
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, Melbourne
International RoRo & Auto Terminal Pty
Ltd ACN 163 814 364 and Qube Holdings
Limited ACN 149 723 053

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1 Persons giving the Undertaking

This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:

- (a) Australian Amalgamated Terminals Pty Ltd (ACN 098 458 229) (**AAT**);
- (b) Melbourne International RoRo & Auto Terminal Pty Ltd (ACN 163 814 364) (**MIRRAT**); and
- (c) Qube Holdings Limited (ACN 149 723 053) (**Qube**);

(each an **Undertaking Party** and together referred to as the **Undertaking Parties** in this Undertaking).

2 Background

2.1 Undertaking Parties

AAT and Qube

- (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**). In 2016, the 50 per cent shareholding in AAT held by Plzen was acquired by BAPS BidCo Pty Ltd (ACN 611 189 381) (**BAPS BidCo**).
- (b) Subsequently, AAT became a wholly-owned subsidiary of Qube.
- (c) AAT currently operates terminals at the following Australian ports:
 - (i) an automotive and/or RoRo terminal at Port Kembla in New South Wales (**Port Kembla Terminal**);
 - (ii) an automotive and/or RoRo terminal at Fisherman Islands in Queensland (**Brisbane Terminal**); and
 - (iii) a general and bulk break cargo terminal at Appleton Dock in Victoria (**Appleton Dock**).
- (d) In addition to its interests in 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 per cent 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 50 per cent interest in PrixCar.

MIRRAT

- (e) The Melbourne International RoRo & Auto Terminal (ACN 163 814 364) (**MIRRAT**) operates the automotive/RoRo terminal at Webb Dock West (**Webb Dock West Terminal**, or **Webb Dock West**). MIRRAT's ultimate parent company is Wallenius Wilhelmsen ASA (**WW**). WW is a Norway-based global provider of RoRo shipping and vehicle logistics and operates automotive terminals overseas.

ACCC's Competition Concerns and Undertaking Objective

2.2 The context in which this Undertaking has been given by AAT, Qube and MIRRAT

- (a) This Undertaking addresses the ACCC's competition concerns with Qube's proposed acquisition of 100 per cent of MIRRAT, which operates Webb Dock West, as well as the ACCC's competition concerns with Qube's acquisition of 100 per cent of AAT in 2016, which resulted in Qube and AAT giving a section 87B Undertaking in 2016 (**2016 Undertaking**).
- (b) In respect of each transaction, following a public review, the ACCC considered the acquisitions would have the effect, or be likely to have the effect, of substantially lessening competition in one or more markets for the:
 - (i) supply of automotive stevedoring services;
 - (ii) supply of PDI services,
 - (iii) and in the case of the 2016 Transaction, one or more of the markets for the supply of general cargo stevedoring services.
- (c) The transactions giving rise to the ACCC's concerns are outlined in detail below.
 - (i) The first transaction concerned an acquisition in 2016 by which Qube acquired 100 per cent ownership of AAT (the **2016 Transaction**). The 2016 Transaction resulted in Qube and AAT controlling the Port Kembla Terminal, Brisbane Terminal and Appleton Dock. The ACCC's public review of the 2016 Transaction resulted in Qube and AAT giving the 2016 Undertaking, which was subsequently varied on 25 June 2018.
 - (ii) The second transaction concerns the proposed acquisition by AAT of 100 per cent of the shareholdings in MIRRAT (**MIRRAT Acquisition**). MIRRAT operates Webb Dock West subject to a section 87B Undertaking (**MIRRAT Undertaking**). Upon completion of the MIRRAT Acquisition, MIRRAT would operate the automotive and/or RoRo terminal at Webb Dock West, subject to the control and direction of AAT. Therefore, the MIRRAT Acquisition would result in Qube and AAT controlling each of the major automotive and/or RoRo terminals along the east coast of Australia. The ACCC's public review of the MIRRAT Acquisition resulted in Qube, AAT and MIRRAT giving this Undertaking.
- (d) As a result of the 2016 Transaction and the proposed MIRRAT Acquisition, AAT will operate all of the following:
 - (i) the Port Kembla Terminal;
 - (ii) the Brisbane Terminal; and

- (iii) two terminals at the Port of Melbourne (**Melbourne Terminals**):
 - (A) Webb Dock West; and
 - (B) Appleton Dock,(each a **Terminal**).
- (e) This Undertaking is intended to replace the 2016 Undertaking as varied on 25 June 2018, and the MIRRAT Undertaking.

2.3 ACCC Competition Concerns

- (a) The ACCC considered AAT's terminal services to be a key requirement for enabling the supply of automotive stevedoring services and PDI services at each of the Terminals and general cargo stevedoring services at Port Kembla Terminal, Brisbane Terminal and Appleton Dock. Following the proposed MIRRAT Acquisition, Qube will continue to operate downstream automotive stevedoring and PDI businesses at each of the Terminals as well as general cargo stevedoring services at Port Kembla Terminal, Brisbane Terminal and Appleton Dock.
- (b) In the absence of the Undertaking, the ACCC was concerned that AAT, MIRRAT and/or Qube may have the ability and incentive to engage in conduct at Webb Dock West as a result of the MIRRAT Acquisition, and at the Port Kembla Terminal, Brisbane Terminal and Appleton Dock as a result of the 2016 Acquisition, that substantially lessens competition in markets for the supply of automotive stevedoring and/or PDI services including by:
 - (i) preventing or hindering rivals in those markets from competing effectively with Qube Related Entities by raising the prices of terminal services, lowering the quality of terminal services and/or restricting access to the terminal and/or related services either to those downstream rivals or to their customers that use the terminal;
 - (ii) accessing and using commercially sensitive information, obtained in the course of managing or operating one or more of the Terminals, with the effect of undermining third party automotive stevedore or PDI service providers' incentives to compete aggressively, or facilitating coordination between Qube's downstream businesses and their competitors;
 - (iii) tying or bundling terminal services to, or with, Qube's downstream automotive stevedoring or PDI services or offering terminal services in an anti-competitive manner if acquired in conjunction with its downstream services.
- (c) Given the proposed MIRRAT Acquisition would result in AAT controlling and directing all major automotive/RoRo terminals along the east coast, the ACCC was also concerned that Qube and/or AAT would have the ability and incentive to engage in foreclosure conduct across multiple Terminals. The ACCC was concerned that the concurrent or cumulative result of such conduct would have the effect, or be likely to have the effect, of substantially lessening competition in the supply of downstream automotive stevedoring services and/or PDI services at multiple ports.

2.4 Undertaking Objective

- (a) The objective of the Undertaking is to address the ACCC's competition concerns as outlined at clauses 2.2 and 2.3 above and the competition concerns that may arise during the term of the Undertaking in relation to the operation of the Terminals by the Undertaking Parties. To achieve this objective, the Undertaking:
- (i) establishes a non-discriminatory open access regime for all users of the Terminals, to govern the management and operation of the Terminals for the full duration of the Undertaking;
 - (ii) establishes a framework to ensure that any Charge implemented by AAT and MIRRAT is reasonable and appropriate having regard to the principles set out in the Undertaking, including to assess whether any new tariff is a Charge under the Undertaking;
 - (iii) ensures the Undertaking obligations are ongoing, fit for purpose and achieve an effective, improved non-discriminatory open access framework for the full duration of the Undertaking, by including in the Undertaking a review mechanism to ensure the Undertaking obligations can be reviewed and amended where any changes in circumstances occur that may impact the effectiveness of those obligations; and
 - (iv) ensures that there are effective mechanisms for the ongoing monitoring, compliance, and enforcement of compliance issues with the Undertaking.
- (b) In particular, the Undertaking:
- (i) establishes a non-discriminatory, open access framework to govern the management and operation of the Terminals, which requires:
 - (A) AAT and MIRRAT not to discriminate between users of the Terminals, (including discriminating in favour of a Qube Related Entity) and requiring AAT, MIRRAT and Qube not to engage in conduct that prevents or hinders access to Terminals by any users (including prospective users). To ensure AAT and MIRRAT do not discriminate in this way, AAT and MIRRAT must:
 1. comply with the Open Access Conditions (as outlined in clause 5); and
 2. comply with the Berthing Allocation Rules (to the extent AAT and MIRRAT have responsibility for berthing at each Terminal).
 - (B) AAT to facilitate access by PDI operators to the Automotive Flyover at the Port of Brisbane;
 - (C) AAT and MIRRAT to ring fence the Confidential Information of users of the Terminals and Applicants, and requiring AAT, MIRRAT and Qube to maintain controls to ensure that Confidential Information is not disclosed to unauthorised personnel, which includes Related Bodies Corporate of AAT and MIRRAT except in limited circumstances described in clause 6.2;
 - (D) AAT and MIRRAT to comply with the Price Dispute Resolution Process, which includes the appointment of an ACCC approved

Independent Price Expert, and requiring AAT, MIRRAT and Qube to comply with the Non-Price Dispute Resolution Process;

- (ii) provides for the effective oversight of the Undertaking Parties' compliance with this Undertaking, including an obligation which requires AAT and MIRRAT to provide for an ad-hoc compliance audit by an ACCC Approved Independent Auditor in certain circumstances; and
- (iii) provides for regular reviews of this Undertaking including to ensure that:
 - (A) the Undertaking continues to achieve its objectives, and its obligations continue to be fit for purpose and achieve an effective, improved non-discriminatory open access framework for the full duration of the Undertaking term; and
 - (B) where new competition concerns arise from the operation of Webb Dock West since the commencement of the Undertaking, these concerns are effectively addressed by the Undertaking.
- (c) This Undertaking applies to automotive and RoRo cargos, general cargo and break bulk cargo (including without limitation steel, machinery and project cargo). This Undertaking does not apply in respect of bulk or containerised cargo.

Transaction History

2.5 The 2016 Transaction

- (a) On 18 August 2016, a 50 per cent shareholding in AAT held by Plizen was acquired by BAPS BidCo in connection with a Scheme Implementation Deed between Qube, Asciano, Brookfield Infrastructure and other consortium parties entered into on 15 March 2016. BAPS BidCo was 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.
- (b) Qube, P&O, and BAPS BidCo entered into a side deed to an agreed form share purchase agreement which gave Qube 100 per cent ownership of AAT (the **2016 Transaction**).
- (c) On 8 August 2016, the ACCC commenced its public review of the 2016 Transaction to assess whether the 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.
- (d) As a result of its review, the ACCC was concerned that, in the absence of an undertaking, the 2016 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 PDI services;
 - (iii) the supply of general cargo stevedoring services.
- (e) The ACCC considered that, as the only automotive terminal operator at each of Port of Brisbane, Port of Melbourne, Port Kembla and Port Adelaide, AAT had a

substantial degree of market power in the supply of automotive terminal services and general cargo terminal services at those ports. AAT's terminal services are also a key requirement for enabling the supply of automotive stevedoring services, general cargo services and PDI services at each of those ports. 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 of the ports following the 2016 Transaction, and Qube would have an incentive to operate AAT in a manner that would favour its downstream businesses at the expense of downstream rivals.

- (f) AAT and Qube did not consider that the ACCC's competition concerns were likely to arise from the 2016 Transaction, and did not consider that the transaction would have the effect, or likely effect, of substantially lessening competition in a market, pursuant to section 50 of the Act.
- (g) Nonetheless, AAT agreed to operate the Terminals on a multi-user, open access basis, pursuant to a version of the undertaking accepted by the ACCC on 23 November 2016 (the **2016 Undertaking**).

2.6 2018 Variations

- (a) In 2018, AAT no longer operated automotive and/or RoRo terminals at Webb Dock West. The automotive and RoRo terminal at Webb Dock West was operated by MIRRAT from 1 January 2018 subject to the MIRRAT Undertaking. Pursuant to arrangements made by AAT and the Port of Melbourne, AAT operated a general cargo terminal at Appleton Dock at the Port of Melbourne from 1 January 2018.
- (b) AAT sought the ACCC's consent to vary the 2016 Undertaking to be able to offer more flexible terms to shipping lines than was permitted by the 2016 Undertaking at Appleton Dock. AAT and Qube also sought to simplify the process for amending Berthing Allocation Rules that would apply at all Terminals. Finally, AAT and Qube sought to vary the process and timing (but not the length of time) contained in clause 7 of Schedule 1 and the Price Dispute Resolution Process in Schedule 5, to provide greater certainty that Charges take effect from 1 July each Financial Year.
- (c) Notwithstanding these developments, the ACCC's competition concerns with AAT or Qube having the ability to discriminate in favour of Qube's downstream businesses at the expense of downstream rivals or to otherwise engage in conduct for the purposes of preventing or hindering access to Appleton Dock by users of the terminal, remained. However, the ACCC consented to a variation to the 2016 Undertaking for this purpose for a period of three years to 25 June 2021. These amendments primarily allowed for:
 - (i) AAT to offer directly to or otherwise agree with shipping lines more flexible terms, provided certain conditions in clause 5(c) are met; and
 - (ii) AAT to minimise its compliance costs during the relevant period while ensuring that AAT, Qube, and Qube Related Entities continue to be bound by the obligations regarding non-discrimination and prevention or hindering of access to Appleton Dock by terminal users.
- (d) Following public consultation, the ACCC accepted a varied version of the Undertaking as at 25 June 2018 that reflected these amendments (**2018 Variation**).

2.7 2021 Waiver

- (a) In 2021, the ACCC granted AAT and Qube a further three-year extension to 25 June 2024 with respect to the varied obligations of AAT and Qube in relation to the 2018 Variation as they related to Appleton Dock.

