
Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the
Competition and Consumer Act 2010 (Cth)
by Australian Amalgamated Terminals Pty
Ltd ACN 098 458 229 and Qube Holdings
Limited ACN 149 723 053

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Undertaking to the Australian Competition and Consumer Commission

1 Persons giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 (AAT) and Qube Holdings Limited ACN 149 723 053 (Qube) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the Act).

2 Background

2.1 The Proposed Transaction

- (a) AAT was established as an incorporated joint venture between P&O Wharf Management Pty Limited ACN 100 737 264 (P&O), a wholly-owned subsidiary of Qube and Plzen Pty Limited ACN 065 905 571 (Plzen), a wholly-owned subsidiary of Asciano Limited ACN 123 652 862 (Asciano).
- (b) AAT operates automotive and/or RoRo terminals at the following Australian ports:
 - (i) Port Kembla in New South Wales (Kembla Terminal);
 - (ii) Fisherman Islands in Queensland (Brisbane Terminal);and to the extent that AAT retains operational control over them:
 - (iii) Webb Dock West and Appleton Dock in Victoria (Melbourne Terminals) – AAT's operation of the Melbourne Terminals is likely to continue only until the cessation of the current leases for the Melbourne Terminals (31 December 2017); and
 - (iv) Port Adelaide in South Australia (Adelaide Terminal) - AAT's operation of Adelaide Terminal is likely to continue only until General Motors Holden ceases exporting cars from the Adelaide Terminal, currently scheduled to occur during 2017(each an AAT Terminal or Terminal and collectively, the AAT Terminals).
- (c) On 18 August 2016, the 50% shareholding in AAT held by Plzen was acquired by BAPS BidCo Pty Ltd ACN 611 189 381 (BAPS BidCo) in connection with the Scheme Implementation Deed between Qube, Asciano, Brookfield Infrastructure and other consortium parties entered into on 15 March 2016. BAPS BidCo is indirectly owned by the members of the BAPS Consortium being Brookfield Infrastructure Fund II, Buckland Investment Pte Ltd, British Columbia Investment Management Corporation and Qatar Investco.
- (d) Qube, P&O, and BAPS BidCo entered into a side deed to an agreed form share purchase agreement which will give Qube 100% ownership of AAT (Proposed Transaction). The Proposed Transaction is subject to a condition that the ACCC will not take steps to oppose Qube's ownership.

- (e) The Proposed Transaction is entered into subsequent to the completion of the Scheme of Arrangement. The Scheme of Arrangement is not conditional upon the completion of the Proposed Transaction.
- (f) As well as AAT, Qube has interests in the following related businesses:
 - (i) Qube Ports Pty Limited (ACN 123 021 492), operated by Qube, which is a leading provider of automotive stevedoring services. Qube has a 100% shareholding in Qube Ports Pty Limited; and
 - (ii) Prixcar Services Pty Limited ACN 007 063 505 (**Prixcar**), which supplies pre-delivery inspection (PDI) and other services related to unloading automobiles at the ports. Qube has an indirect 25% interest in Prixcar; and
- (g) Qube does not hold any direct or indirect interest in any shipping line.
- (h) AAT currently manages security access to the Automotive Flyover on behalf of the Port of Brisbane.

2.2 The ACCC's review

- (a) On 8 August 2016, the ACCC commenced its public review of the Proposed Transaction.
- (b) The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Transaction, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

2.3 The ACCC's competition concerns

- (a) The ACCC was concerned that, in the absence of the Undertaking, the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in markets at each of the Port of Brisbane, Port of Melbourne, Port Kembla and Port Adelaide for:
 - (i) the supply of automotive stevedoring
 - (ii) the supply of vehicle pre-delivery inspection (PDI) services
 - (iii) the supply of general cargo stevedoring services.
- (b) The Proposed Transaction would result in LINX Cargo Care's (ACN 611 189 381) (**LINX**) stevedoring and PDI businesses (formerly Patrick Bulk and Automotive Port Services) no longer being vertically integrated with AAT, but AAT would remain vertically integrated with Qube's downstream interests. As a result of the Proposed Transaction, AAT would also no longer need to comply with the conditions of the ACCC's 3 December 2009 authorisation of the joint operation of AAT (authorisation numbers A91141, A91142, A91181 and A91182 (the **Authorisation**)). The Authorisation restricts AAT from discriminating against non-shareholder suppliers of stevedoring and PDI services, including new entrants.
- (c) The ACCC considered that, as the only automotive terminal operator at each Port, AAT had a substantial degree of market power in the supply of automotive terminal services and general cargo terminal services. AAT's terminal services are also a key input for the supply of automotive stevedoring services, general cargo services

and vehicle PDI services at each Port. Therefore, AAT would have the ability to exercise market power in a way that would significantly impact competition in downstream markets for stevedoring and PDI services at each Port after the Proposed Transaction, and Qube would have an incentive to operate AAT in a manner that would favour its downstream businesses.

- (d) In particular, the ACCC was concerned that without this Undertaking the Proposed Transaction would be likely to substantially lessen competition, including by:
 - (i) AAT possibly discriminating between Terminal Users, for example by agreeing to supply certain port services to Qube's downstream businesses on better terms or prices than it does to third parties
 - (ii) AAT possibly foreclosing entry and expansion of third party stevedores or PDI operators, for example by setting higher prices for Terminal Services
 - (iii) Qube possibly having access to commercially sensitive information provided to AAT by Terminal Users, shipping lines and car manufacturers and using it to favour its own downstream businesses
- (e) AAT and Qube do not believe that competition concerns are likely to arise from the Proposed Transaction, and do not consider that the Proposed Transaction will have the effect, or likely effect, of substantially lessening competition in a market, pursuant to section 50 of the Act.
- (f) Nonetheless, AAT intends to operate the AAT Terminals on a multi-user, open-access basis, pursuant to this Undertaking.
- (g) Given the Undertaking is expected to be in place for the duration of the relevant leases at each of the Terminals, the ACCC has sought to ensure that this Undertaking continues to meet its objectives throughout its entire term.

2.4 The Undertaking remedy

The objective of this Undertaking is to address the ACCC's competition concerns as set out above in clause 2.3. The Undertaking aims to achieve this objective by:

- (a) requiring AAT not to discriminate between Terminal Users, (including discriminating in favour of a Qube Related Entity), and requiring AAT and Qube not to engage in conduct for the purposes of preventing or hindering access to Terminals by Terminal Users (which includes prospective users). To ensure AAT does not discriminate in this way, AAT must:
 - (i) comply with the Open Access Conditions; and
 - (ii) comply with the Berthing Allocation Rules (to the extent AAT has responsibility for berthing at each Terminal).
- (b) requiring AAT to facilitate access by PDI operators to the Automotive Flyover at the Port of Brisbane;
- (c) requiring AAT to ring fence Confidential Information of Terminal Users and Applicants, and requiring AAT and Qube to maintain controls to ensure that Confidential Information is not disclosed to unauthorised personnel, which includes Related Bodies Corporate of AAT except in limited circumstances described in clause 6.2;

- (d) requiring AAT to comply with the Price Dispute Resolution Process, which includes the appointment of an ACCC approved Independent Price Expert, and requiring AAT and Qube to comply with the Non-Price Dispute Resolution Process;
 - (e) providing for the effective oversight of the Parties' compliance with this Undertaking, including an obligation which requires AAT to provide for a compliance audit by an ACCC Approved Independent Auditor at the request of a Terminal User at any time; and
 - (f) provide for regular reviews of this Undertaking to ensure that the Undertaking continues to meet its objective as described in this clause 2.
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3 Commencement of this Undertaking

- (a) This Undertaking comes into effect when:
 - (i) this Undertaking is executed by the Parties; and
 - (ii) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
 - (b) Unless otherwise specified in the Undertaking, clauses 5 to 13 take effect from the Control Date.
 - (c) The Parties must notify the ACCC in writing of the occurrence of the Control Date within one Business Day of that date.
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4 Cessation of this Undertaking

4.1 Withdrawal

Either Party may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to such withdrawal in accordance with section 87B of the Act.

4.2 Revocation

The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

4.3 Waiver

The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

5 Open Access Conditions

- (a) AAT must comply with the Open Access Conditions set out in Schedule 1.
- (b) In complying with this clause 5 and without limiting the generality of the obligations in relation to all Access Services, AAT must not:

- (i) offer a longer period of free landside storage at any Terminal for cargo handled by stevedores or PDI operators which are Qube Entities than for Comparable Cargo handled by other stevedores or PDI operators;
 - (ii) offer to waive storage fees for cargo handled by stevedores or PDI operators which are Qube Entities to a greater extent than, or in different circumstances to, offers made to waive storage fees for Comparable Cargo handled by other stevedores or PDI operators;
 - (iii) offer more favourable storage terms at a Terminal for cargo handled by stevedores or PDI operators which are Qube Entities than for Comparable Cargo handled by other stevedores or PDI operators;
 - (iv) offer Qube Entities more favourable terms for the use or supply of machinery or equipment at a Terminal than it offers other entities for the use or supply of that machinery or equipment;
 - (v) discriminate between Service Providers when they are providing services to stevedores or PDI operators which are Qube Entities, and when they are providing services to other stevedores or PDI operators in relation to:
 - (A) rules about receipt and delivery of Comparable Cargo; and
 - (B) the allocation of equipment for Comparable Cargo;
 - (vi) discriminate in the allocation of yard space at a Terminal such that cargo handled by stevedores or PDI operators which are Qube Entities is provided with more favourable laydown areas compared with Comparable Cargo handled by other stevedores or PDI operators; or
 - (vii) offer export customers of stevedores or PDI operators which are Qube Entities superior receipt services (including laydown/free time) than those offered to customers of other stevedores or PDI operators for comparable services.
- (c) AAT, Qube and other Qube Related Entities must not engage in conduct for the purpose of preventing or hindering the provision of Access Services to any Applicant or Service Provider who wishes to conduct or who is conducting Terminal Services.
 - (d) Subject to any requirements for managing security access imposed by the Port of Brisbane, AAT must provide any PDI operator at the Port of Brisbane with access to the Automotive Flyover, including such incidental access to the Brisbane Terminal as is necessary to facilitate access to the Automotive Flyover, where the PDI operator has facilities which are accessible from the Automotive Flyover. AAT must not discriminate between PDI operators in providing that access.

6 Confidentiality and ring-fencing

6.1 Access to and use of ring-fenced Confidential Information

- (a) AAT must not require a Terminal User or Applicant to provide any Confidential Information to AAT unless provision of that Confidential Information is:
 - (i) reasonably necessary for the proper operation of the applicable AAT Terminal;

- (ii) reasonably necessary for the assessment of an Applicant against the eligibility criteria set out in clause Schedule 14 of Schedule 1;
 - (iii) required by law or government authority; or
 - (iv) consented to by the Terminal User or Applicant.
- (b) For the avoidance of doubt, AAT must not require a Terminal User or Applicant to provide any Confidential Information to AAT about freight rates, terms and conditions agreed with a customer, the terms or duration or renewal of any freight contract, or any customer specific forecast of freight volumes.
- (c) AAT must keep confidential any Confidential Information provided to AAT by a Terminal User or Applicant and only allow AAT's Personnel to access that Confidential Information.
- (d) AAT must only use Confidential Information provided by a Terminal User or Applicant for the purpose of:
 - (i) providing Access Services to that Terminal User;
 - (ii) assessment of an Applicant against the eligibility criteria set out in clause 4 of Schedule 1;
 - (iii) resolving a Terminal Dispute; or
 - (iv) as otherwise expressly consented in writing by that Terminal User or Applicant.
- (e) AAT must procure that its Personnel only use Confidential Information for the purposes specified in clause 6.1(d) of this Undertaking.
- (f) AAT must appoint an AAT Compliance Officer who is responsible on a day to day basis for monitoring AAT's compliance with this clause 6.
- (g) AAT must implement a compliance education program for Personnel, which:
 - (i) provides training and information on AAT's obligations under this clause 6;
 - (ii) is given once every 2 years to Personnel; and
 - (iii) forms part of the induction of new Personnel within 30 days of the commencement of their position with AAT.
- (h) AAT must establish and maintain effective IT systems and security measures to safeguard the Confidential Information of Terminal Users or Applicants from unauthorised access, use, copying or disclosure. These measures will include:
 - (i) providing individual user names, passwords and access keys to any AAT Personnel who have access to the Confidential Information of Terminal Users or Applicants; and
 - (ii) recording a log of AAT Personnel who access Confidential Information of Terminal Users or Applicants stored in AAT's IT system and retaining that log for inspection by the Approved Independent Auditor if required.

