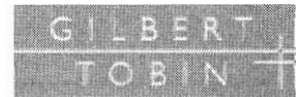


PUBLIC VERSION



LAWYERS

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# **Australian Amalgamated Terminals Pty Limited (AAT) application for authorisation**

## Response to submissions from interested parties

**PUBLIC VERSION**

**17 August 2009**

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## 1 Introduction and summary

Australian Amalgamated Terminals Pty Limited (**AAT**) files this submission in response to the submissions of interested third parties in relation to AAT's application for authorisation filed 10 June 2009.

AAT notes that it is undisputed that:

AAT operates on a multi-user, open-access, non-discriminatory basis, and has operated consistent with these principles at all times; and

AAT has not denied access to its terminals to any licensed stevedore or other port user seeking to do business at an AAT terminal.

No interested third party has put forward any counterfactual to AAT that would be more competitive than AAT. Nor does any party suggest that exclusive access or multi-user, vertically-integrated terminals would be more competitive. Finally, there is no evidence that common user automotive terminals managed by a third party such as a port corporation would be viable, more efficient and more competitive.

AAT's operations have resulted in clear efficiencies as set out in AAT's submission in support of its application of 10 June 2009 (**10 June Submission**) at Sections 2 and 8.3. Briefly stated, these include efficiencies derived from:

- use of the lowest cost terminal facilities;
- scale and rationalisation efficiencies by the removal of duplicated infrastructure, systems and other inputs into the operation of terminal facilities and the introduction and availability of:
  - one pool of machinery, equipment and specialised maintenance labour;
  - a centralised IT system; and
  - one set of delivery personnel.

operational efficiencies by reason of industry participants operating from a new superior terminal facility, including:

- more efficient logistics by providing a single point of discharge;
- enabling importers to process vehicles on-wharf at one terminal; and
- removing the need for stevedores to provide funding for large capital expenditure programs.

Moreover, in addition to achieving greater efficiency in the operation of terminals, AAT's operations facilitate competition by the lowering of barriers to entry for stevedores and other port users (see Sections 2 and 8.3 of AAT's 10 June Submission).

The operation of AAT's open-access multi-user terminals is more efficient and pro-competitive (or at least not any less competitive) than the operation of terminals by vertically integrated automotive/general cargo stevedoring companies.

Indeed, port corporations have noted the pro-competitive benefits of AAT. Port Kembla Port Corporation (**PKPC**) stated:

*“the arrangements in place in the Port of Port Kembla provide for the most competitive and efficient outcome for port users, given the total investment required. These arrangements, in our view, lead to operational efficiencies and effectiveness by reducing the need for resource duplication.”<sup>1</sup>*

Similarly, TasPorts indicated that AAT's operating model *“will provide public benefit through efficiencies [efficiency] gains without lessening competition.”<sup>2</sup>*

At its core, the focus of any concern appears, firstly, to be that new stevedores have not in fact entered the market. But this complaint ignores the fact that AAT has created the potential for entry, and that it is this potential for entry that drives competition. Moreover, lack of actual entry is not indicative of a barrier to entry. The fact that no other stevedore has considered it sufficiently commercially attractive to do business as automotive and general stevedores does not negate the public benefit of lowering barriers to entry attributable to AAT's operations. Secondly, some have noted the level of AAT's charges. A key component of AAT's charges are the terminal facility rental costs under the leases with the port corporations. As AAT's financial statements demonstrate, AAT does not achieve a fair return for the significant investment that it has made in facilities without any contractual commitments to assure recovery of that investment. Further, in two ports, the port corporations supervise AAT's rates. AAT's rates are not comparable with the rates charged at port-operated common user facilities, where there are no lease costs. Moreover, the level of investment by AAT in purpose-built terminal facilities, compared with the common user facilities, is significant and provides significant public benefit to port users.

In summary, no party has provided any basis to refute the fact that the public benefits of AAT outweigh any public detriment.

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## 2 Response to issues raised by interested third parties

Based on the submissions received from third parties, the Australian Competition and Consumer Commission (ACCC) has identified the following issues raised in those submissions:<sup>3</sup>

- *While AAT has claimed that its arrangements lower the barriers to entry for stevedores, there has been no new entry by stevedores at any of the terminals operated by AAT.*
- *The terms and conditions of access to an AAT terminal are provided on a take it or leave it basis. There is no ability to negotiate or dispute the terms of access.*
- *Under AAT's arrangements it is stevedores, rather than shipping lines or importers/exporters, which contract with AAT. This makes it extremely difficult for shipping lines and importers/exporters to have any normal commercial interaction with AAT, including on issues such*

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<sup>1</sup> Letter from Port Kembla Port Corporation (PKPC) to the Australian Competition and Consumer Commission (ACCC), 24 June 2009.

<sup>2</sup> Letter from Tasmania Ports Corporation to the ACCC, 8 July 2009.

<sup>3</sup> See email from Sharon Clancy (ACCC) to Craig Faulkner (AAT) and Elizabeth Avery (G+T), dated 28 July 2009.

*as damaged or missing cargo, anomalies in AAT charges and agent berth access.*

- *Since it commenced operations, AAT's charges have increased steadily and exceed charges at non-AAT terminals, including common user facilities. In the case of Port Kembla and Fisherman Islands, the increases have been significant.*
- *While AAT's policy for reviewing tariffs provides that three months notice will be given to relevant parties before any new tariff is implemented, in practice this does not always occur.*
- *In the event that authorisation is granted, conditions requiring independent regulation of AAT's terms and conditions of access and providing a dispute resolution procedure are necessary.*

AAT's responses to these concerns are set out below

## **2.1 AAT has lowered barriers to entry and created the potential for new entry critical for competition**

Although some third parties point out that there has been no new stevedore entry since AAT was established,<sup>4</sup> AAT has lowered barriers to entry and thus created the potential for new entry for stevedores and other port users by providing potential new entrants with access to terminals, related infrastructure and AAT equipment on a contract-by-contract basis.

AAT facilitates competition by lowering barriers to entry for stevedores and other port users wishing to do business at an AAT terminal, as set out in AAT's 10 June Submission.<sup>5</sup> Briefly stated, barriers to entry have been lowered as follows:

- exclusive, closed access terminal facilities have been replaced with AAT's multi-user, open-access terminals, precluding discrimination between users, enables any stevedore or other port user to do business at an AAT terminal;
- the open-access model has reduced the fixed costs incurred by a new entrant. A new entrant can do business at an AAT terminal on a contract-by-contract basis, without the need to invest in a terminal lease and maintain related infrastructure and facilities;
- entry and exit costs are reduced compared with a model which requires the commitment to an exclusive lease and equipment. A new entrant need not assume the risks for an entire facility, since that risk and cost is assumed by AAT; and

third parties such as external crane operators and transport companies have non-exclusive access to allow them to compete for business on AAT terminals without any restrictions resulting from associations with an already-established party with access to the site.