2.8 The MIRRAT Acquisition

- (a) On 27 May 2024, AAT entered into a share sale agreement with the owner of MIRRAT, Wallenius Wilhelmsen Terminals Holding AS, to acquire 100 per cent of the shares of MIRRAT (**MIRRAT Acquisition**). Following the proposed acquisition, MIRRAT will be a wholly owned subsidiary of AAT.
- (b) The ACCC commenced its review of the proposed MIRRAT Acquisition on 28 June 2024 to assess whether the MIRRAT Acquisition 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.
- (c) The ACCC's competition concerns in relation to this transaction are outlined at clause 2.3 above.
- (d) As with the 2016 Transaction, the ACCC considered that, as the only automotive terminal operator at Webb Dock West, AAT and MIRRAT would have a substantial degree of market power in the supply of automotive terminal services at the Terminal. AAT and MIRRAT's terminal services are also a key requirement for enabling the supply of automotive stevedoring services and PDI services at Webb Dock West. Following the MIRRAT Acquisition, the ACCC considered that:
 - (i) AAT and MIRRAT would have the ability to exercise market power at Webb Dock West in a way that would significantly impact competition in downstream markets for automotive stevedoring and PDI services at the Terminal; and
 - (ii) Qube would have an incentive to operate AAT and MIRRAT in a manner that would favour its downstream businesses at the expense of downstream rivals.
- (e) Following the proposed MIRRAT Acquisition, Qube and AAT would control or be in a position to control each of the major automotive and/or RoRo terminals along the east coast of Australia. The ACCC was concerned that Qube and AAT would engage in conduct of the kind described in clause 2.3 above, at one or more of the Terminals. The ACCC was concerned that the conduct may have the effect of substantially lessening competition in the supply of downstream automotive stevedoring services and PDI services at each of the Terminals or one or more of the Terminals.

2.9 The previous form of the AAT Undertaking

- (a) Based on its experience with the MIRRAT Undertaking and the 2018 Variation, the ACCC was concerned that the 2018 Variation or any further amended undertaking would not sufficiently constrain AAT and/or Qube's ability to engage in the conduct outlined at clause 2.3 above, and therefore would not address the ACCC's concerns that the MIRRAT Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in relevant markets for/the supply of automotive stevedoring and/or PDI services markets.

- (b) The ACCC considered that in order to address its competition concerns, the undertaking should provide for an enhanced non-discriminatory framework of open access for all users across each of the Terminals including by:
 - (i) improving the clarity of the undertaking, particularly in relation to core concepts such as the tariffs the subject of the Price Dispute Resolution Process;
 - (ii) providing for increased transparency as to the operation of the undertaking for interested parties;
 - (iii) including enhanced safeguards for Qube's downstream competitors including as to the scope of the non-discrimination rules;
 - (iv) reducing the enforcement burden on the ACCC;
 - (v) ensuring the undertaking and the obligations on the Undertaking Parties achieve an improved non-discriminatory access framework for all users of the Terminals during the term of the undertaking; and
 - (vi) clarifying and improving the operation of the review clause to ensure that, where changes in circumstances occur during the life of the undertaking, the undertaking can be reviewed and amended so that the undertaking and the obligations on the Undertaking Parties continue to achieve an improved non-discriminatory access framework for all users of the Terminals for the term of the undertaking.
 - (c) This Undertaking addresses the points raised in clauses 2.9(a) and 2.9(b).
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3 Commencement of this Undertaking

- (a) This Undertaking comes into effect when:
 - (i) this Undertaking is executed by the Undertaking 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 23 and the associated schedules take effect from the Control Date.
 - (c) The Undertaking 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 Ongoing Obligations

4.1 Withdrawal

Any Undertaking 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 that withdrawal.

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, waive any of the obligations contained in this Undertaking. Such a waiver must be express and in writing.

4.4 Extension of time to comply with obligations

The ACCC may, at any time, extend the date by which any of the obligations contained in this Undertaking are to be satisfied. Such an extension must be express and in writing.

5 Open Access Conditions

5.1 General rules for non-discrimination

- (a) The Terminal Operators must comply with the general principles governing non-discrimination set out this clause 5 and in the Open Access Conditions in Schedule 1.
- (b) The Terminal Operators must comply with the general principles governing non-discrimination in relation to berthing set out in clause 7.1.
- (c) The Terminal Operators and any Qube Entity must not engage in conduct which prevents or hinders the provision of Access Services to any Applicant or Service Provider.
- (d) The Terminal Operators must not:
 - (i) offer or supply any services, including but not limited to Access Services, to any third parties, including but not limited to shipping lines in respect of any Terminal on more favourable terms or subject to a level of service that is more favourable on the condition that such third party is serviced by any Qube Entity;
 - (ii) offer or supply to any third party any services, including but not limited to Access Services, on less favourable terms by reason that the third party acquires or has acquired any services offered or supplied by a Service Provider that is not a Qube Entity;
 - (iii) offer to supply any services to any Qube Entity at a Terminal, including Access Services, which it does not also make available to any other Service Provider;
 - (iv) offer to supply any services to any Qube Entity at a Terminal, including Access Services, on terms which are more favourable for the Qube Entity than the terms on which the service is made available to any other Service Provider; and/or
 - (v) offer to supply any services to any Qube Entity at a Terminal, including Access Services, on the basis of a level of service that is more favourable than the level of service made available to any other Service Provider.

- (e) Qube Entities must not offer or supply any services to any third parties which involves the bundling or tying of any service provided at a Terminal by the Terminal Operator with any service supplied by any other Qube Entity. This includes but is not limited to circumstances where a Qube Entity provides an offer to supply a third party and the terms of supply in that offer are conditional on that third party also acquiring services from a Qube Entity (such as stevedoring or PDI services). For the avoidance of doubt, this prohibition on bundling and tying conduct is not limited to pricing behaviour.
- (f) The Terminal Operators must levy any fee, charge, tariff or duty to any Qube Entity based solely on the current published fee, charge, tariff or duty for that service under the rate card and, for clarity, must not offer any discount, waiver or rebate (however described) from those fees, charges, tariffs or duties.

5.2 Specific rules for non-discrimination

- (a) In complying with this clause 5 and without limiting the generality of the obligations in relation to services, including Access Services, the Terminal Operators must not:
 - (i) offer or apply 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 or waive (including by suspending or not applying) storage fees for cargo handled by stevedores or PDI operators which are Qube Entities to a greater extent than, or in different circumstances to those in which, it offers to waive or waives storage fees for Comparable Cargo handled by other stevedores or PDI operators;
 - (iii) offer or apply 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 or apply to Qube Entities more favourable terms for the use or supply of machinery or equipment at a Terminal than it offers or applies to 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/or when they are providing services to other stevedores or PDI operators, including 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.

- (b) 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.
- (c) In the event that the Terminal Operator introduces a vehicle booking service at any Terminal, it will operate the service on a non-discriminatory basis in compliance with this clause 5, and so slots are made available on a "first come first served" basis.

6 Confidentiality and ring-fencing

6.1 Access to and use of ring-fenced Confidential Information

- (a) The Terminal Operators must not require a user of a Terminal or an Applicant to provide any Confidential Information to the Terminal Operator(s) unless provision of that Confidential Information is:
 - (i) reasonably necessary for the proper operation of the applicable Terminal;
 - (ii) reasonably necessary for the assessment of an Applicant against the eligibility criteria set out in clause 3 of Schedule 1;
 - (iii) required by law or a government authority; or
 - (iv) consented to by the user of a Terminal or Applicant.
- (b) For the avoidance of doubt, the Terminal Operators must not require a user of a Terminal or an Applicant to provide any Confidential Information to the Terminal Operator(s) 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) The Terminal Operators must keep confidential any Confidential Information provided to a Terminal Operator by a user of a Terminal or an Applicant and only allow the Terminal Operator's Personnel to access that Confidential Information.
- (d) The Terminal Operators must only use Confidential Information provided by a user of a Terminal or an Applicant for the purpose of:
 - (i) providing Access Services to that user or Applicant;
 - (ii) assessment of an Applicant against the eligibility criteria set out in clause 3 of Schedule 1;
 - (iii) resolving a Terminal Dispute; or
 - (iv) as otherwise expressly consented in writing by that user or Applicant.
- (e) The Terminal Operators must procure that their Personnel only use Confidential Information for the purposes specified in clause 6.1(d) of this Undertaking.

- (f) The Terminal Operators must appoint a Compliance Officer who is responsible on a day-to-day basis for monitoring the Terminal Operators' compliance with this clause 6.
- (g) The Terminal Operators must implement a compliance education program for Personnel, which:
 - (i) provides training and information on the Terminal Operator'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 a Terminal Operator.
- (h) The Terminal Operators must establish and maintain effective IT systems and security measures to safeguard the Confidential Information of users of the Terminal or Applicants from unauthorised access, use, copying or disclosure. These measures will include:
 - (i) providing individual user names, passwords and access keys to any Terminal Operator Personnel who have access to the Confidential Information; and
 - (ii) recording a log of Terminal Operator Personnel who access Confidential Information stored in the Terminal Operator's IT system and retaining that log for inspection by the Approved Independent Auditor.

6.2 Limited Disclosure

- (a) A Terminal Operator may disclose Confidential Information of a user of a Terminal or an Applicant:
 - (i) which comprises the Vessel Details, including publication on its website from time to time;
 - (ii) to a Related Body Corporate of a Terminal Operator which is an Approved Terminal Operator:
 - (A) only to the extent necessary for that Approved Terminal Operator to provide services to the user of or Applicant at the Terminal operated by the Approved Terminal Operator; and
 - (B) on the condition that the Approved Terminal Operator will treat that Confidential Information as if it was "confidential information" provided by the user of a Terminal 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 Compliance Officer who must have regard to the Undertaking Objectives 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 the Approved Independent Auditor to the extent necessary for the purpose of resolving a Terminal Dispute, provided that the Terminal Operator does not disclose the Confidential Information of one user of a Terminal or Applicant to another user of a Terminal or Applicant without the first user's or Applicant's consent;
 - (v) to the ACCC or any other government agency to the extent necessary to comply with any written request by that agency;
 - (vi) to a Port Manager where the Terminal Operator is under a legal obligation to do so;
 - (vii) where required by law, provided that, where permissible, the Terminal Operator first endeavours to consult with the 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) The Terminal Operators must retain records of any Confidential Information of users of a Terminal or an 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 a Terminal Operator from disclosing information in the ordinary course of business or financial reporting where Confidential Information 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 user of a Terminal or an Applicant.

6.3 Confidentiality policy

The Terminal Operators must establish, maintain and publish on their website(s), a confidentiality policy to assist its Personnel to comply with the Terminal Operators' obligations under this clause 6.

6.4 Terminal Operator Ring Fenced Personnel

- (a) Unless waived by the ACCC pursuant to clause 4.3 of this Undertaking, the Undertaking Parties must procure that no Personnel of a Terminal Operator 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 within a period of 6 months before ceasing to be employed or engaged by a Terminal Operator, the Undertaking Parties must procure that any such Ring Fenced Personnel are not employed or engaged, within 6 months of ceasing to be Terminal Operator Personnel, by Qube, a Qube Related Entity or any other Related Body Corporate of the Terminal Operators to work in any part of the relevant entity which is responsible for commercial dealings with customers acquiring stevedoring or PDI Operator Services within a Terminal.

- (c) Clause 6.4(b) does not apply to any Terminal Operator Personnel who are employed or engaged by another Approved Terminal Operator within 6 months of ceasing to be employed or engaged by a Terminal Operator, but only if the Personnel have undertaken to the relevant Terminal Operator not to disclose, to the extent permitted by law, any Confidential Information provided to the Terminal Operator during their engagement or employment with the Terminal Operator to any person other than the Approved Terminal Operator.

6.5 The Terminal Operators' compliance with confidentiality and ring-fencing measures

The Terminal Operators 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 the Terminal Operator has responsibility for berthing at a Terminal), or the date on which the Terminal Operator assumes responsibility for berthing at a Terminal, or such later date as agreed with the ACCC, the Terminal Operator 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) The Terminal Operator must comply with the Berthing Allocation Rules.
- (c) In its application or interpretation of the Berthing Allocation Rules, the Terminal Operator must not:
 - (i) discriminate against or in favour of any shipping lines, PDIs or stevedores;
 - (ii) discriminate between Service Providers in a manner that is inconsistent with the Berthing Allocation Rules; or
 - (iii) 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) The Terminal Operator must not have any responsibility for determining the allocation of berths for vessels calling at a Terminal, nor manage or provide berthing services at a Terminal, unless the Undertaking Parties 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.
- (e) Disputes regarding berthing decisions and the Terminal Operator's compliance with the Berthing Allocation Rules will be determined by the relevant Port Manager, and the Terminal Operator agrees to comply with any directions received from the relevant Port Manager, as soon as reasonably practicable and no later than 5 Business Days of receipt of any direction.

7.2 Terminal Operator initiated Berthing Allocation Rules variation process

- (a) If the Terminal Operator wishes to initiate a variation to the Berthing Allocation Rules at a Terminal other than at the direction of a Port Manager, the Terminal Operator must only do so:
 - (i) on the basis that the variation is consistent with the principles in clause 7.1(c);
 - (ii) after providing as much notice of the draft variation as is reasonably practicable to affected stakeholders, but in any event at least 15 Business Days' prior notice of the draft variation to affected stakeholders;
 - (iii) by providing affected stakeholders with at least 10 Business Days to provide feedback to the Terminal Operator on the draft variation;
 - (iv) after it reviews and considers in good faith any:
 - (A) written responses provided in the timeframe specified in the draft variation notice; and
 - (B) feedback provided by any affected stakeholder provided in the timeframe specified in the draft variation notice; and
 - (v) in consultation with, and subject to any necessary approval of, the relevant Port Manager.
- (b) The Terminal Operator must publish on its website any Berthing Allocation Rules which have been varied in accordance with clause 7.2(a). The Terminal Operator must specify the date on which the revised Berthing Allocation Rules will take effect.
- (c) Within 5 Business Days after a variation to the Berthing Allocation Rules has come into effect under this clause 7.2, the Terminal Operator must provide to the Approved Independent Auditor and the ACCC copies of:
 - (i) the varied Berthing Allocation Rules and notice of the date on which they took effect; and
 - (ii) the notice provided to stakeholders under clause 7.2(a)(ii) together with a description of any stakeholder feedback received and any changes made by the Terminal Operator in response to such feedback.

7.3 Variations by the Port Manager

Notwithstanding clause 7.2 but subject to clause 7.1(c), the Terminal Operator may vary the Berthing Allocation Rules from time to time in respect of a Terminal to the extent necessary to comply with a written direction from the relevant Port Manager, in which case the Terminal Operator must provide users of that Terminal with notice of the variation within 10 Business Days of the variation coming into effect 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 the Terminal Operator's compliance with the process

governing variations as set out in this clause 7) can be raised by interested parties under the Non-Price Dispute Resolution Process.

