

FORM A

Regulation 7

Commonwealth of Australia
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.
- * (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 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 contain provisions that are, or may be, exclusionary provisions within the meaning of sections 45 and 4D of the *Trade Practices Act 1974* (Cth) in connection with the supply and/or acquisition of coal handling services at the Terminal, in particular arising from the proposed queue management system or proposed auction system, which is described in the attached submission.

(See Direction 4 on the back of this Form)

- (c) **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.

- 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**

See attached submission.

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

See attached submission.

(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?**

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**

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

Mr Dave Poddar, Partner
Mallesons 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 black ink, appearing to be "D Poddar", written over a horizontal dotted line.

Dave Poddar

Partner

Mallesons 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 authorised 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 of 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(8) of the *Trade Practices Act 1974*, which provides as follows:

“(8) The Commission shall not:

 - (a) make a determination granting:
 - (i) an authorisation under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorisation under subsection 88(7) or (7A) in respect of proposed conduct; or
 - (iii) an authorisation under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorisation under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be and exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.”.

- 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 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.