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ABN 29 991 935 627

9 September 2013

Dr Richard Chadwick
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Adjudication Branch
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Dear Dr Chadwick

Australian Amalgamated Terminals Pty Limited ACN 098 458 229
Application for minor variation of authorisation no. A91141, A91142, A91181 and A91182

On behalf of Australian Amalgamated Terminals Pty Limited ACN 098 458 229 (AAT), please find **enclosed** an application for a minor variation (**Application**) of authorisation no. A91141, A91142, A91181 and A91182 dated 3 December 2009 (**Authorisation**).

As set out in the Application, AAT is applying for a minor variation of the Authorisation to enable it to operate Appleton Dock at the Port of Melbourne for an interim period beginning on or before 1 April 2014 and ending on 31 December 2017 (**Interim Period**) during the redevelopment and expansion of Webb Dock West and the closure and redevelopment of Webb Dock East as part of the Port Capacity Project at the Port of Melbourne.

The background to the Application is set out below.

1. AAT

AAT currently operates terminals at Port Adelaide, Port of Brisbane, Port Kembla and the Port of Melbourne (specifically, Webb Dock West at the Port of Melbourne). AAT operates those terminals on a multi-user, non-discriminatory and open-access basis pursuant to the Authorisation and, in particular, the terms and conditions of terminal access prescribed in the conditions in Attachment D to the Authorisation (**Conditions**).

AAT is the most experienced operator of automotive and general cargo terminals on an open-access basis in Australia.

2. Port of Melbourne Corporation and the Port Capacity Project

Port of Melbourne Corporation (**POMC**) is the statutory authority responsible for managing and developing the Port of Melbourne. POMC is undertaking the Port Capacity Project to substantially increase the capacity of the Port of Melbourne, to enable the port to cope with the anticipated increase in cargo volumes up to at least 2040. Webb Dock West, currently operated by AAT, Webb Dock East and Swanson Dock are to be redeveloped and expanded as part of the Port Capacity Project.

Automotive stevedoring services are currently provided at Webb Dock East, Webb Dock West and Appleton Dock at the Port of Melbourne. It is POMC's intention that, following the completion of the Port Capacity Project, all automotive trade at the Port of Melbourne will be consolidated at Webb Dock West until 2040. The Port Capacity Project also includes the development of a new automotive processing facility adjacent to Webb Dock West.

POMC is conducting a competitive bidding process to select the developer and operator of Webb Dock West and AAT has been shortlisted by POMC in this process.

3. Expansion and redevelopment of Webb Dock West and Webb Dock East

Work on the redevelopment and expansion of Webb Dock West and Webb Dock East, expected to begin in 2014 and to be completed in 2017, will involve the complete cessation of operations at Webb Dock East and necessitate the increased use of available capacity at other terminals at the Port of Melbourne during its closure and redevelopment.

Some of the cargo otherwise handled at Webb Dock East is proposed to be handled at Webb Dock West during its closure and redevelopment. However, Webb Dock West is not equipped and does not have the capacity to absorb all of the volume or types of cargo currently handled at Webb Dock East. Webb Dock East has significantly greater capacity than either Webb Dock West or Appleton Dock. In any case, Webb Dock West will be undergoing redevelopment and expansion at the same time. For that reason, POMC proposes to use the available berthing and land capacity at both Webb Dock West and Appleton Dock during the closure and redevelopment of Webb Dock East.

POMC has approached AAT, as the most experienced operator of automotive and general cargo terminals on an open-access basis in Australia, to operate Appleton Dock at the Port of Melbourne for the Interim Period, on an open-access basis, for the purpose of handling cargo not able to be handled at Webb Dock East during its closure and redevelopment. This would include automotive cargo from Webb Dock East, in connection with the eventual consolidation of automotive stevedoring services at Webb Dock West. The objective is to maximise the utilisation of available port berthing and land capacity at the Port of Melbourne during the closure and redevelopment of Webb Dock East and thereby to minimise the disruption to operations at the Port of Melbourne and the consequential impact on economic activity.

AAT understands that POMC has indicated to the ACCC its rationale for selecting AAT to operate at Appleton Dock during the Interim Period.

4. Benefits of the proposed operation of Appleton Dock by AAT

As noted above, the key purpose and benefit of the proposed operation of Appleton Dock by AAT for the Interim Period is to maximise the utilisation of available port capacity at the Port of Melbourne during the closure and redevelopment of Webb Dock East and, in doing so, to minimise disruption and ensure the continuity of operations at the Port of Melbourne.

AAT understands it is POMC's preferred operator of Appleton Dock during the Interim Period, with a view to minimising disruption to stevedores, other terminal users and terminal end users, including the Australian automotive industry.

5. Section 50 of the Competition and Consumer Act 2010 (Cth)

We addressed the application of section 50 of the *Competition and Consumer Act 2010* (Cth) (CCA) to the proposed acquisition of Appleton Dock by AAT in our letter of 13 June 2013.