8 The Terminal Operators' Self-Compliance Reports

8.1 General Compliance Reports

- (a) The Terminal Operators must provide a report (**General 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 8.1(c), the Terminal Operators must publish each General Compliance Report on their website(s) within seven days of providing the report to the ACCC and the Approved Independent Auditor.
- (c) The Terminal Operators may redact from any General Compliance Report that is published on its website, any information contained within the General Compliance Report that is:
 - (i) identified as confidential by any other party (other than a Qube Related Entity); and
 - (ii) confidential to the Terminal Operator, Qube or a Qube Related Entity, provided that the ACCC has been notified of the proposed redaction and has provided written confirmation to the Terminal Operator that it accepts the information is confidential.
- (d) The Terminal Operators must publish on their website(s) all General Compliance Reports that are less than three years old.
- (e) The General Compliance Report must contain:
 - (i) a record of the performance by the Terminal Operator 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 a Terminal Operator to Qube or a Qube Related Entity; and
 - (B) for the same services provided in that period to all other users of the Terminal,

(that is, for example, the report provided by the Terminal Operators 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 Service Provider 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; and

- (iv) details of any identified non-compliance with this Undertaking.
- (f) If this Undertaking commences or expires, is withdrawn or revoked during a 6 month period referred to in clause 8.1(a), the relevant General 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 Purpose

The purpose of this clause 9 is to establish an audit regime to provide assurance that the Undertaking Parties are complying with this Undertaking and to appoint an Approved Independent Auditor to facilitate the prompt rectification of any identified issues regarding the Undertaking Parties' compliance with this Undertaking.

9.2 Obligation to appoint an Approved Independent Auditor

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

9.3 Process for approving a Proposed Independent Auditor

- (a) The Undertaking 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 4 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- (b) The Approved Independent Auditor is to be appointed for a term of four years. Within 15 Business Days of the end of the Approved Independent Auditor's term, the Undertaking Parties must provide the ACCC, with a new Proposed Independent Auditor Notice. A person who is, or who has been the Approved Independent Auditor is eligible for reappointment as the Approved Independent Auditor.
- (c) If clauses 9.9(a), 9.9(b) or 9.9(c) apply, the Undertaking Parties must provide the ACCC with a Proposed Independent Auditor Notice within 5 Business Days after the relevant event occurs, otherwise clause 9.5(b) applies.
- (d) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- (e) 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 (such as experience in ports or logistics, auditing complex business operations and finances, arbitration or mediation of disputes, reviewing IT systems and protections) 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 the Undertaking Parties;

- (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.

9.4 Appointment of the Approved Independent Auditor

After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Undertaking 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;
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment; and
- (c) publish the Approved Independent Auditor's contact details (including a telephone number, postal address and email address) on the Terminal Operators' website(s).

9.5 Failure to appoint

- (a) If:
 - (i) the Undertaking Parties have not provided the ACCC with a Proposed Independent Auditor Notice in accordance with clause 9.3(a); or
 - (ii) a new Approved Independent Auditor has not been appointed within 15 Business Days after the former Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clauses 9.9(a), 9.9(b) or 9.9(c),then clause 9.5(b) applies.
- (b) If clause 9.5(a) applies, the ACCC, in its absolute discretion, may:
 - (i) direct the Undertaking Parties to appoint a person who the ACCC has deemed is an Approved Independent Auditor; and/or
 - (ii) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan.

9.6 Obligations and powers of the Approved Independent Auditor

- (a) The Undertaking 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 the Undertaking Parties, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in Schedule 4 to this Undertaking with the Undertaking Parties for the period of his or her appointment;
 - (ii) conduct compliance auditing according to the Approved Audit Plan;
 - (iii) conduct any Ad Hoc Investigation in accordance with clause 11 of this Undertaking;

- (iv) provide the following reports directly to the ACCC:
 - (A) a scheduled written Audit Report as described in clause 9.7(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, including in relation to any non-compliance notified to the Approved Independent Auditor in accordance with clause 9.8(a)(iv);
 - (C) any Audit Reports following completion of an Ad Hoc Investigation under clause 11;
 - (v) carry out the functions in Schedule 6, where and to the extent required to do so; and
 - (vi) 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 Undertaking 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, systems (including IT systems) or operations of the Undertaking Parties and the Undertaking Parties' 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 which the Approved Independent Auditor determines, from time to time, is required to perform his or her functions and the Undertaking Parties will be responsible for the associated costs incurred by the Approved Independent Auditor in any such engagement.

9.7 Compliance Audit

- (a) The Approved Independent Auditor must conduct a separate audit for each of the Undertaking Parties and prepare a detailed report (**Audit Report**) for each of AAT, MIRRAT 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 Undertaking Party's compliance with this Undertaking including a consideration of compliance with the Undertaking by reference to each KPI;
 - (iii) identification of any areas of uncertainty or ambiguity in the Approved Independent 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 Undertaking Parties' processes or reporting systems in relation to compliance with this Undertaking;
 - (D) the KPIs in Schedule 3 of this Undertaking that the Terminal Operators are required to report against in accordance with clause 8,
 - (E) the requirements and obligations included in this Undertaking in order to achieve the Undertaking Objective; and
 - (vii) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- (b) The Approved Independent Auditor is to provide Audit Reports to the ACCC and to each of the Undertaking Parties (that is, each Undertaking 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) if the Approved Independent Auditor elects to publish an Ad Hoc Audit Report within 10 Business Days of completion of any Ad Hoc Investigation 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) The Undertaking Parties must implement any recommendations made by the Approved Independent Auditor in Audit Reports or Ad Hoc Audit Reports and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or Ad Hoc Audit Report or such other period as agreed in writing with the ACCC.
- (d) The Undertaking Parties must comply with any direction of the ACCC in relation to matters arising from the Audit Report or Ad Hoc Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

9.8 The Undertaking Parties' obligations in relation to the Approved Independent Auditor

- (a) Without limiting the obligations in this Undertaking, the Undertaking Parties 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 the Undertaking Parties' Personnel to act in accordance with this clause 9;
 - (B) providing access to the facilities, sites or operations of the Undertaking Parties and the Undertaking Parties' other businesses as required by the Approved Independent Auditor;
 - (C) providing to the Approved Independent Auditor, in the time period and form requested by 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;
 - (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; and
- (iv) within 5 Business Days, notify the Approved Independent Auditor of any non-compliance with the terms of this undertaking after identifying any non-compliance and fully cooperate with any inquiry by the Approved Independent Auditor, including as part of any Ad Hoc Investigation.

9.9 Resignation, revocation or termination of the Approved Independent Auditor

- (a) The Undertaking 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:
 - (i) the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading;
 - (ii) if the Approved Terms of Appointment are varied; or
 - (iii) if the role of the Approved Independent Auditor is varied in this clause 9 (including as a result of the MIRRAT Acquisition).
- (c) The ACCC may approve any proposal by, or alternatively may direct, the Undertaking Parties 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 and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

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

Nothing in this clause 9 prohibits:

- (a) a person who was appointed as an approved independent auditor under another section 87B undertaking given by an Undertaking Party from being appointed as the Approved Independent Auditor in accordance with this Undertaking; and
- (b) the Approved Independent Auditor being appointed as an approved independent auditor under any other section 87B undertaking given by AAT, MIRRAT, Qube or an Approved Terminal Operator.

9.11 Consolidated Audit Report for all Terminals and Qube Related Entities

Qube, AAT, MIRRAT, 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 the Terminal Operators' or Qube's compliance with this Undertaking governing all Terminals and all obligations pursuant to this Undertaking.

10 Price Dispute Resolution

10.1 Price Dispute Resolution Process

- (a) The Terminal Operator must comply with the Price Dispute Resolution Process in Schedule 5 to determine any disputes by any Dispute Applicant in relation to:
 - (i) Charges for Access Services; and
 - (ii) the introduction of any new fee, charge, tariff or duty however so described.
- (b) For the avoidance of doubt, an existing fee, charge, tariff or duty (however so described) that is not a Charge and which is proposed to be levied on a new group of customers, will be considered as the introduction of a new tariff and not the modification of an existing tariff.

- (c) The Terminal Operators 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 the relevant Terminal Operator has obtained the 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, Terminal Operators 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 the Terminal Operators and must not be:
 - (i) an employee or officer of the Undertaking Parties or a Qube Related Entity, whether current or in the past 3 years;
 - (ii) a professional adviser of the Undertaking Parties 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 the Undertaking Parties or a Qube Related Entity;
 - (iv) a person who has a contractual relationship with the Undertaking Parties or a Qube Related Entity (other than the terms of appointment of the Independent Price Expert);
 - (v) a user of a Terminal or an Applicant, supplier or material customer of the Undertaking Parties 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 Undertaking 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 the Terminal Operators in writing that it:
 - (i) does not object to the Proposed Independent Price Expert, the Terminal Operators 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, the Terminal Operators 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), the Terminal Operators 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 their website(s).
- (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 the Terminal Operators 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 a Terminal Operator.

10.3 Term of the Independent Price Expert's appointment

- (a) The Independent Price Expert is to be appointed for a term of four (4) years. Prior to the end of the Independent Price Expert's term, the Terminal Operators 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 four (4) 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, the Terminal Operators 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 Control Date" 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) The Terminal Operators 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 the Terminal Operators' compliance with this Price Dispute Resolution Process directly to the ACCC; and
 - (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, in the time period and form requested, any information or documents requested by the Independent Price Expert that he or she considers necessary for carrying out 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 Terminal and/or more than one Dispute Applicant

- (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 Terminal, the Terminal Operators 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 Terminal and/or more than one Dispute Applicant.
- (b) The Terminal Operators 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) The Undertaking Parties must comply with the Non-Price Dispute Resolution Process at Schedule 6 to determine any disputes brought by a Dispute Applicant in respect of compliance by the Terminal Operators or Qube with this Undertaking, other than disputes in relation to:

- (i) Price Disputes which are to be determined in accordance with the Price Dispute Process in Schedule 5; and
- (ii) Berthing decisions, and compliance by the Terminal Operators with the Berthing Allocation Rules, which are to be determined by the relevant Port Manager in accordance with clause 7.1(e),

(a Non-Price Dispute).

- (b) For the avoidance of doubt, a Dispute Applicant may raise a complaint regarding the Undertaking Parties' compliance with this Undertaking directly with the ACCC at any time.

11.2 Ad Hoc Investigation

- (a) In addition to the Non-Price Dispute Resolution Process, any person who has any concern regarding the Terminal Operators' and/or Qube's compliance with this Undertaking may at any time, request in writing (via email or post using the contact details for the Approved Independent Auditor published in accordance with clause 9.4(c)) to the Approved Independent Auditor or post) that he or she investigate the relevant concern (an **Ad Hoc Investigation**).
- (b) A person requesting an Ad Hoc Investigation may request that their request be kept confidential from Qube or the Terminal Operators, in which case the Approved Independent Auditor will maintain the confidentiality of their identity in any correspondence with Qube and the Terminal Operators, and in the publication of any findings.
- (c) The Approved Independent Auditor may commence an Ad Hoc Investigation at any time, on their own initiative, if they have reason to believe that either the Terminal Operator(s) or Qube have engaged in conduct that does not comply with this Undertaking.
- (d) The Approved Independent Auditor, at its absolute discretion, may determine whether to commence an Ad Hoc Investigation and the manner in which it is undertaken. For clarity, and without limiting the Approved Independent Auditor's absolute discretion, the Approved Independent Auditor may determine not to undertake an investigation in circumstances where the Approved Independent Auditor determines that:
 - (i) the matters which are the subject of the request have already been investigated or otherwise considered by the Approved Independent Auditor (including in any earlier Audit Report) and require no further consideration; or
 - (ii) the subject matter of the request is trivial, vexatious, misconceived, or not made in good faith.
- (e) For the avoidance of doubt, any person who has any concern regarding the Undertaking Parties' compliance with the Berthing Allocation Rules as set out in clauses 7.1(c) and 7.1(d), may request an Ad Hoc Investigation.
- (f) A person may at any time withdraw a request for an Ad Hoc Investigation by notifying the Approved Independent Auditor in writing, in which case the requirement for the Approved Independent Auditor to investigate ceases.

- (g) At the conclusion of an Ad Hoc Investigation, the Approved Independent Auditor may disclose their findings to the ACCC, the person who lodged the concern and the Undertaking Parties. This may take the form of publication of any findings:
 - (i) as part of a regular annual Audit Report;
 - (ii) in a separate audit report (**Ad Hoc Audit Report**); or
 - (iii) a separate report provided only to the person who lodged the concern as well as to the Undertaking Parties (subject to any protection of the identity of the complainant and any confidential information).
- (h) The Undertaking Parties will be responsible for the Approved Independent Auditor's costs of:
 - (i) undertaking any Ad Hoc Investigation regardless of the outcome of the Ad Hoc Investigation; and
 - (ii) work undertaken to determine whether to conduct an Ad Hoc Investigation in accordance with clause 11.2(d) above,

including any costs incurred by the Approved Independent Auditor in engaging any external expertise, assistance or advice required to consider the request or to undertake the investigation and to prepare and publish his or her findings.
- (i) The Approved Independent Auditor must disclose the outcome of any Ad Hoc Investigation to the ACCC within 10 Business Days of the conclusion of their Ad Hoc Investigation. However, unless requested by the ACCC, the Approved Independent Auditor will not be required to comply with this sub-clause if they make a determination not to conduct an Ad Hoc Investigation in accordance with clause 11.2(d) above.

