

ATTACHMENT B: KPI 10 - COMPLIANTS



**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 53 008 550 347

24 April 2017

Mr. Carl Millington
Independent Price Expert
Pitcher Partners
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Dear Mr. Millington

NOTICE OF OBJECTION

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing vehicle manufacturers and importers of passenger cars, light commercial vehicles, SUVs and motorcycles in Australia. On behalf of our members, the FCAI gives notice that we are lodging an objection to the 24 March 2017 notification by Australian Amalgamated Terminals (AAT) which proposes a 16% FAC rate increase to be applied at Fisherman Islands Cargo Terminal effective from 1 July 2017.

The FCAI notes that the ACCC Authorisation and the Undertaking requires AAT to provide, among other information, the reasons for the proposed price increase. FCAI has received a short note from AAT indicating:

- that property costs have increased significantly;
- they have a need to invest \$2.5m in capital expenditure on maintenance;
- they have lost income from sub-leases;
- that volumes of vehicles and project cargoes are depressed; and
- these occurrences have “adversely impacted earnings”.

FCAI is unable to ascertain the veracity of any of the claims in the above other than to note a slight decrease in motor vehicle imports through the Port of Brisbane. Sales of new motor vehicles in Queensland only decreased by 1.1% in the calendar year 2016 which brings into question the claim that the volumes are significantly depressed. A rough calculation indicates

that the loss of revenue to AAT through this decline in volume would be around A\$97,314. When the proposed price increase of A\$0.39 per cubic metre is applied to actual trade in 2016 this would equate to increased revenue of A\$1,363,202 from new motor vehicles. FCAI finds this disparity alarming.

With respect to property costs the FCAI understands that from time to time prices rise. However, the accumulation of costs due to internal management projections and an inability to maintain tenants and then group these with other externally induced price rises is inappropriate. The claim of a 30% cost increase over the last five years through the grouping of these issues does not provide a foundation from which to investigate the veracity of the claims. Further, with respect to the loss of revenue from a sub-lease, the FCAI understands that the tenant in question has always indicated a ten year term was appropriate and then they would relocate. This was known at the time AAT tendered for the rights to operate the terminal according to our information. To declare that this loss of rental revenue is recoverable from existing users of other areas within the terminal is quite ridiculous given the fixed term tenancy that was in place.

The rent increases applied by the Port of Brisbane are to our knowledge based on CPI. Again these cost increases are clearly costs that any budgeting process should take into account from the earliest consideration of the business case to operate the terminal. To claim CPI increases in rent are an unforeseen continuing escalation is a little stretched.

FCAI is also struggling to understand the relevance to the AAT reference to increased competition from other container terminal operators to increase the FAC for motor vehicles by some 16%. If the Undertaking is to operate in this manner then it effectively extends the consideration and impact of any decisions from being limited to the terminal operated by AAT. Clearly if the undertaking is used to apply a price increase based on increased competition from other container terminal operators (as per the AAT notice of 23 March 2017) then there is a fundamental failing from a very basic competition principles perspective. FCAI is not sure that other container terminal operators in the Port of Brisbane are aware that their market competitiveness for container trade may be directly impacted by an ACCC approved undertaking for trade in motor vehicle and project cargo at adjacent berths.

In respect of the claim that there is a need for capital investment of \$2.5m this is a cost that the FCAI understands was budgeted for in the bid process for the rights to operate the terminal. It is not new or unexpected. This is also relevant to the claim by AAT that the pricing model indicated that an 18% price increase was justified during the last review period. This is not the

case. AAT's assessment of the pricing model may have arrived at this figure but the independent pricing expert did not.

The FCAI members are of the view that a 16% increase in the FAC on top of the increase last year is beyond reasonable and reflects monopolistic rents attached to essential infrastructure such as ports.

Please contact me on 02 6229 8217 to arrange a suitable appointment to discuss the above.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tony McDonald', is positioned above the printed name.

