

1 October 2004

Our ref : GDS  
Matter no : 8934640

Mr Tim Grimwade  
General Manager, Adjudication  
Australian Competition and Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

Dear Mr Grimwade

**Port Waratah Coal Services Limited - Applications for authorisation**

Hunt and Hunt acts for Port Waratah Coal Services Limited (“PWCS”) in this matter.

**1. Applications for authorisation**

PWCS applies for authorisation pursuant to sub-sections 88(1) and 88(7) of the *Trade Practices Act 1974* (Cth) (“TPA”) for the making of, or giving effect to, any contract, arrangement or understanding involving PWCS and any producer of coal for export through the Port of Newcastle, or exporter or exporters of coal through the Port of Newcastle (whether they are shareholders in PWCS or not), which relates to or is in any way associated with the proposed medium term capacity distribution system that is described in the attached supporting submission and which may constitute:

- exclusionary provisions within the meaning of section 45 of the TPA;
- a provision having the effect of substantially lessening competition within the meaning of section 45 of the TPA; and
- a provision to which sections 45D, 45DA or 45DB of the TPA might apply.

Please also note that the Parties are seeking an interim authorisation.

We enclose:

- (a) a non-confidential supporting submission to the Commission;
- (b) a confidential supporting submission to the Commission containing commercially sensitive information over which confidentiality is sought;

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- (c) Forms A, B and D, the application forms prescribed by regulation for authorisation of exclusionary provisions, agreements affecting competition and boycotts; and
- (d) a cheque for \$10,500.

## 2. Confidentiality

The supporting submission contains some commercially sensitive and confidential information. Pursuant to section 89(5) of the TPA, the Parties request that the Commission exercises its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3).

Accordingly, for the Commission's convenience we have provided a non-confidential version of the supporting submission from which the confidential material referred to above has been deleted and marked "[Confidential - information deleted"].

Should you have any questions relating to this application, please do not hesitate to contact me.

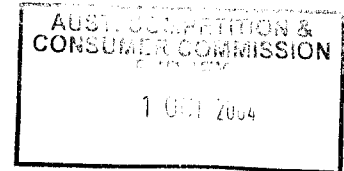
Yours faithfully  
**HUNT & HUNT**



**Grant Sefton**  
Partner

Direct line: (02) 4925 5504  
Email: [grant\\_sefton@hunthunt.com.au](mailto:grant_sefton@hunthunt.com.au)

**FORM A**



COMMONWEALTH OF AUSTRALIA

A30236

*Trade Practices Act 1974 - Subsection 88(1)*

**EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

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1. (a) **Name of applicant:**

Port Waratah Coal Services Limited ACN 001 363 828 (“PWCS”).

(b) **Short description of business carried on by applicant:**

PWCS owns and operates the Carrington and Kooragang Island export coal loading terminals at the Port of Newcastle in New South Wales. Currently, all coal exported from the Hunter Valley in New South Wales is shipped through PWCS at the Port of Newcastle.

PWCS provides coal handling services to those coal exporters, including the receiving and unloading of coal, the storage of coal and the loading of coal onto vessels for export from the Port of Newcastle.

(c) **Address in Australia for service of documents on the applicant:**

Port Waratah Coal Services Limited  
C/- Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
**Attention:** Mr G D Sefton, Partner.

2. (a) **Brief description of contract, arrangement or understanding and, where already made, its date:**

The making of, or giving effect to, any contract, arrangement or understanding involving PWCS and any producer of coal for export through the Port of Newcastle, or exporter or exporters of coal through the Port of Newcastle (whether they are shareholders in PWCS or not) which relates to, or is in any way associated with, the proposed medium term capacity distribution system, which is described in the attached submission.

(b) **Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:**

In accordance with the contracts, arrangements or understandings described in 2(a) above, the applicant and the parties referred to in 2(c) below may, from time to time, make and/or give effect to contracts, arrangements or understandings that are, or may be exclusionary provisions within the meaning of section 45 and section 4D of the *Trade Practices Act 1974* (Cth) in connection with the supply and/or acquisition of coal handling services at the Port of Newcastle, in particular arising from the proposed auction system or capacity distribution system, which is described in the attached submission.

(c) **Names and addresses of other parties or proposed parties to contract, arrangement or understanding:**

Any exporter of coal for export through the Port of Newcastle or exporter of coal from the Port of Newcastle may be a party to a contract, arrangement or understanding referred to in 2(a). These exporters include the shareholders in PWCS and Newcastle Coal Shippers Pty Limited listed in Attachment A to this application.

