
Summary of Australian Amalgamated Terminals Pty Ltd, Melbourne International RoRo & Auto Terminal Pty Ltd and Qube Holdings Limited's undertaking to the Australian Competition & Consumer Commission

(under section 87B of the *Competition and Consumer Act 2010* (Cth))

Background and objective

On 10 April 2025, the Australian Competition & Consumer Commission (**ACCC**) announced that it would not oppose the acquisition by Australian Amalgamated Terminals Pty Ltd (**AAT**) (a wholly-owned subsidiary of Qube Holdings Limited (**Qube**)) of Melbourne International RoRo & Auto Terminal Pty Ltd (**MIRRAT**) (the **Transaction**), subject to an undertaking given by AAT, Qube and MIRRAT (**the Undertaking Parties**) under section 87B of the *Competition and Consumer Act 2010* (Cth) (**Undertaking**).

The Undertaking contains obligations on the Parties to:

- not discriminate between terminal users in favour of their own interests in the automotive supply chain;
- provide for certain price and non-price dispute resolution processes;
- comply with access and berthing allocation rules, as well as ring fencing of certain confidential information and personnel;
- report periodically on their compliance with the undertaking and facilitate independent oversight (including by an independent auditor); and
- comply with restrictions on AAT's and MIRRAT's ability to introduce or change certain fees, charges, tariffs or duties (however so described).

The Undertaking is a publicly available document which is published on the ACCC's website. The full Undertaking can be accessed at: <https://www.accc.gov.au/public-registers/undertakings-registers/section-87b-undertakings-register/australian-amalgamated-terminals-pty-ltd-melbourne-international-ro-ro-auto-terminal-pty-ltd-and-qube-holdings-limited>

The Undertaking Parties are required to publish this plain English summary of the Undertaking's terms. However, parties considering their rights and obligations under the Undertaking should consult its terms and not rely on this summary which has only been prepared for ease of reference.

Open Access Conditions – Clause 5 and Schedule 1

AAT and MIRRAT (as the **Terminal Operators**) must comply with a number of general and specific principles governing non-discrimination in the way they operate the Terminals. These obligations ensure that the Terminal Operators do not discriminate between Qube (and its related entities which includes all related bodies corporate and any other entity that is controlled directly or indirectly by Qube - such as Qube Ports stevedoring or PrixCar PDI services) and other users of the terminal. The Terminal Operators' non-discrimination obligations are not limited to the provision of Access Services or Service Providers, meaning that all users of the Terminals receive the benefit of these protections and safeguards.

The general non-discrimination obligations include requirements on the Terminal Operators not to offer or supply:

- any services to any third parties on more favourable terms or a more favourable level of service on the condition that the third party is serviced by Qube (or a related entity);
- any services to a third party that are on less favourable terms because the third party acquires or has acquired services that are offered or supplied by a Service Provider that is not Qube (or a related entity);
- any services to Qube (or a related entity) which it does not also make available to any other Service Provider;
- any services to Qube (or a related entity) on terms or a level of service which are more favourable than the terms or level of service on which the service is made available to any other Service Provider.

Qube (and its related entities) must not to offer or supply any services to third parties which involve the bundling or tying of any service provided by a Terminal Operator with a service provided by Qube (or a related entity). This includes but is not limited to circumstances where Qube (or a related entity) provides an offer to supply a third party and the terms of supply are conditional on that third party also acquiring services from Qube (or a related entity).

The Undertaking also requires the Terminal Operators to levy all of their fees, charges, tariffs and duties to Qube (or any related entity) based solely on the current published rate card and without any discount, waiver or rebate. This is to ensure that every user of a Terminal is charged in the same way.

In addition to the general non-discrimination principles outlined above, the Undertaking also contains a number of specific rules for non-discrimination which further reinforce the general non-discrimination obligations (refer to clause 5.2 of the Undertaking).

Confidentiality and ring-fencing – Clause 6

Confidential Information

The Undertaking requires the Terminal Operators to take a number of steps to ensure the protection of any Confidential Information they obtain from users of a Terminal or an Applicant.

The measures in the Undertaking to protect Confidential Information include:

- AAT and MIRRAT can only require a user of a Terminal or an Applicant to provide Confidential Information if it is reasonably necessary for the operation of a Terminal, to assess the Applicant against the eligibility criteria for access, or as required by law or a government authority. AAT and MIRRAT cannot require a user of a Terminal or an Applicant to provide any Confidential Information about freight rates, terms and conditions agreed with a customer, the terms, duration or renewal of any freight contract, or any customer specific forecast of freight volumes;
- limits on the use and disclose of any Confidential Information of a user of a Terminal or an Applicant, including a requirement for the Terminal Operators to procure that their personnel only use Confidential Information for specified purposes; and
- requirements for the Terminal Operators to establish and maintain effective IT systems and security measures to safeguard Confidential Information.

To assist their personnel in comply with the confidentiality and ring-fencing obligations, the Terminal Operators are required to establish and maintain a confidentiality policy and appoint a Compliance Officer.