That AAT has lowered barriers to entry is clear and of significant benefit to the public by reason of the potential competition that now exists. For entry to occur, as well as access

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<sup>4</sup> See submission from the FCAI to the ACCC, July 2009, letter from Asiaworld Shipping Services Pty Ltd to the ACCC, 8 July 2009 and letter from Swire Shipping Ltd to the ACCC, 7 July 2008. See also letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter from GM Holden Ltd to the ACCC, 23 July 2009, both endorsing the FCAI submission.

<sup>5</sup> See AAT's submission in support of the application for authorisation, 10 June 2009, pages 2 – 4 and 29 – 31

to a terminal, a stevedore would need a sufficient volume of contracts with shipping lines in addition to the ability to organize a source of acceptable labour. The fact that entry has not occurred does not negate this public benefit. Notably, other port users -- such as shipping lines or consignees/consignors -- could choose to sponsor new entry by reason of their contracts with importers/exporters. Merely because a stevedore has not considered it sufficiently commercially attractive to commence business is not evidence of any barrier to entry.

## **2.2 AAT does business on the basis of published rates consistent with its principle of non-discrimination between users**

Although some parties<sup>6</sup> have asserted that AAT does business on a "take it or leave it basis" precluding port users from negotiating with AAT, with no mechanism to resolve access disputes, this assertion is incorrect. It is based on a misunderstanding of AAT's operations and the requirement not to discriminate between port users.

AAT will negotiate with port users provided such negotiation is not discriminatory (see Section 2.3 below), so as to ensure fair competition between all port users seeking to use AAT's facilities. AAT charges stevedores and other port users on the basis of published rates. This policy gives effect to AAT's principle of non-discrimination between port users, allowing all users access to AAT facilities on the same terms and conditions.

This principle is integral to AAT's business model and mandated by its arrangements with some port corporations. For example, clause 7.1(a)(i)(A) of the Management Agreement between AAT and Port of Brisbane Corporation (PBC) requires AAT to publish user charges, general access terms and stevedore access terms so that potential users are informed of these matters at all times. Additionally, clause 7.1(f) provides that:

*"AAT must not unfairly discriminate between different Users, whether in relation to User Charges, General Access Terms, Stevedore Access Terms or otherwise...Without limitation, AAT must ensure that all services which may be offered to a particular Qualified Stevedore will be offered and publicised to all Qualified Stevedores."*

Further, AAT is subject to mechanisms for resolving disputes. The standard stevedoring license requires disputes to be resolved on an escalating basis, ultimately requiring parties to submit a dispute to be resolved by a retired Federal Court judge. In addition, there are provisions in agreements with port corporations which provide port users with additional mechanisms. For example, in Brisbane, if a port user questions the amount of the user charges or any component of the user charges published by AAT, AAT is required to disclose the calculations to the PBC CEO, who will then nominate an independent expert to investigate the complaint.<sup>7</sup>

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<sup>6</sup> See submission from the Federal Chamber of Automotive Industries (FCAI) to the ACCC, July 2009. See also letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter GM Holden Ltd to the ACCC, 23 July 2009, both endorsing the FCAI submission.

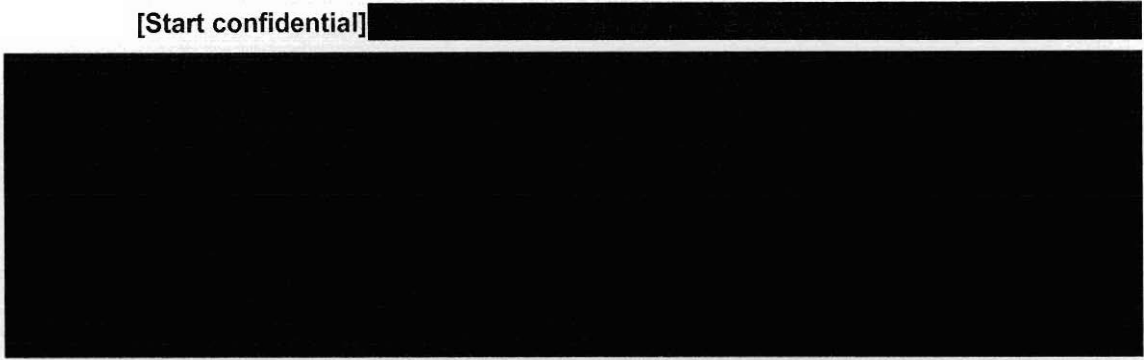
<sup>7</sup> See clauses 7.3 and 7.4 of the Management Agreement between PBC and AAT. See also letter from PKPC to ACCC, 24 June 2009, stating that the agreement between AAT and PKPC provides that if a dispute arises, whether it relates to access or unfair pricing, then an independent person can be engaged to investigate any irregularities which may be brought to PKPC's attention.

**2.3 AAT contracts with any port user wishing to load or unload cargo and regularly deals directly with a range of port users**

Some parties, in particular the FCAI, contend that because AAT contracts with stevedores, rather than shipping lines or importers, these other users are unable to have "normal commercial relations" with AAT.<sup>8</sup> However, this is not correct. AAT does contract with parties other than stevedores. Moreover, AAT does not consider that the lack of a contractual relationship with a particular port user is a barrier to resolving issues and anomalies raised in good faith.

As a terminal facilities operator, AAT will contract with any port user wishing to load or unload cargo. In addition, there are circumstances where AAT deals directly with other port users such as importers/exporters, shipping lines and consignees<sup>9</sup> on a range of commercial issues as discussed below and does so in good faith. For example, AAT has directly negotiated with:

[Start confidential]



[End confidential]

Consignees. In all AAT terminals, AAT deals directly with consignees in relation to storage and quarantine issues;

[Start confidential]



[End confidential]

Any relevant port user with respect to cargo that is damaged or lost while the cargo is in AAT's custody. In these situations, AAT directly corresponds with the relevant party and will report and record all incidents where cargo is damaged when it is in AAT's custody.

<sup>8</sup> See submission from the FCAI to the ACCC, July 2009, letter from Asiaworld Shipping Services Pty Ltd to the ACCC, 8 July 2009 and letter from Swire Shipping Ltd to the ACCC, 7 July 2009. See also letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter from GM Holden Ltd to the ACCC, 23 July 2009, both endorsing the FCAI submission.

