



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/1097
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24 June 2009

Mr Craig Faulkner
Chief Executive Officer
AAT
PO Box 5129
Garden City VIC 3207

By email: craig.faulkner@aat.auz.biz
eavery@gtlaw.com.au

Dear Mr Faulkner

Applications for authorisation submitted by Australian Amalgamated Terminals Pty Limited (AAT)

I refer to the applications for authorisation received by the Australian Competition and Consumer Commission (the ACCC) from AAT on 10 June 2009. The ACCC has commenced its interested party consultation process in respect of the applications. While that process is ongoing, the ACCC wishes to raise two issues arising from the applications with AAT:

1. the description of the conduct, as contained in the application forms, for which authorisation is sought; and
2. the period for which authorisation is sought.

Each issue is dealt with in turn.

Description of the conduct for which authorisation is sought

The application forms describe the conduct for which AAT seeks authorisation as follows:

AAT seeks authorisation to:

- (a) *give effect to the joint venture of AAT (AAT Joint Venture), including section 2 of the shareholders agreement dated 2 December 2002 between AAT, P&O Wharf Management Pty Limited and Plzen Pty Limited (Shareholders' Agreement), related provisions and the Constitution of AAT; and*
- (b) *engage in conduct under or pursuant to, and in fulfilment 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.

I am concerned that this description sought lacks sufficient elaboration to enable the ACCC to understand AAT's business for the purposes of considering AAT's applications for authorisation. In other words, AAT will need to define exhaustively, and in detail, those aspects of its current business activities in order for the ACCC to consider the benefits and detriments to the public arising from those activities, which give effect to the provisions of the Shareholders' Agreement and Constitution for which authorisation is sought. The description of the Terminal Services that appears in section 3.2 of AAT's submission appears to contain a list that may be a useful starting point for a description of AAT's business. Of course, it will be necessary to specify the conduct in greater detail than the bulletpoints in section 3.2. For example, the locations at which the conduct is being engaged in will need to be identified.

Please provide an exhaustive and detailed description of those parts of AAT's operations for which authorisation is sought. I would appreciate it if you could provide a response by 15 July 2009.

Period for which authorisation is sought

In its applications, AAT has sought authorisation 'for the period of the AAT Joint Venture'. However, the Constitution of AAT and the Shareholders' Agreement do not fix a period for the AAT Joint Venture.

The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances which may have arisen during that period. Accordingly, AAT may wish to consider providing further information to the ACCC as to why authorisation be granted for the life of the AAT joint venture, and not for some fixed period.

This letter has been placed on the ACCC's public register. Should you have any queries in relation to this letter, please contact Monica Bourke on (02) 6243 1351.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch