



Our ref: 212480

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20 December 2021

Mr Shannon Curran
Commercial Manager
Port of Portland Pty Ltd



Dear Mr Curran

Re: Port of Portland – Non-compliance with subclause 25(2) of the Port Terminal Access (Bulk Wheat) Code of Conduct

Thank you for your letter of 29 October 2021 in response to the Australian Competition and Consumer Commission's (ACCC) request for information regarding Port of Portland Limited's (POPL) capacity allocation process for the 2021-22 shipping year.

The purpose of this letter is to set out the ACCC's intention not to take further action at this time regarding POPL's non-compliance with subclause 25(2) of the *Port Terminal Access (Bulk Wheat) Code of Conduct* (the Code), which applies to POPL as a non-exempt 'port terminal service provider' (PTSP).

As POPL is a non-exempt PTSP, it must comply with the obligations in Parts 1 to 6 of the Code. This letter further sets out the ACCC's expectation that POPL will comply with these obligations, and requests that POPL provide a written commitment to the ACCC regarding its intention to comply with its obligations under the Code.

No further action to be taken regarding POPL's breach of subclause 25(2) of the Code in October 2021

The ACCC has considered the conduct and outcomes in relation to POPL's 2021-22 capacity allocation process. The ACCC considers the release of capacity on 1 October 2021 for shipping slots out to 30 June 2022 breached subclause 25(2) of the Code, as POPL allocated capacity more than 6 months in advance without its capacity allocation system having been approved by the ACCC. However, the ACCC has considered the outcomes of this process as well as the reasoning provided in POPL's letter of 29 October 2021 to the ACCC and has decided not to take further action at this time.

Obligation under subclause 25(2) of the Code

While the ACCC will not be taking action against POPL in relation to this breach, this does not mean that the ACCC will not take future action should a further breach occur. It is important that POPL complies with subclause 25(2) of the Code going forward. Subclause

25(2) of the Code provides that a PTSP's capacity allocation system must not allocate capacity more than 6 months in advance unless that capacity allocation system has been approved by the ACCC in accordance with subclause 25(3) of the Code, or is taken to be approved by the ACCC under subclause 25(5) of the Code.

Should POPL wish to allocate capacity more than 6 months in advance, the ACCC invites POPL to submit an application for approval of a proposed capacity allocation system to the ACCC. Further information on the capacity allocation system application and assessment process is available on our website.¹

The ACCC welcomes the further development of competition in the bulk grain export market at the Port of Portland. The increased availability of capacity in the market should provide access seekers further grain marketing and export opportunities. When conducting a capacity allocation process, POPL should be mindful of access seekers planning considerations. It is important that POPL ensure industry is kept informed of POPL's intentions to release capacity and that due notice is provided to industry ahead of further capacity allocation processes. In addition, this information should be clearly reflected on POPL's website.

Other ongoing Code obligations

The ACCC also reminds POPL of the other obligations under the Code which apply to non-exempt PTSPs. As a non-exempt PTSP, POPL must comply with all obligations in Parts 1 to 6 of the Code.

Commitment from POPL to comply with its Code obligations

As noted above, the ACCC requests that POPL respond to this letter with a written commitment to comply with its obligations under the Code.

In the interests of transparency, the ACCC intends to publish on its website both this letter and POPL's response outlining its commitment to comply with its obligations under the Code.

Assessment of POPL's exemption application.

Separately, the ACCC notes it is progressing its assessment of POPL's application for exemption from Parts 3 to 6 of the Code in relation to its shiploading arrangements at the Port of Portland. The ACCC will update POPL and stakeholders on the outcomes of the exemption assessment in early 2022.

Yours sincerely



Mr Matthew Schroder
General Manager
Infrastructure & Transport Branch, Infrastructure Division

¹ See: <https://www.accc.gov.au/publications/process-guidelines-for-approving-capacity-allocation-systems>