6.2 Limited Disclosure

- (a) AAT may disclose Confidential Information of a Terminal User or Applicant:
 - (i) which comprises the Vessel Details, including publication on its website from time to time;
 - (ii) to a Related Body Corporate of AAT which is an Approved Terminal Operator:
 - (A) only to the extent necessary for that Approved Terminal Operator to provide services to the Terminal User or Applicant at the Terminal operated by the Approved Terminal Operator;
 - (B) on the condition that the Approved Terminal Operator will treat that Confidential Information as if it was "confidential information" provided by a Terminal User or Applicant under a section 87B undertaking given by the Approved Terminal Operator and accepted by the ACCC;
 - (iii) to the extent necessary for the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers, or notifications required to brokers, insurers, claims assessors, provided that:
 - (A) the disclosure is first approved by the AAT Compliance Officer who must have regard to the objectives of this Undertaking in making a decision on whether to grant such approval; and
 - (B) the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
 - (iv) to any mediator, expert or arbitrator to the extent necessary for the purpose of resolving a Terminal Dispute, provided that AAT does not disclose the Confidential Information of one Terminal User or Applicant to another Terminal User or Applicant without the first Terminal User or Applicant's consent;
 - (v) to the ACCC, any other government agency to the extent necessary to comply with any written request by that agency;
 - (vi) to a Port Manager where AAT is under a legal obligation to do so;
 - (vii) where required by law, provided that, where permissible, AAT first endeavours to consult with the Terminal User or Applicant that provided the Confidential Information; and
 - (viii) to the extent the disclosure is reasonably required to protect the safety or security of persons or property or in connection with an emergency.
- (b) AAT must retain records of any Confidential Information of a Terminal User or Applicant disclosed in accordance with clauses 6.2(a)(ii) to 6.2(a)(viii) for a period of not less than five years from the date the Confidential Information is disclosed.
- (c) For the avoidance of doubt, nothing in this clause 6 prevents AAT from disclosing in the ordinary course of business or financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any Terminal User or Applicant.

6.3 Confidentiality policy

AAT must establish and maintain a confidentiality policy to assist its Personnel to comply with AAT's obligations under this clause 6.

6.4 AAT Ring Fenced Personnel

- (a) Unless waived by the ACCC pursuant to clause 4.3 of this Undertaking, AAT and Qube must procure that no Personnel of AAT who manage or undertake Ring Fenced Functions (**Ring Fenced Personnel**) are also simultaneously employed or engaged by Qube or another Qube Related Entity (other than an Approved Terminal Operator) or vice versa.
- (b) Unless waived by the ACCC pursuant to clause 4.3 of this Undertaking, in relation to any Ring Fenced Personnel who have had access to Confidential Information of a Terminal User or Applicant within a period of 6 months before ceasing to be employed or engaged by AAT, AAT and Qube must procure that any such Ring Fenced Personnel are not employed or engaged, within 6 months of ceasing to be AAT Personnel, by Qube, a Qube Related Entity or any other Related Body Corporate of AAT to work in any part of the relevant entity which is responsible for commercial dealings with customers acquiring stevedoring or PDI Operator Services within an AAT Terminal.
- (c) Clause 6.4(b) does not apply to any AAT Personnel who are employed or engaged by another Approved Terminal Operator within 6 months of ceasing to be employed or engaged by AAT, but only if the Personnel have undertaken to AAT not to disclose to the extent permitted by law any Confidential Information provided to AAT during their engagement or employment with AAT to any person other than the Approved Terminal Operator.

6.5 AAT's compliance with confidentiality and ring-fencing measures

AAT must report any breaches of this clause 6 to the Approved Independent Auditor within 5 Business Days of becoming aware of the breach.

6.6 Qube's compliance with confidentiality and ring-fencing measures

Qube must report any breaches of clause 6.4 to the Approved Independent Auditor within 5 Business Days of becoming aware of the breach.

7 Berthing Allocation Rules

7.1 Compliance with Berthing Allocation Rules

- (a) From the Control Date (where AAT has responsibility for berthing at an AAT Terminal), or the date on which AAT assumes responsibility for berthing at an AAT Terminal, or such later date agreed with the ACCC, AAT must introduce and publish on its website the berthing allocation rules that are set out in Schedule 2 to this Undertaking (**Berthing Allocation Rules**), which will govern the berthing of vessels at the Terminal (and may be varied from time to time in accordance with this clause 7).
- (b) AAT must comply with the Berthing Allocation Rules.
- (c) In its application or interpretation of the Berthing Allocation Rules, AAT must not:

- (i) discriminate between shipping lines;
- (ii) engage in conduct for the purpose of preventing or hindering access to a Terminal by any shipping line in the exercise of a right of access to the Terminal.
- (d) AAT must not have any responsibility for determining the allocation of berths for vessels calling at a Terminal, nor manage nor provide berthing services at a Terminal, unless AAT and Qube have offered, and the ACCC has accepted, a section 87B undertaking or variation to this Undertaking setting out the berthing allocation rules which will apply at a particular Terminal.

7.2 Standard variation process

Subject to clause 7.1(c), AAT may vary the Berthing Allocation Rules from time to time provided that such variation is consistent with the objectives of this Undertaking and that before doing so, AAT:

- (a) publishes a notice (**Draft BAR Variation Notice**) on its website which:
 - (i) informs the public of AAT's intention to vary the Berthing Allocation Rules and the reasons for the proposed variation;
 - (ii) attaches a copy of the Berthing Allocation Rules with the proposed variation shown in mark-up;
 - (iii) invites interested parties to provide written responses to AAT on the proposed variation, including whether the respondent considers that the proposed variation will have a material adverse effect on a Terminal User or is not consistent with this Undertaking;
 - (iv) includes a deadline for responses which is not earlier than 10 Business Days after the date of publication of the Draft BAR Variation Notice;
 - (v) includes a contact name and address for written responses to be addressed to AAT;
 - (vi) invites interested parties to request a meeting to discuss the proposed variation, such request to be submitted within 5 Business Days after the date of publication of the Draft BAR Variation Notice; and
 - (vii) specifies the date on which the proposed variation will take effect, which must be no less than 30 Business Days after publication of the Draft BAR Variation Notice;
- (b) provides the Draft BAR Variation Notice to the Approved Independent Auditor;
- (c) if requested to do so by any interested party in accordance with clause 7.2(a)(vi), conducts a meeting to discuss the proposed variation with interested parties no later than 10 Business Days after publication of the Draft BAR Variation Notice. At AAT's discretion, separate meetings may be held between AAT and individual parties with confidential interests;
- (d) reviews and considers in good faith any:
 - (i) written responses provided by the deadline specified in the Draft BAR Variation Notice; and

- (ii) feedback provided during any meeting about the proposed variation conducted in accordance with clause 7.2(c);
- (e) obtains approval from the relevant Port Manager to the proposed variation to the Berthing Allocation Rules;
- (f) publishes a notice (**Final BAR Variation Notice**) on its website which:
 - (i) may withdraw, amend or confirm any variation proposed in the Draft BAR Variation Notice;
 - (ii) includes reasons for any withdrawal or amendment of a variation proposed in the Draft BAR Variation Notice;
 - (iii) attaches a copy of the Berthing Allocation Rules with the proposed variation shown in mark-up; and
 - (iv) specifies the date on which the revised Berthing Allocation Rules will take effect, which must be no less than 20 Business Days after publication of the Final BAR Variation Notice (which may differ from the date specified in the Draft BAR Variation Notice).
- (g) provides the Final BAR Variation Notice to the Approved Independent Auditor within 5 Business Days of the Final BAR Variation Notice being published on its website.

7.3 Variations by the Harbour Master of the Port

Notwithstanding clause 7.2 but subject to clause 7.1(c), AAT may vary the Berthing Allocation Rules from time to time in respect of an AAT Terminal to the extent necessary to comply with a written direction from the relevant Port Manager of the Port, in which case AAT must provide Terminal Users at that AAT Terminal with as much prior notice of the variation as is feasible in the circumstances by publishing a notice on its website describing the event and providing reasons for the variation.

7.4 Disputes about changes to the Berthing Allocation Rules

Any concerns relating to a variation or proposed variation to the Berthing Allocation Rules under clause 7.2 (including AAT's compliance with the process set out in this clause 7) can be raised by interested parties under the Non-Price Dispute Resolution Process.

8 AAT's Self-Compliance Reports

- (a) AAT must provide a report (**Compliance Report**) to the ACCC and the Approved Independent Auditor no later than:
 - (i) 28 February each year, covering the immediately prior six month period from 1 July to 31 December, and
 - (ii) 31 August each year, covering the immediately prior six month period from 1 January to 30 June.
- (b) Subject to clause 8(c), AAT must publish each Compliance Report on its website within seven days of providing the report to the ACCC and the Approved Independent Auditor.

- (c) AAT may redact from any Compliance Report that is published on its website, any information contained within the Compliance Report that is:
 - (i) identified as confidential by any other party (other than a Qube Related Entity); and
 - (ii) any information which is confidential to AAT, Qube or a Qube Related Entity, provided that the ACCC has been notified of the proposed redaction and has provided written confirmation to AAT that it accepts the information is confidential.
- (d) AAT must publish on its website all Compliance Reports that are less than three years old.
- (e) The Compliance Report must contain:
 - (i) a record of the performance by AAT against each KPI for each Terminal in Schedule 3 for each calendar quarter within the relevant 6 month period:
 - (A) for any services provided in that period by AAT to Qube or a Qube Related Entity;
 - (B) for the same services provided in that period to all other Terminal Users,

(that is, for example, that report provided by AAT on 28 February must contain separate averages for the quarterly periods of 1 July to 30 September and 1 October to 31 December);
 - (ii) a copy of the Terminal Layout Plan for each Terminal;
 - (iii) the identity of any Terminal User who provides Stevedoring Services or PDI Operator Services at a Terminal in which Qube or a Qube Related Entity has a direct or indirect interest greater than or equal to 20 per cent;
- (f) if this Undertaking commences or expires, is withdrawn or revoked during a 6 month period referred to in clause 8(a), the relevant Compliance Report need only cover the part of that 6 month period in respect of which this Undertaking was in operation.

9 Independent Audit

9.1 Approval of Proposed Independent Auditor

The Parties must appoint and maintain an Approved Independent Auditor to audit and report upon their respective compliance with this Undertaking.

9.2 Process for approving a Proposed Independent Auditor

- (a) The Parties must, prior to, or within 5 Business Days after the Control Date, 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.

- (b) If clauses 9.8(a), 9.8(b) or 9.8(c) apply, the Parties must provide the ACCC with a Proposed Independent Auditor Notice within 5 Business Days after the relevant event occurs, otherwise clause 9.4(b) applies.
- (c) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- (d) 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:
 - (i) 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;
 - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of AAT and Qube;
 - (iii) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
 - (iv) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

9.3 Appointment of the Approved Independent Auditor

After receiving notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Parties must within 5 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.

9.4 Failure to appoint

- (a) The ACCC may exercise its powers under clause 9.4(b) if:
 - (i) either of the Parties has not provided the ACCC with a Proposed Independent Auditor Notice in accordance with clauses 9.2(a); or
 - (ii) a new Approved Independent Auditor has not been appointed within 17 Business Days after the former Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clauses 9.8(a), 9.8(b) or 9.8(c).
- (b) If clause 9.4(a) applies, the ACCC at its absolute discretion may:
 - (i) direct the relevant Party to appoint a person who the ACCC has deemed is an Approved Independent Auditor; or
 - (ii) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan.