12 ACCC requests for information

- (a) The ACCC may direct the Undertaking Parties in respect of their compliance with this Undertaking to, and the Undertaking Parties must:
 - (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 Undertaking Parties' 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) Any direction made by the ACCC under clause 12(a) will be notified to the Undertaking Parties in accordance with clause 20.
- (c) In respect of the Undertaking Parties' 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) The Undertaking Parties 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 the Undertaking Parties have a claim of legal professional or other privilege.
-

13 ACCC Review

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 Undertaking Objective.
- (b) On deciding to conduct a review pursuant to clause 13.1(a), the ACCC may invite submissions from the Undertaking Parties, a Port Manager (only in respect of the relevant Terminal at its Port) and other parties with an interest in the terms and conditions of access to the Terminal on whether any changes to the terms of this Undertaking are necessary in order to ensure that this Undertaking continues to achieve the Undertaking Objective.
- (c) The factors to which the ACCC may have regard in making a decision whether 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 9.7(a);
 - (ii) the outcomes of any Ad Hoc Investigations undertaken 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);
- (v) any complaints made to the ACCC regarding the Undertaking Parties' compliance with this Undertaking and the outcomes of any subsequent investigations;
- (vi) any submissions from parties with an interest in the terms and conditions of access to the Terminal;
- (vii) whether there has been a material change in the market conditions since the commencement of the Undertaking or when the Undertaking was last reviewed;
- (viii) whether the obligations in the Undertaking continue to be clear, unambiguous, and relevant;
- (ix) whether any new competition concerns have arisen from Qube's ownership of Webb Dock West Terminal since the commencement of the Undertaking or when the Undertaking was last reviewed; and
- (x) whether the Approved Independent Audit function is working effectively, and the compliance and monitoring burden on the ACCC.

13.2 Amendment Notice

- (a) Following a review conducted 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 Undertaking Objective, the ACCC may give the Undertaking 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 the Undertaking Parties 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 Undertaking Objective, the ACCC will provide the Undertaking Parties with a notice setting out the terms of a variation to the Undertaking which is acceptable to the ACCC (**Variation Notice**).
- (b) The Undertaking 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:
 - (A) in the form set out in the Variation Notice; or
 - (B) in a form agreed between the ACCC and the Undertaking Parties following the consultations undertaken in accordance with clause 13.3(b)(i).
- (c) If the Undertaking Parties notify the ACCC that they agree to seek a variation to the Undertaking in accordance with clause 13.3(b)(ii)(A) or clause 13.3(b)(ii)(B), at the same time, the Undertaking 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 Undertaking Parties do not agree to seek a variation to this Undertaking in accordance with clause 13.3(b)(ii)(A) or clause 13.3(b)(ii)(B) (**Variation Dispute**), they must provide a written notice to the ACCC of the Variation Dispute.
 - (b) The written notice of the Variation Dispute must include:
 - (i) written reasons explaining why the Undertaking 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 Undertaking Parties or a Qube Related Entity; and
 - (iv) whether the Proposed Independent Expert has been:
 - (A) an employee or officer of any of the Undertaking Parties or a Qube Related Entity, whether current or in the past 5 years;
 - (B) a professional adviser of any of the Undertaking Parties or a Qube Related Entity, whether current or in the past 5 years;
 - (C) a person who has a contractual relationship with any of the Undertaking Parties or a Qube Related Entity; or
 - (D) an employee or contractor of a firm or company referred to in clause 13.4(b)(iv)(C),
- (a **Variation Dispute Notice**).
- (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 Terminals.
- (d) Within 10 Business Days of the Undertaking Parties providing a Variation Dispute Notice to the ACCC, the ACCC will provide written notice to the Undertaking Parties informing them of its decision to agree or not agree to the Proposed Independent Expert identified pursuant to clause 13.4(b)(ii).
- (e) If the Undertaking Parties and the ACCC cannot agree on an independent expert to be appointed to determine the Variation Dispute within 20 Business Days of the Undertaking 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 by the Undertaking Parties.
- (g) The ACCC and the Undertaking Parties will agree the terms of appointment of the independent expert.
- (h) The Undertaking Parties will use best endeavours to ensure that the independent expert is provided with:
 - (i) all relevant information available to the Terminal Operators 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.
- (i) 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 Undertaking Objective.
- (j) 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 Undertaking Objective, the Undertaking Parties must proffer a proposed variation in accordance with the ACCC's proposed variation, to the ACCC, for the purpose of seeking the ACCC's consent in accordance with section 87B(2) of the Act, within 5 Business Days of the independent expert's decision.
- (k) If the independent expert decides that a variation is necessary to ensure that the Undertaking continues to meet the Undertaking Objective, but this variation differs materially from the ACCC's proposed variation, the Undertaking Parties must proffer a proposed variation in accordance with the independent expert's proposed variation, to the ACCC, for the purpose of seeking the ACCC's 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 the Undertaking Parties.
- (l) If the independent expert decides that a variation is not necessary to ensure that the Undertaking continues to meet the Undertaking Objective, the ACCC's Variation Notice lapses.

- (m) The independent expert's decision will be final and binding on the Undertaking Parties and they must take all steps to ensure that the independent expert's decision is fulfilled or otherwise given effect to.
- (n) 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, the Undertaking Parties will publish a copy of this Undertaking on their respective websites.
- (b) Within 25 Business Days of the Commencement Date, the Undertaking Parties 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) The Terminal Operators must maintain a link on the home page(s) of their websites to a page containing all items that they are required to publish in accordance with this Undertaking.
- (d) Where this Undertaking (including its schedules) imposes a requirement on the Undertaking Parties 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 Undertaking 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

- (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 the Terminal Operators must each procure that Qube Related Entity to take or refrain from taking that action.
- (b) As soon as practicable after the Control Date, the Undertaking Parties must direct their respective Personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with the Undertaking Parties' obligations under this Undertaking.
- (c) The Undertaking Parties must ensure that any Qube Related Entity provides all necessary assistance and information so that the Undertaking 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 the Undertaking Parties' compliance with clause 6.

- (d) Subject to clause 6.4, nothing in this Undertaking prohibits:
 - (i) Terminal Operator 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 the Terminal Operator.
- (e) The Undertaking Parties will ensure that only AAT and MIRRAT operate the Terminals and, in the event it is proposed that any other Qube Related Entity owns and operates any of those Terminals, the Undertaking Parties will:
 - (i) notify the ACCC in writing of the proposal;
 - (ii) procure that the Qube Related Entity has given to the ACCC a section 87B undertaking in relation to its operation of that Terminal in substantially similar terms to this Undertaking, which has been accepted by the ACCC prior to the Qube Related Entity commencing to operate that Terminal; and
 - (iii) only implement the change if the ACCC has provided written consent.

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 the Undertaking Parties 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 the Undertaking Parties do not fully implement and/or perform their 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

17.1 Change of Ownership reasonably expected to occur before 1 January 2026

In the event that a Change of Ownership is reasonably expected to occur before 1 January 2026, the Undertaking Parties must:

- (a) inform in writing 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, Qube and MIRRAT pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the Undertaking Parties in writing that a section 87B undertaking under this clause is not required.

17.2 Change of Ownership reasonably expected to occur on or after 1 January 2026

In the event that a Change of Ownership is reasonably expected to occur on or after 1 January 2026, the Undertaking Parties must:

- (a) inform in writing the ACCC of this expectation as soon as is practicable, and
- (b) either:
 - (i) if the Change of Ownership involves a proposed acquisition that is Required To Be Notified, comply with clause 17.3; or
 - (ii) if the Change of Ownership involves a proposed acquisition that is not Required To Be Notified but the Principal Party to the proposed acquisition has or proposes to notify the ACCC in accordance with section 51ABX of the Act, comply with clause 17.3; or
 - (iii) in all other cases where the Change of Ownership is not notified to the ACCC in accordance with section 51ABX of the Act, comply with clause 17.4.

17.3 Where Change of Ownership is notified under section 51ABX of the Act

If sub-clauses 17.2(b)(i) or 17.2(b)(ii) apply, the Undertaking Parties must:

- (a) by no later than 5 Business Days following the date on which the ACCC is notified of the Change of Ownership in accordance with subsection 51ABX(1), request that this Undertaking be varied or withdrawn (as appropriate) in the event the ACCC or the Australian Competition Tribunal makes a determination of the type referred to in sub-paragraphs 17.3(b)(i) or 17.3(b)(ii) below (the **Withdrawal / Variation Request**);

- (b) not implement the Change of Ownership unless:

either:

- (i) the ACCC has made a determination under section 51ABZE that the acquisition may be put into effect (which determination may include specified conditions in accordance with section 51ABZF); or
- (ii) on a review of a determination made by the ACCC, the Australian Competition Tribunal has made a determination under Division 1B of Part IX of the Act the effect of which is that the acquisition may be put into effect (which determination may include specified conditions);

and

- (iii) the ACCC has consented expressly in writing pursuant to section 87B(2) of the Act to:

- (A) the Withdrawal / Variation Request; or
- (B) any amended Withdrawal / Variation Request submitted by the parties no later than 10 Business Days following the making of the determination referred to in clause 17.3(b)(i) and 17.3(b)(ii) above. Any amendments to the Withdrawal / Variation Request should be limited to those which are reasonably necessary to facilitate the

implementation of the determination referred to in clause 17.3(b)(i) and 17.3(b)(ii) above including any specified conditions.

17.4 Where notification is not notified under section 51ABX

If sub-clause 17.2(b)(iii) applies, the Undertaking Parties must:

- (a) by no later than 5 Business Days following the date they have informed the ACCC of the Change of Ownership pursuant to clause 17.2(a) above, request that this Undertaking be varied or withdrawn (as appropriate) pursuant to section 87B(2) of the Act (the **Withdrawal / Variation Request**). The parties may amend the Withdrawal / Variation Request at any time before the date on which the ACCC makes a decision for the purposes of sub-clause 17.4(b) below;
- (b) not implement the Change of Ownership to another person or entity unless:
 - either:
 - (i) a section 87B undertaking to the ACCC (which may be but is not required to be in the same terms as this Undertaking), is accepted by the ACCC under section 87B(1) of the Act; or
 - (ii) the ACCC has notified the Undertaking Parties in writing that a section 87B undertaking under this clause is not required; and
 - and
 - (iii) the ACCC has consented expressly in writing to the Withdrawal / Variation Request pursuant to section 87B(2) of the Act.

17.5 Definitions

The expression **Change of Ownership** means any of the following:

- (a) any acquisition by any other person or entity of any shares in the capital of any of the Undertaking Parties, which is required to be notified to the ACCC under Division 2 of Part IVA of the Act;
- (b) an acquisition by any other person or entity of any of the assets of any of the Undertaking Parties, which is required to be notified to the ACCC under Division 2 of Part IVA of the Act;
- (c) any acquisition by any other person or entity of anything relating to the Undertaking Parties or any of the Terminals (other than shares in the capital of any of the Undertaking Parties or assets of any of the Undertaking Parties), which is required to be notified to the ACCC under Division 2 of Part IVA of the Act;
- (d) the assignment or other transfer of the legal or beneficial ownership of the share capital of Qube or AAT or MIRRAT to any other person or entity pursuant to which that other person or entity obtains the capacity to influence the outcome of decisions about Qube, AAT or MIRRAT's financial and operating policies; or
- (e) the assignment or other transfer of the legal or beneficial ownership of some or all of a Terminal (or the business activities or assets associated with operating that Terminal) to any other person or entity.

Explanatory note: a restructure or reorganisation is dealt with under clause 15(e) of this Undertaking.

Explanatory note: a reference to Division 2 of Part IVA, sections 51ABI, 51ABO, 51ABX, 51ABZE, 51ABZF is a reference to those provisions as in force from time to time from 1 July 2025.

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 the Undertaking Parties' obligations pursuant to this Undertaking, this Undertaking prevails.

19 Costs

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

20 Notices

20.1 Giving Notices

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

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Mergers, Exemptions and Digital Division

With a copy sent to:

Email address: mergersru@acc.gov.au
Attention: Director, Remedies Unit
Policy, Coordination and Remedies Branch
Mergers, Exemptions and Digital Division

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

Name: Australian Amalgamated Terminals Pty Ltd
Address: Level 27, 45 Clarence Street, Sydney, NSW 2000
Email address: antony.perkins@aaterminals.com.au
Attention: Antony Perkins, Managing Director

- (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

- (d) Any notice or communication to MIRRAT pursuant to this Undertaking must be sent to:

Name: Melbourne International RoRo & Auto Terminal Pty Ltd
Address: 46 Kooringa Way, Port Melbourne, VIC 3207
Email address: antony.perkins@aaterminals.com.au
Attention: Antony Perkins, Managing Director

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) The Undertaking Parties must notify the ACCC of a change to their 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 20.2(a) and 20.2(b), will be taken to be received.

21 Defined terms and interpretation

21.1 Definitions

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in clause 22 (**Dictionary**), has the meaning given to it in the Dictionary; or
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

21.2 Interpretation

Clause 23 sets out the rules of interpretation for this Undertaking.

21.3 Application across Terminals

In assessing whether conduct contravenes the provisions of this Undertaking or in resolving any Price Dispute or Non-Price Dispute:

- (a) regard may be had to the combined effect of conduct occurring at more than one Terminal; and
- (b) the terms of this Undertaking should be applied, to the maximum extent practicable, in a consistent manner in respect of the same or similar conduct at different Terminals.

22 Dictionary

In this document, unless the context requires otherwise:

2016 Transaction has the meaning given in clause 2.2(c) of this Undertaking.

2016 Undertaking has the meaning given in clause 2.2(a) of this Undertaking.

2018 Variation has the meaning given in clause 2.6(d) of this Undertaking.

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

ACCC means the Australian Competition and Consumer Commission.

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

Access Services means, for each Terminal:

- (a) the use of and access to the Terminal, facilities and/or infrastructure owned, operated or controlled;
- (b) services, machinery, equipment, access to data and anything else offered or supplied; or
- (c) any service offered or provided in connection with (a) and (b) above and any associated rights, benefits or privileges needed to deliver such services,

by the Terminal Operator at that Terminal which in each case the Terminal Operator makes available to a Service Provider and which, at a minimum, includes all services the Terminal Operator makes available to:

- (a) all stevedores and PDI operators; or
- (b) any other competitor or potential competitor of a Qube Entity.

Explanatory Note: *To assist interpretation, and without limiting the definition of Access Services, as at the Commencement Date of this Undertaking, Access Services included the following services:*

- (a) **Stevedores:**
 - (i) *supply of office and equipment;*
 - (ii) *berth and facility hire; and*
 - (iii) *receival and delivery services,**to a stevedore for the provision of general cargo or automotive or RoRo stevedoring.*
- (b) **PDI Service Provider:**
 - (i) *access to a Terminal to collect or deliver automobiles; and*
 - (ii) *security vehicle control.*

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

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

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

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

Appleton Dock has the meaning given in clause 2.1(c) 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 9.4 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 of the Approved Independent Auditor, as approved by the ACCC in accordance with the terms of this Undertaking.

