - of operating a multi-user, open-access terminal; and
 - (ii) the promotion of competition and potential competition by lowering barriers to entry to stevedores and other third parties wishing to do business at an AAT terminal; and
- (b) in comparison with any likely theoretical counterfactual to the AAT Joint Venture, AAT does not substantially lessen competition.

For these reasons, the Commission should grant authorisation in accordance with the Application.