
Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the
Competition and Consumer Act 2010 (Cth)
by Qube Holdings Limited

22 December 2017

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1 Person giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Qube Holdings Limited ACN 149 723 053 (Qube).

2 Background

The Qube MCS Acquisition

- 2.1 Qube's subsidiary, Qube Logistics (Aust) Pty Ltd ACN 123 003 930 (Qube Logistics) has entered into an agreement with the Sellers, David Charles Wright and James Wright to acquire 100% of the issued share capital in D&J Holding Co Pty Limited ACN 615 429 199 (D&J HoldCo), the holding company of Maritime Container Services Pty Ltd ACN 001 169 240 (MCS) (the Qube MCS Acquisition).
- 2.2 On the Completion Date, the current directors of MCS will resign and new directors nominated by Qube Logistics will be appointed.
- 2.3 Under the Qube MCS Acquisition, David Charles Wright and James Wright have each entered into Executive Service Agreements with Qube Logistics pursuant to which they will continue to have principal responsibility for the management and operation of the MCS business on and from the Completion Date.
- 2.4 Qube is an ASX listed company that provides import and export logistics services in Australia.
- 2.5 D&J HoldCo is the holding company of MCS. MCS is a New South Wales based business that is involved in the provision of import and export container services in Sydney, including the operation of empty container parks in Cooks River and Banksmeadow and road transport.
- 2.6 On 19 December 2017, Qube notified the ACCC of the Qube MCS Acquisition and advised the ACCC of its intention to complete the Qube MCS Acquisition on 21 December 2017.
- 2.7 On 20 December 2017, the ACCC notified Qube Logistics that the ACCC proposes to undertake a review of the Qube MCS Acquisition under section 50 of the Act (the ACCC's Review).

Undertaking

- 2.8 The objective of this Undertaking is to keep the MCS business separate from Qube's existing operations and managed and maintained as a going concern while the ACCC conducts the ACCC's Review.
- 2.9 The Undertaking aims to achieve this objective by placing obligations on Qube:
 - (a) requiring Qube to hold its interest in the MCS business separate from Qube's other assets and businesses pending completion of the ACCC's Review;
 - (b) ensuring the MCS business continues to be a viable, effective, stand-alone and independent business during the ACCC's Review;

- (c) requiring Qube to appoint Approved Managers with principal responsibility and control over the management and operations of the MCS business;
 - (d) protecting confidential information of the MCS business; and
 - (e) providing for the effective oversight of Qube's compliance with this Undertaking.
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3 Commencement and termination of this Undertaking

3.1 This Undertaking comes into effect when:

- (a) the Undertaking is executed by Qube; and
- (b) the Undertaking executed by Qube is accepted by the ACCC,
(the **Commencement Date**).

3.2 This Undertaking terminates on the date the ACCC communicates in writing to Qube:

- (a) that it does not oppose the Qube MCS Acquisition; or
 - (b) that it gives its consent to the withdrawal of this Undertaking in accordance with section 87B of the Act.
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4 Preservation of MCS Business

Commencement and operation of clause 4

4.1 Notwithstanding clause 3.1, this clause 4 commences on the later of:

- (a) the Commencement Date; and
- (b) the Completion Date.

4.2 This clause 4 will cease to operate on a date (the **Cessation Date**) notified by Qube to the ACCC in writing and which date must be:

- (a) no earlier than 14 March 2018; and
- (b) a date in respect of which Qube has provided the ACCC with at least seven business days' prior notice in writing in accordance with clause 11.

Hold Separate Obligations

4.3 Qube will:

- (a) not sell or transfer its interest, or any assets comprising part of, or used in, MCS (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking, as required by the Approved Managers;
- (b) ensure that the MCS business is kept operationally and financially separate from Qube including Qube's management, commercial and operational activities or decisions;

- (c) not involve itself in the management, commercial and operational activities or decisions of the MCS business and ensure that its staff are not so involved;
- (d) ensure that, except as otherwise approved by the Approved Managers, any personnel (including contractors) concerned with the management or operation of MCS are not concerned with the management or operation of any aspect of Qube's businesses;
- (e) ensure that the books and records of the MCS business are kept separate from those of Qube;
- (f) not access MCS customer or otherwise competitively sensitive confidential information;
- (g) otherwise manage and maintain the MCS business as a going concern, including by taking all steps to ensure that MCS is managed and operated by the Approved Managers in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of MCS at the Completion Date; and
- (h) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of MCS as at the Completion Date to any other business operated by Qube.