3. **Names and addresses (where known) of parties and other persons on whose behalf application is made:**

Not applicable.

4. (a) **Grounds for grant of authorisation:**

Refer to submission attached.

(b) **Facts and contentions relied upon in support of those grounds:**

Refer to submission attached.

5. **This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.**

(a) **Is this application to be so expressed?**

No.

(b) **If so, the following information is to be furnished:**

(i) **the names of the parties to each other contract, arrangement or understanding:**

Not applicable.

(ii) **the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:**

Not applicable.

6. (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

Yes. PWCS is an incorporated joint venture between the companies listed in Attachment A to this application.

(b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

No.

(c) **If so, by whom or on whose behalf are those other applications being made?**

No.

7. **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

(a) Mr Mark Eames  
General Manager, Planning & Logistics  
Port Waratah Coal Services Limited  
PO Box 57  
Carrington NSW 2294  
Telephone: (02) 4907 2000  
Facsimile: (02) 4907 3000

(b) Mr Grant Sefton  
Partner  
Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
Telephone: (02) 4925 5500  
Facsimile: (02) 4925 5599

Dated: 1 October 2004

Signed by/on behalf of the applicant

*R. D. Sefton*

(Signature)

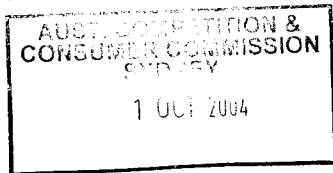
*GRANT DAVID SEFTON*

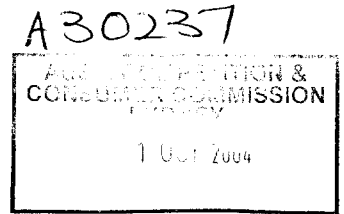
(Full Name)

*PARTNER, HUNT & HUNT*

(Description)

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**FORM B**

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Subsection 88(1)*

**AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR  
AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

---

1. (a) **Name of applicant:**

Port Waratah Coal Services Limited ACN 001 363 828 ("PWCS").

(b) **Short description of business carried on by applicant:**

PWCS owns and operates the Carrington and Kooragang Island export coal loading terminals at the Port of Newcastle in New South Wales. Currently, all coal exported from the Hunter Valley in New South Wales is shipped through PWCS at the Port of Newcastle.

PWCS provides coal handling services to those coal exporters, including the receiving and unloading of coal, the storage of coal and the loading of coal onto vessels for export from the Port of Newcastle.

(c) **Address in Australia for service of documents on the applicant:**

Port Waratah Coal Services Limited  
C/- Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
**Attention:** Mr G D Sefton, Partner.

2. (a) **Brief description of contract, arrangement or understanding and, where already made, its date:**

The making of, or giving effect to:

- any contract, arrangement or understanding involving PWCS and any producer of coal for export through the Port of Newcastle, or exporter or exporters of coal through the Port of Newcastle (whether they are shareholders in PWCS or not);
- which relates to, or is in any way associated with, the proposed medium term capacity distribution system, which is described in the attached submission; and
- a provision of which would have the purpose or would have the effect of substantially lessening competition within the meaning of section 45 of the *Trade Practices Act 1974*.

(b) **Names and addresses of other parties or proposed parties to contract, arrangement or understanding:**

Any producer of coal for export through the Port of Newcastle or exporter of coal from the Port of Newcastle may be a party to a contract, arrangement or understanding referred to in 2(a). These exporters include the shareholders in PWCS and Newcastle Coal Shippers Pty Limited listed in Attachment A to this application.

3. **Names and addresses (where known) of parties and other persons on whose behalf application is made:**

Not applicable.

4. (a) **Grounds for grant of authorisation:**

Refer to submission attached.

(b) **Facts and contentions relied upon in support of those grounds:**

Refer to submission attached.

5. **This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the above-mentioned contract, arrangement or understanding.**

(a) **Is this application to be so expressed?**

No.



**(b) If so, the following information is to be furnished:**

**(i) the names of the parties to each other contract, arrangement or understanding:**

Not applicable.

**(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application:**

Not applicable.

6. **(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

Yes. PWCS is an incorporated joint venture between the companies listed in Attachment A to this application.

**(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

No.

**(c) If so, by whom or on whose behalf are those other applications being made?**

No.