9.5 Obligations and powers of the Approved Independent Auditor

- (a) The Parties must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
 - (i) maintain his or her independence from AAT and Qube, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in Schedule 2 to this Undertaking with AAT or Qube for the period of his or her appointment;
 - (ii) conduct compliance auditing according to the Approved Audit Plan;
 - (iii) conduct any ad hoc compliance audit if requested to do so by a Terminal User in accordance with clause 11 of this Undertaking;
 - (iv) provide the following reports for each of AAT and Qube directly to the ACCC:
 - (A) a scheduled written Audit Report as described in clause 9.6(a);
 - (B) 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;
 - (C) any Audit Reports following completion of an ad hoc compliance audit under clause 11; and
 - (v) 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.
- (b) the Parties must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
 - (i) access the facilities, sites or operations of Qube, AAT, and Qube's and AAT's other businesses as required by the Approved Independent Auditor;
 - (ii) 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
 - (iii) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

9.6 Compliance Audit

- (a) The Approved Independent Auditor must conduct a separate audit for each of AAT and Qube and prepare a detailed report (**Audit Report**) for each of AAT and Qube that includes:
 - (i) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures since the previous Audit Report;

- (ii) to the extent feasible, a thorough audit of each Party's compliance with this Undertaking including a consideration of compliance with the Undertaking by reference to each KPI;
 - (iii) an outline of areas of uncertainty or ambiguity in the Auditor's interpretation of any obligations contained in this Undertaking;
 - (iv) all of the reasons for the conclusions reached in the Audit Report;
 - (v) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (vi) any recommendations by the Approved Independent Auditor to improve:
 - (A) the Approved Audit Plan;
 - (B) the integrity of the auditing process;
 - (C) the Parties' processes or reporting systems in relation to compliance with this Undertaking;
 - (D) the KPIs in Schedule 3 of this Undertaking that AAT is required to report against in accordance with clause 8,
 - (E) the requirements and obligations included in this Undertaking in order to achieve the objective of the Undertaking in clause 2; and
 - (vii) the implementation and outcome of any prior recommendations by the Approved Independent Auditor made under clause 9.6(a)(vi).
- (b) The Approved Independent Auditor is to provide Audit Reports to the ACCC and to each of the Parties (that is, each Party will only receive an Audit Report that covers its own compliance with the Undertaking) at the following times:
- (i) within two months after the appointment of the Approved Independent Auditor, 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 in conducting the audit (**Establishment Audit**);
 - (ii) by 31 October each year until the expiry, withdrawal or revocation of this Undertaking pursuant to clause 4;
 - (iii) on completion of any ad hoc audit requested under clause 11.2; and
 - (iv) a final report due three months after the expiry, withdrawal or revocation of this Undertaking pursuant to clause 4,
- (c) Unless otherwise agreed with the ACCC in writing, AAT and Qube must implement any recommendations of the Approved Independent Auditor made in the Audit Report pursuant to clause 9.6(a)(vi)(A) to 9.6(a)(vi)(D), 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.
- (d) AAT and 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).

9.7 The Parties' obligations in relation to the Approved Independent Auditor

- (a) Without limiting the obligations in this Undertaking, AAT and Qube must:
 - (i) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (ii) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (A) 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;
 - (B) 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
 - (iii) 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:
 - (A) directing AAT and Qube Personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (B) providing access to the facilities, sites or operations of AAT or Qube and AAT's and Qube's other businesses as required by the Approved Independent Auditor;
 - (C) providing to the Approved Independent Auditor any information or documents requested by the Approved Independent Auditor that 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;
 - (D) 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
 - (E) not appoint 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.

9.8 Resignation, revocation or termination of the Approved Independent Auditor

- (a) The Parties must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.

- (b) 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.
- (c) The ACCC may approve any proposal by, or alternatively may direct, AAT and 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.

9.9 Appointment of Approved Independent Auditor under another section 87B undertaking

- (a) Nothing in this clause 9 prohibits:
 - (i) a person who was appointed as an approved independent auditor under another section 87B undertaking given by AAT or Qube from being appointed as the Approved Independent Auditor in accordance with this Undertaking; and
 - (ii) the Approved Independent Auditor being appointed as an approved independent auditor under any other section 87B undertaking given by AAT, Qube or an Approved Terminal Operator.

9.10 Consolidated Audit Report for all AAT Terminals and Qube Related Entities

Qube, AAT, and any other Qube Related Entity may, if the Approved Independent Auditor considers that it is efficient and desirable to do so procure that the Approved Independent Auditor provide a single and consolidated Audit Report to the ACCC addressing AAT's or Qube's compliance with this Undertaking governing all AAT Terminals and all obligations pursuant to this Undertaking.

10 Price Dispute Resolution

10.1 Price Dispute Resolution Process

- (a) AAT must comply with the Price Dispute Resolution Process at Schedule 5 to determine disputes by any Dispute Applicant in relation to Charges for the Access Services.
- (b) AAT may from time to time amend the Price Dispute Resolution Process, including to the extent necessary to comply with a written direction from a Port Manager, provided that AAT has obtained prior written consent of the ACCC in relation to the amendments.

10.2 Appointment of Independent Price Expert

- (a) Within 20 Business Days of the Control Date, AAT must provide to the ACCC a written notice setting out the identity of the Proposed Independent Price Expert and a copy of the proposed terms of appointment for that Proposed Independent Price Expert (**Proposed Independent Price Expert Notice**).
- (b) The Proposed Independent Price Expert must have the qualifications and experience necessary to carry out the functions of the Independent Price Expert independently of AAT and must not be;

- (i) an employee or officer of AAT, Qube, or a Qube Related Entity whether current or in the past 3 years;
 - (ii) a professional adviser of AAT, Qube, or a Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who, in the opinion of the ACCC, holds a material interest in AAT, Qube, or a Qube Related Entity;
 - (iv) a person who has a contractual relationship with AAT, Qube, or a Qube Related Entity (other than the terms of appointment of the Independent Price Expert);
 - (v) a Terminal User, supplier or material customer of AAT, Qube, or a Qube Related Entity; or
 - (vi) an employee or contractor of a firm or company referred to in clauses 10.2(b)(iii) to 10.2(b)(v).
- (c) The Parties must provide to the ACCC such information and documents as the ACCC requires to assess the appointment of the Proposed Independent Price Expert.
- (d) The ACCC may, in its absolute discretion, consult with any other person in relation to the appointment of the Proposed Independent Price Expert as the Independent Price Expert.
- (e) If, after receipt by the ACCC of the Proposed Independent Price Expert Notice, the ACCC informs AAT in writing that it:
- (i) does not object to the Proposed Independent Price Expert, AAT will appoint the Proposed Independent Price Expert as the Independent Price Expert as soon as practicable on terms approved by the ACCC and consistent with the performance by the Independent Price Expert of his or her functions under the Price Dispute Resolution Process; or
 - (ii) does object to the Proposed Independent Price Expert, AAT will appoint a person identified by the ACCC at its absolute discretion as the Independent Price Expert on terms approved by the ACCC and consistent with the performance by the Independent Price Expert of his or her functions under the Price Dispute Resolution Process.
- (f) Within 5 Business Days of the appointment of the Independent Price Expert under clause 10.2(e), AAT must:
- (i) forward to the ACCC a copy of the executed terms of appointment; and
 - (ii) publish the name and contact details of the Independent Price Expert on AAT's website.
- (g) Nothing in this clause 10 prohibits:
- (i) a person who was appointed as an independent price expert under any other section 87B undertaking given by AAT from being appointed as the Independent Price Expert in accordance with this Undertaking; and

- (ii) the Independent Price Expert being appointed as an approved independent price expert under any other section 87B undertaking given by AAT.

10.3 Term of the Independent Price Expert's appointment

- (a) The Independent Price Expert is to be appointed for a term of two years. Prior to the end of the Independent Price Expert's term, AAT must appoint another person as the Independent Price Expert.
- (b) Each Independent Price Expert who is appointed after the first Independent Price Expert is to be appointed for a term of two years, commencing on the day after the end of the previous Independent Price Expert's term. Prior to the end of each subsequent independent Price Expert's term, AAT must appoint another person as the Independent Price Expert.
- (c) Clauses 10.2(a) to 10.2(f) apply to the appointment of any subsequent Independent Price Expert required by clauses 10.3(a) and 10.3(b) as if the reference in clause 10.2(a) to "Within 20 Business Days of the date of this Undertaking" reads "At least 20 Business Days prior to the end of the Independent Price Expert's term".
- (d) A person who is, or who has been, the Independent Price Expert is eligible for reappointment as the Independent Price Expert.

10.4 Conditions relating to Independent Price Expert's functions

- (a) AAT must:
 - (i) procure that the terms of appointment of the Independent Price Expert include obligations on the Independent Price Expert to:
 - (A) continue to satisfy the independence criteria in clause 10.2(b) for the period of his or her appointment;
 - (B) provide any information or documents requested by the ACCC about AAT's compliance with this Price Dispute Resolution Process directly to the ACCC;
 - (C) report or otherwise inform the ACCC directly of any issues that arise in the performance of his or her functions as Independent Price Expert or in relation to any matter that may arise in connection with this Price Dispute Resolution Process.
 - (ii) comply with and enforce the terms of appointment for the Independent Price Expert;
 - (iii) maintain and fund the Independent Price Expert to carry out his or her functions;
 - (iv) indemnify the Independent Price Expert for any expense, loss, claim or damage arising directly or indirectly from the performance by the Independent Price Expert of his or her functions as the Independent Price Expert except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Independent Price Expert;

- (v) not interfere with, or otherwise hinder, the Independent Price Expert's ability to carry out his or her functions as the Independent Price Expert;
- (vi) provide and pay for any external expertise, assistance or advice required by the Independent Price Expert to perform his or her functions as the Independent Price Expert;
- (vii) provide to the Independent Price Expert any information or documents requested by the Independent Price Expert that he or she considers necessary for carrying his or her functions as the Independent Price Expert or for reporting to or otherwise advising the ACCC; and
- (viii) ensure that the Independent Price Expert will provide information or documents requested by the ACCC directly to the ACCC.

10.5 Single Dispute Resolution involving more than one AAT Terminal

- (a) Subject to clause 10.5(b), where there is more than one Dispute Applicant in relation to Charges for the Access Services or where a Price Dispute relates to more than one AAT Terminal, AAT may, if the Independent Price Expert considers that it is efficient and desirable to do so, conduct a single and consolidated Price Dispute Resolution Process in accordance with Schedule 5 in respect of more than one AAT Terminal and/or more than one Dispute Applicant.
- (b) AAT may only conduct a consolidation of the Price Dispute Resolution Process in Schedule 5 under clause 10.5(a) where the Dispute Applicants have brought a dispute in relation to a substantially similar Price Dispute, and the consolidation has been agreed to by the Dispute Applicants and the Independent Price Expert.

11 Non-Price Dispute Resolution

11.1 Non-Price Dispute Resolution Process

- (a) AAT and Qube must comply with the Non-Price Dispute Resolution Process at Schedule 6 to determine disputes by any Dispute Applicant in relation to the granting, refusal to grant, conditions or administration of an Access Licence Agreement, other than in relation to the amount of any Charges.
- (b) For the avoidance of doubt, AAT and Qube must permit a Dispute Applicant to raise a dispute under the Non-Price Dispute Resolution Process in relation to AAT or Qube's compliance with:
 - (i) Clause 5 - Open Access Conditions affecting the Dispute Applicant;
 - (ii) Clause 6 - Access to and use of that Terminal User's ring-fenced Confidential Information.
- (c) AAT may from time to time amend the Non-Price Dispute Resolution Process, including to the extent necessary to comply with a written direction from a Port Manager, provided that AAT has obtained the prior written consent of the ACCC to the amendments.
- (d) For the avoidance of doubt, a Dispute Applicant may raise a complaint regarding AAT or Qube's compliance with this Undertaking directly with the ACCC at any time.

11.2 Ad hoc independent audit

- (a) In addition to the Non-Price Dispute Resolution Process, a Dispute Applicant who has a complaint about AAT and/or Qube's compliance with this Undertaking may at any time, by providing notice in writing to AAT and/or Qube (as applicable) and the ACCC (**Ad Hoc Audit Notice**), request the Approved Independent Auditor to undertake a compliance audit in accordance with clause 9 in relation to that specific complaint and prepare an Audit Report in relation to that specific complaint (**Ad Hoc Audit Report**).
- (b) To be valid, an Ad Hoc Audit Notice must contain:
 - (i) a description of the complaint and reasons why the Dispute Applicant suspects that AAT and/or Qube may have breached its obligations under this Undertaking; and
 - (ii) an unconditional undertaking by the Dispute Applicant to pay the costs of the Approved Independent Auditor in connection with the audit requested in the Ad Hoc Audit Notice, within 14 days of:
 - (A) withdrawal of an Ad Hoc Audit Notice by the Dispute Applicant; or
 - (B) completion of the audit, if the Approved Independent Auditor does not find or report that AAT or Qube has breached their obligations under this Undertaking in relation to the matters set out in the Ad Hoc Audit Notice giving rise to the audit.
- (c) A Dispute Applicant may at any time withdraw an Ad Hoc Audit Notice by notifying AAT and/or Qube (as applicable) and the Approved Independent Auditor in writing, in which case the requirement for the Approved Independent Auditor to prepare an Ad Hoc Audit Report under clauses 9.6(a) and 9.6(b) ceases.

12 Information

- (a) In respect of the Parties' compliance with this Undertaking, the ACCC may direct AAT and/or Qube to:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce documents and materials to the ACCC within AAT or Qube's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- (b) AAT and Qube must comply with any direction made by the ACCC under clause 12(a), which will be notified to AAT or Qube in accordance with clause 20.2.
- (c) In respect of AAT's and Qube's compliance with this Undertaking or an Approved Independent Auditor's compliance with its Approved Terms of Appointment, the ACCC may request any Approved Independent Auditor to:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;

- (ii) produce documents and materials to the ACCC within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and/or
- (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have,
- (d) AAT and Qube will use best endeavours to ensure that an Approved Independent Auditor complies with any request from the ACCC in accordance with clause 12(c).
- (e) Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 12 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- (f) The ACCC may in its discretion to be exercised in good faith:
 - (i) advise any Approved Independent Auditor of any request made by it under this clause 12; and/or
 - (ii) provide copies to any Approved Independent Auditor of any information furnished, documents and material produced or information given to it under this clause 12.
- (g) Nothing in this clause 12 requires the provision of information or documents in respect of which AAT or Qube has a claim of legal professional or other privilege.

