



Australian  
Competition &  
Consumer  
Commission

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Our Ref: C2005/583-05  
Contact Officer: Jaime Norton  
Contact Phone: (03) 9290 1885

10 November 2005

Dear Sir/Madam

**Re: Dalrymple Bay Coal Terminal Pty Ltd's applications for authorisation  
(A30239 – A30241) - draft determination**

The Australian Competition and Consumer Commission (the ACCC) has considered applications for authorisation (A30239 – A30241) lodged by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) on 5 April 2005.

DBCTPL seeks authorisation of the queue management system (QMS) designed to address the imbalance between the demand for coal loading services at Dalrymple Bay Coal Terminal and the capacity of the Goolayella coal chain.

The ACCC has issued a draft determination (attached). Having considered the application and submissions from DBCTPL and interested parties, the ACCC proposes to grant authorisation to DBCTPL for the QMS until 31 December 2008.

A copy of the draft determination will also be available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au) (follow the public registers link to the authorisations public register).

**The next steps**

*Conference*

In accordance with section 90A of the *Trade Practices Act 1974* (the Act), you may notify the ACCC in writing by close of business on **24 November 2005** if you wish the ACCC to hold a conference in relation to the draft determination. The Act does not allow the ACCC to extend this deadline.

A conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the ACCC's draft determination, to make an oral submission in response to the ACCC's draft determination.



*Further submissions*

Alternatively, you may wish to lodge a written submission to the ACCC in response to the draft determination. We request that any submission be provided to the ACCC by **Thursday, 1 December 2005** at the following address:

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

Submissions can also be lodged by e-mail to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au) or by facsimile on (02) 6243 1211.

Submissions will be placed on the Public Register kept by the ACCC.

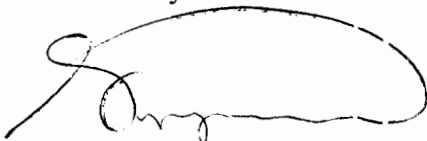
However, persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though it is not publicly available.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

The ACCC will consider any submissions it receives, including any oral submissions made should a conference be called, and will then release a final determination in relation to these applications.

If you require further information 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 kept by the ACCC.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping loop at the end.

Scott Gregson  
General Manager  
Adjudication Branch

## GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC 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 ACCC 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 ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC 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 ACCC 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 ACCC:

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

If the ACCC 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 ACCC pursuant to its powers generally under the Act.

**Dalrymple Bay Coal Terminal Pty Limited application for authorisation  
– interested parties**

1. Department of Industry, Tourism & Resources
2. Trade Development Division - Department of Foreign Affairs and Trade
3. Queensland Department of Natural Resources and Mines
4. Queensland Department of Transport
5. Queensland Environmental Protection Agency
6. Queensland Department of Transport
7. Queensland Competition Authority
8. The Maritime Union of Australia
9. Ports Corporation of Queensland
10. BMT Maritime Consultants Pty Ltd
11. QR
12. Babcock and Brown Infrastructure
13. Macarthur Coal
14. Millennium Coal
15. Anglo Coal
16. RTCA Rio Tinto
17. AMCI
18. Xstrata Coal
19. Australian Premium Coal
20. BHP Billiton Mitsubishi Alliance
21. Peabody Energy Australia Coal Pty Ltd
22. Foxleigh Coal Mine Pty Ltd
23. Rowland Communications
24. McCullough Robertson
25. The Institute of Energy Economics Japan