TONY MCDONALD
Director, Industry Operations

cc: Mr Antony Perkins
Chief Executive Officer
Australian Amalgamated Terminals
PO Box 180
BROADWAY NSW 2007



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Australian Amalgamated Terminals Pty Ltd

First Independent Price Expert Determination

Schedule 5 of Undertaking to the Australian Competition and
Consumer Commission

4 August 2017

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About Pitcher Partners

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Mr. Antony Perkins
Chief Executive Officer
Australian Amalgamated Terminals Pty Ltd
Unit 61, The Hub 89-97 Jones Street, Ultimo, NSW, 2007

Dear Mr Perkins

**INDEPENDENT PRICE EXPERT DETERMINATION
Price Increase Proposed for Fisherman Islands, Brisbane**

This Determination has been made pursuant to Schedule 5 of the Undertaking to the Australian Competition and Consumer Commission Given under section 87B of the Competition and Consumer Act 2010 (Cth) by Australian Amalgamated Terminals Pty Ltd ACN 098 458 229 and Qube Holdings Limited ACN 149 723. All subsequent references to the Undertaking will be to Schedule 5 only, unless otherwise specified.

On 24 March 2017 AAT notified Terminal Users of proposed maximum tariffs that will apply to AAT terminals at Fisherman Islands in Brisbane, commencing 1 July 2017 ("**proposed price increases**"). In total one (1) written objection was received from Terminal Users within the time period allowed by the Undertaking.

The Undertaking provides as follows:

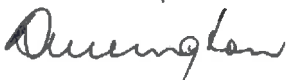
1. The Independent Price Expert must notify AAT and any party which lodged an objection to the proposed price increase of the Determination made under clause 3.3(a)(ii) as soon as practicable after making the determination;
2. The Independent Price Expert, in making this Determination, is acting as an expert and not an arbitrator;
3. Any determination or decision made by the Independent Price Expert is final and binding on AAT.

Submissions and Consultation

The submissions, assistance and information provided by the following interested parties is acknowledged and appreciated:

- AAT – as required by the Authorisation
- Federal Chamber of Automotive Industries ("**FCAI**")
- Port of Brisbane Pty Ltd ("**PBPL**")

Yours faithfully



Carl Millington
Approved Independent Price Expert

DETERMINATION

Determination by Approved Independent Price Expert

In accordance with Clause 3.5(a)(i) and (ii) of Schedule 5 of the Undertaking I hereby notify you of my Determination in relation to the proposed price increases advised by AAT to be effective from 1 July 2017. The original notification provided by AAT is attached as Annexure 2:

As the only Objection Notice I received related to the proposed increase in Facilities Access Charge ("FAC") my determination is limited to the FAC.

I have determined that the proposed price increases for FAC at Fisherman Islands as notified by AAT on 24 March 2017 are not reasonable and appropriate and have therefore set new prices as provided for by clause 3(a)(ii) of Schedule 5 of the Undertaking. The new prices as set out in the table below reflect a 0% increase over the existing prices compared to the 16% which was proposed by AAT.

<i>Fisherman Islands Cargo Terminal Berths 1 to 3 Port of Brisbane</i>	Pre 30 June 2017	Post- 30 June 2017	
	Actual	Proposed by AAT 16%	Determination 0%
FAC general cargo \$ per revenue tonne	6.40	7.41	6.40
FAC wheeled vehicles \$ per M ³	2.45	2.84	2.45
FAC RoRo general cargo	2.45	2.84	2.45

Annexure 1 – Independence Declaration

In conducting the Determination I have complied with the independence requirements of the conditions of authorisation and the Australian professional accounting bodies.

In accordance with 2.2.1(b) of the conditions of authorisation we declare that neither Pitcher Partners nor the Independent Price Expert:-

- (i) is a current employee or officer of AAT or its Related Bodies Corporate;
- (ii) is a person who has been an employee or officer of AAT or its Related Bodies Corporate in the past three years;
- (iii) is a person who holds a material interest in AAT or its Related Bodies Corporate;
- (iv) is currently, or has been in the past three years, a professional adviser of AAT or its Related Bodies Corporate;
- (v) is a person who has a contractual relationship, or is an employee or contractor of a firm or company that has a contractual relationship with AAT or its Related Bodies Corporate, but for the terms of this Approved Independent Price Expert agreement with AAT;
- (vi) is a supplier, or a person who is an employee or contractor of a firm or company that is a supplier of AAT or its Related Bodies Corporate; or
- (vii) is a material customer of, or a person who is an employee or contractor of a firm or company that is a material customer of, AAT or its Related Bodies Corporate.



CARL MILLINGTON

Director

PPNSW Services Pty Limited

Sydney, 4 August 2017