Asciano means Asciano Limited (ACN 123 652 862).

Associated Entities has the meaning given to it in section 50AAA of the Corporations Act.

Audit Report has the meaning given in clause 9.7(a) of this Undertaking.

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

BAPS BidCo means BAPS BidCo Pty Ltd (ACN 611 189 381).

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

Brisbane Terminal has the meaning given in clause 2.1(c) of this 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.

Change with respect to a Charge, has the meaning given in Schedule 5 of this Undertaking.

Charge(s) means all compulsory fees or charges payable by a Service Provider to the Terminal Operator for 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) and identified as a charge in the Terminal Operator's published pricing, and relevantly includes:

- (a) if the Terminal Operator implements multi-part pricing, all components of the Charge for the Access Service; or
- (b) any additional or optional fees or charges which are payable for an Access Service (for example, fees which are payable to acquire a different quality of service or to acquire the Access Service in different circumstances or on different conditions); or
- (c) any fees or charges which are payable for an Access Service by a Service Provider but only in particular circumstances or on particular conditions (for example, any fees or charges which are payable by reason of the Service Provider's failure to perform a particular act or to perform a particular act within a particular timeframe).

For the purposes of this definition, fees or charges payable by a Service Provider for a service are not compulsory where there is a competitive substitute for the relevant service. For example, fees applicable to standard storage and vehicle washing services are not Charges if other competitive alternatives are readily available servicing the Terminal including where a Service Provider has their own facility for providing those services.

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 Officer means the person referred to in clause 6.1(f) of this Undertaking.

Confidential Information means information provided by a user of a Terminal or an Applicant to the Terminal Operator in relation to the supply of Access Services which is:

- (a) by its nature confidential, including but not limited to information about that user's 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 user or Applicant who supplied it; or
- (c) known, or ought reasonably to be known, by the Terminal Operator to be confidential or commercially valuable,

but excludes information that:

- (d) is comprised solely of the name, address, and contact details of a user of a Terminal or an Applicant for the sole purpose of allowing the Terminal Operator to comply with requirements of the Open Access Conditions where those details are to be published on the Terminal Operators' website(s);
- (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 the Terminal Operator prior to being provided by the user or Applicant; or
- (h) ceases to be confidential in nature by any other lawful means.

Control Date means the date on which the MIRRAT Acquisition is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI Inflation has the meaning given in Schedule 5.

DAFF means Department of Agriculture, Fisheries and Forestry.

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 users of a Terminal, importers and exporters (and/or their industry representative bodies).

Entity Connected has the meaning given to it in section 64B of the Corporations Act.

Establishment Audit has the meaning given in clause 9.7(b) of this Undertaking.

Financial Year means a financial year ending 30 June.

General Compliance Report has the meaning given in clause 8.1(a) of this Undertaking.

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

KPI means key performance indicator.

Licence Application Form means the application form the Terminal Operator requires Applicants to complete in order to apply for Access Services.

MIRRAT means Melbourne International RoRo & Auto Terminal Pty Ltd (ACN 163 814 364).

MIRRAT Acquisition has the meaning given in clause 2.2(c) of this Undertaking.

MIRRAT Undertaking has the meaning given in clause 2.2(c) of this Undertaking.

Non-Price Dispute has the meaning given in clause 11.1(a) of this Undertaking.

Non-Price Dispute Resolution Process means the non-price dispute resolution process set out in Schedule 6 of this Undertaking.

Objection Notice has the meaning given to that term in clause 3.1 of Schedule 5 of this Undertaking.

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

P&O means P&O Wharf Management Pty Limited (ACN 100 737 264).

PDI means pre-delivery inspection.

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

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

Plzen means Plzen Pty Limited (ACN 065 905 571).

Port means in so far as this Undertaking applies to the:

- (i) the Webb Dock West Terminal and Appleton Dock – the Port of Melbourne;
- (ii) the Port Kembla Terminal – Port Kembla; and
- (iii) the Brisbane Terminal – the Port of Brisbane.

Port Kembla Terminal has the meaning given in clause 2.1(c) of this Undertaking.

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

- (i) at the Port of Melbourne – Port of Melbourne Operations Pty Ltd as trustee for the Port of Melbourne Unit Trust;
- (ii) at Port Kembla – Port Authority of New South Wales and/or NSW Ports; and
- (iii) at the Port of Brisbane – Port of Brisbane Pty Ltd.

Price Dispute means a dispute raised by a Dispute Applicant about the proposed Change to a Charge or the proposed introduction of any new fee, charge, tariff or duty however so described that is not identified as a Charge which relates to that Dispute Applicant.

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

Principal Party has the meaning given to that expression by sections 51ABI of the Act.

PrixCar means PrixCar Services Pty Limited (ACN 007 063 505).

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

Proposed Independent Auditor Notice has the meaning given in clause 9.3(a) of this Undertaking.

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

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

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

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

Proposed MIRRAT Change has the meaning given in Schedule 5.

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 Entity or Qube Entities means Qube, together with all Qube Related Entities.

Qube Related Entity or Qube Related Entities means any Related Body Corporate and any other entity (including trust, managed investment scheme, joint venture or partnership) that is Controlled directly or indirectly by Qube including, but not limited to, PrixCar, AAT and MIRRAT as from the Control Date. For the purpose of this definition, **Controlled** means the capacity to influence the outcome of decisions about an entity's financial and operating policies.

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

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

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

Required to be Notified has the meaning given to that expression by sections 51ABO of the 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 by a Terminal Operator;
- (iii) negotiation or management of Access Licence Agreements or any other agreements or commercial terms with users of the Terminal in relation to Access Services; or
- (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) of this Undertaking.

RoRo means roll-on roll-off.

Service Provider means:

- (a) any stevedore, PDI operator, mooring service provider; or
- (b) any other user or Applicant operating at a Terminal, or which intends to operate at the Terminal, in competition with a Qube Entity,

but does not include a shipping line.

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

Terminal(s) means:

- (a) the Webb Dock West Terminal;
- (b) Appleton Dock;
- (c) the Port Kembla Terminal; and
- (d) the Brisbane Terminal.

Terminal Operator(s) means each of AAT and MIRRAT.

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 a Terminal Operator 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 the Terminal Operator and which regulate the operation or management of a Port of any related precinct.

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

Undertaking Objective means those objectives collectively described in clause 2.4 of this Undertaking.

Undertaking Party or Undertaking Parties means each of Qube, MIRRAT and AAT.

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(b) 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.

Webb Dock West or Webb Dock West Terminal has the meaning given in clause 2.1(e) of this Undertaking.

WW has the meaning given in clause 2.1(e) of this Undertaking.

23 Interpretation

In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

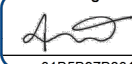
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (c) if the day on which any act, matter or thing is to be done under this Undertaking 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 2001*;
- (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 23(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, the Undertaking Parties 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; and
- (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:

DocuSigned by:

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Signature of director

Paul Digney

Name of director (print)

Date: 9 April 2025

Signed by:

D9B726800A2543A...


Signature of company secretary

William Hara

Name of company secretary
(print)

Date: 9 April 2025

Executed by Australian Amalgamated Terminals Pty Ltd (ACN 098 458 229) pursuant to section 127(1) of the *Corporations Act 2001* by:


DocuSigned by:

01B5B97B30124B9...

Signature of director

Paul Digney

Name of director (print)

Date: 9 April 2025

DocuSigned by:

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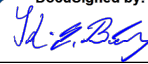
Signature of director

Antony Perkins

Name of director (print)

Date: 9 April 2025

Executed by Melbourne International RoRo & Auto Terminal Pty Ltd (ACN 163 814 364) pursuant to section 127(1) of the *Corporations Act 2001* by:

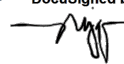
DocuSigned by:

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Signature of director

Kim Buoy

Name of director (print)

Date: 9 April 2025

DocuSigned by:

567F460D067B4F8...

Signature of company secretary

Madrid Quiroz

Name of company secretary
(print)

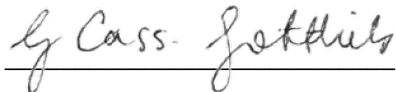
Date: 9 April 2025

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

9 April 2025

Date

And signed on behalf of the Commission:



Chair

9 April 2025

Date

Schedule 1 Open Access Conditions

1 Definitions

In this Schedule 1, terms are defined as set out in clauses 21 and 22 of this Undertaking.

2 No discrimination or hindering access

- (a) The Terminal Operator must not supply Access Services to a stevedore (including any Qube Entities), unless the Terminal Operator has entered into an Access Licence Agreement with that stevedore.
 - (b) The Terminal 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 Terminal 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 Terminal Operator must not:
 - (i) provide any PDI, stevedoring, mooring or shipping line 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 Terminal Operator to Qube, a Qube Related Entity or third parties, through its own use of a Terminal.
-

3 Eligibility requirements

The Terminal Operator must ensure that every Applicant can demonstrate, to the Terminal 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.
-

4 Terminal Operator obligations

- (a) The Terminal Operator must publish on its website:

- (i) the Licence Application Form;
 - (ii) a rate card in accordance with clause 5(a);
 - (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; and
 - (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 3 of this Schedule 1.
 - (c) The Terminal Operator must not discriminate between Applicants in applying the criteria set out in clause 3 of this Schedule 1.
 - (d) The Terminal Operator must negotiate in good faith for the provision of Access Services.
 - (e) The Terminal Operator must provide unsuccessful Applicants with a statement of reasons for the decision and provide a copy to the Port Manager.
 - (f) The Terminal Operator must supply Access Services at prices no greater than the then current Charges payable for the Access Services.

5 Charges

On or before 3 March of each year, each Terminal Operator must:

- (a) publish a proposed rate card on its website that separately identifies the Charges the subject of this Undertaking from the tariffs, fees, charges or duties (however so described) levied by the Terminal Operator that are not Charges;
- (b) provide written notice to any person who has entered into an Access Licence Agreement at the Terminal, and to any person who has informed the Terminal Operator in writing that it wishes to be notified of tariffs, fees, charges or duties (however described) in respect of that Terminal; and
- (c) include on its website and in the notice referred to in this paragraph, a requirement that any person who wishes to raise a dispute in accordance with the Price Dispute Resolution Process must notify the Terminal Operator in writing of the dispute by no later than 24 March of the relevant year.

Schedule 2 Berthing Allocation Rules

1.1 General

- 1 The Terminal Operators operate the Terminals.
- 2 This Schedule 2 sets out the priorities for managing berthing and berthing allocation at each Terminal where the Terminal Operators have 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. The relevant Terminal Operator 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 (three pages); and
 - (c) Fisherman Islands in Queensland (three pages).
- 3 In its application or interpretation of the Berthing Allocation Rules, the Terminal Operator must not discriminate between shipping lines or engage in conduct for the purpose of preventing or hindering access to any Terminal by any shipping line in the exercise of a right of access to the Terminal.
- 4 The Terminal Operators have also executed a confidentiality deed poll in favour of users of the Terminals which outlines how the Terminal Operators will handle Confidential Information provided under the Berthing Allocation Rules.
- 5 These Berthing Allocation Rules will be reviewed by the Terminal Operators annually and proposals for changes will be discussed with all shipping lines and stevedores. The Terminal Operators may only make changes to these Berthing Allocation Rules in accordance with the process set out in the clause 7 of this Undertaking.
- 6 Unless defined in these rules, the definitions in the Undertaking apply.
- 7 For the most current Berthing Allocation Rules, please refer to the Terminal Operators' website(s).



Australian Amalgamated Terminals Webb Dock West and Appleton Dock Berths 1&2 Priority Arrangements

2 BERTH PRIORITY

Preamble

1. Australian Amalgamated Terminals Pty Ltd (**AAT**), operates a general cargo facility at Appleton Dock, Melbourne, and through its wholly-owned subsidiary MIRRAT, operates the automotive RoRo terminal at Webb Dock West (**Terminals**).
2. This document sets out the rules for managing berthing and allocation at the Terminals (**Berthing Allocation Rules**). The Terminal Operator will allocate berths at the Terminals in accordance with these Berthing Allocation Rules. The Terminal Operator will berth vessels across the terminals in the most efficient manner to speed up and facilitate cargo throughout the Terminals.
3. In its application or interpretation of these Berthing Allocation Rules, the Terminal Operator will not discriminate between different shipping lines or in favour of its Related Bodies Corporate or engage in conduct for the purpose of preventing or hindering access to the Terminals by any shipping line.
4. The Terminal Operators have also executed a Confidentiality Deed Poll in favour of users of the Terminals which outlines how the Terminal Operators will handle Confidential Information provided under these Berthing Allocation Rules.

The Berthing Allocation Rules are:

- a) Vessels equipped with ramps and that are purpose made for ocean transportation of self-propelled vehicles will call at the Webb Dock West Terminal for the loading and discharging of wheeled vehicles.
- b) Vessels equipped with cranes and that are purpose made for ocean transportation of general/break bulk cargo will call at the Appleton Dock for loading and discharging of general cargo.
- c) Berthing allocation and priority will be based on the overriding principle of "first come / first served" (measured from first to within a radius of 30 nautical miles from Point Lonsdale), and subject thereto, berthing allocations will be made having regard to the following:
 - i. Optimal safety in operations as well as accommodating the fastest possible turn-around of vessels;
 - ii. ETA to 30 nautical miles from Point Lonsdale based on 7 day, 3 day, 2 day and 1 day notice; and
 - iii. ETA to 30 nautical miles from Point Lonsdale based on (1) 12 hours' notice, (2) stevedore commencement times, and (3) best estimate of arrival time at the berth.
- d) It will be the shipping line's local representative's responsibility to notify the Terminals through EDI on actual time of arrival to 30 nautical miles from Point Lonsdale and of expected arrival at the Terminals. If the vessel is unable to work on arrival for whatever reason, or the stevedores have not been ordered to start



work on arrival or can't supply sufficient labour, priority will be given to the next vessel in line, and the vessel will be given priority according to when the vessel is able to work efficiently, or the stevedores will commence working on that vessel.