13 Review of the terms of this Undertaking

13.1 Review process

- (a) The ACCC may, after the second anniversary of the Control Date and thereafter not more than once in any five year period, review the terms of this Undertaking to consider whether any more changes to the terms of this Undertaking are necessary given the objectives of this Undertaking as described in clause 2.
- (b) On deciding to conduct a review pursuant to clause 13.1(a), the ACCC may invite submissions from AAT, Qube, a Port Manager (only in respect of the relevant AAT Terminal at its Port) and other parties with an interest in the terms and conditions of access to the AAT Terminal on whether any changes to the terms of this Undertaking are necessary in order to ensure that this Undertaking continues to achieve the objectives as described in clause 2.
- (c) The factors to which the ACCC may have regard in making a decision to review pursuant to clause 13.1(a) or in conducting the review include but are not limited to:
 - (i) the Audit Reports prepared by the Approved Independent Auditor in accordance with clause 9.6(a);
 - (ii) any Ad Hoc Audit Reports prepared in accordance with clause 11.2(a);
 - (iii) disputes raised under clause 5 (Open Access Conditions), clause 10 (Price Dispute Resolution) or clause 11 (Non-Price Dispute Resolution);
 - (iv) any change in circumstances since the Commencement Date or the last review conducted pursuant to clause 13.1(a); and

- (v) any submissions from parties with an interest in the terms and conditions of access to the Terminal received by the ACCC.

13.2 Amendment Notice

- (a) Following a review in accordance with clauses 13.1(a), 13.1(b) and 13.1(c), if the ACCC is satisfied that a variation is necessary to ensure that the Undertaking continues to achieve the objectives as described in clause 2, the ACCC may give the Parties an amendment notice (**Amendment Notice**) which sets out any changes that the ACCC considers should be made to the Undertaking and an explanation for those changes. The ACCC will, subject to removing any confidential information of AAT, Qube or any other person;
 - (i) publish the Amendment Notice on the ACCC's website;
 - (ii) give a copy of the Amendment Notice to any relevant Port Manager; and
 - (iii) publicly consult on the Amendment Notice.

13.3 Proposed Variations to this Undertaking following ACCC review

- (a) Following any consultation on the Amendment Notice, if the ACCC decides that changes to this Undertaking are necessary in order to ensure that the Undertaking continues to achieve the objectives as described in clause 2 the ACCC will provide AAT and Qube with a notice setting out the terms of a variation to the Undertaking which is acceptable to the ACCC (**Variation Notice**).
- (b) The Parties must:
 - (i) consult in good faith with the ACCC with a view to proposing variations to this Undertaking which will address the matters stated in the Variation Notice; and
 - (ii) notify the ACCC within 90 days of receiving a Variation Notice if they agree to seek a variation to the Undertaking either:
 - (A) in the form set out in the Variation Notice; or
 - (B) in a form agreed between the ACCC and the Parties following the consultations undertaken in accordance with clause 13.3(b)(i).
- (c) If the Parties notify the ACCC that they agree to seek a variation to the Undertaking in accordance with clause 13.3(b)(ii), at that same time, the Parties must provide a proposed variation to the Undertaking to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act.

13.4 Referral to expert determination

- (a) If the Parties do not agree to seek a variation to this Undertaking in accordance with clause 13.3(b)(ii) (**Variation Dispute**), they must provide written notice to the ACCC of the Variation Dispute, including:
 - (i) written reasons explaining why the Parties do not propose to seek a variation to the Undertaking;
 - (ii) the identity of a proposed independent expert who will be appointed to conduct the expert determination (**Proposed Independent Expert**); and

- (iii) details of the Proposed Independent Expert's relevant qualifications and experience necessary to carry out the expert determination independently of the Parties or a Qube Related Entity.

(Variation Dispute Notice).

- (b) The Proposed Independent Expert must not be:
 - (i) an employee or officer of AAT, Qube or a Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of AAT, Qube or a Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with AAT, Qube or a Qube Related Entity; or
 - (iv) an employee or contractor of a firm or company referred to in clause 13.4(b)(iii).
- (c) Nothing in this clause 13 prohibits:
 - (i) a person who has been appointed as an independent expert under a section 87B undertaking given by Qube or any other Qube Related Entity from being nominated as the Proposed Independent Expert; and
 - (ii) the Proposed Independent Expert being appointed as an independent expert under Undertakings given by Qube or other Qube Related Entities in respect of any other Terminal or all of the AAT Terminals.
- (d) Within 10 Business Days of the Parties providing a Variation Dispute Notice to the ACCC, the ACCC will provide written notice to the Parties informing them of its decision to agree or not agree to the Proposed Independent Expert identified pursuant to clause 13.4(a)(ii).
- (e) If the Parties and the ACCC cannot agree on an independent expert to be appointed to determine the Variation Dispute within 20 Business Days of the Parties providing a Variation Dispute Notice to the ACCC, then the Chairman of the Victorian Bar Council will determine the identity of the independent expert and the Variation Dispute will be referred to that independent expert for determination.
- (f) The cost of the independent expert will be borne equally by AAT and Qube unless otherwise agreed.
- (g) The Parties will use best endeavours to ensure that the independent expert is provided with:
 - (i) all relevant information available to AAT and Qube in relation to the Variation Dispute; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Variation Dispute Notice within 60 Business Days of referral to that expert.
- (h) The independent expert will decide whether the ACCC's proposed variation to the Undertaking as set out in the Variation Notice is necessary to ensure that the

Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking.

- (i) If the independent expert decides that the ACCC's proposed variation to the Undertaking as set out in the Variation Notice (with such minor modifications as the expert considers necessary) is necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking, the Parties must proffer a proposed variation in accordance with the ACCC's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision.
- (j) If the independent expert decides that a variation is necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking but this variation differs materially from the ACCC's proposed variation, the Parties must proffer a proposed variation in accordance with the expert's proposed variation to the ACCC for the purpose of seeking ACCC consent in accordance with section 87B(2) of the Act within 5 Business Days of the independent expert's decision. The ACCC may in its complete discretion decide whether or not to consent to the variation proffered by AAT.
- (k) If the independent expert decides that a variation is not necessary to ensure that the Undertaking continues to meet the objectives of this Undertaking as described in clause 2 of this Undertaking, the ACCC's Variation Notice lapses.
- (l) The independent expert's decision will be final and binding on the Parties and they must both take all steps to ensure that the independent expert's decision is fulfilled or otherwise given effect to.
- (m) Nothing in this clause 13 prevents the ACCC from investigating a potential breach of this Undertaking or from applying to the Court for orders pursuant to section 87B of the Act in respect of a breach of this Undertaking at any time.

14 Disclosure of this Undertaking

- (a) Within 5 Business Days of the Commencement Date, Qube and AAT will publish this Undertaking on their respective websites.
- (b) Within 25 Business Days of the Commencement Date, Qube and AAT will publish on their respective websites a plain English summary of the obligations contained within this Undertaking (which summary is to be approved by the ACCC prior to distribution).
- (c) AAT must maintain a link on the home page of its website to a page containing all items that it is required to publish in accordance with this Undertaking.
- (d) Where this Undertaking (including its schedules) imposes a requirement on AAT or Qube to publish an item on their website, that item must be placed on their website in a location where it would be easily found by someone looking for that item or for information about an issue to which that item relates.
- (e) The Parties acknowledge that the ACCC may:
 - (i) make this Undertaking publicly available;

- (ii) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
- (iii) from time to time publicly refer to this Undertaking.

15 Obligation to procure, direction to AAT Personnel and assistance from Related Bodies Corporate

- (a) Where the performance of an obligation under this Undertaking requires a Qube Related Entity to take or refrain from taking some action, Qube and to the extent possible AAT must each procure that Qube Related Entity to take or refrain from taking that action.
- (b) As soon as practicable after the Control Date, AAT and Qube must direct their respective Personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with the Parties' obligations under this Undertaking.
- (c) AAT and Qube must ensure that any Qube Related Entity provides all necessary assistance and information so that the Parties are in a position to comply with any:
 - (i) direction from the ACCC under clause 12(a); or
 - (ii) request from the Approved Independent Auditor in accordance with clause 9;for the purposes of the ACCC or the Approved Independent Auditor (as applicable) investigating AAT's or Qube's compliance with clause 6.
- (d) Subject to clause 6.4, nothing in this Undertaking prohibits:
 - (i) AAT Personnel from being employed, appointed, transferred or seconded to, or otherwise engaged by an Approved Terminal Operator; or
 - (ii) the Personnel of an Approved Terminal Operator from being employed, appointed, transferred or seconded to, or otherwise engaged by AAT.

16 No derogation

- (a) 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 by AAT or Qube of any term of this Undertaking.
- (b) 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 AAT or Qube do 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.

17 Change of Ownership of AAT Terminals

In the event that a Change of Ownership of Qube, AAT or any AAT Terminal is reasonably expected to occur before the withdrawal of this Undertaking in accordance with clause 4.1, the Parties must:

- (a) notify the ACCC of this expectation as soon as is practicable; and
- (b) only implement a Change of Ownership to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on AAT and Qube pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the Parties in writing that a section 87B undertaking under this clause is not required.

18 Resolving inconsistencies

To the extent there are any inconsistencies between this Undertaking and any of the following:

- (a) a Terminal Licence;
- (b) Terminal Regulations; or
- (c) any operational protocol (whether or not binding) applying to a Port at which a Terminal is located,

as regards AAT's obligations pursuant to this Undertaking, this Undertaking prevails.

19 Costs

Each Party must pay all of its own costs incurred in relation to this Undertaking.

20 Notices

20.1 Giving notice

- (a) Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to:

Email address: mergersucu@accc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

- (b) Any notice or communication to AAT pursuant to this Undertaking must be sent to:

Name: Australian Amalgamated Terminals Pty Ltd
Address: Level 11, 330 Collins Street, Melbourne
Email address: craig.faulkner@aaterminals.com.au
Attention: Chief Executive Officer

- (c) Any notice or communication to Qube pursuant to this Undertaking must be sent to:

Name: Qube Holdings Limited
Address: Level 27, 45 Clarence St, Sydney, NSW 2000
Email address: william.hara@qube.com.au
Attention: William Hara

20.2 When a notice is received

- (a) If sent by post, notices are taken to be received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia).
- (b) If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

20.3 Change of contact details

- (a) AAT and Qube must notify the ACCC of a change to its contact details within 3 Business Days.
- (b) Any notice or communication will be sent to the most recently advised contact details and subject to clause 20.32(a) and 20.2(b), will be taken to be received.

21 Definitions

21.1 Definitions

In this document, unless the context requires otherwise:

AAT means Australian Amalgamated Terminals Pty Ltd ACN 098 458 229, which upon the Control Date will become a wholly owned subsidiary of Qube.

AAT Complaints Officer means the complaints officer designated by AAT who is responsible for receiving and attending to complaints raised by Terminal Users about berthing.

AAT Compliance Officer means the person referred to in clause 6.1(e) of this Undertaking.

AAT Terminal has the meaning given in clause 2.1(b) of this Undertaking.

ACCC means the Australian Competition and Consumer Commission.

Access Licence Agreement means an agreement between AAT and a Service Provider under which the Service Provider is supplied the Access Services by AAT.

Access Services means, for each Terminal:

- (a) the use of facilities and infrastructure owned, operated or controlled; or
- (b) services, machinery, equipment, access to data and anything else provided,

by AAT at that Terminal which in each case AAT makes available to allow a Service Provider to provide all or part of the Terminal Services and which, at a minimum, includes those services AAT makes available to stevedores and PDI operators.

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

Ad Hoc Audit Notice has the meaning given in clause 11.2(a) of this Undertaking.

Ad Hoc Audit Report has the meaning given in clause 11.2 of this Undertaking.

Amendment Notice has the meaning given in clause 13.2(a) of this Undertaking.

Applicant means any stevedore, PDI operator, Mooring Service provider or any other user seeking Access Services.

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 appointed under clause 9.3 of this Undertaking.

Approved Terminal Operator means any Qube Related Entity which operates a Terminal and has given a section 87B undertaking to the ACCC in relation to its operation of that Terminal in substantially similar terms to 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 in clause 9.6(a) of this Undertaking.

