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TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED
ABN 64 009 886 097

RJG1204
30 July 2009

Ms Joanne Palisi
Director
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Ms Palisi

PRIVATE AND CONFIDENTIAL

I am writing in response to your letter of 15 June 2009 to Jing Tadeo (Manager, Logistics and Order Systems) in relation to the recent applications for authorisation by Australian Amalgamated Terminals Pty Limited (AAT).

I understand that the Federal Chamber of Automotive Industries (FCAI) has made a submission to the ACCC on behalf of the automotive industry in relation to this matter, but given the ongoing concerns Toyota Australia has experienced with AAT over an extended period of time, we thought it was worthwhile giving Toyota Australia's perspective on AAT's application.

Summary

Toyota Australia has had major concerns with the conduct of AAT since it commenced its operations in 2002. It is our experience that AAT has been able to use its market power in an unrestrained (and unregulated) manner. This has manifested itself in many ways, including:

1. AAT unilaterally imposing price increases;
2. AAT refusing to negotiate on price; and
3. AAT failing to address operational problems.

Toyota Australia believes that AAT would not have been able to act in this way in a market place where AAT had competitors to provide port facility access and services to the motor vehicle industry.

On this basis, we request that the ACCC ensure that AAT's entire operations are continually supervised so that it is prevented from acting in an anti-competitive way. An independent body could be charged with handling any complaints regarding AAT's operations. We also request that AAT be required to give written undertakings to ensure future price increases are controlled (e.g all future price increases should be referred to an appropriate independent price review body for prior approval).

1 Structure

Toyota Australia has no direct contract with AAT. In the current structure, AAT's charges are passed on to the port stevedores (Patrick Stevedore and POAGS) who then pass the charges on to the shipping lines and eventually to Toyota Australia.

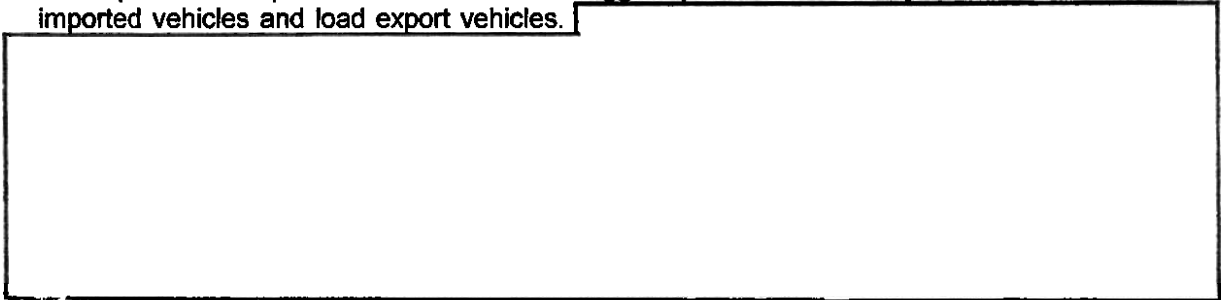
As the two main port stevedores are related companies of AAT, there is no incentive for them to 'push back' on AAT's price increases, and AAT therefore is able to increase its prices without any resistance from the stevedores. The stevedores pass these charges on to the shipping companies, who in turn impose these charges on the car companies. Given that AAT won't

negotiate directly with the car companies, Toyota Australia has no ability to negotiate the price increases with AAT.

When we have tried to discuss with AAT the justification for their price increases, they have generally not been willing to provide information to substantiate the increases. In the cases where AAT has justified price increases, it has pointed to an increase in the lease cost imposed on them by the relevant Port Authority. Whilst this sounds like a reasonable approach, we submit that in the current structure, the ports have the ability to easily impose rent increases on AAT in the knowledge that these charges will not be pushed back on by AAT (because they are able to easily pass the increases on to the end-users, being the car companies).

Dimension of the problem

AAT operates the port facilities in the four biggest ports at which Toyota Australia unloads imported vehicles and load export vehicles.