<sup>9</sup> AAT notes that its ability to negotiate with the Federal Chamber of Automotive Industries (FCAI) in relation to commercial issues such as tariffs is limited as the FCAI is an industry body and not an importer itself. In April 2005, the ACCC granted authorisation to the FCAI to collectively negotiate the terms and conditions of area hire charges with stevedoring companies on behalf of its members. FCAI members have the option of expressly opting out and accepting the optional terms negotiated by the FCAI or negotiate their own individual terms with area hire providers. In 2007, the ACCC authorised the FCAI to negotiate model terms and conditions with automotive stevedores and port facilities managers (including port corporations). Notably, the ACCC did not authorise the FCAI to coordinate and disseminate its members' views and to liaise with relevant stakeholders regarding the development, design and operation of facilities for the importation and exportation of motor vehicles into and out of Australia. Nonetheless, where appropriate, AAT has engaged with the FCAI on a number of issues of concern to industry (i.e. importers). For example, in late 2008 AAT approached the FCAI to discuss with industry how a recurrence of the seed contamination issue (which originally occurred in late 2007/early 2008) would be handled.

## 2.4 AAT's charges

While some third parties have complained that AAT's charges have increased significantly since its establishment,<sup>10</sup> this complaint ignores the considerable development and ongoing costs that AAT incurs by reason of operating a terminal. AAT's current charges reflect increased operating costs and the substantial investment made by AAT at each terminal. A key component of AAT's costs is port lease costs. In the context of these costs, AAT's charges and recent increases are not unreasonable. Charges for access to a port-operated common-user facility are not comparable. AAT has invested a significant amount of capital to develop facilities that are specifically designed for loading and unloading automotive and general cargo, providing for a significantly greater efficiency in logistics than that provided at a common-user facility.

AAT has undertaken significant capital investment to establish, develop and operate terminal facilities at ports including Port Kembla, Fisherman Islands, Webb Dock West, Outer Harbour and Bell Bay, as set out in AAT's submission of 15 July 2009 (**15 July Submission**) at Section 3.1, and Confidential Annexure A, thereto.

Significant business and financial risk is associated with AAT's initial investment as it is undertaken without any contractual commitments from shipping lines or car manufacturers as to volume and/or timing of business. Despite this uncertainty, AAT enters into long-term arrangements with different port authorities to develop multi-user terminal facilities.

In addition, there are on-going risks associated with AAT's business. AAT's revenue is driven by the volume of cargo that is imported or exported through its terminals. Accordingly, AAT's business is highly cyclical. In addition to the initial cost of investment, AAT also has substantial on-going costs, related to leases, equipment and site maintenance. For example, notwithstanding a significant decline in volumes of cargo imported and exported in 2009, AAT's annual operating costs for 2009 are projected to be \$42 million. **Confidential Annexure A** contains a comparison of the volumes of trade handled at AAT's terminal facilities during the first half of 2008 and 2009. Furthermore, while AAT's budget (prepared in December 2008) initially predicted an annualised return on capital of [Start confidential] [End confidential] for the period January to July 2009, actual results for the period indicated a significant shortfall on predicted return with an annualised return on capital of [Start confidential] [End confidential]. For the same period in 2008, AAT's annualised return on capital was [Start confidential] [End confidential].<sup>11</sup> These fluctuations demonstrate the highly cyclical and unpredictable character of AAT's revenues.

AAT does not increase tariffs at its terminals each year. The table in **Appendix A** sets out the tariff increases at each of AAT's terminals. For example, at Fisherman Islands, between the period July/August 2005 through to 1 October 2007, the facilities access charge (FAC) remained unchanged. Furthermore, in some ports (notably at Port Kembla and Fisherman Islands), AAT's ability to increase tariffs is subject to significant oversight by port corporations.<sup>12</sup> In addition, shipping lines may choose to use alternative facilities. For example, in Melbourne, a shipping line may choose to use the Patrick facility at Webb

<sup>10</sup> See submission from the FCAI to the ACCC, July 2009; letter from Shipping Australia Limited to the ACCC, 7 July 2009; letter from Swire Shipping Ltd to the ACCC, 7 July 2009 and letter from Australian Steel Association to the ACCC, 27 July 2009. See also letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter GM Holden Ltd to the ACCC, 23 July 2009, both endorsing the FCAI submission.

<sup>11</sup> The annualised return on capital has been calculated on a pre-tax basis.

<sup>12</sup> For example, see clauses 16.1(b), 16.2, 16.3(a), 16.3(b) and 16.3(c) of the Management Deed between AAT and Port Kembla Port Corporation. See also clause 7 of the Management Deed between AAT and Port of Brisbane Corporation.



Dock East, or any of the common user facilities further upriver. Notably, in Port Kembla, Swire Shipping Ltd has indicated that it is less costly to operate at the Gateway terminal than at AAT's terminal.<sup>13</sup> Similarly, Shipping Australia Limited noted that some of its members have, where possible, used terminals other than AAT's in Brisbane and Port Kembla for limited operations, as they were less costly.<sup>14</sup> The potential for port users to use other facilities represents a significant constraint on AAT's charges.

### **Rent increase at Fisherman Islands**

Tariff increases are largely attributable to lease payments which increase by CPI over the term of the lease and market rent reviews. Generally, market rent reviews are conducted by port authorities generally every two to five years. For example, AAT's revised FAC at Fisherman Islands, introduced in 2008, reflected increased lease payments resulting from a market rent review undertaken in 2008 by PBC. The market rent review increased AAT's lease costs at Fisherman Islands by approximately 134%. Accordingly, AAT obtained an independent valuation of the land. This assessment confirmed PBC's valuation however, to minimise the impact of the land rental increase on port users and industry, AAT requested PBC provide some relief by staggering the increase (that is, incremental increases of approximately 1/3 of the land rental increase at the beginning of each review period of 2008, 2009 and 2010).<sup>15</sup> In addition to agreeing with AAT's proposal, PBC provided a further 16% decrease in the original proposed land value level. The total benefit of the incremental increases and reduced final land value was a saving of \$10 million to all port users at Fisherman Islands over a three year period.

Following the rental discussions with PBC described above, land and improvements rental increased by 44% in 2008. As a result of these increases, AAT raised its FAC charges for motor vehicles by 37%, containers by 55% and general cargo by 38%. All increases took effect on 1 September 2008. The revised FAC charges were rigorously reviewed by PBC who indicated in June 2008 that they had accepted the level of tariffs as reasonable.

Nevertheless, some of AAT's customers refused to pay the increased FAC. A letter requesting payment was sent noting that pursuant to clause 7.2 of the stevedoring licence agreement, if a stevedore fails to pay an invoice within 14 days of the date of the invoice, AAT may refuse the customer access to the relevant terminals and may also charge interest with respect to non-payment. A copy of this letter is attached at **Confidential Annexure B**.