Authorisation has the meaning given in clause 2.3(b) of this Undertaking

Automotive Flyover means the elevated road at the Port of Brisbane that connects the AAT Terminal with the automotive precinct.

Berthing Allocation Rules means the document by that name published on AAT's website from time to time which governs the berthing of vessels at the relevant AAT Terminal, the current version of which (at the time of the ACCC's acceptance of this Undertaking) is provided at Schedule 2.

Business Day means, for a Terminal, a day other than a Saturday or Sunday on which banks are open for business generally in the State in which the Terminal is located.

Change of Ownership means:

- (a) the assignment or other transfer of 50 per cent or more of the legal or beneficial ownership of the share capital of Qube or AAT to any other person or entity; or
- (b) the assignment or other transfer of the legal or beneficial ownership of some or all of a Terminal (or the business activities associated with operating that Terminal) to any other person or entity, or the sale or transfer of any assets necessary, or which may be necessary, to enable compliance with this Undertaking in its entirety with respect to the Terminal.

Charges means the fees or charges payable by a Service Provider to AAT for the Access Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Access Services (or any material part thereof).

Commencement Date has the meaning given in clause 3(a) of this Undertaking.

Comparable Cargo means cargo which is similar in nature, type, size or volume.

Compliance Report has the meaning given in clause 8(a) of this Undertaking.

Confidential Information means information provided by a Terminal User or Applicant to AAT in relation to the supply of Access Services to that Terminal User or Applicant which is:

- (a) by its nature confidential, including but not limited to information about that Terminal User or Applicant's cargo manifests, cargo descriptions, cargo markings, cargo mix/volumes, cargo origin and destinations, overseas and local customer details, terminal expenditure/cost information; or
- (b) designated to be confidential by the Terminal User or Applicant who supplied it; or
- (c) known, or ought reasonably to be known, by AAT to be confidential or commercially valuable,

but excludes information that:

- (d) is comprised solely of the name, address, and contact details of a Terminal User or Applicant for the sole purpose of allowing AAT to comply with requirements of the Open Access Conditions where those details are to be published on AAT's website;
- (e) was in the public domain at the time when it was supplied;
- (f) subsequently becomes available other than through a breach of confidence or breach of this Undertaking;
- (g) was in the lawful possession of AAT prior to being provided by the Terminal User or Applicant;

or

- (h) ceases to be confidential in nature by any other lawful means.

Control Date means the date on which the Proposed Transaction is completed.

Corporations Act means the Corporations Act 2001 (Cth).

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal and includes Terminal Users, importers and exporters (or their industry representative bodies).

Draft BAR Variation Notice has the meaning given in clause 7.2(a) of this Undertaking.

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

Establishment Audit has the meaning given in clause 9.6(a) of this Undertaking.

Final BAR Variation Notice has the meaning given in clause 7.2(f) of this Undertaking.

Financial Year means a financial year ending 30 June.

Independent Price Expert means the person appointed under clause 10.2(e) of this Undertaking.

LINX has the meaning given in clause 2.3(b) of this Undertaking.

Material means of non-trivial commercial value or importance to AAT or a Terminal User.

Mooring Services means the mooring and unmooring of vessels at Berths.

Non-Price Dispute means a dispute raised by a Dispute Applicant in relation to the granting, refusal to grant, conditions or administration of an Access Licence Agreement by AAT, other than in relation to the amount of any Charges.

Non-Price Dispute Resolution Process means the non-price dispute resolution process established by AAT and set out in Schedule 6 of this Undertaking and as amended from time to time in accordance with clause 11.1(c) of this Undertaking.

Open Access Conditions are the conditions contained in Schedule 1 of this Undertaking.

PDI Operator Services means the undertaking of pre-delivery inspection activities and related services.

Party means each of Qube and AAT.

Personnel means, in relation to a party, that party's officers (including directors), employees, agents and contractors.

Port means in so far as this Undertaking applies to:

- (i) the Melbourne Terminals – the Port of Melbourne;
- (ii) the Kembla Terminal – Port Kembla;
- (iii) the Brisbane Terminal – the Port of Brisbane;
- (iv) the Adelaide Terminal – the Port of Adelaide.

Port Manager the owner, harbour master and/or manager of a Port from time to time, being initially:

- (i) at the Port of Melbourne – the Port of Melbourne Corporation;
- (ii) at Port Kembla – Port Authority of New South Wales and/or NSW Ports;
- (iii) at the Port of Brisbane – Port of Brisbane Pty Ltd;
- (iv) at the Port of Adelaide – Flinders Ports.

Price Dispute means a dispute raised by a Dispute Applicant about the proposed increase to a Charge which relates to that Dispute Applicant.

Price Dispute Resolution Process means the price dispute resolution process established by AAT and set out in Schedule 5 of this Undertaking, and as amended from time to time in accordance with clause 10.1(b) of this Undertaking.

Prixcar means Prixcar Services Pty Limited ACN 007 063 505.

Proposed Independent Auditor Notice has the meaning given in clause 9.2(a) of this Undertaking.

Proposed Independent Expert has the meaning given in clause 13.4(a)(ii) of this Undertaking.

Proposed Independent Price Expert means the prospective independent price expert identified by AAT who will, subject to approval by the ACCC, determine all Price Disputes for Terminal Users for the forthcoming period of 2 years.

Proposed Independent Price Expert Notice has the meaning given in clause 10.2(a) of this Undertaking.

Proposed Transaction has the meaning given in clause 2.1(d) of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

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 Entities means Qube together with all Qube Related Entities.

Qube Related Entity means Prixcar and any Related Bodies Corporate of Qube including, but not limited to, AAT as from the Control Date.

Related Bodies Corporate has the meaning given in section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Ring Fenced Functions means any management oversight over any of the following activities:

- (i) scheduling or allocation of berthing times;
- (ii) operation of equipment or provision of access to facilities, infrastructure, data or services to Terminal Users by AAT;
- (iii) negotiation or management of Access Licence Agreements or any other agreements or commercial terms with Terminal Users in relation to access to a Terminal;
- (iv) managing the grant of security or other access to the Automotive Flyover.

For clarity, Ring Fenced Functions do not include corporate support functions, including any provision by Qube Personnel of general administration, payroll, human resources, insurance, legal or regulatory, or information technology services.

Ring Fenced Personnel has the meaning given in clause 6.4(a).

Service Provider means any stevedore, PDI operator, Mooring Service provider or any other user operating at a Terminal, including under an Access Licence Agreement with AAT.

Stevedoring Services means the loading and unloading of vessels at the berths and transfer of cargo to the Terminal.

Terminal has the meaning given in clause 2.1(b) of this Undertaking.

Terminal Dispute means any Non-Price Dispute or Price Dispute.

Terminal Layout Plan means, for each Terminal, a plan of the Terminal showing the names and boundaries of the designated storage areas for import cargo.

Terminal Licence means any licence granted to AAT under which it retains the right to develop, operate and provide services at a Terminal.

Terminal Regulations means any rules, regulations, protocols or requirements that are binding on AAT and which regulate the operation or management of a Port of any related precinct.

Terminal Services means PDI Operator Services, Stevedoring Services and Mooring Services.

Terminal User means, in respect of a Terminal:

- (a) any stevedore, PDI operator or shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time, including under an Access Licence Agreement with AAT.

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.

Variation Dispute has the meaning given in clause 13.4(a) of this Undertaking.

Variation Dispute Notice has the meaning given in clause 13.4(a) of this Undertaking.

Variation Notice has the meaning given in clause 13.3(a) of this Undertaking.

Vessel Details means vessel name, voyage number, estimated time of arrival at Terminal, receiving, cut-off and delivery dates for vessels arriving at the Terminal.

22 Interpretation

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 includes a company over which that company is in a position to exercise control within the meaning of section 50AA of the Corporations Act;
- (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 clause 22(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, AAT and Qube will do everything reasonably within their power to ensure that their 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.

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)

Date: 17/11/16



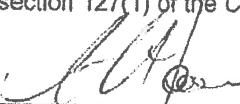
Signature of company secretary

WILLIAM HARA

Name of company secretary
(print)

Date: 17/11/16

Executed by Australian Amalgamated Terminals Pty Ltd (ACN 149 723 053) pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director
MAURICE JAMES

Name of director (print)

Date: 17/11/16



Signature of ~~company secretary~~
director

DON SMITHWICK

Name of ~~company secretary~~
director
(print)

Date: 17/11/16

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

23/11/16

Date

Schedule 1 Open Access Conditions

1 Definitions

In this Schedule 1, terms are defined as set out in clause 21 of this Undertaking, unless specified as follows:

Applicant means any stevedore, PDI operator, Mooring Service provider or any other user seeking Access Services.

Licence Application Form means the application form the Operator requires Applicants to complete in order to apply for Access Services to provide PDI Operator Services, Stevedoring Services, Mooring Services and any other Terminal Service (as the case may be).

Operator means Australian Amalgamated Terminals Pty Ltd ACN 098 458 229.

2 No discrimination or hindering access

- (a) The Operator must not supply Access Services to a stevedore (including any Qube Entities), unless the Operator has entered into an Access Licence Agreement with that stevedore.
 - (b) The Operator must offer Access Services to an Applicant on terms no less favourable than terms offered to any Service Provider, except to the extent that the cost of providing Access Services to the Applicant is higher.
 - (c) The Operator must not discriminate between different Applicants and Service Providers, in offering and providing Access Services, except to the extent that the cost of providing Access Services to the Applicant or Service Provider is higher.
 - (d) The Operator must not:
 - (i) provide Terminal Services; or
 - (ii) discriminate between different persons, in offering and providing directly to third parties (including stevedores, PDI operators, shipping lines, importers and exporters) any other services or access to facilities of a kind offered or provided by the Operator to Qube, a Qube Related Entity or third parties, through its own use of a Terminal.
-

3 Initial terms of access

- (a) At the Control Date, the Charges for Access Services will be no higher than AAT's charges for those services immediately prior to the Control Date.
- (b) This obligation does not preclude the Operator from proposing, after the Control Date, a price increase consistent with the process in Schedule 5.

4 Eligibility requirements

The Operator must ensure that every Applicant can demonstrate, to the Operator's reasonable satisfaction, that the Applicant:

- (a) is solvent;
- (b) has a legal ownership structure with a sufficient capital base and assets of value to meet the actual potential liabilities under an agreement for the supply of Access Services, including the ability to pay any charges when they fall due;
- (c) is able to provide credit support; and
- (d) has in place appropriate occupational health and safety standards.

5 Operator obligations

- (a) The Operator must publish on its website:
 - (i) the Licence Application Form;
 - (ii) current Charges for each Access Service;
 - (iii) the terms and conditions on which Access Services are offered;
 - (iv) the process for assessing and approving an application by an Applicant and executing an Access Licence Agreement, including timeframes, the price review mechanism and a dispute resolution mechanism;
 - (v) full details of the Price Dispute Resolution Process and Non- Price Dispute Resolution Process;
 - (vi) entity names and ABNs of each Service Provider.
- (b) The requirements of the Licence Application Form must be reasonable, having regard to the criteria set out in clause 4 of this Schedule.
- (c) The Operator must not discriminate between Applicants in applying the criteria set out in clause 4 of this Schedule.
- (d) The Operator must negotiate in good faith for the provision of Access Services.
- (e) The Operator must provide unsuccessful Applicants with a statement of reasons for the decision and provide a copy to the Port Manager.
- (f) The Operator must supply Access Services at prices no greater than the then current Charges payable for the Access Services.

6 Complaints and requests for information

- (a) The Operator must notify the Port Manager within two Business Days after the date of receiving:
 - (i) a complaint from any person in relation to Access Services;

- (ii) a request or inquiry from the ACCC concerning a complaint about the Operator's compliance with this Undertaking, and including a request for information or documents under the Act or this Undertaking.
 - (b) The Operator must co-operate with the Port Manager in the resolution of complaints by any person in relation to Access Services or responding to inquiries or requests by the ACCC.
 - (c) The Operator must co-operate with the ACCC in relation to any inquiries or requests, including requests for information or documents.
-

7 Charges

At least 60 Business Days before the end of each Financial Year, the Operator must:

- (a) publish on its website the proposed Charges applicable for the next financial year; and
- (b) provide written notice to each Service Provider of the proposed Charges applicable for the next financial year, and to any person who has informed AAT in writing that it wishes to be notified of the proposed price increase.
- (c) include on its website and in the notice referred to in this paragraph, a requirement that any person who disputes the proposed Charges, may do so in accordance with the Price Dispute Resolution Process and must notify the Operator in writing of the dispute at least 45 Business Days before the end of the financial year.