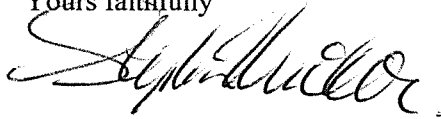
TO: Dr Richard Chadwick

9 September 2013

We understand from your letter of 8 July 2013 that the ACCC does not propose to conduct a public review of the proposed operation of Appleton Dock by AAT under section 50 of the CCA.

Please do not hesitate to contact us should you have any queries in relation to the Application or the information set out above or should you require any further information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stephen Kroker', written over a horizontal line.

Stephen Kroker
for **GADENS LAWYERS**

Encl.

Form FA

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Competition and Consumer Act 2010* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91141

A91142

Australian Amalgamated Terminals Pty Limited ACN 098 458 229 (AAT)

A91181

A91182

- (b) Description of business carried on by applicant:
(Refer to direction 3)

AAT operates terminals at four Australian ports (Port Adelaide, Port of Brisbane, Port Kembla and Port of Melbourne) on a multi-user, non-discriminatory and open-access basis.

- (c) Address in Australia for service of documents on the applicant:

Level 11, 330 Collins Street, Melbourne, Victoria 3000

2. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

Authorisation No. A91141, A91142, A91181 and A91182 (**Authorisation**)

As set out in paragraph 5.9 of the Authorisation, the Australian Competition and Consumer Commission (ACCC) granted authorisation “to AAT, P&O Wharf Management Pty Limited and Plzen Pty Limited to give effect to section 2 of the Shareholders Agreement, together with the other provisions of the Shareholders Agreement and the Constitution of AAT, being provisions that establish and constitute the AAT joint venture until 31 December 2019, but only to the extent that those provisions allow the parties to engage in the following conduct at the Terminals...”, in summary: the development of infrastructure and the maintenance of equipment within a terminal, the provision of space at a terminal, the provision of access to a terminal, the provision of various services, systems and equipment to terminal users, and incidental conduct.

In accordance with the definition of “Terminals” in paragraph 5.10 of the Authorisation, authorisation was granted in relation to “the terminals presently operated by AAT and located at Port Adelaide, Port of Bell Bay, Port of

Brisbane, Port Kembla and Port of Melbourne.” (AAT ceased operations at Port of Bell Bay in 2012.)

- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

The Authorisation relates to AAT’s provision of services in the form of access to terminals, terminal facilities and related services to stevedores and other terminal users at various Australian ports.

- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:

(Refer to direction 4)

AAT seeks a variation of the Authorisation to enable AAT to engage in the authorised conduct at Appleton Dock at the Port of Melbourne for the period beginning on or before 1 April 2014 and ending on 31 December 2017 (**Interim Period**), subject to the conditions contained in Attachment D to the Authorisation (**Conditions**).

In particular, AAT seeks variation of the definition of “Terminals” in paragraph 5.10 of the Authorisation so as to include the provisions underlined below:

For the purposes of paragraph 5.9, ‘Terminals’ means the terminals presently operated by AAT and located at Port Adelaide, Port of Bell Bay, Port of Brisbane, Port Kembla and Port of Melbourne and, notwithstanding any other provision of this Authorisation, for the period beginning on or before 1 April 2014 and ending on 31 December 2017, Appleton Dock at the Port of Melbourne.

As a corollary, AAT seeks the same variation to the definition of “Port Terminal”, being the equivalent term in paragraph 6.1 of Attachment D to the Authorisation, so that the Conditions would apply to AAT’s operation of Appleton Dock for the Interim Period. The definition of “Port Terminal” would include the provisions underlined below:

“Port Terminal” means each of the terminals presently operated by AAT and located at Port Adelaide, Port of Bell Bay, Port of Brisbane, Port Kembla and Port of Melbourne and, notwithstanding any other provision of this Authorisation, for the period beginning on or before 1 April 2014 and ending on 31 December 2017, Appleton Dock at the Port of Melbourne.

AAT does not seek a variation of the authorised contracts, arrangements or understandings (being provisions of the AAT Shareholders Agreement and Constitution), or variation of the conduct authorised in paragraph 5.9 of the Authorisation.

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

The variation of the definition of “Terminals” in paragraph 5.10 of the Authorisation is a minor variation because:

- (i) it is a single variation of the Authorisation; the same, single amendment is sought to be made to the definition of the term “Terminals” in the operative part of the Authorisation and the definition of the equivalent term (“Port Terminal”) in the Conditions (refer to paragraph 2(c) above);
- (ii) it does not involve a material change in the effect of the Authorisation (refer to paragraphs 4 and 6 below);
- (iii) it does not affect the substance of the Authorisation and, in particular, does not affect the authorised contracts, arrangements or understandings or the conduct authorised in paragraph 5.9 of the Authorisation;
- (iv) it only extends the application of the Authorisation, on its existing terms and subject to the existing Conditions, to an additional terminal (Appleton Dock) at the Port of Melbourne where AAT operates Webb Dock West;
- (v) it is for the Interim Period only (for the limited purpose of maximising the utilisation of available port berthing and land capacity at the Port of Melbourne during the expansion and redevelopment of Webb Dock West and the closure and redevelopment of Webb Dock East);
- (vi) it is for a period of approximately four years, beginning on or before 1 April 2014 and ending on 31 December 2017, a period well within the term of the Authorisation (25 December 2009 to 31 December 2019);
- (vii) the types of cargo to be handled at Appleton Dock during the Interim Period would fall well within what is contemplated by and authorised under the Authorisation (which is not limited to specific types of cargo) and, while the types of cargo handled at Appleton Dock would differ somewhat from the types of cargo currently handled at Webb Dock West (as the types of cargo handled at Appleton Dock would include the types cargo currently handled at Webb Dock East), the types of cargo to be handled at Appleton Dock are already handled at terminals operated by AAT pursuant to the Authorisation;
- (viii) the Conditions of the Authorisation (Attachment D to the Authorisation) would apply equally to Appleton Dock and AAT would operate Appleton Dock in accordance with the Conditions (refer to paragraphs 2(c) above and 6 below); and
- (ix) accordingly, Appleton Dock would be operated by AAT on a multi-user, non-discriminatory, open-access basis.

The variation of the definition of “Port Terminal” in paragraph 6.1 of Attachment D to the Authorisation is incidental to the variation of the definition of “Terminal” in paragraph 5.10 of the Authorisation and is necessary in order to preserve the internal consistency of the Authorisation.

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

P&O Wharf Management Pty Limited ACN 100 737 264
Level 22, 44 Market Street, Sydney, New South Wales 2000

Plzen Pty Limited ACN 065 905 571
Level 4, 476 St Kilda Road, Melbourne, Victoria 3004

Descriptions of the businesses carried on by P&O Wharf Management Pty Limited and Plzen Pty Limited are set out in the submission, dated 10 June 2009, accompanying the original authorisation application.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Refer to paragraph 3(a) above.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:
(See Direction 6 of this Form)

The variation would not affect the benefits to the public of the Authorisation.

However, to the extent that the Conditions provide benefits for, in particular, terminal users and end users, the variation would ensure that users and end users of Appleton Dock during the Interim Period have those benefits.

- (b) Facts and evidence relied upon in support of these claims:

The variation does not affect the substance of the Authorisation and therefore would not affect the benefits to the public of the Authorisation.

The Conditions would apply equally to Appleton Dock (refer to paragraph 2(c) above). Therefore, to the extent that the Conditions guarantee benefits for, in particular, terminal users and end users, the variation would extend those benefits to users and end users of Appleton Dock.

The purpose of the variation is to maximise the utilisation of available port berthing and land capacity at the Port of Melbourne during the expansion and redevelopment of Webb Dock West and the closure and redevelopment of Webb Dock East, in order to minimise the disruption of operations at the Port of Melbourne and the attendant impact on economic activity, and is a key aspect of the implementation of the Port Capacity Project at the Port of Melbourne.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(See Direction 7 of this Form)

The supply of automotive and general cargo terminal services at the Port of Melbourne (at which Appleton Dock and Webb Dock West are located) (refer to paragraphs 4.20–4.25 of the Authorisation).

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

(See Direction 8 of this Form)

The variation would not affect the potential detriments to the public of the Authorisation (including in relation to pricing).

- (b) Facts and evidence relied upon in support of these claims:

The variation does not affect the substance of the Authorisation and therefore would not affect the detriments to the public of the Authorisation.

Further, the Conditions minimise or eliminate each of the potential detriments to the public identified in the Authorisation (paragraphs 4.60 to 4.107), including in relation to pricing (paragraph 1 of Attachment D to the Authorisation) and the terms and conditions of access (paragraph 2 of Attachment D to the Authorisation), and ensure that the Authorisation results in a net benefit to the public (refer to paragraphs 4.110 and 4.112 of the Authorisation). The Conditions would apply equally in relation to Appleton Dock (refer to paragraph 2(c) above).

7. Further information

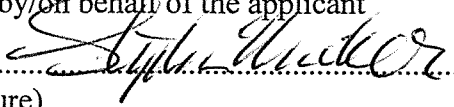
- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

Craig Faulkner
Chief Executive Officer
Australian Amalgamated Terminals Pty Ltd
Level 11, 330 Collins Street, Melbourne, Victoria 3000
(03) 8698 6916

Stephen Kroker
Partner
Gadens Lawyers
Level 25, 600 Bourke Street, Melbourne, Victoria 3000
(03) 9252 2557

Dated.....9. September 2013.....

Signed by/on behalf of the applicant

..........
(Signature)

.....Stephen Charles Kroker.....
(Full Name)

.....Gadens Lawyers, for AAT.....
(Organisation)

.....Partner.....
(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.