### **Contamination and cleaning charges**

The Seed Contamination Storage and Handling Charge (**Contamination Charge**) and a charge for cleaning when required by Australian Quarantine Inspection Service (**AQIS**) (**Cleaning Charge**) at Fisherman Islands were introduced to manage the additional costs associated with an AQIS requirement that all vehicles imported from Thailand, Korea and Japan be inspected for grass seeds.<sup>16</sup> By reason of the AQIS requirement, imported motor vehicles from Thailand, Korea and Japan were not able to leave the terminal until

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<sup>13</sup> Letter from Swire Shipping Ltd to the ACCC, 7 July 2009.

<sup>14</sup> Letter from Shipping Australia Limited to the ACCC, 7 July 2009.

<sup>15</sup> By 2010, the rent would reflect the agreed rent level resulting from the market review of AAT's rent.

<sup>16</sup> In late 2007/early 2008 Glebe Island and Fisherman Islands were under severe capacity constraints due to the high volume of imported vehicles arriving from Thailand (and to some extent from Japan) contaminated with grass seeds. On 20 February 2008, AQIS issued an order requiring all vehicles imported from Thailand, Korea and Japan to be inspected by AQIS which meant that vehicles were impounded for quarantine in AAT's terminal. In light of the existing delays at both terminals, this AQIS requirement was likely to paralyse AAT's operations at Glebe Island and Fisherman Islands.

they were cleared by AQIS in accordance with the decontamination procedure attached at **Appendix B**. This required inspection by AQIS and cleaning if ordered by AQIS. At this time, AAT's terminal was at capacity, making it difficult to receive further imports because cars were dwelling for 8 to 11 days instead of the normal 3. In response to the AQIS order and to meet the requests of shipping lines, importers and PBC to keep the terminal functioning, AAT entered into a short term lease with PBC for additional land to store vehicles that had not been cleared by AQIS. AAT sought and received approval from PBC to introduce the Contamination Charge.<sup>17</sup> At no time did AAT prevent or hinder importers or any other port user from proposing an alternative solution.<sup>18</sup>

### **FAC increases at Port Kembla**

Finally, the revised FAC at Port Kembla (introduced on 1 March 2009) was implemented to reflect a fully developed terminal under full costs of operation.<sup>19</sup> This was the first revision to the FAC since February 2007. The initial tariff was not only calculated based on stage 1 developments<sup>20</sup> and outdated anticipated cargo levels but was discounted (from \$2.50 m<sup>3</sup> to \$2.20 m<sup>3</sup>) to allow for a concession for the fact that the site was under development and that the motor vehicle trade would be split between Port Jackson and Port Kembla until Glebe Island closed. Notably, the current FAC charge at Port Kembla for a motor vehicle is equal to the charge previously imposed at the now closed Glebe Island Automotive Terminal. AAT provided PKPC with more than 30 days notification of its proposed revised tariffs and addressed all queries raised by PKPC in relation to the revised FAC. AAT customers were provided with more than two months notification.

## **2.5 AAT provides relevant parties reasonable notice of fee increases**

Some interested parties,<sup>21</sup> have complained that they receive inadequate notice of price increases. AAT notes that this issue is not material to the ACCC's analysis of the public benefits and detriments required to assess an application for authorisation, however, wishes to provide the ACCC with factual clarification.

AAT provides reasonable notice to relevant parties and complies with its standard stevedoring licence agreements<sup>22</sup> and leases agreements with various port corporations.<sup>23</sup> AAT's general policy, as stated in its 10 June Submission, has been to provide two months notice.

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<sup>17</sup> The Contamination Charge and Cleaning Charge (if required) were to apply to all vehicles imported to Brisbane from Thailand, Japan and Korea from 1 March 2008 and provided importers with unlimited storage, cleaning and inspection of vehicles until they received clearance from AQIS.

<sup>18</sup> Relevantly, after it received approval from AQIS for its wash facility, PrixCar assisted in carrying out some cleaning and provided their services to importers as an alternative to AAT.

<sup>19</sup> The stevedore access charges (SAC) and receipt and delivery (R+D) charges were only increased by a minimum to reflect cost increases. These two charges had been fully priced in May 2007 as the development of those facilities had been completed.

<sup>20</sup> [Start confidential]

[End Confidential] Confidential Annexure C.

<sup>21</sup> See submission from the FCAI to the ACCC, July 2009, letter from Shipping Australia Limited to the ACCC, 7 July 2009, letter from Swire Shipping Ltd to the ACCC, 7 July 2008 and letter from Australian Steel Association to the ACCC, 27 July 2009. See also letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter GM Holden Ltd to the ACCC, 23 July 2009, both endorsing the FCAI submission.

<sup>22</sup> See Schedule 1 of AAT's pro forma stevedoring licences as attached in Appendix H to AAT's 10 June Submission.

<sup>23</sup> For example, PKPC's requirement that AAT must provide notice of a variation of a tariff schedule to PKPC and each third party user in its complete discretion and PBC's requirement of 14 days notice.

Recently, AAT has implemented a new Compliance Policy, which provides that three months notice is provided before any new tariff is implemented and intends to adhere to this policy.<sup>24</sup>

## **2.6 AAT operates consistent with the principles required by its ownership structure and by its agreements with certain port authorities**

Some interested parties have suggested that independent regulation of AAT should be a condition of authorisation, as should access and dispute resolution mechanisms.<sup>25</sup> Such conditions are not necessary because AAT already has an effective access regime in place. AAT is governed by operating principles required by reason of its ownership structure and its arrangements with certain port authorities. Moreover, terms and conditions of access and dispute resolution procedures are already provided for in existing agreements with stevedores and port corporations.

AAT's business operations already mandate non-discriminatory, open-access and AAT has operated under this mandate for seven years. Adherence to these principles is necessitated by AAT's structure of ownership between competitors, to ensure that there is no discrimination between stevedores related to the shareholders as well as under agreements with certain port authorities. No third party has asserted that AAT has operated inconsistently with these principles.

AAT is also subject to significant oversight by port authorities. This is acknowledged by PKPC:

*"The agreement between the two organizations requires that all users of these berths and facilities are treated on an equal and fair basis and that if a dispute arises, whether it relates to access or unfair pricing, that an independent person can be engaged to investigate any irregularities which may be brought to the Corporation's attention."<sup>26</sup>*

The Management Agreement between AAT and PBC contains comparable provisions,<sup>27</sup> as PBC acknowledges in its letter to the ACCC:

*"As AAT details in its application, the Corporation presently has in place, by way of its Management Agreement, measures to address potential competition concerns to the satisfaction of the Corporation."<sup>28</sup>*

Additionally, AAT's standard stevedoring licence agreement contains specific clauses that manage the way in which AAT operates, including requirements of non-discrimination,<sup>29</sup> third party access,<sup>30</sup> dispute resolution procedures relating to tariffs<sup>31</sup> and a separate

<sup>24</sup> Since this policy was introduced, AAT has not revised any tariffs at its terminals.