Schedule 2 Berthing Allocation Rules

1.1 General

- 1 AAT operates the AAT Terminals.
- 2 This Schedule sets out the priorities for managing berthing and berthing allocation at each Terminal where AAT has berthing responsibilities (**Berthing Allocation Rules**). Those Terminals are Port Kembla in New South Wales, Fisherman Islands in Queensland, and Webb Dock West and Appleton Dock in Victoria. AAT will allocate berths at each Terminal in accordance with these Berthing Allocation Rules. The Berthing Allocation Rules appear on the following pages in this order:
 - (a) Webb Dock West and Appleton Dock in Victoria (two pages)
 - (b) Port Kembla in New South Wales (four pages)
 - (c) Fisherman Islands in Queensland (three pages)
- 3 In its application or interpretation of the Berthing Allocation Rules, AAT must not discriminate between shipping lines, or engage in conduct for the purpose of preventing or hindering access to any AAT Terminal by any shipping line in the exercise of a right of access to the Terminal.
- 4 AAT has also executed a confidentiality deed poll in favour of Terminal Users which outlines how AAT will handle Confidential Information provided under the Berthing Allocation Rules.
- 5 AAT has published a Non-Price Dispute Resolution Process in respect of its management of each Terminal and has undertaken to comply with that process. Any person dissatisfied with a berthing allocation made by AAT or a change to these Berthing Allocation Rules which has been proposed or made by AAT may, as an alternative to referring the dispute to the Harbour Master under clause 1.2(2)(c) of this Schedule, raise a dispute under the Non-Price Dispute Resolution Process.
- 6 These Berthing Allocation Rules will be reviewed by AAT yearly and proposals for changes discussed with all shipping lines and stevedores. AAT may only make changes to these Berthing Allocation Rules in accordance with the process set out in the clause 7 of the Section 87B Undertaking it has given to the ACCC.
- 7 Unless defined in these rules, the definitions in the Section 87B undertaking apply.

Schedule 3 Key Performance Indicators

See clause 8 of this Undertaking for AAT's comparative reporting obligations on each of the following KPIs.

AAT will report against these KPIs for each Terminal. The purpose of KPI reporting under this Undertaking is to monitor AAT's compliance with its obligations in this Undertaking, including the Open Access Conditions, Berthing Allocation Rules, and ring fencing obligations. The KPIs are therefore undertaken compliance tools, and will not be used to measure the performance of individual Terminal Users.

KPI	Purpose	Calculation of KPI
1. Truck turnaround time	Assess AAT's compliance with the Open Access Conditions by measuring the average time trucks are spending at the Terminal picking up or delivering cargo. This will be influenced by the AAT's allocation of the storage location of the relevant cargo at the Terminal.	Average time spent at the Terminal picking up or delivering cargo, measured from the time the truck enters the Terminal gate to the time when the truck departs the Terminal through the Terminal gate, for; (a) Automobiles (b) Break bulk cargo (including high and heavy cargo)
2. Yard dwell time, imports	Assess AAT's compliance with the Open Access Conditions by measuring the average time import cargo units stay at the designated cargo pickup area of the Terminal waiting for pick up, once the cargo is ready to be picked up. AAT determines pick-up times.	Average time cargo units stay at the designated cargo pickup area of the Terminal measured from announced time for pick-up to actual pick-up. The announced time is based on the earliest practical time it is possible for a truck to safely enter the designated cargo pick up area in the Terminal after the completion of vessel discharge operations, assuming all import documentation and clearances are complete.

KPI	Purpose	Calculation of KPI
3. Yard dwell time, exports	Assess AAT's compliance with the Open Access Conditions by measuring the average time export cargo units stay at the designated cargo pickup area of the Terminal waiting to be loaded onto a vessel, once the cargo is ready be loaded. AAT determines cut-off times.	Average time cargo units stay at the designated cargo pickup area of the Terminal measured from actual time of delivery to announced cut-off time. The announced cut-off time is based on the latest practical time it is possible for a truck to safely enter the designated cargo drop off area in the Terminal before the commencement of vessel load operations, assuming all export documentation and clearances are complete.
4. Berthing allocation changes	Measure delays in loading or discharging of vessels due to change in allocated berth by AAT.	Number of incidents where there is a delay in start-up of stevedore operations due to deviation between planned allocation of berth and actual allocation of berth. Note: excludes any change to berthing allocation caused or contributed to by the relevant shipping line (or its representatives) or matters not within AAT's reasonable control.
5. Mooring services	Measure delays for mooring service providers due to change in allocated berth by AAT.	Number of incidents where there is a delay in the mooring of vessels due to deviation between planned allocation of berth and actual allocation of berth. Note: excludes any change to berthing allocation caused or contributed to by the relevant shipping line (or its representatives) or matters not within AAT's reasonable control.
6. Allocation of first point of rest area	Assess AAT's compliance with the Open Access Conditions by measuring location of first point of rest for cargo. AAT determines the first point of rest for cargo.	Data showing for each cargo shipment: (a) berth allocated to vessel; and (b) allocated storage area in the Terminal Layout Plan for the cargo's first point of rest.

KPI	Purpose	Calculation of KPI
7. Equipment availability	Assess AAT's compliance with the Open Access Conditions by measuring the availability of requested AAT equipment allocated to stevedore or shipping line at the Terminal.	Deviation between AAT equipment requested by stevedore or shipping line and actual machinery provided (including standard of equipment, age, type and capacity) to stevedore or shipping line. Note: KPI applies to equipment at the Terminal which is owned or controlled by AAT and offered for use to stevedores or shipping lines.
8. Mechanical support	Assess AAT's compliance with the Open Access Conditions by measuring the quality and reliability of mechanical support for AAT equipment at the Terminal.	Average lost time in excess of 1 hour due to failure of AAT in providing mechanical breakdown support. Reported from time Mechanical Engineer officially notified to issue resolved (in total hours). Note: Excludes any faults or break-down caused or contributed to by the relevant Terminal User.
9. Cargo dwell time over free time / long term storage	Assess AAT's compliance with the Open Access Conditions by measuring the time cargo units stay over free time, excluding Customs, DAFF and customer hold. Subject to the below definition of customer hold, AAT has influence over the circumstances in which cargo stays over free time at the Terminal-Customer hold is storage beyond free time which is requested by the customer, arising from an arm's length commercial agreement between the customer and AAT.	(a) Total cargo units (b) Number of cargo units which stay over free time. (c) Number of cargo units which stay over free time due to Customs, DAFF or customer hold (d) Number of cargo units which stay over free time (excluding Customs, DAFF or customer hold) as a percentage of total cargo units; [(b)-(c)] divided by (a)
10. Confidentiality and Ring Fencing	Measure AAT's compliance with clause 6 of the Undertaking, regarding confidentiality and ring fencing. AAT must maintain 100% compliance with clause 6.	(a) Number of and type of complaints received concerning non-compliance with clause 6. (b) Number of instances of breaches of clause 6. (c) AAT's response to the reported complaints and breaches.

KPI	Purpose	Calculation of KPI
11. Complaints	Report on the number and type of complaints raised, in order to facilitate the ACCC's review of the terms of this Undertaking in determining whether the Undertaking is meeting its objectives set out in clause 2 for the term of this Undertaking. AAT must minimise complaints,	(a) Number and type of complaints raised under the Price Dispute Resolution Process and Non-Price Dispute Resolution Process, (b) Outcomes of the complaints raised.

Schedule 4 Proposed Independent Auditor Notice

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

Please note in relation to information given on in relation to this notice, giving false or misleading information is a serious offence.

Method of delivery to the ACCC

The completed Proposed Independent Auditor Notice, along with the additional requested information is to be provided to the ACCC with the subject line "Proposed Independent Auditor Notice - AATs87B Undertaking" to the below email addresses;

Email address: mergers@accc.gov.au
Attention: Executive General Manager
 Merger and Authorisation Review Division

With a copy sent to:

Email address mergersucu@accc.gov.au
Attention: Director, Undertakings Compliance 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.

- 8 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:
 - (i) address;
 - (ii) contact name;
 - (iii) telephone number; and
 - (iv) other contact details.
- 9 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 (*delete any that do not apply*)] of proposed independent auditor's employer.

- (c) details of any of the following types of relationships between AAT, Qube and/or any Qube Related Entity 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) AAT, Qube, or a Qube Related Entity and the proposed independent auditor's employer are Associated Entities;
 - (ii) AAT, Qube, or a Qube Related Entity is an Entity Connected with the proposed independent auditor's employer;
 - (iii) the proposed independent auditor's employer is an Entity Connected with AAT, Qube, or a Qube Related Entity;
 - (iv) AAT, Qube, or a Qube Related Entity and the proposed independent auditor's employer are Related Entities;
 - (v) AAT, Qube, or a Qube Related Entity and the proposed independent auditor's employer are Related Parties;
 - (vi) any Related Party, Related Entity or Entity Connected with AAT, Qube, or a Qube Related Entity is a Related Party, Related Entity or Entity Connected with the proposed independent auditor;
 - (vii) AAT, Qube, or a Qube Related Entity 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 AAT, Qube, or a Qube Related Entity or has been in the past three years;
 - (ix) AAT, Qube, or a Qube Related Entity is a supplier of the proposed independent auditor's employer or has been in the past three years; or
 - (x) any other relationship between AAT, Qube, or a Qube Related Entity and the proposed independent auditor or the proposed independent auditor's employer that allows one to affect the business decisions of the other.
- 10 A document outlining the terms of appointment for the proposed independent auditor.

Specific Information required for Undertaking Appointments

The ACCC requires the finalised draft audit plan, drafted by the proposed independent auditor and outlining (to the extent possible) the proposed independent auditor's detailed work plan describing how it intends to monitor AAT's and Qube's compliance with the Undertaking and how it will prepare the plans in regard to the Establishment Audit and the Audit Report.

Schedule 5 Price Dispute Resolution Process

Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 (AAT) operates the AAT Terminals.

This Price Dispute Resolution Process is intended to resolve disputes relating to the prices charged by AAT for the supply of Access Services at any of the AAT Terminals. Non-price disputes are not governed by these processes.

AAT has committed to the ACCC (through the Section 87B Undertaking) to comply with the Open Access Conditions in the performance of its obligations under this Price Dispute Resolution Process.

1 Objective

- (a) AAT publishes on its website Charges for each of the AAT Terminals.
 - (b) AAT will use this Price Dispute Resolution Process to notify price increases and resolve disputes relating to the prices AAT charges or will charge for Access Services.
 - (c) The Section 87B Undertaking outlines how AAT will deal with Confidential Information provided by Terminal Users at each of the Terminals.
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2 Annual price review

2.1 Review of reference tariffs

AAT will conduct an annual review of its Charges and may propose a price increase which it considers reasonable and appropriate, taking into account the relevant considerations in clause 3.4, and provided that AAT complies with its obligations under any Terminal Licence in respect of that price increase (to the extent that those obligations are not inconsistent with the terms of the Undertaking).

2.2 Notice of price increase

At least 60 Business Days before the end of each Financial Year, AAT will provide notice of the proposed Charges for each Terminal applicable for the next Financial Year by:

- (a) giving written notice to any person who has entered into an Access Licence Agreement at the Terminal, and to any person who has informed AAT in writing that it wishes to be notified of the proposed price increase in respect of that Terminal;
- (b) publishing the proposed Charges and information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 Business Days before the end of the Financial Year) on its website; and
- (c) giving written notice to the Independent Price Expert.

2.3 Information about price increase

A notice provided under clause 2.2(a) must contain:

- (a) the amount of the proposed Charges;

- (b) the date on which the proposed Charges will take effect;
- (c) detailed reasons for any proposed price increase;
- (d) information about this Price Dispute Resolution Process (including that a Price Dispute can be raised up until 45 Business Days before the end of the Financial Year); and
- (e) the name and contact details of the Independent Price Expert.

2.4 Offer to negotiate

AAT may, but is not obliged to, offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice in relation to a proposed price increase notified under clause 2.2.

2.5 Approved price increases

A Price Dispute cannot be raised under clause 3.1 in respect of a proposed price increase or a part of a proposed price increase of which notice has been given in accordance with clause 2.2 which notice discloses that the price increase has been approved or determined by the Independent Price Expert pursuant to clause 3.3.

3 Price disputes

3.1 Raising a price dispute

- (a) A Dispute Applicant who objects to a proposed price increase may raise a Price Dispute by providing written notice to the Independent Price Expert and AAT no later than 45 Business Days before the end of the Financial Year (**Objection Notice**).
- (b) An Objection Notice must set out the Dispute Applicant's reasons for objecting to the proposed price increase.
- (c) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Price Dispute Resolution Process.
- (d) A Dispute Applicant may at any time withdraw an Objection Notice by written notice to AAT and the Independent Price Expert, in which case the powers and authority of the Independent Price Expert to make a determination of that Objection Notice under clause 3.3 shall forthwith cease.