4.4 Clauses 4.3(c), 4.3(e) and 4.3(f) do not apply to information or other actions that Qube requires to:

- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements;
- (b) carry out its obligations pursuant to this Undertaking;
- (c) obtain any necessary regulatory approvals in respect of the Qube MCS Acquisition; or
- (d) carry out its obligations pursuant to the Share Purchase Agreement (including, the appointment of new directors of the MCS business and in so far as those directors are required to perform their statutory duties as directors),

provided that where this involves information of the MCS business, it is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Qube who need to know the information to carry out the permitted purpose and the ACCC is notified in accordance with clause 11. Qube must take all steps to ensure that the officers, employees, contractors and advisers of Qube to whom the information is disclosed, use and disclose the information only for the relevant permitted purpose.

4.5 Clause 4.3 will not be taken to limit or prevent Qube from providing:

- (a) usual corporate treasury functions and support to the MCS business
- (b) back office staff assistance in preparing financial accounts for and on behalf of the MCS business,

provided that doing so does not involve the disclosure to Qube or its staff of competitively sensitive confidential information to the MCS business.

Approved Management of the MCS business

- 4.6 Qube will appoint David Wright and James Wright to continue as executives of the MCS business (**Approved Managers**), with principal responsibility and control over the management and operations of the MCS business on and from the Completion Date.
- 4.7 Qube will direct that the Approved Managers:
- (a) act in the best interests of the MCS business at all times including ensuring that the MCS business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the MCS business;
 - (b) not use any confidential information gained through the management of the MCS business other than for performing their functions as Approved Managers;
 - (c) make only those Material Changes to the MCS business which have been approved by the ACCC;
 - (d) operate and manage the MCS business to the maximum extent practicable, in a manner which is financially and operationally separate from Qube;
 - (e) co-operate with the requests of any Approved Independent Auditor appointed pursuant to this Undertaking;
 - (f) provide directly to the ACCC an immediate report of any issues that arise in relation to compliance with this Undertaking; and
 - (g) follow any direction given to them by the ACCC in relation to the performance of their functions as Approved Managers pursuant to this Undertaking.
- 4.8 Qube must procure that the Approved Managers will retain the sole authority to:
- (a) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the MCS business requested by Qube, in accordance with this Undertaking;
 - (b) renew or replace upon expiry Material Contracts for the provision of goods or services to the MCS business on commercial terms favourable to the MCS business;
 - (c) engage, redeploy or make redundant personnel employed in the MCS business as the Approved Managers determine necessary; and
 - (d) engage any external expertise, assistance or advice required by the Approved Managers to perform their functions as the Approved Managers.
- 4.9 Without limiting its obligations in this Undertaking, Qube must:
- (a) ensure that the Approved Managers are fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Managers consider are required by the MCS business;
 - (b) provide and pay for any external expertise, assistance or advice required by the Approved Managers to perform their functions as the Approved Managers;

- (c) not interfere with the authority of, or otherwise hinder, the Approved Managers' ability to carry out their obligations as the Approved Managers, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Managers as to the control, management, financing and operations of the MCS business, and for the MCS business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the MCS business required by the Approved Managers;
 - (iii) providing to the Approved Managers any information or documents that they consider necessary for managing and operating the MCS business or for reporting to or otherwise advising the ACCC; and
 - (iv) not requesting information or reports regarding the MCS business from the personnel of the MCS business except through the Approved Managers; and
- (d) take all steps to ensure that the Approved Managers comply with the directions given in accordance with clause 4.7.

4.10 Qube will immediately notify the ACCC upon termination of the Executive Service Agreements.

Direction to personnel

4.11 As soon as practicable after the date of the Qube MCS Acquisition, Qube must direct its relevant personnel, including directors (including any directors of MCS appointed by Qube), contractors, managers, officers, employees and agents not to do anything in breach of, or inconsistent with, Qube's obligations under this Undertaking.

