



22 July 2009

Ms Joanne Palisi
Director, Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By Facsimile: 02 6243 1199

Dear Ms Palisi

Australian Amalgamated Terminal Pty Limited ("AAT") – applications for authorisation A91141 & A91142 ("Authorisation Application")

Reference is made to your letter dated 15 June 2009 regarding the above matter and we now provide the following response:

Endorsement of FCAI Submission

We are aware that the peak automotive industry representative body, the Federal Chamber of Automotive Industries ("FCAI") has made a detailed submission on behalf of the industry regarding the Authorisation Application made by AAT ("FCAI Submission"). As a member of the FCAI, Subaru (Aust) Pty Limited ("Subaru Australia") fully endorses all of the submissions made in the FCAI Submission.

Submission for and on behalf of Subaru Australia

Further, in response to the ACCC invitation for submissions regarding AAT's application for authorisation Subaru Australia on its own behalf, repeats all of the submissions made by the FCAI in the FCAI Submission, and in particular that:

1. AAT's automotive port facilities are each a bottleneck monopoly in each relevant State where they operate.
2. Notwithstanding that the formation and continued existence of AAT creates and perpetuates bottleneck monopoly AAT's facilities are not subject to any form of regulation by the ACCC, Essential Services Commission (Vic), Queensland Competition Authority, Independent Pricing and Regulation Tribunal or Essential Services Commission (SA). For the reasons outlined in the FCAI Submission we submit that the AAT facilities ought to be subjected to such regulation.
3. The shareholders of AAT have admitted to the Federal Court that their agreement to jointly operate automotive port terminals in Sydney, Melbourne and Brisbane and the creation of AAT is anticompetitive in breach of the *Trade Practices Act*. Therefore, it is beyond doubt that the ongoing existence and operation of AAT in its current form is anticompetitive in breach of the *Trade Practices Act*.

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4. The alleged efficiencies from the AAT joint venture that flow to new entrants are either non-existent or simply irrelevant as there has been over the past 7 years since the creation of AAT no new entrant to realise and enjoy these efficiencies.
5. Accordingly, the ACCC must reject that application for authorisation as no compelling evidence in support of alleged public benefits has been provided to overcome the anticompetitive detriment admitted by Patrick and P&O from the ongoing existence and operation of AAT in its current form, let alone the additional anticompetitive determine identified above.
6. The only condition of authorisation that could sufficiently address the anticompetitive determinant from the ongoing existence and operation of AAT in its current form is the acceptance by the ACCC of an undertaking in respect of the services provided at each automotive port terminal owned or operated by AAT under section 44ZZA of the *Trade Practices Act*. These undertakings should address such matters as the proposed rate of return used in determining price and proposed dispute resolution procedures.

Should you have any questions regarding this submission please do not hesitate to contact me.

Yours faithfully

Subaru (Aust) Pty Limited



Colin Christie
General Manager – Finance & Operations