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# Millennium COAL

Pty Ltd

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13 May 2005

## ACCC SUBMISSION

Mr Scott Gregson  
General Manager - Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

*Email [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)*

Dear Sir

APPLICATIONS FOR AUTHORISATION A30239, A30240 AND A30241

Millennium Coal Pty Ltd is the owner and operator of the Millennium Coal Mine, which is being developed in the Bowen Basin in Central Queensland. From the commencement of operations, Millennium Coal plans to ship 1.5 Mtpa of coal through Dalrymple Bay Coal Terminal ('DBCT'). If it can acquire further capacity, Millennium Coal has plans to expand production and shipping to 3 Mtpa.

Millennium Coal supports the Applications for Authorisation of the Queue Management System ('QMS') lodged by Dalrymple Bay Coal Terminal Pty Ltd ('DBCTPL'), on the basis that the QMS allows Millennium Coal to swap or trade its entitlement to load coal at DBCT, prior to Millennium Coal delivering coal to the terminal.

Following the grant of the interim authorisation for the QMS, Millennium Coal approached both Prime Infrastructure (DBCT) Management Pty Limited ('Prime') and DBCTPL for clarification on whether the Queue Management Procedures developed to implement the QMS ('Amended Terminal Regulations') would prevent Millennium Coal from swapping or trading its entitlement.

On 9 May 2005, Dr Andrew Carter, the Chief Executive and General Manager of DBCTPL, wrote to Millennium Coal confirming that, if Millennium Coal was unable to ship coal for a significant period, it should give consideration to selling the surplus part of its Annual Contract Tonnage under its Customer Agreement. In the letter, Dr Carter states that the Amended Terminal Regulations do not prohibit Millennium Coal from transferring its allocation and that any allocation that is transferred shall give the purchaser a legal right to ship that coal. A copy of Dr Carter's letter is **attached** to this submission. Pursuant to section 89(5) of the *Trade Practices*

10 MAY 2005

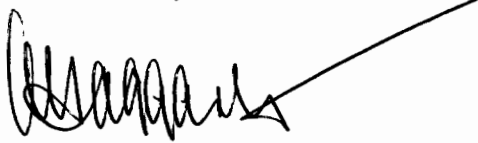
*Act*, Millennium Coal requests that the ACCC exercise its powers under section 89(5A) to exclude the letter from the register kept by the ACCC pursuant to section 89(3).

On 10 May 2005, Mr Greg Smith, Operations Manager of Prime, informed Millennium Coal that, as the Amended Terminal Regulations are subordinate to the Customer Agreement between Prime and Millennium Coal, Millennium Coal will be liable to pay take or pay charges under its Customer Agreement from 1 July 2005 on the full amount of its allocation, whether its inability to ship coal is the result of the Amended Terminal Regulations or its lack of product. Mr Smith also said that Prime has been advised that the Amended Terminal Regulations will not prevent Millennium Coal from swapping or trading its port entitlement prior to the month in which it first delivers coal to DBCT and that it would support Millennium Coal's trading of its port capacity.

Given these assurances, Millennium Coal has entered into arrangements to trade its port allocation with an existing user, consistent with its entitlement under the Customer Agreement. To disallow trading would prejudice not only Millennium Coal, but the user with whom Millennium Coal has traded its allocation.

If the ACCC has any queries about this submission, please contact me on 0418 878 428 or Michael Mewing on 0419 922 353 or [mc2co@ozemail.com.au](mailto:mc2co@ozemail.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Haggarty', with a long horizontal line extending from the end of the signature.

Tony Haggarty  
Chairman