5 Compliance and information

- 5.1 Qube must notify the ACCC and, if the Approved Independent Auditor has been appointed prior to the Completion Date, the Approved Independent Auditor in writing of the occurrence of the Completion Date, within one Business Day of that date.
- 5.2 Qube will respond in a timely manner to all requests for information or documents made by the ACCC about this Undertaking.
- 5.3 The ACCC may direct Qube in respect of its compliance with this Undertaking to, and Qube will:
 - (a) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC; and/or
 - (b) meet with the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, staff and external advisers) may have.
- 5.4 Information furnished, documents and material provided in response to the ACCC's direction under clause 5.3 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 5.5 The ACCC may in its discretion to be exercised in good faith:

- (a) advise any Undertaking Appointment of any request made by it under this clause 5; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 5.
- 5.6 Nothing in this clause 5 requires the provision of information or documents in respect of which Qube has a claim of legal professional or other privilege.
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6 Independent Audit

Obligation to appoint an Approved Independent Auditor

- 6.1 Qube will appoint and maintain an Approved Independent Auditor to audit and report upon Qube's compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 6.2 As soon as practicable, and in any event within 15 Business Days of the Commencement Date, Qube must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 2 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 6.3 If clauses 6.16, 6.17 or 6.18 apply, Qube must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 6.8 applies.
- 6.4 The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 6.5 Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Qube;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 6.6 After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Qube must within three Business Days:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and

- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

6.7 If the Approved Independent Auditor has not been appointed:

- (a) in accordance with clause 6.6;
- (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 6.16, 6.17, or 6.18; or
- (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 6.3,

then clause 6.8 applies.

6.8 If clause 6.7 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct Qube to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

6.9 Qube must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from Qube, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule 2 to this Undertaking with Qube for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 6.11; and
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
- (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

6.10 Qube must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of the MCS business and Qube's other businesses as required by the Approved Independent Auditor;

- (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

6.11 The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:

- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
- (b) a full audit of Qube's compliance with this Undertaking;
- (c) identification of any areas of uncertainty or ambiguity in the Auditor's interpretation of any obligations contained in this Undertaking;
- (d) all of the reasons for the conclusions reached in the Audit Report;
- (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
- (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) Qube's processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) Qube's compliance with this Undertaking; and
- (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.

6.12 The Approved Independent Auditor is to provide an Audit Report to the ACCC and Qube at the following times:

- (a) within 10 Business Days after being appointed, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**); and
- (b) each month from the date of the Establishment Audit until one month after the Cessation Date.

6.13 Qube must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.

- 6.14 Qube must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

Qube's obligations in relation to the Approved Independent Auditor

- 6.15 Without limiting its obligations in this Undertaking, Qube must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing Qube personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the MCS business and Qube's other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 6.16 Qube must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.

- 6.17 The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 6.18 The ACCC may approve any proposal by, or alternatively may direct, Qube to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
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7 Confidentiality and disclosure

- 7.1 Qube acknowledges that the ACCC may:
- (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register; and
 - (c) from time to time publicly refer to this Undertaking.
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8 Obligation to procure

- 8.1 Where the performance of an obligation under the Undertaking requires a Related Body Corporate of Qube to take or refrain from taking some action, Qube will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.
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9 No Derogation

- 9.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach Qube of any term of this Undertaking.
- 9.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Qube does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.
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10 Costs

- 10.1 Qube must pay all of its own costs incurred in relation to this Undertaking.
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11 Notices

Giving notices

- 11.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au

Attention: Executive General Manager

 Mergers and Adjudication Group

With a copy sent to: mergersru@accc.gov.au
Director, Remedies Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

11.2 Any notice or communication to Qube pursuant to this Undertaking must be sent to:

Attention: Luke Woodward, Gilbert + Tobin
Email Address: LWoodward@gtlaw.com.au

11.3 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

11.4 Qube or the ACCC must notify the other party of a change to its contact details within three Business Days.

11.5 Any notice or communication will be sent to the most recently advised contact details and subject to clause 11.3 and 11.4, will be taken to be received.

12 Defined terms and interpretation

Definitions in the Dictionary

- 12.1 A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

12.2 Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

References to Qube

12.3 All acts and things to be done by Qube are references to Qube and its Related Bodies Corporate, where the context requires, except for those acts and things that are to be done on and from the Completion Date, in which case, they are a reference to Qube and its Related Bodies Corporate, excluding MCS.

Executed as an Undertaking

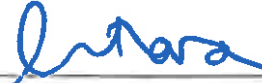
Executed by QUBE HOLDINGS LIMITED ACN 149 723 053 pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director

MAURICE JAMES

Name of director (print)



Signature of director/secretary

William HARA

Name of director/secretary (print)

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on:

And signed on behalf of the Commission:



Chairman

22/12/17

Date

Schedule 1 Dictionary

Definitions

ACCC means the Australian Competition and Consumer Commission.

ACCC's Review has the meaning given to it in clause 2.7 of this Undertaking.

Act means the Competition and Consumer Act 2010 (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 6 of this Undertaking.

