



Australian  
Competition &  
Consumer  
Commission

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11 April 2005

Dear Sir or Madam

**Applications for Authorisation A30239 – A30241 lodged by Dalrymple Bay Coal Terminal Pty Ltd – queue management system**

On 5 April 2005 the Australian Competition and Consumer Commission (the ACCC) received applications for authorisation (A30239, A30240 and A30241) from Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) in relation to a proposed queue management system (QMS). The QMS is aimed at addressing the imbalance between the demand for coal loading services at Dalrymple Bay Coal Terminal (the 'Terminal') and the capacity of the Goonyella coal chain. DBCTPL has lodged this application because it is concerned that its proposal might breach the provisions of the *Trade Practices Act 1974* (the Act) which prohibit anti-competitive conduct or arrangements.

DBCTPL submits that the imbalance between demand and the capacity of the coal chain has caused a substantial queue of approximately 50 ships to form off Dalrymple Bay. It advises that the objective of the QMS is to reduce this queue and the consequent demurrage costs.

DBCTPL has also requested interim authorisation so that it can implement the proposed QMS as soon as practicable. The ACCC seeks your comments on the request for interim authorisation by **Monday, 25 April 2005** – comments can be provided by email or fax to the contacts shown at the end of this letter. The request for interim authorisation is discussed further on page 3 of this letter.

**Authorisations**

The ACCC is the Australian Government agency responsible for administering the Act, a key objective of which is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. The authorisation process in the Act addresses this eventuality by allowing the ACCC to grant immunity from the application of many of the restrictive trade practices provisions of the Act in certain circumstances. In order to grant authorisation the ACCC must generally be satisfied that the public benefit arising from the particular conduct outweighs any detriment, particularly anticompetitive detriment, arising from the conduct.



In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties such as yourself. Following an initial consultation process, the ACCC will issue a draft decision for comment. Further information regarding the authorisation process is available from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)).

### **The application**

DBCTPL has applied for authorisation to implement a queue management system (QMS) to address the imbalance between the demand for coal loading services at the Terminal and the capacity of the Goonyella coal chain. Broadly, under the QMS coal producers will be given a pro rata reduction of their annual contract tonnages for each month in the event that demand for coal shipping services at the Terminal exceeds the capacity of the Goonyella coal chain for a sustained period.

The parties seek authorisation for the queue management system until 31 December 2008.

A copy of DBCTPL's applications, supporting submission and non-confidential attachments are enclosed with this letter. An overview of the operation of the proposed QMS is contained in Section 3 of DBCTPL's supporting submission.

The ACCC is advised that the DBCTPL Board of Directors has approved the adoption of the principles that will be used to draft the provisions under the Terminal Regulations which will outline the operation of the QMS. A copy of these principles is enclosed at Attachment A to DBCTPL's supporting submission. The ACCC understands the operating provisions are currently being finalised and it expects to receive a copy of these provisions shortly. The ACCC will notify interested parties once it receives a copy of the finalised operating provisions, which will also be made available from the ACCC's website at <http://www.accc.gov.au> (by following the Public Registers and Authorisations links). If you do not have access to the internet, please contact Ms Jaime Norton on (03) 9290 1885 to have a paper copy forwarded to you.

### **Request for submissions on the application for authorisation**

As a potentially interested party you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

In support of its application, DBCTPL claims the proposed QMS will result in a range of public benefits, including:

- reducing dead-weight demurrage costs by approximately A\$350 million for the remainder of 2005
- reducing inefficient coal stockpiling and associated costs by providing greater certainty as to when a particular shipment of coal will be loaded and the volume of coal they will be able to load in a particular month
- improving the competitiveness and international reputation of the Australian coal industry and Goonyella coal chain
- facilitating more efficient investment decisions, and potential re-investment, by participants in the Bowen Basin coal industry

- reducing the environmental risks arising from a large number of bulk cargo vessels queuing adjacent to the Great Barrier Reef Marine Park
- assisting the transition until the capacity of the Goonyella coal chain is increased.

DBCTPL also claims the proposed QMS will not result in public detriment for the following reasons:

- a coal producer's ability to get coal through the Goonyella coal chain currently has little to do with the producer's efficiency or competitiveness
- coal producers will still compete for customers in the international coal market
- the QMS is designed to ensure that the Terminal continues to operate at full capacity and hence, there should not be any overall reduction in coal exports
- the incentive for expansion at the Terminal is unlikely to be reduced.

To assist the ACCC in its consideration of the applications it would be helpful to obtain your comments on DBCTPL's claims. Please note, the ACCC recommends that you consider the copy of the DBCTPL's supporting submission before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached (Attachment A).

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au).

Please ensure that your submission reaches the ACCC by **cob Friday, 13 May 2005**.

### **Call for submissions on request for interim authorisation**

As previously mentioned, DBCTPL has also sought interim authorisation so that it can implement the proposed QMS as soon as practicable.

Interim authorisation would allow this arrangement to operate as if it had full authorisation while the substantive application is being considered by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and anti-competitive detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors including harm to the applicant and other parties if interim is or is not granted, possible benefit and anti-competitive detriment to the public, the urgency of the matter and whether the market would be able to return to substantially to its pre-interim state if the ACCC should later deny authorisation.

DBCTPL considers that an interim authorisation to implement the proposed QMS is necessary and urgent to reduce the long vessel queue that has formed off the Terminal, and hence, prevent the industry incurring substantial demurrage costs arising from this queue.

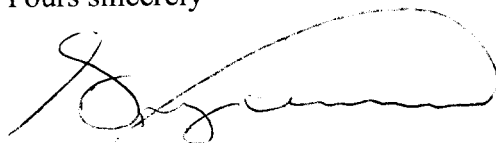
Further details of DBCTPL's request for interim authorisation are in Section 5 of its supporting submission.

The ACCC would also appreciate your views in relation to the request for interim authorisation. To facilitate this, you may wish to provide your views in writing to the above email address; by faxing your comments to the General Manager, Adjudication, (02) 6243 1211; or by calling the officers responsible for this matter, Jaime Norton or David Hatfield (contact details provided below), by **Monday, 25 April 2005**.

Should you have any queries or if you wish to discuss any aspect of the applications for authorisation please contact Jaime Norton on (03) 9290 1885 or David Hatfield on (02) 6243 1266.

A copy of this letter will be placed on the public register.

Yours sincerely



Scott Gregson  
A/g General Manager  
Adjudication Branch

## **GUIDELINES FOR CONFIDENTIALITY CLAIMS**

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.