<sup>25</sup> See submission from the FCAI to the ACCC, July 2009, letter from Shipping Australia Limited to the ACCC, 7 July 2009, letter from Australian Steel Association to the ACCC, 27 July 2009, letter from Subaru (Aust) Pty Limited to the ACCC, 22 July 2009 and letter GM Holden Ltd to the ACCC, 23 July 2009.

<sup>26</sup> Letter from Port Kembla Port Corporation to Australian Competition and Consumer Commission, 24 June 2009. In particular, we refer to the following clauses in the Management Deed: Clause 17 contains a general obligation not to discriminate while clauses 3.5(e), 4.3(b), 8(b)(i) and 16.4 contain other specific non-discrimination requirements; clause 4.1(b) provides for third party access; and clauses 16.1(b), 16.2, 16.3(a) and 16.3(c) relate to price review mechanisms. Clause 22 provides for the escalation of a dispute to an expert in the event it cannot be resolved at the commercial/operational level or at the CEO level.

<sup>27</sup> In particular, we refer to clauses 4.2, 7.1(e), 7.1(f), 7.2(a) and 7.4 which provide for third party access, non-discrimination and price review mechanisms.

<sup>28</sup> Letter from Port of Brisbane Corporation Limited to Australian Competition and Consumer Commission, 29 June 2009.

<sup>29</sup> See standard stevedoring license, clause 3.2(a).

<sup>30</sup> See standard stevedoring license, clause 2.5.

dispute resolution procedure for all other disputes which provides that a dispute may be escalated to a retired Federal Court Judge to be decided.<sup>32</sup>

Finally, to the extent that third parties suggested that AAT should be independently regulated, not only is such a condition unnecessary, but moreover such a condition is not appropriate; section 88 of the *Trade Practices Act 1974 (Cth)* (TPA) does not contemplate the imposition of independent regulation as a condition of authorisation. AAT's application should be considered on the basis of its current operations which clearly provide significant public benefits to port users.

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### 3 Conclusion

For the reasons set out above and in AAT's 10 June Submission, the ACCC should grant authorisation on the basis that the public benefit outweighs any alleged detriment, in particular:

- the efficiencies derived from the use of lowest cost terminal facilities, scale and rationalisation efficiencies, as well as operational efficiencies, are clear;
- in lowering barriers to entry by stevedores, AAT has created the potential for stevedoring competition; and

no counterfactual is any more competitive than AAT.

By consolidating terminal facilities and providing open access, AAT is an effective response to government control and port policy over the use of scarce waterfront land in ports around Australia.

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<sup>31</sup> See standard stevedoring license, clause 12.6.

<sup>32</sup> See standard stevedoring license, clauses 12.1 – 12.5.

## Appendix A

### Glebe Island NSW (closed 11/08)

| Tariff Date (with effect from) | 04-Dec-02 | 01-Jun-05 | 01-Jul-06 | 01-Jul-07 |
|--------------------------------|-----------|-----------|-----------|-----------|
| FAC - Vehicle per m3           | 2.10      | 2.15      | 2.45      | 2.50      |
| SAC - Vehicle per unit         | 10.00     | 10.20     | 10.20     | 10.20     |

### Port Kembla NSW

| Tariff Date (with effect from) | 14-May-07 | 01-Mar-09 |
|--------------------------------|-----------|-----------|
| FAC - Vehicle per m3           | 2.20      | 2.50      |
| FAC - Container per unit       | 38.00     | 40.00     |
| FAC - General Cargo per R/T    | 2.60      | 3.50      |
| SAC - Vehicle per unit         | 10.50     | 10.90     |
| SAC - Container per unit       | 24.00     | 25.00     |
| SAC - General Cargo per R/T    | 2.60      | 2.70      |

### Fisherman Islands Qld

| Tariff Date (with effect from) | 01-Jan-06 | 01-Oct-07 | 01-Sep-08 |
|--------------------------------|-----------|-----------|-----------|
| FAC - Vehicle per m3           | 1.00      | 1.35      | 1.85      |
| FAC - Container per unit       | 40.00     | 42.00     | 63.10     |
| FAC - General Cargo per R/T    | 2.50      | 3.50      | 4.85      |
| SAC - Vehicle per unit         | 10.20     | 10.20     | 10.50     |
| SAC - Container per unit       | 25.00     | 26.00     | 27.00     |
| SAC - General Cargo per R/T    | 2.50      | 2.65      | 2.80      |

### Webb Dock West Vic

| Tariff Date (with effect from) | 01-Jul-05 | 01-May-08 |
|--------------------------------|-----------|-----------|
| FAC - Export vehicle per unit  | 23.00     | 25.15     |
| FAC - Import vehicle per unit  | 18.75     | 20.50     |
| SAC - Vehicle per unit         | 9.50      | 9.50      |

### Outer Harbour SA

| Tariff Date (with effect from) | 10-May-04 | 01-Jul-06 | 01-Apr-08 |
|--------------------------------|-----------|-----------|-----------|
| FAC - Export vehicle per unit  | 20.15     | 20.15     | 20.15     |
| FAC - Import vehicle per m3    | 0.00      | 0.00      | 1.35      |
| SAC - Vehicle per unit         | 7.75      | 8.25      | 8.25      |

## Appendix B

### AAT tariff increases

#### Glebe Island NSW (closed 11/08)

| Tariff Date (with effect from) | 04-Dec-02 | 01-Jun-05 | 01-Jul-06 | 01-Jul-07 |
|--------------------------------|-----------|-----------|-----------|-----------|
| FAC - Vehicle per m3           | 2.10      | 2.15      | 2.45      | 2.50      |
| SAC - Vehicle per unit         | 10.00     | 10.20     | 10.20     | 10.20     |

#### Port Kembla NSW

| Tariff Date (with effect from) | 14-May-07 | 01-Mar-09 |
|--------------------------------|-----------|-----------|
| FAC - Vehicle per m3           | 2.20      | 2.50      |
| FAC - Container per unit       | 38.00     | 40.00     |
| FAC - General Cargo per R/T    | 2.60      | 3.50      |
| SAC - Vehicle per unit         | 10.50     | 10.90     |
| SAC - Container per unit       | 24.00     | 25.00     |
| SAC - General Cargo per R/T    | 2.60      | 2.70      |

#### Fisherman Islands Qld

| Tariff Date (with effect from) | 01-Jan-06 | 01-Oct-07 | 01-Sep-08 |
|--------------------------------|-----------|-----------|-----------|
| FAC - Vehicle per m3           | 1.00      | 1.35      | 1.85      |
| FAC - Container per unit       | 40.00     | 42.00     | 63.10     |
| FAC - General Cargo per R/T    | 2.50      | 3.50      | 4.85      |
| SAC - Vehicle per unit         | 10.20     | 10.20     | 10.50     |
| SAC - Container per unit       | 25.00     | 26.00     | 27.00     |
| SAC - General Cargo per R/T    | 2.50      | 2.65      | 2.80      |