3.2 Publication of Objection Notice

AAT will publish a copy of the Objection Notice on its website within 5 days of receipt.

3.3 Independent Price Expert Determination

- (a) Where the Independent Price Expert has received an Objection Notice, the Independent Price Expert:
 - (i) will determine whether AAT's proposed price increase:
 - (A) is reasonable and appropriate having regard to the principles listed in clause 3.4; and

- (B) complies with AAT's obligations under any Terminal Licence applicable to the relevant Terminal (to the extent that those obligations are not inconsistent with the terms of the Undertaking); and
 - (ii) may accept, reject or vary AAT's proposed price increase.
- (b) Any variation of a price increase by the Independent Price Expert under clause 3.3(a) will not result in a Charge that is:
 - (i) higher than the Charges proposed by AAT under clause 2.2; or
 - (ii) less than the then current Charges.
- (c) The Independent Price Expert will make his or her determination within:
 - (i) the 60 Business Day period referred to in clause 2.2; or
 - (ii) such further period, not being more than 20 Business Days, as the Independent Price Expert in his or her sole discretion requires.
- (d) AAT and the Dispute Applicant must provide the Independent Price Expert with any information he or she requires to make a determination under this clause 3.3, within a timeframe reasonably determined by the Independent Price Expert.
- (e) In the event that more than one Objection Notice is received in relation to a proposed price increase, the Independent Price Expert will only make a single determination about those Charges or that proposed price increase.
- (f) The Independent Price Expert's decision is final and binding.
- (g) When making a determination under this clause 3.3, the Independent Price Expert is acting as an expert and not as an arbitrator.

3.4 Relevant considerations

In determining whether a Charge is reasonable and appropriate, the Independent Price Expert will have regard to the following principles:

- (a) that Charges should:
 - (i) be set so as to generate expected revenue for Access Services that is at least sufficient to meet the efficient costs of providing the Access Services; and
 - (ii) include a reasonable rate of return on the amount of funds invested commensurate with the commercial risks involved;
- (b) that Charges should be set taking into account:
 - (i) Terminal lease costs and all efficient input costs;
 - (ii) an appropriate allocation of AAT's relevant overhead costs;
 - (iii) expected volumes over the period AAT has used to calculate the proposed price increase, including where appropriate any split between committed / uncommitted volume and associated risks;

- (iv) depreciation of, and a return on, the prudent level of capital invested by AAT at the Terminal, where:
 - (A) depreciation is based on a straight line methodology (or reasonable alternative methodology) and reasonably anticipated asset lives;
 - (B) the rate of return is based on AAT's weighted average cost of capital; and
 - (C) the prudent level of capital must not include any investments or proposed investments which arise or are proposed after the Commencement Date at the Terminal that disproportionately benefit a Qube Entity based on their actual or likely use of the Terminal (for clarity, investments will not disproportionately benefit a Qube Entity where costs are allocated, and relevant charges are determined, on a basis that allocates the cost of that investment based on usage of the relevant assets);
 - (v) the interests of all users for which the proposed Charges relates, including the extent to which the proposed Charges reflect actual or likely use of the Terminal by different users, including use of facilities and equipment;
 - (vi) the reasonableness and appropriateness of, and justification for, the existing Charges for the supply of the Access Services; and
 - (vii) where applicable, any additional pricing principles and conditions imposed under a Terminal Licence, to the extent that those pricing principles and conditions are not inconsistent with the terms of the Undertaking and in particular this clause 3.4.
- (c) The structure of Charges may allow multi-part pricing and price discrimination only if, and to the extent that:
- (i) the cost of providing the service is higher, or
 - (ii) it aids efficiency; and
- any multi-part pricing or price discrimination should be transparent.

3.5 Notice and publication of decision

- (a) The Independent Price Expert must notify:
 - (i) AAT; and
 - (ii) any party that lodged an Objection Notice in relation to the proposed price increase, of his or her determination under clause 3.3(a)(ii) as soon as practicable after making the determination.
- (b) Within 2 Business Days of receiving the determination, AAT must:
 - (i) publish the Independent Price Expert's determination on AAT's website; and
 - (ii) provide a copy of the Independent Price Expert's determination to the Approved Independent Auditor.

- (c) The cost of the expert determination will be shared equally between AAT and the Dispute Applicant, unless the Independent Expert determines or the parties agree otherwise.
- (d) AAT and the Dispute Applicant will execute a deed to indemnify the Independent Price Expert against any loss or damage incurred by the Independent Price Expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4 Date price increase takes effect

- (a) In the absence of any Objection Notice submitted under clause 3.1, the new price takes effect the date that AAT notified under clause 2.2(a) that the proposed price increase would take effect.
- (b) If the Independent Price Expert makes a determination under clause 3.3(a)(ii), then the new price as determined by the Independent Expert takes effect on the date that AAT notified under clause 2.2(a) that the proposed price increase would take effect.

5 Definitions

In this Price Dispute Resolution Process, the following meanings will apply (unless the context otherwise indicates):

Access Licence Agreement means an agreement between AAT and a Service Provider under which the Service Provider is supplied the Access Services by AAT.

Access Services means, for each Terminal:

- (a) the use of facilities and infrastructure owned, operated or controlled; or
- (b) services, machinery, equipment, access to data and anything else provided,

by AAT at that Terminal which in each case AAT makes available to allow a Service Provider to provide all or part of the Terminal Services and which, at a minimum, includes those services AAT makes available to stevedores and PDI operators.

Approved Independent Auditor has the meaning given in the Undertaking.

Business Day means, for a Terminal, a day other than a Saturday or Sunday on which banks are open for business generally in the State in which the Terminal is located.

Charges means the fees or charges payable by a Service Provider to AAT for the Access Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Access Services (or any material part thereof).

Commencement Date has the meaning given in clause 3(a) of the Section 87B Undertaking

Confidential Information has the meaning given in the Undertaking.

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal and includes Terminal Users, importers and exporters (or their industry representative bodies).

Financial Year means a financial year ending 30 June.

Independent Price Expert has the meaning given in the Section 87B Undertaking.

Mooring Services means the mooring and unmooring of vessels at Berths.

Objection Notice has the meaning given in clause 3.1(a).

Open Access Conditions means the conditions set out in Schedule 1 of the Section 87B Undertaking.

PDI Operator Services means the undertaking of pre-delivery inspection activities and related services.

Price Dispute means a dispute raised by a Dispute Applicant about the proposed increase to a Charge which relates to that Dispute Applicant.

Qube Entities means Qube together with all Qube Related Entities.

Qube Related Entity means Prixcar Services Pty Limited and any Related Bodies Corporate of Qube Holdings Ltd including, but not limited to, AAT as from the Control Date.

Service Provider means any stevedore, PDI operator, Mooring Service provider or any other user operating at a Terminal, including under an Access Licence Agreement with AAT.

Stevedoring Services means the loading and unloading of vessels at the berths and transfer of cargo to the Terminal.

Terminal means each of the automotive and/RoRo terminals at the following Australian ports:

- (a) Port Kembla in New South Wales (**Kembla Terminal**);
 - (b) Fisherman Islands in Queensland (**Brisbane Terminal**);
- and to the extent that AAT retains operational control over them:
- (c) Webb Dock West and Appleton Dock in Victoria (**Melbourne Terminals**); and
 - (d) Port Adelaide in South Australia (**Adelaide Terminal**).

Terminal Licence means any licence granted to AAT under which it retains the right to develop, operate and provide services at a Terminal.

Terminal Services means PDI Operator Services, Stevedoring Services and Mooring Services.

Terminal User means

- (a) any stevedore, PDI operator, Mooring Service provider or shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time, including under an Access Licence Agreement with AAT.

Undertaking means the undertaking given by AAT to the Australian Competition and Consumer Commission as in force from time to time for the purposes of section 87B of the Competition and Consumer Act 2010 (Cth) concerning AATs operation of the AAT Terminals.

Schedule 6 Non-Price Dispute Resolution Process

Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 (AAT) operates the AAT Terminals.

This Non-Price Dispute Resolution Process is intended to resolve disputes relating to matters other than the prices charged by AAT for the supply of Access Services. Price disputes are not governed by these processes.

Non-Price Disputes include disputes in relation to the granting, refusal to grant, conditions or administration of an Access Licence Agreement, other than in relation to any Charges. Non-Price Disputes may include disputes in relation to the Open Access Conditions or AAT's obligations in relation to Confidential Information.

AAT and Qube have committed to the ACCC (through the Section 87B Undertaking) to comply with the Open Access Conditions in the performance of their obligations under this Non-Price Dispute Resolution Process.

1 Objective

- (a) AAT and Qube are committed to resolving all Non-Price Disputes proactively and constructively.
- (b) AAT and Qube will use this Non-Price Dispute Resolution Process to resolve disputes relating to matters other than the prices AAT charges or will charge for Access Services.
- (c) The Section 87B Undertaking outlines how AAT and Qube will deal with Confidential Information provided by Terminal Users and Applicants.

2 Raising a Non-Price Dispute

- (a) A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, Qube or both AAT and Qube must do so within 6 months after the circumstance giving rise to that Non-Price Dispute by providing written notice (**Non-Price Dispute Notice**) to AAT, Qube or both AAT and Qube (each recipient a **Dispute Respondent**) for the purpose of endeavouring to resolve the Non-Price Dispute.
- (b) The Non-Price Dispute Notice must include details of:
 - (i) the nature of the Non-Price Dispute – including whether the Non-Price Dispute is raised in respect of a single AAT Terminal or more than one AAT Terminal;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Non-Price Dispute; and
 - (iii) the action on the part of the Dispute Respondent(s) which the Dispute Applicant believes will resolve the Non-Price Dispute.
- (c) By lodging a Non-Price Dispute Notice, the Dispute Applicant agrees to comply with this Non-Price Dispute Resolution Process.

3 Negotiation

- (a) Within 7 Business Days of the Dispute Applicant providing the Dispute Respondent(s) a Non-Price Dispute Notice, senior representatives of each party must meet and undertake genuine and good faith negotiations with a view to resolving the Non-Price Dispute expeditiously by joint discussion.
- (b) If the Non-Price Dispute is not resolved in accordance with clause 3(a) within 21 Business Days of the Dispute Applicant providing a Non-Price Dispute Notice to the Dispute Respondent(s) then:
 - (i) if all parties agree, subject to clause 3(c), they will attempt to resolve the Non-Price Dispute by mediation pursuant to clause 4; or
 - (ii) if one or more of the parties do not wish to resolve the Non-Price Dispute by mediation, any party may within 7 days refer the Non-Price Dispute to Expert Determination or Arbitration in accordance with clause 4.4.
- (c) If the parties agree to attempt to resolve the Non-Price Dispute by mediation in accordance with clause 3(b)(i), the Non-Price Dispute will be referred to the chief executive officers of each party, or their representative, who will attempt to resolve the Non-Price Dispute, including by informal mediation.
- (d) If the Non-Price Dispute is not resolved within 15 Business Days after being referred to the chief executive officers or their representatives in accordance with clause 3(c), the Non-Price Dispute will be referred to formal mediation pursuant to clause 4.

4 Formal mediation

4.1 Appointment of a mediator

- (a) A Non-Price Dispute referred to formal mediation in accordance with clauses 3(b)(i) and 3(d) will be mediated by a single mediator appointed by agreement between the Dispute Respondent(s) and the Dispute Applicant.
- (b) The mediator appointed by the Dispute Respondent(s) and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the mediator independently of AAT and Qube and must not be:
 - (i) an employee or officer of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with AAT or any other Qube Related Entity (other than the terms of appointment of the mediator);
 - (iv) a Terminal User, supplier or material customer of AAT or any other Qube Related Entity; or
 - (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.

- (c) If the Dispute Respondent(s) and the Dispute Applicant fail to agree on the appointment of a mediator within 14 Business Days of referral under clause 3(b)(i), then:
 - (i) if the Non Price Dispute involves a single terminal – the President of the Chapter of the Institute of Arbitrators and Mediators of Australia (IAMA) in the state in which the relevant terminal is located; and
 - (ii) in any other case, the President of the Chapter of IAMA in the state of New South Wales,
 will select the mediator.
- (d) The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that;
 - (i) the mediation occurs within 28 Business Days after a mediator has been appointed; and
 - (ii) the mediator is provided with all relevant information available to the Dispute Respondent(s) and the Dispute Applicant and all reasonable assistance to enable the mediator to conduct the mediation.

4.2 Indemnification of the mediator

The Dispute Respondent(s) and the Dispute Applicant will execute a deed to indemnify the mediator against any loss or damage incurred by the mediator in the course of carrying out his or her functions in accordance with his or her terms of appointment.

