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From: Clancy, Sharon
Sent: Tuesday, 12 September 2006 9:32 AM
Cc: Hatfield, David
Subject: Invitation for comment on authorisation applications lodged by Tarong Energy Corporation Ltd [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED
Attachments: Letter to IPs - 12 09 06.pdf; A91009 - A91010 - Tarong Energy Corporation Limited - Lodgement - 25.08.06 - PR VERSION.pdf; Confidentiality Guidelines.pdf
ACCC Classification: SEC=UNCLASSIFIED

Good morning

The Australian Competition and Consumer Commission (ACCC) has received two applications for authorisation from Tarong Energy Corporation Limited (Tarong). The applications concern a coal supply agreement between Tarong, New Acland Coal Pty Ltd and New Hope Corporation Limited.

The ACCC is contacting you in relation to the applications as a potentially interested party.

Please find attached a letter from the ACCC, a copy of the applications for authorisation and the applicant's supporting submission, and a copy of the ACCC's guidelines for requesting documents be excluded from the public register.

Please do not hesitate to contact me should you have any queries.

Regards

Sharon Clancy
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Australian Competition and Consumer Commission
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Letter to IPs - 12
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A91009 - A91010 -
Tarong Energ...



Confidentiality
Guidelines.pdf...

This email and attachments was sent to the attached list of interested parties.

The second attachment is the public version of Tarong's applications and supporting submission - it is available via the 'Applications' link on the ACCC's internet public register.

SC

12/9/06



Our Ref: A91009 & A91010
Contact Officer: Sharon Clancy
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**Australian
Competition &
Consumer
Commission**

12 September 2006

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Dear Sir / Madam

Applications for Authorisation A91009 and A91010 lodged by Tarong Energy Corporation Limited

The Australian Competition and Consumer Commission (ACCC) has received two applications for authorisation from Tarong Energy Corporation Limited (Tarong). The applications concern a coal supply agreement between Tarong, New Acland Coal Pty Ltd (New Acland) and New Hope Corporation Limited (the Agreement).

Under the Agreement, Tarong has been granted an option to buy 5.7 million tonnes of coal annually from the New Acland coal mine for 25 years. The Agreement limits the quantity of coal that New Acland can sell from the New Acland coal mine each year to parties other than Tarong and imposes restrictions on Tarong's ability to on-sell coal to third parties.

The purpose of this letter is to seek your comments in relation to the applications as a potentially interested party.

Authorisation

By way of background, the ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA 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 TPA, however, allows the ACCC to grant immunity from the TPA for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any detriment to the public including that constituted by any lessening of competition. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

The applications

A copy of Tarong's applications for authorisation and supporting submission is enclosed for your information. These documents will also be available on the ACCC's website: www.accc.gov.au (by following the public Registers and Authorisations links).



Request for submissions on the application for authorisation

To assist the ACCC assess the applications for authorisation lodged by Tarong, you are invited to provide comments responding to the application and supporting submission. In particular, your view is sought as to the likely benefits to the public and the potential effect on competition of the proposed coal supply agreement.

If you intend to provide a submission in relation to the application, I would be grateful if you could do so by close of business **6 October 2006**.

General information

The ACCC asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the ACCC's website. The ACCC may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or the ACCC's website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached to this letter for your information.

Should you wish to lodge a submission, please address it 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, or by facsimile on (02) 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

If you do not wish to provide a submission at this stage but would like to be kept informed in relation to the applications for authorisation, please email adjudication@accc.gov.au. If the ACCC does not hear from your organisation it will be removed from the ACCC's list of interested parties for this matter.

Should you have any queries or if you wish to discuss any aspect of this matter please do not hesitate to contact Sharon Clancy on (02) 6243 1217.

Yours sincerely



David Hatfield
Director
Adjudication Branch



Australian
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Consumer
Commission

GUIDELINES FOR CONFIDENTIALITY CLAIMS for authorisation and notification processes

Public process

The Australian Competition and Consumer Commission is responsible for assessing authorisation and notification applications. Successful applicants are protected from legal action under specific competition provisions of the *Trade Practices Act 1974*. The provision of such legal protection is not taken lightly. The ACCC's assessment of authorisation and notification applications is therefore conducted openly and transparently with extensive consultation.