Approved Managers has the meaning given to it in clause 4.6 of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Auditor, as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 6.11 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Cessation Date has the meaning given to it in clause 4.2 of this Undertaking.

Commencement Date has the meaning given to it in clause 3.1 of this Undertaking.

Completion Date means the date that completion of the Qube MCS Acquisition occurs under and in accordance with the Share Purchase Agreement.

Corporations Act means the Corporations Act 2001 (Cth).

D&J HoldCo means D&J Holding Co Pty Limited ACN 615 429 199.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 6.12.

Executive Service Agreements means the agreements of employment in the terms set out in Schedule 8 of the Share Purchase Agreement.

Material Change means any change to the structure, attributes, extent or operations of MCS or products or services sold by MCS that may affect, or impact on, the competitiveness of MCS.

Material Contract means any Agreement that is necessary for the operation of the MCS business.

MCS means Maritime Container Services Pty Ltd ACN 001 169 240.

Proposed Independent Auditor means a person named in Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 6.2 of this Undertaking.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Qube means Qube Holdings Limited ACN 149 723 053.

Qube Logistics means Qube Logistics (Aust) Pty Ltd ACN 123 003 930

Qube MCS Acquisition has the meaning given to it in clause 2.1 of this Undertaking.

Related Body Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Sellers means Marrianna Trench Pty Ltd ACN 080 775 908 ATF Grahame Wright Family Trust, DC Wright Pty Ltd ACN 608 926 914 ATF David Wright Testamentary Trust, JM Wright Pty Ltd ACN 608 926 932 ATF James Wright Testamentary Trust, Lesley McPherson Pty Ltd ACN 608 927 000 ATF Lesley McPherson Life Interest Trust, David Wright CT Pty Ltd ACN 608 927 028 ATF David Wright Family Trust and James Wright CT Pty Ltd ACN 608 927 055 ATF JMW Family Trust;

Share Purchase Agreement means the agreement between Qube Logistics, the Sellers, David Charles Wright and James Wright executed on 18 December 2017 for the acquisition of 100% of the issued share capital in D&J HoldCo.

Undertaking is a reference to all provisions of this document, including its Schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Auditor.

Interpretation

- 1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
 - (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;

- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in this Undertaking to any company other than Qube in accordance with clause 12.3 includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and

whether that meaning promotes the purpose or object of the Undertaking);
and

- (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under this Undertaking, Qube will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 Appointment of Independent Auditor

This form sets out the information required by the ACCC in relation to proposed appointment of the Independent Auditor.

Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*Proposed Independent Auditor Form – Qube/MCS Acquisition section 87B Undertaking*) to the below email addresses:

- 1 mergers@acc.gov.au

 Attention: Executive General Manager
 Merger and Authorisation Review Division

- 2 With a copy sent to: mergersru@acc.gov.au

 Attention: Director
 Remedies Unit
 Coordination and Strategy Branch
 Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a Proposed Independent Auditor.

- 1.1 Proposed Independent Auditor details:
 - (a) the name of the Proposed Independent Auditor; and
 - (b) the name of the Proposed Independent Auditor's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

- 1.2 A submission containing the following information:
 - (a) details of the Proposed Independent Auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
 - (b) the names of the owner/s and the directors of the Proposed Independent Auditor's employer.

- (c) details of any of the following types of relationships between Qube and the Proposed Independent Auditor or the Proposed Independent Auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
- (i) Qube and the Proposed Independent Auditor employer are Associated Entities.
 - (ii) Qube is an Entity Connected with the Proposed Independent Auditor's employer.
 - (iii) The Proposed Independent Auditor's employer is an Entity Connected with Qube.
 - (iv) Qube and Proposed Independent Auditor's employer are Related Entities.
 - (v) Qube and the Proposed Independent Auditor's employer are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with Qube is a Related Party, Related Entity or Entity Connected with the Proposed Independent Auditor.
 - (vii) Qube and the Proposed Independent Auditor or the Proposed Independent Auditor's employer have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) the Proposed Independent Auditor's employer is a supplier of Qube or has been in the past three years.
 - (ix) Qube is a supplier of the Proposed Independent Auditor's employer or has been in the past three years.
 - (x) any other relationship between Qube and the proposed Independent Auditor or the Proposed Independent Auditor's employer that allows one to affect the business decisions of the other.
- (d) A document outlining the terms of appointment for the proposed Undertaking Appointment.
- (e) A finalised draft audit plan for the MCS business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.