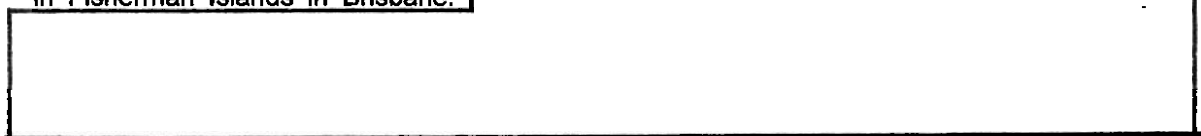
Toyota Australia is the largest importer and exporter of motor vehicles in Australia, and is therefore likely to be the largest user of the automotive port terminals controlled by AAT. Despite Toyota Australia using (and paying for) AAT's facilities to a far greater extent than any other car company, we are required to pay the same facility charge as all the other importers. The fact that Toyota Australia does not receive more favourable pricing than other car companies with far lower volumes is further evidence that AAT's pricing is unrestrained by competition. In addition, given that AAT operates the sole automotive port terminals in these locations, Toyota Australia has no alternative but to use AAT's facilities for the import and export of Toyota and Lexus vehicles.

2 AAT price increases

AAT increases its tariffs (which flow down to Toyota Australia) unilaterally without consulting, or having regard to the interests of, the automotive industry. These charges are passed on to the stevedores, who pass the charges on to the shipping lines, who then pass the charges on to Toyota Australia.

Example of price increases – Fisherman Islands

An example of AAT's attitude to price increases is underlined by facility charges for its facilities in Fisherman Islands in Brisbane.



A summary of the events that took place subsequently is as follows:

- After AAT advised the FCAI of the 2008 increase to the Fisherman Islands FAC, Toyota joined the FCAI in Brisbane to meet with AAT regarding its concerns with the total 85% increase in the FAC after only 2 years of operations (\$1.00/m² to \$1.35/m² in 2007 and \$1.35/m² to \$1.85/m² in 2008).

¹ Please note that these figures are commercially sensitive and confidential, and Toyota Australia asks that the ACCC keeps this information confidential and not disclose it to any external party.

- AAT maintained that the reason for the FAC increase was the valuation of land by the Port of Brisbane. FCAI then consulted with the Port of Brisbane to challenge the increases being passed on by AAT to the automotive industry.
- A meeting was held with the FCAI, AAT and three members of the Port of Brisbane who presented a case on why they increased their rental charge to AAT. They were quite unrepentant and told the FCAI members "we will not negotiate."
- AAT then threatened that if the automotive industry did not pay the increase, the stevedores would not be allowed to unload the imported vehicles at Fisherman Islands.
- The shipping lines were left in the middle, some even paying for the additional charges whilst the industry held out on the payment. [REDACTED]
- Eventually the car companies accepted the price increase because they had no choice in order to get cars out into the marketplace to meet the demands of dealers and customers.

In Toyota Australia's eyes, this example demonstrates AAT's lack of care to its end customer and how they merely increase their costs to the industry without fear of retribution from any governing body or of the car companies taking their business elsewhere.

It also cemented the fact that because of its structure (ie AAT's stevedore customers are related companies of AAT), AAT is able to pass on charges to the car companies without any resistance.

3 Standard of AAT port facilities

Toyota Australia has experienced many and varied problems with the ports handled by AAT. We believe that AAT is able to 'get away' with not fixing these problems because they know there is no real competition for the facility services they provide, and their operations are not overseen by any external regulator.

When operational problems with AAT's facilities are raised, they are often not addressed by AAT. Some examples of the issues Toyota Australia has had with AAT's port operations are as follows:

- a. In early 2008, as a result of the growth in Holden's export volume, AAT gave Holden sole access to the extra land that used to be a common-user lay-down area in Adelaide. This meant that Toyota vehicles at that facility were relegated to vacant positions all over Outer Harbour, including under the now-demolished 'sheep shed', where the vehicles were subjected to acidic bird droppings and resultant vehicle damage. Again, because there is no direct agreement between Toyota Australia and AAT, we have had no recourse to recover the loss suffered from this damage. It can be very expensive for Toyota Australia to repair these vehicles to a condition when they can still be sold as 'new'.
- b. Only Port Kembla has an AAT-owned AQIS-approved wash-bay facility. In other ports, AAT uses Patrick's facility (and Prixcar in the case of Brisbane). AAT has refused to increase the wash bay facilities in Sydney, Melbourne and Brisbane. There have been major fallout and seed contamination problems in the past few years but AAT will not consider changes to the port infrastructure unless the car companies pays for them (in addition to the regular and increasing charges borne by the industry). This has been a common response by AAT in relation to requests by the car companies for facility improvements. It is Toyota Australia's experience with other suppliers (who don't operate in a monopoly and have genuine competition), that the suppliers often absorb the cost of infrastructure improvements with a view to receiving a return on that investment over the long term. The fact that AAT has habitually made the car companies pay up-front for these improvements is further evidence of it operating without competition.