Ring-fencing of staff

The Undertaking also requires ring-fencing of Terminal Operator personnel who have management oversight of certain Terminal functions and operations from Qube and its related entities. These functions include oversight of berthing, operation of equipment or provisions of access, negotiation of any commercial arrangements with users of the Terminals, and managing the grant of security or other access to the Automotive Flyover at the Port of Brisbane. Terminal Operator Personnel undertaking these functions are restricted from being simultaneously employed or engaged by Qube (or any related entity).

Terminal Operator personnel who have had access to Confidential Information of users of a Terminal or Applicants also cannot, within six months of ceasing employment with AAT or MIRRAT, be re-employed by Qube (or its related entities) in a role that involves commercial dealings with customers acquiring stevedoring or PDI Operator Services within a Terminal.

Qube and the Terminal Operators are under express obligations to report any breaches of their confidentiality and ring-fencing obligations to the Approved Independent Auditor within 5 business days of becoming aware of the breach.

Berthing Allocation Rules – Clause 7 and Schedule 2

The Terminal Operators are required to comply with the Berthing Allocation Rules for each Terminal which are published in Schedule 2 of the Undertaking. These rules govern the berthing of vessels at the Terminals and may be varied from time to time in accordance with clause 7 of the Undertaking.

In their application of the Berthing Allocation Rules, the Terminal Operators must not:

- discriminate against or in favour of any shipping lines, PDIs or stevedores;
- discriminate between Service Providers in a manner that is inconsistent with the Berthing Allocation Rules; or
- engage in conduct for the purpose of preventing or hindering access to a Terminal by a shipping line in the exercise of a right of access to a Terminal.

Subject to any arrangements with the relevant port authorities, the Terminal Operators may vary the Berthing Allocation Rules from time to time if the variation is consistent with the objectives of the Undertaking and follows proper procedures as set out in the Undertaking. There is a process for stakeholders to raise concerns with, or dispute, any variation or a proposed variation of the Berthing Allocation Rules (under the Non-price Dispute Resolution Process) and to have any such dispute independently determined. This excludes amendments to the Berthing Allocation Rules that are required by the relevant Port Manager of a Terminal (such as for safety at a port). While disputes regarding variations to the Berthing Allocation Rules that are initiated by the Terminal Operators may be disputed under the Non-price Dispute Resolution Process (outlined further below), disputes regarding berthing decisions and the Terminal Operator's compliance with the Berthing Allocation Rules will be determined by the relevant Port Manager – see further information under the Non-Price Dispute Resolution section below).

Role of the Independent Auditor – Clause 9

The Undertaking Parties are required to appoint an Independent Auditor who must be approved by the ACCC (**Approved Independent Auditor**). The Approved Independent Auditor is responsible for monitoring the Undertaking Parties' compliance with the Undertaking, and for facilitating the prompt rectification of any identified issues regarding the Undertaking Parties' compliance with the Undertaking as well as resolving non-price related disputes under the Non-Price Dispute Resolution process in Schedule 6.

The Approved Independent Auditor will conduct audits of the Undertaking Parties' compliance with the Undertaking according to an audit plan that is approved by the ACCC (**Approved Audit Plan**) and produce an Audit Report with its findings to the ACCC. The Audit Reports will include a review of the Undertaking Parties' compliance with certain Key Performance Indicators published in Schedule 3 of the Undertaking. The Approved Independent Auditor will also conduct any Ad Hoc Investigations (see below under Non-Price Dispute Resolution section).

The Approved Independent Auditor may make recommendations to improve the Approved Audit Plan, the integrity of the auditing process, the Undertaking Parties' processes or reporting systems, the KPIs in Schedule 3, and the requirements and obligations included in the Undertaking in order to achieve the objectives of the Undertaking.

Price Dispute Resolution – Clause 10 and Schedule 5

The Terminal Operators are required to comply with the Price Dispute Resolution Process in Schedule 5 of the Undertaking in relation to:

- Charges for Access Services which means all compulsory fees or charges payable by a Service Provider to a Terminal Operator for Access Services. Service Providers include any stevedore, PDI operator, mooring services provider or any other user or Applicant at a Terminal, or which intends to operate at a Terminal, in competition with a Qube Entity (but does not include a shipping line). Charges will be identified as a charge that is regulated by the Undertaking in the Terminal Operator's published pricing.
- The introduction of any new fee, charge, tariff or duty howsoever described.

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 Qube (or its related entities).

Without limiting the definition of Access Services, as at the commencement of the 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.

Price Disputes will be resolved by the Independent Price Expert who is appointed by the Undertaking Parties with the ACCC's consent.

Annual Price review

The Terminal Operators will conduct an annual review of their Charges and may propose a Change which it considers reasonable and appropriate, taking into account certain relevant considerations in the Undertaking, and provided that the Terminal Operator complies with its obligations under any Terminal Licence.

A **Change** to a Charge means:

- A new Charge the Terminal Operator proposes to introduce;
- An increase to an existing Charge; or
- A variation to the methodology used to levy, calculate or apply a Charge.