- e) Berthing will be allocated on the first available berth based upon estimated completion of operation and departure time. The stevedore and shipping line's representatives have a responsibility to advise the Terminals of any changes.
- f) Vessels that have been at anchor waiting berthing will be given berthing priority over vessels arriving within the 30 nautical miles radius from Point Lonsdale.
- g) Vessels transferring from other berths within the port will only be given berthing priority if they depart (time of casting of last line) their last berth prior to other vessels taking on a pilot (time of pilot boarding). Each shipping line's local representative is responsible for notifying the Terminals of any changes and the time of these actions.
- h) Any changes to announced times of a vessel that could affect the berthing priority of another vessel and are not notified to the Terminals, may lead to a change in allocation of berthing at the Terminal's discretion.

Berthing Priorities

General

Berthing allocations are generally conducted on a 'first booked, first served' basis.

Nominations and bookings are made by Ships Agents into the PKPC CPorts shipping management system. Vessels will be allocated a 'time slot' in the shipping schedule based upon slot availability, with due regard to other shipping bookings on either side and/ or the Vessel Cycling Table.

Conflict resolution

Any conflicts arising as a result of interpretations of these berthing priorities, or from any other circumstances involving shipping within port limits, shall be arbitrated by the Port Kembla Port Manager (or his authorised delegate) and the Port Manager's decision is final. The Port Manager may give directions pursuant to Part 7, sections 88 and 89 of the *Marine Safety Act 1998* (NSW).

Vessel Nomination

Agents may nominate a vessel for arrival to Port Kembla via CPorts even without a firm ETA known. While this may be useful for advanced planning, it does not constitute a confirmed vessel booking.

Vessel Booking

A booking must be made at least 48 hours prior to the desired Pilot embarkation time and confirmed 24 hours in advance.

Agents must confirm berth allocation with the Terminal prior to confirmation of the booking with PKPC (see additional berthing priority information below).

Additionally, the following information is to be supplied before a booking is confirmed:

- 48hr Pre-arrival Form;
- Tanker Checklist (if applicable);
- Crew List; and
- ISPS.

When the information above has been received and processed by VTIC, the booking will be confirmed. Once confirmed, the time slot is assigned to the ship.

Relinquishing a Pilot Booking

A booking can be relinquished under the following circumstances:

- Mutual agreement between agents and/or Terminals;
- Failure to undertake Pilotage within 15 minutes after the assigned time (or as determined by the Port Manager);

Berthing Priorities

- As requested by the Terminal due to internal booking assignments in accordance with their own operating procedures (see additional berthing priority information below), or
- As directed by the Port Manager.

For vessels that fail to undertake pilotage within 15 minutes of the assigned time, the vessel will be allocated a new time slot at the discretion of the Port Manager on a 'non-interference' basis to other shipping lines already booked in the schedule.

Seaworthiness and Compliance

No ship will be accepted for movement at Port Kembla where the ship is not seaworthy and/or not compliant with all International and National shipping standards, AMSA Marine Orders and federal / state legislative requirements.

Special attention is drawn to the requirements for the correct rigging of Pilot Ladders as required by SOLAS regulations and IMO standards.

Additional berthing priority information

AAT Terminal

Schedule 2 of the AAT Management Deed, as agreed between PKPC and AAT, provides for AAT to manage the allocation of berthing spaces for Berths 103, 105, 106 and 107, including vessel and berth assignment. AAT must inform PKPC VTIC of the preferred berthing sequence and berth allocations.

If required and available, B104 can be made available to AAT by PKPC so long as it does not adversely affect grain ships that ordinarily berth at B104.

Vessel priorities for AAT can be summarised as such:

- Two berths are dedicated for PCC/PCTC vessels and two berths are prioritised for General Cargo/Container vessels.
- Contract vessels have priority. However, non-contract vessels, once allocated a berth, shall not be operationally impacted by contract vessels.
- The wharf priorities detailed above will be maintained for a period of up to 8 hours over a vessel of lesser priority.
- Any vessel allocated a berth by AAT must complete all operations and vacate the wharf within the time allocated unless other arrangements have been made with AAT.
- Vessels alongside a berth and not working must give way to a working vessel requiring that berth.
- If no other berths are available in the port and a berth is required by PKPC for a vessel (non-cargo), then the PKPC Port Manager may direct that AAT make a wharf available to that vessel.

If there is a dispute between parties which cannot be resolved through normal mediation processes, the Port Manager will make the final decision on the matter.

Vessel Cycling

Berthing Priorities

PKPC CPorts system is operated in strict vessel cycling times in accordance with the table at the rear of this code.

The CPorts system will therefore only allow ship movements in accordance with the cycling times.

Cycling times are administered by the VTIC on behalf of the Port Manager.

Grain Terminal

Grain ships have priority over non-grain ships for berthing allocation at this berth. This protocol extends to non-grain ships that are already alongside the grain berth (working or not). Such vessels must vacate the berth at their own expense when provided with the required notice of an arriving grain ship (24 hours confirmed booking as per PKPC vessel booking requirements detailed above). Vessels that have not met the minimum 24 hour notice period will not take precedence over other vessels.

No grain ship has any right to hold the grain berth in the event it has failed survey and/or been declared unfit to load or cargo has not been consolidated for shipment. If a subsequent grain ship is waiting for the berth and cargo is available, the ship that has failed survey may be instructed to vacate the berth at its expense.

Deep Draft Ships

Deep Draft Ships are ships over 14m that require tidal windows for safe movement in and about the port. These vessels will be given priority for vessel movements when two vessels are competing for the same unallocated time slot in the shipping schedule.

It is imperative that accurate times for arrival and departure along with accurate drafts are submitted when booking a tidal affected ship. Failure to submit accurate information may result in the shipping movement being re-scheduled to the next suitable tidal window, possibly resulting in significant delays.



March 2013

**Australian Amalgamated Terminals
Fisherman Islands Berths 1-3 | Grain Berth
Berth Priority Arrangements**

1. Berth Priority

- (a) The rules for berthing priorities are set out below. Despite these rules, alternative schedules can be arranged subject to the agreement of all relevant shipping agents and their respective stevedores, and provided such alternative schedules do not interfere with the proper and efficient management of the berthing of vessels at the berths.
- (b) First priority for Berths 1 and 2 will be given to PCC/PCTC vessels discharging vehicles for processing at Fisherman Islands facilities.
- (c) PCC vessels will always retain a minimum priority to any two berths at Fisherman Islands.
- (d) The Grain Berth, if available and suitable, can be used in place of Berths 1 or 2, or in addition to Berths 1 and 2 when required for PCC/PCTC vessels.
- (e) First priority to Berth 3 will be given to RoRo, general break bulk and containerised cargo vessels currently discharging at Fisherman Islands Berth 1 to 3 and those cargo vessels transferring from Hamilton wharves as part of the Hamilton Relocation.
- (f) The berth priorities outlined in the paragraphs above will be maintained for up to 8 hours at the pilot station over a vessel of lesser priority. A lesser priority vessel will not be held off the berths awaiting the arrival of the first priority vessel for longer than 8 hours.
- (g) Thereafter, allocation of a berthing priority will be based on the order of arrival at the pilot station.
- (h) Each vessel must keep AAT informed of its schedule and regular updates as follows:
 - i. Long range schedule on a regular basis;
 - ii. Projected ETA at pilot at least 5 days prior to arrival;
 - iii. Estimated working arrangements, cargo type and volume 5 day prior to arrival;

- iv. Updated projected ETA at the pilot 48 hours prior to arrival;
 - v. Updated projected ETA at the pilot by 1100 on the day prior to arrival for discussion at the AAT Daily Operations Meeting; and
 - vi. Ships Agents are responsible to provide updates on projected ETA as it changes thereafter.
- (i) The projected ETA at pilot provided on the day prior to arrival will be used by AAT to establish the terminal working arrangements in consultation with the stevedores for the following day.
 - (j) Once the terminal working arrangements for the following day have been finalised and the stevedores have ordered their labour, no changes can be made to the working arrangements. If the stevedore is not able to provide sufficient labour to ensure the vessel is able to achieve the nominated ETD, AAT will reallocate the priority berth to another vessel, as determined at the AAT Daily Operations Meeting.
 - (k) MT will request that the agent make arrangements to remove the vessel to anchorage if the stevedore is unable to supply sufficient labour to work the vessel during operations (update made December 2012).
 - (l) If the weather forecast indicates weather conditions that are not conducive to sensitive cargoes (operational safety or cargo care) AAT has the ability to prioritise non-sensitive weather vessels (update made 2 March 2013).
 - (m) While projected ETA at the pilot will be used for berthing priority, vessels which arrive at the pilot and wait at anchor for cargo will use their cargo cut-off time as their pilot time. Vessels that transfer from another operational berth will use their ETD from that berth as their pilot time.
 - (n) The actual arrival time must be similar to the projected arrival time; delays due to ship breakdown or weather exempted.
 - (o) Cargo documentation necessary to discharge the vessel is complete and received at least 24 hours (excluding weekends and public holidays) before the ETA of the vessel.
 - (p) Vessel will be made ready to be worked immediately on arrival.
 - (q) Stevedores will commence work on vessel immediately once it is ready to be worked.

2 Berth Requirements

- (a) AAT will be responsible for the allocation of all berths at FI 1-3 / Grain Berth. In the interests of maintaining optimum operational efficiencies PBPL will be the final arbiter in any dispute which may arise in relation to allocation of a berth at Berths 1, 2, 3 and the Grain Berth. AAT will provide to PBPL a daily schedule and a berth requirement update to facilitate any subsequent arbitration regarding berth operations.
- (b) Vessels will be allocated a berth using due cognisance of the anticipated ship exchange period and which is conditional upon the vessel notification and arrival.

- (c) Any vessel allocated a berth must complete all operations and vacate the berth within the time applicable to the agreed working schedule unless other arrangements are made with AAT; provided these changes do not unfairly impact on the business of another party. Failure to agree alternative suitable arrangements may result in the application of penalties or additional charges.

Schedule 3 Key Performance Indicators

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

The Terminal Operators will report against these KPIs for each Terminal. The purpose of KPI reporting under this Undertaking is to monitor the Terminal Operators' compliance with their obligations in this Undertaking, including the Open Access Conditions, Berthing Allocation Rules, and ring-fencing obligations. Therefore, the KPIs are undertaking compliance tools, and will not be used to measure the performance of individual users of the Terminals.

KPI	Purpose	Calculation of KPI
1. Truck turnaround time	Assess the Terminal Operator'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 Terminal Operator'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 the truck departs the Terminal through the Terminal gate, for: (a) Automobiles; and (b) Break bulk cargo (including high and heavy cargo).
2. Yard dwell time (imports)	Assess the Terminal Operator'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. The Terminal Operator determines pick-up times.	Average time cargo units stay at the designated cargo pickup area of the Terminal, measured from announced time for pickup to actual pickup broken down by PDI operator (as applicable). The announced time is based on the earliest practical time it is possible for a truck to safely enter the designated cargo pickup area in the Terminal after the completion of vessel discharge operations, assuming all import documentation and clearances are complete.
3. Yard dwell time (exports)	Assess the Terminal Operator'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	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 broken down by PDI operator (as applicable). The announced cut-off time is based on the latest practical time it is possible for a truck to safely enter the designated

KPI	Purpose	Calculation of KPI
	cargo is ready to be loaded. The Terminal Operator determines cut-off times.	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 the Terminal Operator.	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, broken down by stevedore. Note: This excludes any change to berthing allocation caused or contributed to by the relevant shipping line (or its representatives) or matters not within the Terminal Operator's reasonable control.
5.	Mooring services Measure delays for mooring service providers due to change in allocated berth by the Terminal Operator.	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: This excludes any change to berthing allocation caused or contributed to by the relevant shipping line (or its representatives) or matters not within the Terminal Operator's reasonable control.
6.	Allocation of first point of rest area Assess the Terminal Operator's compliance with the Open Access Conditions by measuring the location of first point of rest for cargo. The Terminal Operator 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.
7.	Equipment availability Assess the Terminal Operator's compliance with the Open Access Conditions by measuring the availability of requested Terminal Operator equipment allocated to a stevedore or shipping line at the Terminal.	Deviation between Terminal Operator equipment requested by a stevedore or shipping line and actual machinery provided (including standard of equipment, age, type and capacity) to a stevedore or shipping line. Note: This KPI applies to equipment at the Terminal which is owned or controlled by the Terminal Operator and offered for use to stevedores or shipping lines.

KPI	Purpose	Calculation of KPI
8. Mechanical support	Assess the Terminal Operator's compliance with the Open Access Conditions by measuring the quality and reliability of mechanical support for Terminal Operator equipment at the Terminal.	Average lost time in excess of 1 hour due to failure of the Terminal Operator in providing mechanical breakdown support. Reported from time Mechanical Engineer officially notified to issue resolved (in total hours). Note: This excludes any faults or break-down caused or contributed to by the relevant user of the Terminal.
9. Cargo dwell time over free time / long term storage	Assess the Terminal Operator'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, the Terminal Operator 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 the Terminal Operator.	(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 the Terminal Operator's compliance with clause 6 of the Undertaking, regarding confidentiality and ring fencing. The Terminal Operator 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) The Terminal Operator's response to the reported complaints and breaches.
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 2.4 for the term of	(a) Number and type of complaints raised under the Price Dispute Resolution Process and Non-Price Dispute Resolution Process; and (b) Outcomes of the complaints raised.

KPI	Purpose	Calculation of KPI
12.	Self-Reported Non-Compliance Report on the number and type of self-reported instances of non-compliance with the terms of the Open Access Conditions in clause 5.	(a) Number and type of self-reported non-compliances with the terms of the Open Access Conditions; and (b) The outcome of any self-reported non-compliances.

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 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@acc.gov.au

Attention: Executive General Manager
Mergers, Exemptions and Digital Division

With a copy sent to:

Email address mergersru@acc.gov.au

Attention: Director Remedies Unit
Policy, Coordination and Remedies Branch
Mergers Exemptions and Digital Division

Information Required

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

- 1 Proposed Independent Auditor details:
 - (a) the name of the Proposed Independent Auditor; and
 - (b) the name of the Proposed Independent Auditor's employer and contact details including:
 - (i) address;
 - (ii) contact name;
 - (iii) telephone number; and
 - (iv) other contact details.
- 2 A submission containing the following information:
 - (a) details of the Proposed Independent Auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
 - (b) the names of the [owner/s and the directors (*delete any that do not apply*)] of the Proposed Independent Auditor's employer.