4 Seed Contamination crisis - 2008

In November 2007 (and well into 2008), Toyota Australia and other car importers had a significant problem in relation to imported vehicles that were allegedly contaminated with plant seeds from their countries of origin. Until these vehicles were cleaned, AQIS would not allow them to be released into the Australian market. This problem peaked in March and April 2008, which happens to correspond with the period during which Toyota Australia has its highest volumes of vehicles at the ports.

AAT imposed a \$68 plus GST charge per car to clean these vehicles. Toyota Australia had to use AAT (or a nominee of AAT) to clean the vehicles. The \$68 charge was a fixed fee that was not negotiable and applied irrespective of the type of vehicle, or the extent of cleaning required. Despite numerous requests for substantiation of these charges, AAT has not provided any information to the industry in relation to these charges.

In addition:

- a. The industry had to utilise Patrick Autocare and Prixcar's wash bays and hoists in Glebe Island (Sydney) and Fisherman Islands (Brisbane) as AAT did not have any. At some point, every vehicle had to be put up on a hoist and since the hoist's capacity was only 80 units per day while there were another approximately 3,000 vehicles waiting to be completed. The automotive industry suffered severely in lost sales and costly clean up.
- b. Notwithstanding this delay, AAT continued to levy an additional charge on Toyota Australia for vehicles staying on the wharf longer than 3 days at every port. In Brisbane, the storage charge went up to \$15 for every vehicle. Prior to the seed contamination problem, Toyota Australia paid \$2.20 per day storage for every day that vehicles were held at Fishermans Island for more than 3 days. This increased to \$9 per day if the vehicles had to be stored at the grain berth area (when there was no storage space available on wharf). Notably, this charge increased to \$15 during April-July (a 40% increase), which corresponded to the time of the contamination problem. Toyota Australia is concerned that AAT was able to use its market power to take advantage of the unfortunate problems with seed contamination to increase its price during that period.
- c. Because AAT was undertaking the cleaning of the vehicles (at \$68 per vehicle without any negotiation), the longer it took them to clean the vehicles, the longer the vehicles stayed at the wharf, and the more revenue AAT earned from storage. This was a 'win-win' situation for AAT, and something we believe it would have been unable to do in a competitive marketplace.
- d. At no time did AAT extend to Toyota Australia any interim solution, manpower support, resource allocation or negotiation with AQIS. Each time there was a meeting with AQIS, AAT attended merely as observers.

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Conclusion

Since the AAT's inception, Toyota Australia has experienced unilateral and non-negotiable price increases from AAT, as well as poor service. AAT appears to have been able to maintain this behaviour because of a lack of competition.

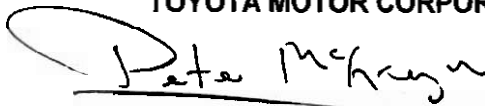
We therefore request that AAT now be made subject to specific regulation to ensure that this behaviour does not continue. Toyota Australia requests that the ACCC impose a supervisory regime over AAT to ensure that in the future it conducts its activities as a supplier would in a competitive market-place (in terms of price and quality of facilities and service). This could be achieved by AAT being required to give undertakings to that effect, including undertakings to:

- be subject to the supervision of an independent tribunal that would consider any complaints raised against AAT in relation to its operations;
- substantiate future price increases to an independent price reviewing body, and have to obtain approval from this body before levying the proposed price increases; and/or
- be subject to a detailed written price variation formula or methodology, in respect of which all price increases must comply.

If you have any questions in relation to this submission, please do not hesitate to contact Jing Tadeo on (03) 9647 4394.

We look forward to hearing a positive outcome on this issue from the ACCC.

Yours sincerely
TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED


PETER MCGREGOR
DIVISIONAL MANAGER