#### Webb Dock West Vic

| Tariff Date (with effect from) | 01-Jul-05 | 01-May-08 |
|--------------------------------|-----------|-----------|
| FAC - Export vehicle per unit  | 23.00     | 25.15     |
| FAC - Import vehicle per unit  | 18.75     | 20.50     |
| SAC - Vehicle per unit         | 9.50      | 9.50      |

#### Outer Harbour SA

| Tariff Date (with effect from) | 10-May-04 | 01-Jul-06 | 01-Apr-08 |
|--------------------------------|-----------|-----------|-----------|
| FAC - Export vehicle per unit  | 20.15     | 20.15     | 20.15     |
| FAC - Import vehicle per m3    | 0.00      | 0.00      | 1.35      |
| SAC - Vehicle per unit         | 7.75      | 8.25      | 8.25      |

#### Bell Bay Tasmania

| Tariff Date (with effect from) | 04-Dec-03 | 01-Jan-05 | 01-Sep-05 | 1-Oct-07 | 01-Jan-09 |
|--------------------------------|-----------|-----------|-----------|----------|-----------|
| Container Lift                 | 38.00     | 39.00     | 45.00     | 49       | 50.00     |
| General Cargo Lift per R/T     | 2.00      | 2.00      | 2.00      | 2.2      | 2.30      |
| Minimum Charge                 |           |           | 2000.00   | 2100     | 2200.00   |



Notice to Industry

20/2008

## Contamination on imported new vehicles

The purpose of this notice is to provide information to importers of new vehicles on how to best prepare vehicles to arrive in Australia free of quarantine risk material (QRM) with particular emphasis on seed contamination. The presence of QRM will delay the quarantine clearance of the imported new vehicles on arrival in Australia.

### What is the issue?

It is the importer's responsibility to ensure each consignment of new vehicles is clean and free of all QRM, including live insects, seeds, soil, mud, clay, animal faeces, animal material, plant material such as straw, twigs, leaves, roots, bark, food refuse and other debris prior to arrival in Australia.

New vehicles can be contaminated with airborne seed and other QRM during testing, transport or storage. The number of imported new vehicles found to be contaminated with prohibited plant seed has risen in recent months. Seed collected by AQIS Officers from imported new vehicles have been identified and found to include weedy species that pose a serious quarantine threat to Australia. Contaminated vehicles must be cleaned at the wharf and reinspected by AQIS to ensure that all contamination has been removed. This process is causing significant delays to the delivery of the vehicles, resulting in added expense for the importer.

### Suggested offshore inspection procedures for new vehicles:

Contamination of vehicles can occur at any point in the logistics chain from manufacturing plant to export facility, so it is important that inspections and remedial action take place immediately prior to loading the vehicles for export to Australia. The following are areas that are likely to be contaminated and should be looked at carefully, other areas (such as the tray of utilities) of the vehicle should also be checked:

#### Protective coatings (plastic sheeting and 'sea prep')

Seed has been found adhered to the sticky underside of protective plastic film, exposed when plastic has lifted from the paintwork. Airborne seed may also stick to surfaces that have been treated with rust protective paints.

All surfaces covered in protective plastic film or rust proofing paint should be thoroughly inspected prior to loading the vehicles. If seed are found, the easiest way to remove them is to remove the protective coating. If there are only a few seeds, these are best removed by physically picking them off the sticky surface. The use of sticky tape to pick up the seed is also an effective removal method.

NOTE: During rain periods seed can be difficult to find as they may be small and disappear under water droplets.

Any bird droppings, plant material or soil should be removed.

### Air filters, radiator and grill and engine bay

Airborne seed can lodge in the air filters, the fins on the radiator, and the corners of the grill. The seed must be removed manually, as high pressure water cleaning only pushes the seed further into the radiator or into the engine bay. Any plant material in the radiator must be removed, and the engine bay checked for QRM.

### Wheel arches

Wheel arches should be inspected for soil that has sprayed up during testing and transportation. They should also be inspected for airborne seed. Seed can get caught in the wheel arch or around any exposed grease on the axles. If seed is found around the wheel arches, then the brake lines and fuel lines of the vehicle should also be checked. Each seed needs to be physically removed. The brakes discs should be checked for any QRM. All QRM must be removed.

### Under the vehicle

The under surfaces of the vehicles will need to be checked and treated if necessary, particularly if other surfaces are found to be contaminated.

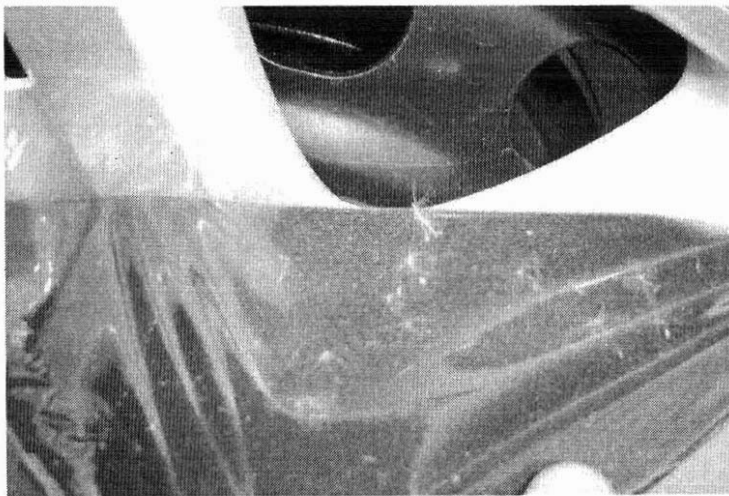
### Door seals and locks

Door seals should be checked if seed has been found in other areas of the vehicle. Seed can become lodged in the rubber (especially around the tailgate of some vehicles), and will need to be physically removed. Seed may also adhere to grease used in the door locks, again the seed will need to be physically removed.