4.3 Conduct of mediation

Unless otherwise agreed between the Dispute Respondent(s) and the Dispute Applicant:

- (a) each of the Dispute Respondent(s) and the Dispute Applicant may be represented at the mediation by another party, including by a legally qualified person;
- (b) the cost of the mediation will be shared equally between the Dispute Respondent(s) and the Dispute Applicant;
- (c) The Dispute Respondent(s) and the Dispute Applicant will bear their own costs relating to the preparation for and attendance at the mediation; and
- (d) the mediation will otherwise be conducted under the IAMA Mediation Rules (whether or not the mediator is a legal practitioner).

4.4 Referral to expert determination or arbitration

- (a) A party may, by notice to the other (Final Dispute Notice) refer a Non-Price Dispute which remains unresolved to;
 - (i) an expert for determination in accordance with clause 5; or
 - (ii) an arbitrator for arbitration in accordance with clause 6, within 7 Business Days after:

- (iii) the conclusion of the 21 Business Day negotiation period for the Non-Price Dispute under clause 3(b), where the parties have not agreed to attempt to resolve the dispute through mediation; or
 - (iv) the conclusion of formal mediation of the Non-Price Dispute in accordance with clause 4.
- (b) Within 7 Business Days of the issue of a Final Dispute Notice, the Dispute Respondent(s) and the Dispute Applicant will agree on:
 - (i) which of expert determination or arbitration will be conducted to resolve the Non-Price Dispute; and
 - (ii) the identity of the expert or arbitrator to be appointed to conduct the expert determination or arbitration.
- (c) In the event that the Dispute Respondent(s) and the Dispute Applicant cannot agree on either:
 - (i) which of expert determination or arbitration will be conducted to resolve the Non-Price Dispute; or
 - (ii) the identity of the person to conduct the expert determination or arbitration as the case may be,

then

 - (iii) if the Non Price Dispute involves a single terminal – the President of the Chapter of IAMA in the state in which the relevant terminal is located; and
 - (iv) in any other case, the President of the Chapter of IAMA in the state of New South Wales,

will determine these issues.
- (d) The expert or arbitrator appointed by the Dispute Respondent(s) and the Dispute Applicant must have the qualifications and experience necessary to carry out the functions of the expert or arbitrator as applicable independently of AAT and Qube and must not be:
 - (i) an employee or officer of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of AAT or any other Qube Related Entity, whether current or in the past 3 years;
 - (iii) a person who has a contractual relationship with AAT or any other Qube Related Entity (other than the terms of appointment of the expert or arbitrator);
 - (iv) a Terminal User, supplier or material customer of AAT or any other Qube Related Entity; or
 - (v) an employee or contractor of a firm or company referred to in paragraphs (iii) and (iv) above.

5 Expert determination

If the Non-Price Dispute is referred to an expert for expert determination pursuant to clause 4.4(a), the following provisions will apply:

- (a) The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that the expert provides the expert's determination on the Non-Price Dispute within 60 Business Days of referral under clause 4.4(a).
- (b) The expert will decide the Non-Price Dispute as an expert not an arbitrator and the expert's decision will be final and binding on both the Dispute Respondent(s) and the Dispute Applicant. The Dispute Respondent(s) must take all steps within its power to ensure that the expert's decision is fulfilled or otherwise given effect to, including by enforcing the Dispute Respondent(s)' contractual rights against third parties.
- (c) The cost of the expert determination will be shared equally between the Dispute Respondent(s) and the Dispute Applicant, unless agreed otherwise.
- (d) The Dispute Respondent(s) and the Dispute Applicant will use all reasonable endeavours to ensure that the expert is provided with:
 - (i) all relevant information available to the Dispute Respondent(s) and the Dispute Applicant; and
 - (ii) all reasonable assistance, in a timely manner, to enable the expert to make a determination in relation to the Non-Price Dispute within 60 Business Days of referral under clause 4.4(a).
- (e) The Dispute Respondent(s) and the Dispute Applicant will execute a deed to indemnify the expert against any loss or damage incurred by the expert in the course of carrying out his or her functions in accordance with his or her terms of appointment.
- (f) The Dispute Respondent(s) must within 7 days of the determination being made by the expert send a copy of the determination to:
 - (i) the Approved Independent Auditor; and
 - (ii) in the case of any Non-Price Dispute, the relevant Port Manager.

6 Arbitration

- (a) If the Non-Price Dispute is referred to an arbitrator pursuant to clause 4.4(a), the Dispute Respondent(s) and the Dispute Applicant may agree on the terms on which the arbitration will be conducted.
- (b) The Dispute Respondent(s) must take all steps within its power to ensure that any determination by the arbitrator is fulfilled or otherwise given effect to, including by enforcing the Dispute Respondent(s)' contractual rights against third parties.
- (c) If, within 14 Business Days of the arbitrator being appointed, the Dispute Respondent(s) and the Dispute Applicant are unable to reach agreement on the terms on which the arbitration will be conducted, the arbitration will be conducted in

accordance with the IAMA Arbitration Rules, as modified by the following provisions:

- (i) The arbitrator will not be required to proceed with the arbitration unless and until the Dispute Applicant has agreed to pay the arbitrator's and other costs as determined in accordance with clause 6(j) and provide any indemnity as required in accordance with clause 6(k).
 - (ii) Unless the Dispute Respondent(s) and the Dispute Applicant agree otherwise, the arbitration will be conducted in private.
 - (iii) The Dispute Respondent(s) and the Dispute Applicant may appoint a person, including a legally qualified person, to represent it or assist in the arbitration.
 - (iv) The arbitrator must observe the rules of natural justice, but is not bound by technicalities, legal forms or rules of evidence.
 - (v) The arbitrator must act as speedily as a proper consideration of the Non-Price Dispute allows, having regard to the need to carefully and quickly enquire into and investigate the Non-Price Dispute and all matters affecting the merits, and fair settlement, of the Non-Price Dispute.
 - (vi) The arbitrator may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the Dispute Respondent(s) and the Dispute Applicant in the Non-Price Dispute, and may require that the cases be presented within those periods.
 - (vii) The arbitrator may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.
 - (viii) The arbitrator will present its determination in draft form to the Dispute Respondent(s) and the Dispute Applicant and allow them the opportunity to comment before making a final determination.
 - (ix) The arbitrator will hand down a final determination in writing which includes its reasons for making the determination and findings on material questions of law and fact, including references to evidence on which the findings of fact were based.
 - (x) Subject to clause 6(1) and unless the Dispute Respondent(s) and the Dispute Applicant agree otherwise, any determination by the arbitrator will be confidential.
- (d) The arbitrator may at any time terminate an arbitration (without making a determination save for any determination under clause 60)) and the subject matter of the Dispute Notice shall be regarded as resolved, if he or she thinks that:
- (i) the notification of the Non-Price Dispute is vexatious;
 - (ii) the subject matter of the Non-Price Dispute is trivial, misconceived or lacking in substance; or
 - (iii) the Dispute Applicant has not engaged in negotiations in good faith.
- (e) In deciding a Non-Price Dispute, the arbitrator will have regard to the objectives of the Undertaking and may have regard to any other matters that he or she thinks are relevant.

- (f) In deciding a Non-Price Dispute, the arbitrator must not, without the consent of the Dispute Respondent(s) and the Dispute Applicant:
 - (i) make a determination which relates to matters which were not specified in the Non-Price Dispute Notice; or
 - (ii) without the consent of the Dispute Respondent(s) and the Dispute Applicant, allow any other party to join or intervene in the arbitration.
- (g) The arbitrator may make any determination or direction in relation to the Non-Price Dispute that it considers appropriate. A determination or direction of the arbitrator will be final and binding, subject to any rights of review by a court of law, and will have effect on and from the date specified by the arbitrator. Any or all of the provisions of a final determination may be expressed to apply from a specified day which is earlier than the day on which it takes effect.
- (h) Other than in circumstances where the determination or direction is the subject of review by a court of law, if a Dispute Applicant does not comply with a determination or direction of the arbitrator, the Dispute Respondent(s) will not be obliged to continue to seek to resolve the matters subject of the Non-Price Dispute Notice.
- (i) Other than where the determination or direction is the subject of review by a court of law, the Dispute Respondent(s) will comply with the lawful determination or direction of the arbitrator.
- (j) The arbitrator's costs and the costs of the parties to the arbitration will be borne by the Dispute Respondent(s) and the Dispute Applicant in such proportions as the arbitrator determines. The Dispute Respondent(s) and the Dispute Applicant may make submissions to the arbitrator on the issue of costs at any time prior to the arbitrator's costs determination.
- (k) Where the arbitrator requires it, the Dispute Respondent(s) and the Dispute Applicant will indemnify the arbitrator from any claims made against the arbitrator arising in connection with the performance by the arbitrator of its duties under this clause 6, such indemnity excluding circumstances where the conduct of the arbitrator constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (l) Any laws relating to arbitrations applying in the jurisdiction in which any arbitration undertaken in accordance with this clause 6 is conducted will apply to the arbitration.
- (m) The Dispute Respondent(s) must send a copy of any determination made by the arbitrator to the Port Manager and the Approved Independent Auditor within 7 days of the determination being made.

7 General

Save for the obligations of disclosure to a Port Manager and the Approved Independent Auditor provided for in this Non-Price Dispute Resolution Process, the Non-Price Dispute and any terms of resolution are to be kept strictly confidential by the Dispute Respondent(s) and the Dispute Applicant.

8 Definitions

In this Non-Price Dispute Resolution Process, the following meanings will apply (unless the context otherwise indicates):

Access Licence Agreement means an agreement between AAT and a Service Provider under which the Service Provider is supplied the Access Services by AAT.

Access Services means, for each Terminal:

- (a) the use of facilities and infrastructure owned, operated or controlled; or
- (b) services, machinery, equipment, access to data and anything else provided,

by AAT at that Terminal which in each case AAT makes available to allow a Service Provider to provide all or part of the Terminal Services and which, at a minimum, includes those services AAT makes available to stevedores and PDI operators.

Approved Independent Auditor has the meaning given in the Section 87B Undertaking.

Business Day means, for a Terminal, a day other than a Saturday or Sunday on which banks are open for business generally in the State in which the Terminal is located.

Charges means the fees or charges payable by a Service Provider to AAT for the Access Services which must (at a minimum) be separated into discrete fees and charges payable for each category of Access Services (or any material part thereof).

Confidential Information has the meaning given in the Section 87B Undertaking.

Dispute Applicant means a person with a genuine direct or indirect economic interest in the terms and conditions of use of the Terminal and includes Terminal Users, importers and exporters (or their industry representative bodies).

Dispute Respondent has the meaning given in clause 2(a).

Final Dispute Notice has the meaning given in clause 4.4(a).

IAMA means Institute of Arbitrators and Mediators of Australia.

Mooring Services means the mooring and unmooring of vessels at berths.

Non-Price Dispute means a dispute raised by a Dispute Applicant including in relation to:

- the granting, refusal to grant, conditions or administration of an Access Licence Agreement by AAT;
- the Open Access Conditions; or
- AATs obligations in relation to Confidential Information,

but not including disputes in relation to the amount of any Charges.

Non-Price Dispute Notice has the meaning given in clause 2(a).

Open Access Conditions means the conditions set out in Schedule 1 of the Section 87B Undertaking.

PDI Operator Services means the undertaking of pre-delivery inspection activities and related services.

Qube Related Entity means Prixcar Services Pty Limited and any Related Bodies Corporate of Qube Holdings Ltd including, but not limited to, AAT as from the Control Date.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Section 87B Undertaking means the undertaking by AAT to the Australian Competition and Consumer Commission as in force from time to time for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) concerning AAT's operation of the Terminals.

Service Provider means any stevedore, PDI operator, Mooring Service provider or any other user operating at a Terminal, including under an Access Licence Agreement with AAT.

Stevedoring Services means the loading and unloading of vessels at the berths and transfer of cargo to the Terminal.

Terminal means each of the automotive and/RoRo terminals at the following Australian ports:

- (a) Port Kembla in New South Wales (**Kembla Terminal**);
- (b) Fisherman Islands in Queensland (**Brisbane Terminal**);

and to the extent that AAT retains operational control over them:

- (c) Webb Dock West and Appleton Dock in Victoria (**Melbourne Terminals**); and
- (d) Port Adelaide in South Australia (**Adelaide Terminal**).

Terminal Services means PDI Operator Services, Stevedoring Services and Mooring Services.

Terminal User means:

- (a) any stevedore, PDI operator, Mooring Service provider or shipping line using the Terminal; or
- (b) any other person who has applied for, whether successful or not, the right to provide services at the Terminal from time to time, including under an Access Licence Agreement with AAT.