On or before 3 March each year, the Terminal Operators will publish a notice of the proposed Charges for each Terminal applicable for the next Financial Year. The notice will be published on the Terminal Operator's website and sent to any person who has entered into an Access Licence Agreement, or informed the Terminal Operator in writing that they wish to be notified.

Price Disputes

A Price Dispute can be raised under the Price Dispute Resolution Schedule in the Undertaking in respect of:

- a Change to a Charge;
- the proposed designation of a new fee, charge, tariff or duty (however so described) as not a Charge that is subject to the Undertaking; or
- 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 it becomes a Charge.

A Dispute Applicant can raise a dispute by issuing an Objection Notice to the Independent Price Expert, the Terminal Operator(s) and the ACCC no later than 24 March of the relevant year. The Independent Price Expert's contact details will be published on the Terminal Operators' websites. The Dispute Applicant must have a genuine direct or indirect economic interest in respect of the relevant Charge or new or changed fee, charge, tariff or duty (however so described) it is disputing. A change 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.

The Terminal Operators will offer to negotiate with any Dispute Applicant who provides or proposes to provide an Objection Notice. Where the dispute is not resolved through negotiation, the Independent Price Expert will resolve the matters the subject of the Objection Notice in accordance with the published procedure in the Undertaking. Any decision of the Independent Price Expert 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.

Date Change or new tariff takes effect

In the absence of an Objection Notice, new fees, charges, tariffs or duties (however so described) that are not designated as a Charge and any Changes to a Charge will take effect from the date specified in the initial notice. Where a new fee, charge, tariff or duty (however so described) or a Change to a Charge is the subject of an Objection Notice, the Terminal Operator may only implement the new fee, charge, tariff or duty (however so described) or Change to a Charge following notice and publication of the Independent Price Expert's determination and no earlier than 1 July of the relevant year. The Terminal Operator is not permitted to backdate any new fees, charges, tariffs or duties (however so described) or Changes to Charges that have not been determined as at 1 July of the relevant year.

In the event that 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 Provider within 15 Business Days.

Non-Price Dispute Resolution – Clause 11 and Schedule 6

Resolving Non-Price Disputes

The Undertaking Parties must comply with a Non-Price Dispute Resolution process to resolve disputes that are not related to pricing in a proactive, constructive, and timely manner. The Non-Price Dispute Resolution Process will be used to resolve disputes relating to matters other than Price Disputes.

Disputes regarding berthing allocation decisions and compliance with the Berthing Allocation Rules may only be raised in some circumstances; the Non-Price Dispute Resolution Process can be used to resolve disputes regarding the variation or proposed variation of the Berthing Allocation Rules by the Terminal Operator. Disputes regarding berthing allocation decisions and the Terminal Operators' compliance with Berthing Allocation Rules may not be raised under the Non-Price Dispute Resolution Process. These disputes must be raised with the relevant Port Manager. The Terminal Operator is required under the Undertaking to comply with any written directions received from the relevant Port Manager. Disputes cannot be raised in relation to any variation to the Berthing Allocation Rules that is required to comply with a written direction from the relevant Port Manager.

A Dispute Applicant who wishes to raise a Non-Price Dispute with AAT, MIRRAT or Qube or some combination of the Undertaking Parties (**Dispute Respondent**) must do so within 6 months of the circumstances giving rise to the dispute by providing written notice (**Non-Price Dispute Notice**). The Non-Price Dispute Notice must include details of:

- the nature of the Non-Price Dispute including whether it is in respect of a single or multiple Terminals;
- the outcome sought by the Dispute Applicant; and
- the actions on the part of the Dispute Respondent(s) which the Dispute Applicant believes will resolve the dispute.

The Approved Independent Auditor also has ability to make a determination regarding the validity of a Non-Price Dispute Notice which will be binding on both the Dispute Respondent(s) and the Dispute Applicant. The Approved Independent Auditor may also refuse to accept a Non-Price Dispute Notice, or terminate a Non-Price Dispute, in circumstances where:

- the Approved Independent Auditor determines that 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
- the subject matter of the Non-Price Dispute Notice is trivial, vexatious, misconceived, or not made in good faith.

Within 7 business days of receiving a Non-Price Dispute Notice, representatives of each party will meet and undertake genuine good faith negotiations with a view to resolving the dispute expeditiously by joint discussion. Where the parties are unable to resolve the dispute, then the matter will be referred to the Approved Independent Auditor for determination. The Approved Independent Auditor will act as quickly as the dispute allows having regard to the need to properly enquire into and to fairly resolve the dispute. The Undertaking requires the Approved Independent Auditor to publish both a draft and final determination, and afford the parties an opportunity to comment on the draft determination before it is finalised.

Ad Hoc Investigations

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 the Undertaking may at any time, request in writing to the Approved Independent Auditor that they investigate the relevant concern. The person requesting the Ad Hoc Investigation may request that their request be kept confidential. This allows the party raising the dispute to keep their identity confidential from the Undertaking Parties.

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.