- (c) details of any of the following types of relationships between MIRRAT, 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, MIRRAT, Qube, or a Qube Related Entity and the Proposed Independent Auditor's employer are Associated Entities;
 - (ii) AAT, MIRRAT, 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, MIRRAT, Qube, or a Qube Related Entity;
 - (iv) AAT, MIRRAT, Qube, or a Qube Related Entity and the Proposed Independent Auditor's employer are Related Entities;
 - (v) AAT, MIRRAT, 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, MIRRAT, Qube, or a Qube Related Entity is a Related Party, Related Entity or Entity Connected with the Proposed Independent Auditor;
 - (vii) AAT, MIRRAT, 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, MIRRAT, Qube, or a Qube Related Entity or has been in the past three years;
 - (ix) AAT, MIRRAT, 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, MIRRAT, 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.

- 3 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 the Undertaking Parties' 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

This Price Dispute Resolution Process is intended to resolve disputes relating to the Charges levied by the Terminal Operator for the supply of Access Services at any of the Terminals and the introduction of new fees, charges, tariffs, or duties (however so described).

Non-Price Disputes are not governed by this process.

AAT and MIRRAT have committed to the ACCC (through the Undertaking) to comply with the obligations in clause 5 of the Undertaking and the Open Access Conditions in the performance of its obligations under this Price Dispute Resolution Process.

1 Objective

- (a) The Terminal Operator publishes on its website a rate card that separately identifies the Charges the subject of this Undertaking from any fees, charges tariffs or duties (however so described) levied by the Terminal Operator that are not Charges for each of the Terminals.
 - (b) The Terminal Operator will use this Price Dispute Resolution Process to notify any Change to Charges and resolve disputes relating to the Charges the Terminal Operator levies or will levy for Access Services.
 - (c) The Undertaking outlines how the Terminal Operator will deal with Confidential Information provided by users of the Terminals.
-

2 Annual price review

2.1 Review of Charges

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

2.2 Notice of Charges and any Changes

On or before 3 March each year, each Terminal Operator will provide notice of the proposed Charges for each Terminal applicable for the next Financial Year in accordance with clause 5 of Schedule 1 by:

- (a) publishing a proposed rate card that separately identifies the Charges the subject of this Undertaking from the fees, charges, tariffs or duties (however so described) levied by the Terminal Operator that are not Charges;
- (b) giving written notice to any person who has entered into an Access Licence Agreement at the Terminal, and to any person who has informed the Terminal Operator in writing that it wishes to be notified of the Charges or a Change to a Charge in respect of that Terminal;
- (c) publishing information about this Price Dispute Resolution Process (including that a Price Dispute can be raised in accordance with clause 3 of this Schedule 5) on its website; and

- (d) giving written notice to the Independent Price Expert.

2.3 Information about Changes to Charges

A notice provided under clause 2.2(a) must:

- (a) specify the amount of the proposed Charges including identifying any Changes that are proposed to be made to the Charges;
- (b) identify any new fees, charges, tariffs or duties (however so described) that the Terminal Operator considers not to be Charges and an explanation why these new fees, charges, tariffs or duties are, or are not considered to be Charges;
- (c) state the date on which the proposed Changes to Charges will take effect (if no such date is specified, the Changes to Charges will be deemed to take effect from 1 July in accordance with clause 4.1(b) of this Schedule 5);
- (d) contain detailed reasons for any proposed Change to the Charges including identification of all Changes and detailed reasons for each Change;
- (e) contain information about this Price Dispute Resolution Process (including that a Price Dispute can be raised in accordance with clause 3 of this Schedule 5 in relation to a Change to a Charge); and
- (f) contain the name and contact details of the Independent Price Expert.

2.4 Offer to negotiate

The Terminal Operator(s) will offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice in relation to a Change to a Charge notified under clause 2.2.

2.5 Approved Changes and existing Charges

- (a) A Price Dispute can be raised under clause 3.1 in respect of:
 - (i) a Change to a Charge; or
 - (ii) the proposed designation of a new fee, charge, tariff or duty (however so described) as not a Charge that is the subject of this Undertaking; or
 - (iii) any change made to a fee, charge, tariff or duty (however so described) which involves a change in the party on whom it is levied, or the circumstances in which it is otherwise payable, and as a consequence of which it becomes a Charge.
- (b) A Price Dispute cannot be raised under clause 3.1 in respect of:
 - (i) any Charge as specified on a rate card in respect of any of Port Kembla Terminal, Brisbane Terminal or Appleton Dock published as at the Control Date;
 - (ii) a proposed Change to a Charge of which notice has been given in accordance with clause 2.2 and which discloses that the Change has been approved or determined by the Independent Price Expert pursuant to clause 3.3;

- (iii) an existing Charge that the Terminal Operator is not proposing to Change; or
- (iv) an existing fee, charge, tariff or duty (however so described) that has not been identified as a Charge and is not a new fee, charge, tariff or duty that the Terminal Operator proposes to introduce (in accordance with clause 2.3(b)).

3 Price disputes

3.1 Raising a price dispute

- (a) If a Dispute Applicant objects to:
 - (i) a proposed Change to a Charge; or
 - (ii) the proposed designation of a new fee, charge, tariff or duty (however so described) as not a Charge that is the subject of this Undertaking,

in respect of which the Dispute Applicant has a genuine direct or indirect economic interest, it may raise a Price Dispute in respect of that relevant Charge or new fee, charge, tariff or duty by providing written notice to the Independent Price Expert and the Terminal Operator(s) by no later than 24 March of the relevant year (**Objection Notice**).
- (b) An Objection Notice must set out:
 - (i) the Charge(s) the relevant Terminal Operator proposes to Change in respect of which the dispute is raised or the new tariff(s) it proposes to implement;
 - (ii) for each of the disputed Charges or tariffs that the Terminal Operator proposes to Change, the genuine economic interest that the Dispute Applicant claims it holds in respect of that new tariff or Charge (or those Charges); and
 - (iii) the Dispute Applicant's reasons for:
 - (A) objecting to the Charge the Terminal Operator proposes to Change; or
 - (B) why the new fee, charge, tariff or duty (however so described) is a Charge.
- (c) A Dispute Applicant must provide a copy of the Objection Notice to the ACCC at the same time as it is provided under clause 3.1(a) to the Independent Price Expert and the Terminal Operator.
- (d) By submitting an Objection Notice, the Dispute Applicant agrees to comply with this Price Dispute Resolution Process.
- (e) A Dispute Applicant may at any time withdraw an Objection Notice by written notice to the Terminal Operator, the Independent Price Expert and the ACCC, in which case the powers and authority of the Independent Price Expert to make a determination of that Objection Notice under clause 3.3 cease.

3.2 Publication of Objection Notice

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

3.3 Independent Price Expert Determination

- (a) Where the Independent Price Expert has received an Objection Notice in relation to a Charge, the Independent Price Expert:
 - (i) will determine whether the Dispute Applicant holds a genuine direct or indirect economic interest in the disputed Charge that the Terminal Operator proposes to Change;
 - (ii) will determine whether the Terminal Operator's proposed Change:
 - (A) is reasonable and appropriate having regard to the principles listed in clause 3.4; and
 - (B) complies with the Terminal Operator'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
 - (iii) may accept, reject or vary the Terminal Operator's proposed Change to the relevant Charge or Changes.
- (b) Where the Independent Price Expert has received an Objection Notice in relation to a new fee, charge, tariff or duty (however so described) that has not been designated as a Charge, the Independent Price Expert:
 - (i) will determine whether the Dispute Applicant holds a genuine direct or indirect economic interest in the disputed new fee, charge, tariff or duty that the Terminal Operator proposes to not designate as a Charge; and
 - (ii) will determine whether the new fee, charge, tariff or duty should be designated as a Charge by determining whether it meets the requirements of a Charge as defined in this Undertaking; and
 - (iii) if the Independent Price Expert determines that the new fee, charge, tariff or duty should be designated as a Charge on the basis that it meets the requirements of the definition of a Charge, the Independent Price Expert can also and as part of the same dispute determine whether the Charge is reasonable and appropriate in accordance with clause 3.3(a).
- (c) Any variation of a Charge by the Independent Price Expert under clause 3.3(a) will not result in a Charge that is:
 - (i) higher than the Change to the Charges proposed by the Terminal Operator under clause 2.2; or
 - (ii) less than the then current Charges to the extent the Charge is already being levied by the Terminal Operator.
- (d) The Independent Price Expert will provide a copy of his or her determination and supporting reasons (including any modelling or quantification relied on in his or her

determination) subject to any confidentiality claims, to the Terminal Operator, the Dispute Applicant and the ACCC by 31 May each year.

- (e) In the event that the Independent Price Expert, acting reasonably, determines that an extension of time is necessary in order to make a determination in respect of the Price Dispute, they must notify each of the Terminal Operator, the Dispute Applicant and the ACCC of:
 - (i) the further period required, provided that this does not result in a determination being provided any later than 15 June in any year; and
 - (ii) the reasons justifying the required extension of time.
- (f) The Terminal Operator 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.
- (g) In the event that more than one Objection Notice is received in relation to a proposed Change to a Charge or a proposed new fee, charge, tariff or duty (however so described) that has not been designated as a Charge, the Independent Price Expert will make a single determination about that Charge or new fee, charge, tariff or duty.
- (h) The Independent Price Expert's decision is final and binding.
- (i) When making a determination under this clause 3.3, the Independent Price Expert is acting as an expert and not as an arbitrator.
- (j) In circumstances where the Terminal Operator considers that an Objection Notice does not concern matters that are properly the subject of an Objection Notice, the Independent Price Expert may:
 - (i) determine whether the matters fall within the proper scope of the subject of an Objection Notice under this Schedule 5; and
 - (ii) in making a determination under sub-clause (i), if the Independent Price Expert considers it necessary or desirable to do so, he or she may obtain external legal advice from an Australian Senior Counsel or King's Counsel of his or her choosing who has relevant expertise or experience (which will be shared with the Terminal Operator) to inform his or her decision.
- (k) Any decision of the Independent Price Expert under sub-clause (j) will be binding on the Terminal Operator and the parties who submitted the Objection Notice, subject only to any error of law or unless waived by the ACCC.

3.4 Relevant considerations

In determining whether a Change to 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;

- (ii) include a reasonable rate of return on the amount of funds invested commensurate with the commercial risks involved; and
 - (iii) in the case of Webb Dock West, also comply with the requirements in clause 3.5.
- (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) reasonably expected volumes over the period used to calculate the proposed increase in the Charge 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 a Terminal Operator at the Terminal, where:
 - (A) depreciation is based on a reasonable depreciation methodology and reasonably anticipated asset lives;
 - (B) the rate of return is a reasonable rate of return commensurate with the commercial risks involved including having regard, without limitation, to 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;
 - (vii) whether any Change is consistent with CPI Inflation; and
 - (viii) 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.

3.5 Pricing commitments following the MIRRAT Acquisition

In respect of Webb Dock West:

- (a) Charges as at the date of completion of the MIRRAT Acquisition ('**day 1 prices**') will reflect those tariffs levied by MIRRAT for substantially the same Access Services immediately prior to the Control Date (unless otherwise approved by the ACCC);

- (b) where a fee, charge, tariff or duty (however so described) forms part of day 1 prices, a Dispute Applicant can dispute the designation made by MIRRAT of that tariff, fee, charge or duty as being a Charge, or as not being a Charge, in the first rate card published following the Control Date, in accordance with the process set out in clause 3; and
- (c) following the MIRRAT Acquisition, any Change in Charges proposed by AAT for Webb Dock West under this Schedule 5 will be taken to be reasonable and appropriate provided that such Change in Charges must be set so as to generate expected revenue for Access Services that is at least sufficient to meet:
 - (i) any increase during the relevant period in the efficient costs of providing the Access Services as contemplated by clause 3.4(a)(i); and/or
 - (ii) any reasonably expected reduction of volumes for Access Services over the period used to calculate the proposed Change to the Charges, including where appropriate any split between committed / uncommitted volume and associated risks,

inclusive of a reasonable rate of return in accordance with clause 3.4(a)(ii).

- (d) if completion of the MIRRAT Acquisition occurs before 1 July 2025 and MIRRAT has, prior to the date of completion of that acquisition, proposed an amendment or increase to a Reference Tariff (as defined in the MIRRAT Undertaking) to take effect from 1 July 2025 (**Proposed MIRRAT Change**), the Terminal Operator may only implement the Proposed MIRRAT Change if:
 - (i) the Terminal Operator has designated whether the Reference Tariff is a Charge;
 - (ii) for Reference Tariffs which are designated as Charges, the Terminal Operator has issued a notice, which complies with the requirements of clause 2.3 of this Schedule 5 in respect of the Proposed MIRRAT Change (except in respect of the date required for notification under that clause);
 - (iii) the Terminal Operator has provided any Dispute Applicant with a period of 15 business days to indicate whether they propose to object to the Proposed MIRRAT Change, which may include disputing the designation by the Terminal Operator under sub-paragraph (i) above.
- (e) For the purposes of sub-clause (d) above, if a Dispute Applicant submits an Objection Notice in respect of the Proposed MIRRAT Change, the requirements in this Schedule 5 apply to that dispute. In determining whether to accept, reject or vary the Proposed MIRRAT Change, the Independent Price Expert must have regard to the matters set out in clauses 3.4 and 3.5 of this Schedule 5 as applicable to Webb Dock West.
- (f) If completion of the MIRRAT Acquisition occurs after 1 July 2025, the Terminal Operator may only implement a Proposed MIRRAT Change if MIRRAT has followed the process set out in the MIRRAT Undertaking for amending or increasing Reference Tariffs (as defined in the MIRRAT Undertaking). If any price dispute has been raised under the MIRRAT Undertaking but has not been finalised by the date of completion of the MIRRAT Acquisition, the Terminal Operator must not implement the Proposed MIRRAT Change.