Under the Trade Practices Act the ACCC must maintain public registers of information provided in authorisation and notification processes. The ACCC may place information from its public registers on the ACCC website.

Can information be excluded from the public registers?

The Trade Practices Act allows for applicants and interested parties providing information in relation to an authorisation or notification application to ask that the information, or parts of it, be excluded from the relevant public register.

Under the Trade Practices Act, when a claim for confidentiality is made, the ACCC must exclude information from the public registers if the information contains the details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current manufacturing, producing or marketing costs of goods or services.

The ACCC also has the discretion, under the Trade Practices Act, to exclude material from the public registers if it is satisfied that it is desirable to do so, either because of the confidential nature of the material or for other reasons, such as the ACCC deciding there may be certain sensitivities.

How to claim confidentiality

The Trade Practices Regulations outline what parties need to do if they want information provided to be treated confidentially.

The regulations state that if a request for confidentiality is made for a whole document or parts of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page. If a request is made for confidentiality for part of the document the regulations state that the words 'Restriction of Publication of Part claimed' should appear in red near the top of the first page and the part of the document for which confidentiality is claimed should also be clearly marked in red. If the confidentiality claim is for a document longer than five pages, a description of the whereabouts of the parts for which confidentiality is claimed should be provided.

The ACCC asks that you provide a confidential copy of the document, and a non-confidential version with confidential material omitted.

You should remove headers claiming 'confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If confidentiality is not requested and the header cannot be removed, parties should clearly state at the beginning of correspondence provided to the ACCC that confidentiality is not requested.

Applicants and interested parties requesting confidentiality must do so when they submit the information to the ACCC. Reasons must be provided in support of the request for confidentiality.

How does the ACCC assess confidentiality claims?

Information for which confidentiality is claimed will be excluded from the public register while the ACCC assesses the request.

The ACCC will try to respond to confidentiality claims within three to five business days. The ACCC is generally able to respond much faster if confidentiality claims are limited to information that is genuinely confidential, if confidential information is clearly marked and if claims are accompanied by a detailed explanation of why confidentiality is being sought.

When the ACCC grants a request for confidentiality the information will be excluded from the relevant public register. Although information for which confidentiality is granted will not be placed on the public register, it may still be used by the ACCC under its powers under the Trade Practices Act. Information withheld from the public register may still be accessed through other legal processes such as under the *Freedom of Information Act 1982*.

If the ACCC denies a confidentiality request because the claim is not accompanied by sufficient justification or because it considers that the information is not confidential in nature, the ACCC will inform the party making the claim of its decision. If the ACCC denies a confidentiality request, the information for which confidentiality was claimed will be considered as withdrawn from the ACCC's consideration—unless the party advises the ACCC that it wishes to withdraw or amend the confidentiality claim. As a general rule, the ACCC will allow the party one to two business days to respond.

If a party chooses to withdraw the information subject to a confidentiality claim, the ACCC will not use the information in its decision-making processes.

Applicants should be aware that the ACCC will not accept confidentiality claims from applicants for information that is necessary to identify the conduct or arrangements for which protection is sought.

Checklist for confidentiality claims

- Have you identified the specific sections of the document to which the claim relates?
- Have you outlined reasons for requesting confidentiality?
- Have you provided a copy of the whole document with the confidential sections identified?
- Have you provided a non-confidential version of the document with the confidential information omitted?
- Are you aware that the confidentiality claim must be submitted at the time the information is provided to the ACCC?

Authorisation applications A91009 & A91010 – list of interested parties

1. AGL Electricity Pty Ltd
2. Alinta Sales Pty Ltd
3. AMCI
4. Anglo Coal (Capcoal Management) Pty Ltd
5. BHP Billiton Mitsubishi Alliance
6. Delta Electricity
7. ENERGEX Limited
8. EnergyAustralia
9. Enertrade
10. Eraring Energy
11. Ergon Energy Pty Ltd
12. Excel Coal (Millenium)
13. Integral Energy Australia
14. Macarthur Coal
15. Macquarie Generation
16. Oaky Creek Coal Pty Ltd
17. Origin Energy Electricity Limited
18. Powerlink Queensland
19. Qld Department of Natural Resources and Mines
20. Rio Tinto Coal Australia
21. Stanwell Corporation Limited
22. Xstrata Coal Qld