### Interior

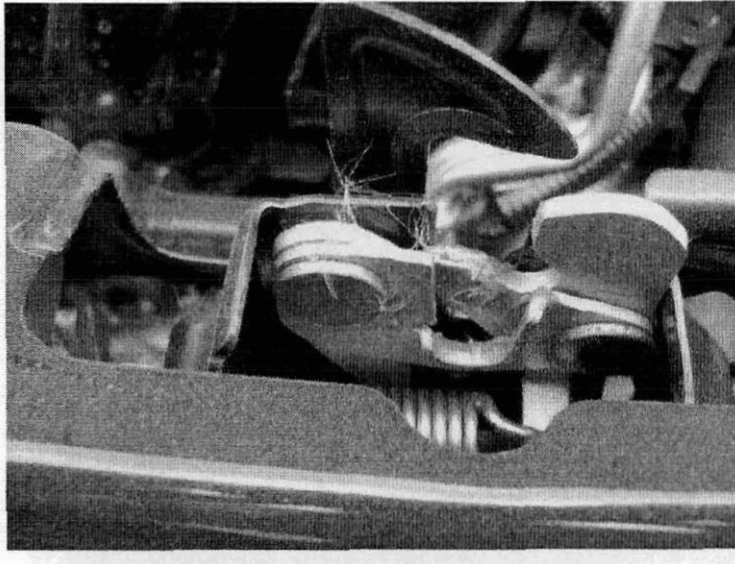
The interior of the vehicles should be checked for soil on the floors and around the pedals. The soil should be vacuumed out and the surface should then be wiped clean

### **Examples of seed contamination:**



Seed adhered to protective coatings:





Seed adhered to grease in the engine bay:

**Preventative measures to reduce seed contamination:**

- During peak flowering season (generally October to February in Asia), ensure that grass around the factory and port areas is kept down, or in a vegetative state by mowing and use of weed controls.
- Consider covering the vehicles during transport and storage and erect seed barriers around storage and loading areas. The use of sticky seed traps to identify when airborne seeds are present may also be beneficial.
- Prior to loading the vehicle, inspect the sticky wrapping and remove or replace it if contamination is present.

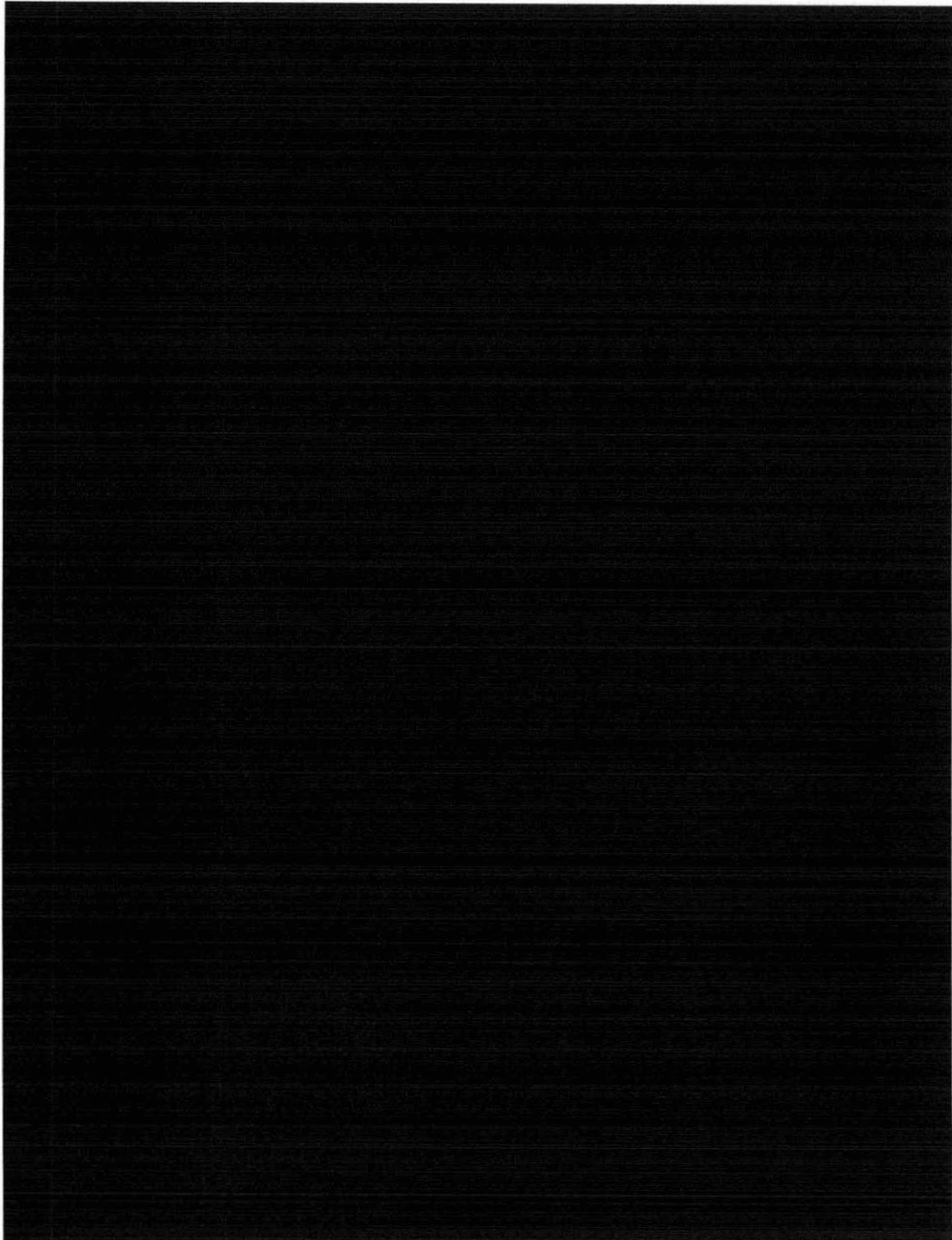
**Further Advice**

AQIS appreciates the co-operation of industry in this important activity. To obtain further information on contamination issues of new vehicles, please call Lindy Cayzer on (02) 6272 4938 or email [treat.inspect@aqis.gov.au](mailto:treat.inspect@aqis.gov.au)

