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By email

Mr Richard Bailey
Managing Director
MIRRAT
46 Kooringa Way
Port Melbourne VIC3207
Email: Richard.bailey@mirrat.com.au

Copy: Kym Fraser Michael Corrigan
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Confidential

Dear Mr Bailey

MIRRAT purported notification of increased terminal charges at Port of Melbourne

We act for Qube Ports Pty Ltd (**Qube**).

We refer to the stevedore licensing agreement (**SLA**) entered into by Qube with MIRRAT dated 13 April 2017. We note that MIRRAT publishes a schedule of charges that apply under the SLA in respect of its terminal activities at the Port of Melbourne and under which MIRRAT has levied charges on Qube since that date.

We understand that MIRRAT undertook a review of tariffs during 2017 and, in November 2018, you notified Qube of an increase to its charges which MIRRAT indicated would take effect from 1 January 2018 (**2018 Notification**). Your notification of the increased charges makes reference to the charges “*taking into consideration the costs associated with commencement of full operations*” at Webb Dock West. No detail or evidence was provided to enable Qube to verify that the increased charges reflect MIRRAT’s increased costs, as claimed.

In respect of the purported increase in charges reflected in the 2018 Notification, we note that:

- (a) The timing of the purported increase is inconsistent with the timing of any rate changes (and associated notices) required under the section 87B undertaking governing MIRRAT’s activities at the Port of Melbourne (**MIRRAT Undertaking**), accepted by the ACCC on 27 March 2014.

Clause 11.1 of the MIRRAT Undertaking requires MIRRAT to comply with the price dispute process set out in Schedule 6. Schedule 6 specifies the process and timeframes required for notifying any increase in charges at the terminal. Charges are to be increased annually and will only be effective from the commencement of each Financial Year (Schedule 6, clause 2.2). There is no provision for charges to be increased on a calendar year basis as appears to have been the intent with the 2018 Notification.

To the extent that MIRRAT has purported to increase charges in a manner that is directly inconsistent with the operation of the MIRRAT Undertaking, Qube considers that the increase in charges is invalid and unenforceable. We draw your attention to clause 1.2(n) of the SLA.

In the circumstances, our client has continued to pay the amount of any charges validly levied (in accordance with the 2017 rate card) but has not paid the invalid amount of any increases specified in the 2018 Notification.

- (b) Should the purported increases be found to be valid, notwithstanding its failure to comply with the timeframes specified in Schedule 6 of the MIRRAT Undertaking, Qube will exercise its right to refer all of the rates set out in the 2018 Notification to expert determination in accordance with the process specified in Schedule 6 of the MIRRAT Undertaking. This would extend to the SAC, FAC and all other notified charges.

We note, for completeness, that Qube does not accept that the MIRRAT Undertaking took effect on and from 1 January 2018. It is clear that:

- terminal services have been provided by MIRRAT throughout 2017 under the SLA; and
- the 2018 Notification relates to an increase in charges already paid by Qube.

Amongst other things, this is clear from correspondence between you and Qube, including your letter dated 11 December 2017.

Qube recognises the importance of maintaining a constructive commercial relationship with MIRRAT. We therefore invite you to reconsider the timing of the proposed increase in charges set out in the 2018 Notification. To the extent that MIRRAT continues to wish to press for the increases, this should be done by no later than 60 days before the end of the current Financial Year as required by clause 2.2, Schedule 6 of the MIRRAT Undertaking.

Please refer correspondence in relation to this matter to us.

Qube reserves its rights.

Yours sincerely

A handwritten signature in blue ink that reads 'Gilbert + Tobin'.

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