7. **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

(a) Mr Mark Eames  
General Manager, Planning & Logistics  
Port Waratah Coal Services Limited  
PO Box 57  
Carrington NSW 2294  
Telephone: (02) 4907 2000  
Facsimile: (02) 4907 3000

(b) Mr Grant Sefton  
Partner  
Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
Telephone: (02) 4925 5500  
Facsimile: (02) 4925 5599

Dated: 1 October 2004

Signed by/on behalf of the applicant

*P. D. Sefton*

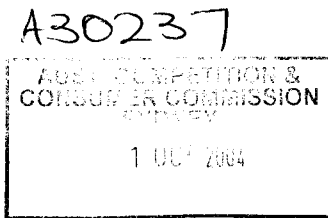
(Signature)

*GRANT DAVID SEFTON*

(Full Name)

*PARTNER, HUNT & HUNT*

(Description)



**FORM D**

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Subsection 88(7)*

**BOYCOTTS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(7) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to engage, in concert with other persons, in conduct that hinders or prevents, or may hinder or prevent, a third person supplying goods or services to, or acquiring goods or services from, a fourth person.
- to engage, in concert with other persons, in conduct that prevents or substantially hinders, or may prevent or substantially hinder, a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

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1. (a) **Name of applicant:**

Port Waratah Coal Services Limited ACN 001 363 828 (“PWCS”).

(b) **Short description of business, activity or occupation carried on by applicant:**

PWCS owns and operates the Carrington and Kooragang Island export coal loading terminals at the Port of Newcastle in New South Wales. Currently, all coal exported from the Hunter Valley in New South Wales is shipped through PWCS at the Port of Newcastle.

PWCS provides coal handling services to those coal exporters, including the receiving and unloading of coal, the storage of coal and the loading of coal onto vessels for export from the Port of Newcastle.

(c) **Address in Australia for service of documents on the applicant:**

Port Waratah Coal Services Limited  
C/- Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
**Attention:** Mr G D Sefton, Partner.

2. (a) **Description of conduct proposed to be engaged in:**

The making of, or giving effect to, any contract, arrangement or understanding to which sections 45D, 45DA or 45DB of the *Trade Practices Act 1974* might apply involving PWCS and any producer of coal for export through the Port of Newcastle, or exporter or exporters of coal through the Port of Newcastle (whether they are shareholders in PWCS or not) which relates to, or is in any way associated with, the proposed medium term capacity distribution system, which is described in the attached submission.

(b) **Number of persons proposing to engage, in concert, in that conduct:**

Any exporter of coal from the Port of Newcastle may be a party to a contract, arrangement or understanding referred to in 2(a). These exporters include the shareholders in PWCS and Newcastle Coal Shippers Pty Limited listed in Attachment A to this application.

**Where number of persons stated in item 2(b) is less than 50, their names and addresses:**

See above.

3. **Name and address of third person whose supply or acquisition of goods or services, or whose trade or commerce involving the movement of goods overseas, is to be, or may be, hindered or prevented by the conduct:**

In accordance with the contracts, arrangements or understandings described in 2(a) above, the parties referred to in 2(b) above may, from time to time, be hindered or prevented in relation to the export of coal through PWCS's coal handling facilities at the Port of Newcastle.

4. **Name and address of person to or from whom, or the place to or from which, supply or acquisition of goods or services is to be, or may be, hindered or prevented by the conduct:**

See 3 above.

5. **Names and addresses of persons on whose behalf application is made:**

Port Waratah Coal Services Limited  
PO Box 57  
Carrington NSW 2294

6. (a) **Grounds for grant of authorisation:**

Refer to submission attached.

(b) **Facts and contentions relied upon in support of those grounds:**

Refer to submission attached.

7. (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?**

Yes. PWCS is an incorporated joint venture between the companies listed in Attachment A to this application.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Yes - see attached submission.

- (c) **If so, by whom or on whose behalf are those other applications being made?**

No.

8. **Name and address of person authorised by the applicant to provide additional information in relation to this application:**

- (a) Mr Mark Eames  
General Manager, Planning & Logistics  
Port Waratah Coal Services Limited  
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- (b) Mr Grant Sefton  
Partner  
Hunt & Hunt, Lawyers  
PO Box 492  
Newcastle NSW 2300  
Telephone: (02) 4925 5500  
Facsimile: (02) 4925 5599

Dated: 1 October 2004

Signed by/on behalf of the applicant

*Grant Sefton*

(Signature)

*GRANT DAVID SEFTON*

(Full Name)

*PARTNER, HUNT & HUNT*

(Description)