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**Confidential Annexure A**

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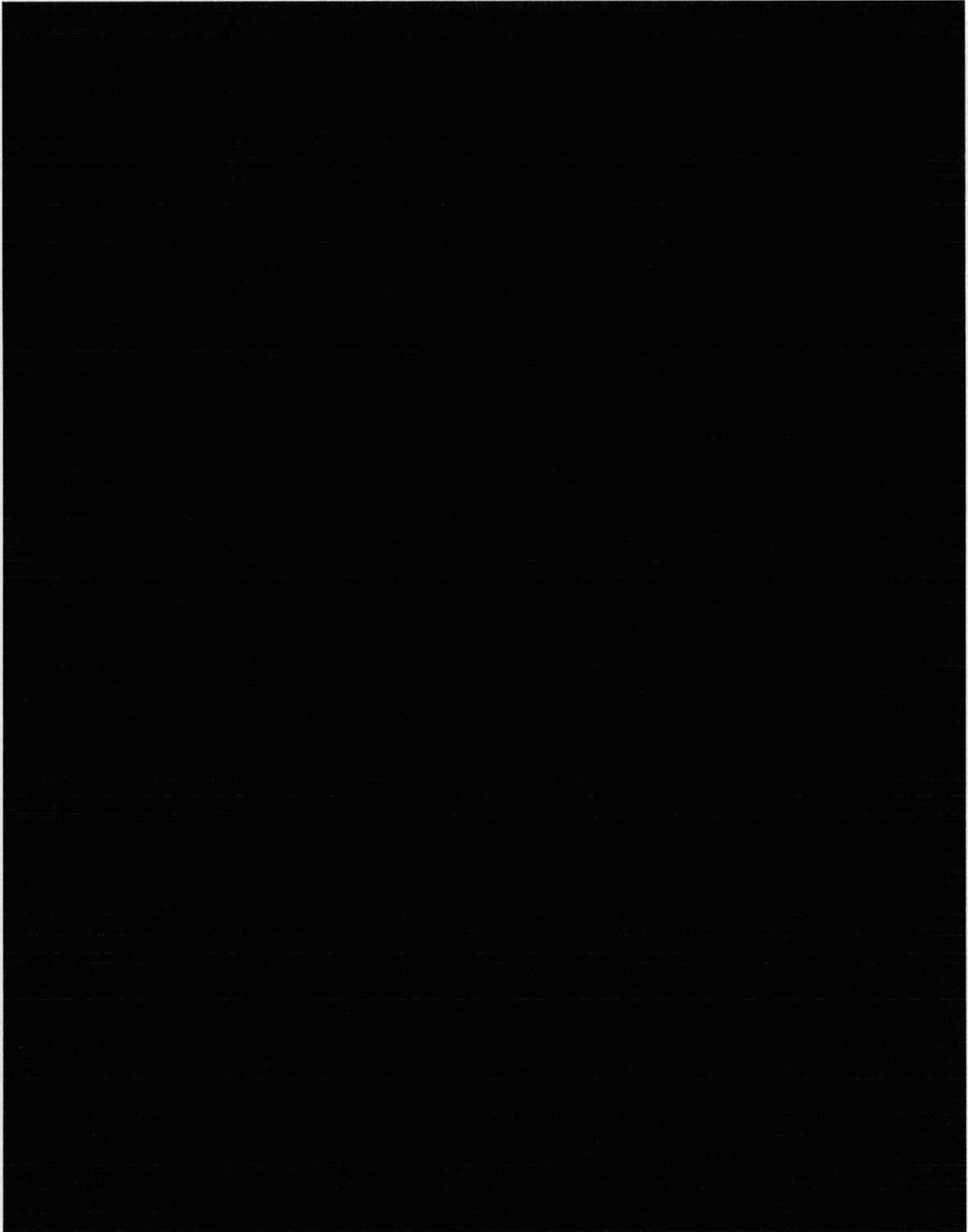


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## Confidential Annexure B

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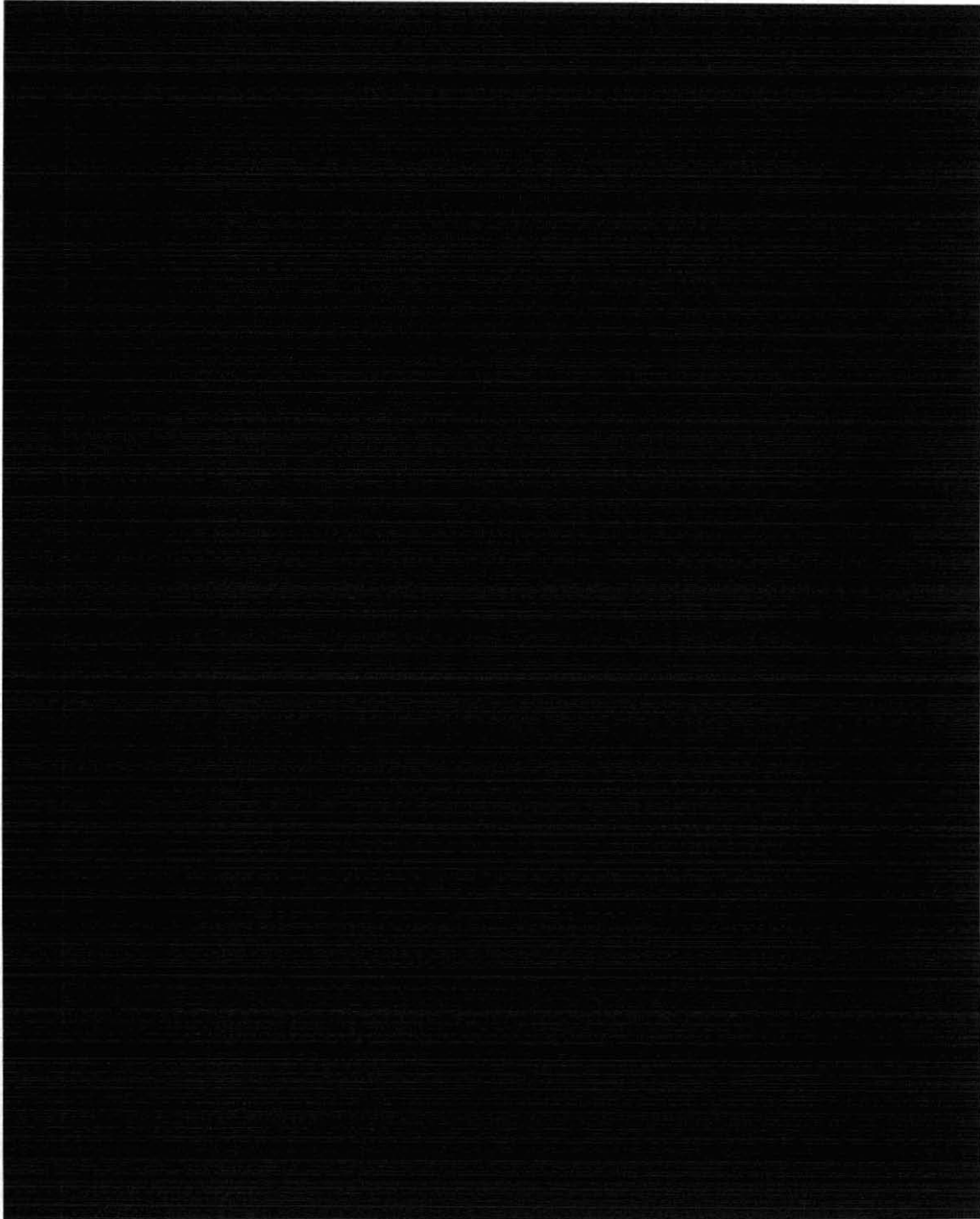


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**Confidential Annexure C**

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