



Neel Stevens / Martin Summons

Mr Scott Gregson
General Manager, Adjudication
Australian Competition & Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

5 April 2005

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

Dalrymple Bay Coal Terminal Pty Limited - Applications for authorisation

We act for Dalrymple Bay Coal Terminal Pty Limited ("DBCTPL") in this matter. DBCTPL operates the Dalrymple Bay coal loading terminal ("Terminal") at the Port of Hay Point, South of Mackay in Queensland. DBCTPL operates the Terminal under a contract with the lessee of the Terminal, Prime Infrastructure.

The Terminal is Queensland's largest coal export terminal and provides coal handling services to export coal producers in the Bowen Basin region of Queensland.

1 Applications for authorisation

DBCTPL 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 DBCTPL and any producer of coal for export through the Terminal, or exporter or exporters of coal through the Terminal (whether they are shareholders in DBCTPL or not) or any other party, which relates to or is in any way associated with the proposed queue management 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 DBCTPL is 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;
- (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, DBCTPL requests 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 relation to this application, please do not hesitate to contact me.

Yours sincerely



Dave Poddar
Partner
Direct line +61 2 9296 2281
Email dave.poddar@malleasons.com

FORM B

Regulation 7

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.
- * (strike out whichever is not applicable)

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1 (a) **Name of applicant**

Dalrymple Bay Coal Terminal Pty Ltd ACN 010 268 167 (“**DBCTPL**”).

(See Direction 2 on the back of this Form)

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

DBCTPL operates the Dalrymple Bay coal loading terminal (“**Terminal**”) at the Port of Hay Point, south of Mackay in Queensland. DBCTPL operates the Terminal under a contract with the lessee of the Terminal, Prime Infrastructure.

The Terminal is Queensland’s largest coal export terminal and provides coal handling services to export coal producers in the Bowen Basin region of Queensland.

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

Dalrymple Bay Coal Terminal Pty Ltd
 Martin Armstrong Drive
 Hay Point, QLD 4740
 Attention: Dr Andrew Carter, General Manager

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

Any contract, arrangement or understanding:

- which relates to, or is in any way associated with, the proposed queue management 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**

Prime Infrastructure (DBCT) Management Pty Limited, Prime Infrastructure (DBCT) Investment Services Limited as well as any producer of coal for export through the Terminal or exporter of coal from the Terminal may be a party to a contract, arrangement or understanding referred to in 2(a). These include the shareholders in DBCTPL listed in the attached submission, and the owners and operators of the mines that ship coal through the Terminal listed in the attached submission.

(See Direction 4 on the back of this Form)

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.

(See Notice 1 on the back of this Form)

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.

(See Direction 5 and Notice 2 on the back of this Form)

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

Yes. DBCTPL is an incorporated joint venture between its shareholder companies (listed in the attached submission).

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

Not applicable.

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

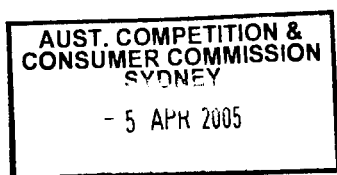
Not applicable.

- 7 **Name and address of person authorized by the applicant to provide additional information in relation to this application**

Dr Andrew Carter, General Manager,
Dalrymple Bay Coal Terminal Pty Ltd
Martin Armstrong Drive
Hay Point, QLD 4740

Mr Dave Poddar, Partner
Malleons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dated: 5 April 2005



Signed on behalf of the applicant

A handwritten signature in dark ink, appearing to be "DP" or "Dave Poddar", written over a dotted line.

Dave Poddar
Partner
Malleons Stephen Jaques

DIRECTIONS

- 1 Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 2 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the application and the application is to be signed by a person authorized by the corporation to do so.
- 3 In item 1(b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
- 4 Furnish with the application particulars of the contract, arrangement or understanding in respect of which the authorisation is sought. Those particulars shall be furnished —
 - (a) in so far as the particulars or any of them have been reduced to writing — by lodging a true copy of the writing; and
 - (b) in so far as the particulars or any of them have not been reduced to writing — by lodging a memorandum containing a full and correct statement of the particulars that have not been reduced to writing.
- 5 Where the application is made also in respect of other contracts, arrangements or understandings which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangement or understanding referred to in item 2.

NOTICES

- 1 In relation to item 4, your attention is drawn to subsection 90(6) and (7) of the *Trade Practices Act 1974* which provides as follows:
 - “(6) The Commission shall not make a determination granting an authorisation under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct, unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if —
 - (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
 - (b) the proposed covenant were given, and were complied with; or
 - (c) the proposed conduct were engaged in,

as the case may be.

“(7) The Commission shall not make a determination granting an authorisation under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding, or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.”.

- 2 If an authorisation is granted in respect of a proposed contract, arrangement or understanding the names of the parties to which are not known at the date of this application, the authorisation shall, by subsection 88(14) of the *Trade Practices Act 1974*, be deemed to be expressed to be subject to a condition that any party to the contract, arrangement or understanding will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract, arrangement or understanding.