- (g) For clarity, an Objection Notice cannot dispute the reasonableness or appropriateness of the quantum of day 1 prices, except in respect of a Proposed MIRRAT Change.

In respect of Port Kembla Terminal, Brisbane Terminal and Appleton Dock:

- (h) A Dispute Applicant can dispute the designation made by AAT of a tariff, fee, charge or duty as being a Charge, or as not being a Charge, in the first rate card published following the Control Date, in accordance with the process set out in clause 3.

3.6 Notice and publication of decision

- (a) The Independent Price Expert must notify:
 - (i) the Terminal Operator; and
 - (ii) any party that lodged an Objection Notice,of his or her determination under clause 3.3(a)(iii) as soon as practicable after making the determination.
- (b) Within 2 Business Days of receiving the determination, the Terminal Operator must:
 - (i) publish the Independent Price Expert's determination on its 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 the Terminal Operator and the Dispute Applicant, unless the Independent Price Expert determines, or the parties agree otherwise.
- (d) The Terminal Operator 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 Change or new tariff takes effect

4.1 Changes to Charges

- (a) In the absence of any Objection Notice submitted under clause 3.1 in relation to a Change to a specific Charge or Charges, the Change to the Charge takes effect from the date that the Terminal Operator notified under clause 2.2(a) that the proposed Change would take effect.
- (b) Unless otherwise specified by the Terminal Operator in the notice issued under clause 2.2(a), any Changes to Charges approved or determined by the Independent Price Expert under this Schedule 5 will take effect from 1 July and will apply in respect of that Financial Year.
- (c) For the avoidance of doubt, if an Objection Notice submitted under clause 3.1 relates to a specified Charge, the Terminal Operator may implement any Changes

proposed to Charges that are not the subject of the Objection Notice in accordance with clause 4.1(a) above.

4.2 New tariffs that are not designated as a Charge

- (a) In the absence of any Objection Notice submitted under clause 3.1 in relation to a new fee, charge, tariff or duty (however so described) that the Terminal Operator proposes to not designate as a Charge, the new fee, charge, tariff or duty takes effect from the date that the Terminal Operator notified under clause 2.2(a) that the proposed new tariff, fee, charge or duty would take effect.
- (b) Unless otherwise specified by the Terminal Operator in the notice issued under clause 2.2(a), any new fee, charge, tariff or duty (however so described) approved or determined by the Independent Price Expert to not be a Charge under this Schedule 5 will take effect from 1 July and will apply in respect of that Financial Year.
- (c) For the avoidance of doubt, if an Objection Notice submitted under clause 3.1 relates to a specified new fee, charge, tariff or duty (however so described), the Terminal Operator may implement any other new tariffs, fees, charges or duties that are not the subject of the Objection Notice in accordance with clause 4.1(a) above.

4.3 New tariffs or Changes to Charges that are the subject of an Objection Notice

- (a) The Change to a Charge or introduction of a new fee, charge, tariff or duty (however so described) that is the subject of an Objection Notice cannot be implemented or levied by the Terminal Operator until the Independent Price Expert makes a determination in accordance with clause 3.6(a) above.
- (b) The Terminal Operator may only implement or levy the Change to the Charge or the new fee, charge, tariff or duty (however so described) following notice and publication of the Independent Price Expert's determination and no earlier than 1 July of the relevant year.
- (c) The Terminal Operator is not permitted to backdate any Changes to Charges or new fees, charges, tariffs or duties that are the subject of an Objection Notice that has not been determined by the Independent Price Expert as at 1 July of the relevant year.

4.4 Reimbursement of any overpayment of Charges

- (a) Where the Independent Price Expert determines that there has been an overpayment resulting from payments made by a Service Provider of a Charge prior to determination of a Price Dispute, the Independent Price Expert may direct the Terminal Operator to reimburse any affected Service Providers the amount of that historical overpayment within 15 Business Days. For the avoidance of doubt, the Approved Independent Auditor may consider complaints regarding the Terminal Operator's compliance with this clause.

5 Definitions

In this Schedule 5, the following meanings will apply (unless the context otherwise indicates):

AAT has the meaning given in the Undertaking.

ACCC has the meaning given in the Undertaking.

Access Licence Agreement has the meaning given in the Undertaking.

Access Services has the meaning given in the Undertaking.

Approved Independent Auditor has the meaning given in the Undertaking.

Business Day has the meaning given in the Undertaking.

Change(s) means any of the following:

- (b) a new Charge the Terminal Operator proposes to introduce;
- (c) an increase to an existing Charge; or
- (d) a variation to the methodology used to levy, calculate or apply a Charge.

Charge(s) has the meaning given in the Undertaking.

Commencement Date has the meaning given the Undertaking.

Confidential Information has the meaning given in the Undertaking.

CPI Inflation means the percentage change in the Consumer Price Index (All Groups) for the weighted average of Australia's eight capital cities as published by the Australian Bureau of Statistics (ABS 6401.0) over the twelve months up to the December Quarter immediately prior to the commencement of the relevant financial year.

Dispute Applicant has the meaning given in the Undertaking.

Financial Year means a financial year ending 30 June.

Independent Price Expert has the meaning given in the Undertaking.

MIRRAT has the meaning given in the Undertaking.

MIRRAT Acquisition has the meaning given in the Undertaking.

Objection Notice has the meaning given in clause 3.1(a) of this Schedule 5.

Open Access Conditions has the meaning given in the Undertaking.

Price Dispute has the meaning given in the Undertaking.

Price Dispute Resolution Process has the meaning given in the Undertaking.

Proposed MIRRAT Change has the meaning given in clause 3.5(d) of this Schedule 5.

Qube Entity or Qube Entities has the meaning given in the Undertaking.

Service Provider has the meaning given in the Undertaking.

Terminal(s) has the meaning given in the Undertaking.

Terminal Licence has the meaning given in the Undertaking.

Terminal Operator(s) has the meaning given in the Undertaking.

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.

Webb Dock West has the meaning given in the Undertaking.

Schedule 6 Non-Price Dispute Resolution Process

1 Objective

- (a) The Undertaking Parties are committed to resolving all Non-Price Disputes proactively, constructively and in a timely and effective manner.
- (b) The Undertaking Parties will use this Non-Price Dispute Resolution Process to resolve disputes relating to matters other than Price Disputes and disputes regarding berthing decisions and compliance with the Berthing Allocation Rules (which will be resolved in clause 7.1(e)). For the avoidance of doubt, the Non-Price Dispute Resolution Process can be used to resolve disputes regarding the variation or proposed variation of the Berthing Allocation Rules (in accordance with clause 7.2).
- (c) The Undertaking outlines how the Undertaking Parties will deal with Confidential Information provided by users of the Terminal and Applicants.

2 Raising a Non-Price Dispute

2.1 Non-Price Dispute Notice

- (a) A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, MIRRAT, Qube or some combination or all of AAT, MIRRAT 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 and/or MIRRAT (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 Terminal or more than one Terminal;
 - (ii) the outcome sought by the Dispute Applicant in relation to the Non-Price Dispute; and
 - (iii) the action(s) 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.

2.2 Validity of a Non-Price Dispute Notice

- (a) In circumstances where a Dispute Respondent considers that a Non-Price Dispute Notice does not concern matters that are properly the subject of a Non-Price Dispute Notice, the Dispute Respondent must notify the Approved Independent Auditor within 7 Business Days and the Approved Independent Auditor may:
 - (i) determine whether the matters fall within the proper scope of the subject of a Non-Price Dispute Notice under this Schedule 6; and

- (ii) in making a determination under sub-clause (i), if the Approved Independent Auditor considers it necessary or desirable to do so, he or she may obtain external legal advice from an Australian Senior Counsel or King's Counsel of their choosing who has relevant expertise or experience (which will be shared with the Dispute Respondent(s)) to inform his or her decision.
- (b) Any decision of the Approved Independent Auditor under sub-clause 2.2(a) of this Schedule 6 will be binding on the Dispute Respondents and the Dispute Applicant, subject only to any error of law or unless waived by the ACCC.
- (c) The Approved Independent Auditor may, at its absolute discretion, refuse to accept a Non-Price Dispute Notice, or terminate a Non-Price Dispute, in circumstances where the Approved Independent Auditor determines that:
 - (i) the matters which are the subject of the Non-Price Dispute Notice have already been the subject of an earlier Non-Price Dispute Notice or have otherwise already been determined and require no further consideration; or
 - (ii) the subject matter of the Non-Price Dispute Notice is trivial, vexatious, misconceived, or not made in good faith.
- (d) A person may at any time withdraw a Non-Price Dispute Notice by notifying the Approved Independent Auditor in writing, in which case the Non-Price Dispute will cease.

2.3 Obligation on the Dispute Respondent(s) to engage

- (a) The Dispute Respondent must engage with this Non-Price Dispute Resolution Process unless there is a decision by the Approved Independent Auditor that the Non-Price Dispute is not within the scope of the Non-Price Dispute Resolution Process in accordance with clause 2.2(a).

3 Negotiation

- (a) Subject to sub-clause (b) below, within 7 Business Days of the Dispute Applicant providing the Dispute Respondent(s) a Non-Price Dispute Notice in accordance with clause 20 of the Undertaking, 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) Where the Dispute Respondent has referred a Non-Price Dispute Notice to the Approved Independent Auditor in accordance with clause 2.2(a), the time for compliance with sub-clause (a) above will be suspended until the Approved Independent Auditor makes a determination. If the Approved Independent Auditor determines that the Non-Price Dispute Notice concerns a matter that is properly the subject of a Non-Price Dispute Notice, then within 7 Business Days of the Approved Independent Auditor's determination, 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.
- (c) If the Non-Price Dispute is not resolved in accordance with clause 3(a) or 3(b) within 7 Business Days of the Dispute Applicant and the Dispute Respondent(s) meeting to conduct negotiations then the dispute will be referred to the Approved Independent Auditor for determination in accordance with clause 4.

4 Determination by Approved Independent Auditor

- (a) A Non-Price Dispute referred to under clause 3(c) of this Schedule 6 for determination by the Approved Independent Auditor will be conducted in accordance with the following provisions:
 - (i) the Approved Independent Auditor must act as quickly as a consideration of the Non-Price Dispute allows having regard to the need to properly enquire into and to fairly resolve the Non-Price Dispute;
 - (ii) the Approved Independent Auditor will present its determination of the Non-Price Dispute in draft form to the Dispute Respondent(s) and the Dispute Applicant within 10 Business Days of referral of the Non-Price Dispute Notice to the Approved Independent Auditor and allow them 5 Business Days to comment before making a final determination;
 - (iii) the Approved Independent Auditor will hand down a final determination in writing which includes its reasons for making the determination and findings within 10 Business Days of the expiry of the time provided to the Dispute Respondent(s) and Dispute Applicant to comment on the draft determination; and
 - (iv) subject to any claims for confidentiality over the Approved Independent Auditor's determination (which will be determined by the Approved Independent Auditor), any determination by the Approved Independent Auditor will be made available to the Dispute Applicant (and where they are an industry body, all of their relevant members) and the Dispute Respondents.
- (b) In the event that the Approved Independent Auditor, acting reasonably, determines that an extension of time is necessary in order to make a determination in respect of the Non-Price Dispute, they must notify the Dispute Applicant, the Dispute Respondent(s), and the ACCC of:
 - (i) the further period required; and
 - (ii) the reasons justifying the required extension of time.
- (c) In deciding a Non-Price Dispute, the Approved Independent Auditor will have regard to the objectives of the Undertaking set out in clause 2.4 of the Undertaking and may have regard to any other matters that he or she thinks are relevant.
- (d) In deciding a Non-Price Dispute, the Approved Independent Auditor 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) allow any other party to join or intervene in the adjudication process.
- (e) Subject to sub-clause 4(d), the Approved Independent Auditor may make any determination or direction in relation to the Non-Price Dispute that he or she considers appropriate, including as to the process by which the Non-Price Dispute is to be undertaken.

- (f) If a Dispute Applicant does not comply with a determination or direction of the Approved Independent Auditor, the Dispute Respondent(s) will not be obliged to continue to seek to resolve the matters subject of the Non-Price Dispute Notice.
- (g) The Dispute Respondent(s) will comply with the lawful determination or direction of the Approved Independent Auditor.
- (h) The Approved Independent Auditor's costs and the costs of the parties to the Non-Price Dispute will be borne by the Dispute Respondent(s) and the Dispute Applicant in such proportions as the Approved Independent Auditor determines. The Dispute Respondent(s) and the Dispute Applicant may make submissions to the Approved Independent Auditor on the issue of costs at any time prior to the Approved Independent Auditor's costs determination.
- (i) The Dispute Respondent(s) and the Dispute Applicant will indemnify the Approved Independent Auditor from any claims made against the Approved Independent Auditor arising in connection with the performance by the Approved Independent Auditor of their duties under this clause 4, such indemnity excluding circumstances where the conduct of the Approved Independent Auditor constitutes negligence (whether wilful or otherwise), dishonest or unlawful conduct.
- (j) The Approved Independent Auditor must include a copy of their determination with the next Audit Report.
- (k) The Approved Independent Auditor must notify the ACCC of the outcome of the Non-Price Dispute.

5 Definitions

In this Schedule 6, the following meanings will apply (unless the context otherwise indicates):

AAT has the meaning given in the Undertaking.

ACCC has the meaning given in the Undertaking.

Applicant has the meaning given in the Undertaking.

Approved Independent Auditor has the meaning given in the Undertaking.

Audit Report has the meaning given in the Undertaking.

Berthing Allocation Rules has the meaning given in the Undertaking.

Business Day has the meaning given in the Undertaking.

Confidential Information has the meaning given in the Undertaking.

Dispute Applicant has the meaning given in the Undertaking.

Dispute Respondent has the meaning given in clause 2.1(a) of this Schedule 6.

MIRRAT has the meaning given in the Undertaking.

Non-Price Dispute has the meaning given in the Undertaking.

Non-Price Dispute Notice has the meaning given in clause 2.1(a) of this Schedule 6.

Non-Price Dispute Resolution Process has the meaning given in the Undertaking.

Price Dispute has the meaning given in the Undertaking.

Qube has the meaning given in the Undertaking.

Terminal(s) has the meaning given in the Undertaking.

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

Undertaking Parties has the meaning given in the Undertaking.