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24 November 2006

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4 Page(s)

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**APPLICATION FOR AUTHORISATION A91009 AND A91010 LODGED BY TARONG ENERGY CORPORATION LIMITED, NEW HOPE CORPORATION LIMITED AND NEW ACLAND COAL PTY LTD**

**Consultant**

John D Taylor

As previously advised we act for Intercoal limited recently renamed International Gold Mining Limited. Our client is the applicant in proceedings number WAD 359 of 2005 currently pending in the Federal Court of Australia. In these proceedings, our client is claiming damages of \$30m against Tarong Energy Corporation Limited ("Tarong Energy") arising from an alleged breach by Tarong Energy of section 46 of the *Trade Practises Act of 1974 (Cth)* ("TPA"), namely misuse of market power.

Further, we have, on behalf of our client, lodged a complaint with the ACCC about the conduct of Tarong Energy, since the commencement of the Federal Court proceedings, in relation to its coal procurement strategies to source a supply of coal for the Tarong power stations after December 2010.

However, please note our client is presently considering amending its statement of claim in the Federal Court proceedings to add a claim for damages for misleading and deceptive conduct under section 52 of the TPA

Our client has requested and been granted the opportunity to put forward their case at a pre decision conference which will be held on the 27<sup>th</sup> of November 2006.

Our client further recommends that the ACCC should take all or part of the following information into consideration prior to making any final decision under S88 (1) of the TPA. It is our client's opinion that by Tarong Energy entering into the option agreement with New Acland for a period of 25 years this conduct would **substantially lessen competition**, restrict entry into the market by competitors and potentially provide a significant benefit to one single ASX listed public company, New Hope Corporation Limited.

**Information to be considered some of which wasn't clearly identified or included in Tarong's submission to the ACCC**

- The failure to mention (even in passing) the current litigation pending in the Federal Court between our client and Tarong Energy in which a serious allegation of misuse of market power against Tarong Energy is made. It would appear Tarong Energy believe that a \$30 million claim

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in respect of an alleged breach by it of one of the competition provisions of the TPA (the very same provisions being the subject of its authorisation application) is not material or relevant.

- The failure to mention the fact that Tarong Energy has entered into an option agreement with Rio Tinto Coal Australia, the owner of the Meandu Mine, for the purchase of the rights to a coal deposit located at Kunioon, just north of the Tarong Power Stations. This option is exercisable on or before the 30/06/07.
- The failure to mention the fact that coal from the Kunioon deposit is presently being bulk tested by Tarong Energy to determine the quality of the coal.
- The failure to mention the fact that Tarong Energy owns a coal resource at Glen Wilga. It has been in the public domain for some considerable time that one of the options available to Tarong Energy has been the development of a mine at Glen Wilga and associated transport infrastructure (a 150km railway line).
- New Hope Corporation Limited (ASX Code NHC) is an ASX listed public company with a market capitalisation of \$1billion.
- NHC is profitable. Results to 31/7/06 record a profit after tax of \$68.7m from production of 3.7 million tonnes of coal with 72% or 2.7 million tonnes from New Acland Coal mine.
- NHC's major shareholder is Washington H Soul Patterson with a 62% interest.
- Washington H. Soul Patterson is ASX Listed (ASX Code SOL) public company with a market capitalisation of over \$2billion.
- From NHC's financial statements as at 31/7/06, a basic analysis of profit from coal sales and tonnes of coal produced indicate a profit of over \$20 per tonne of coal produced.
- The Tarong Power Stations are fuelled by low-grade energy output. Higher grade coal is usually sold to the more lucrative export market.
- Tarong purchases up to 7.5 million tonnes per year of its coal from Rio Tinto Coal Australia Pty Ltd's Meandu mine. This current contract is due to expire 31/12/2010.
- Meandu Mine is nearing the end of its economic productive life (but not of its mine life). Presumably the Meandu Mine could produce further coal at an incrementally higher cost than the current cost. Consequently Tarong requires a new source of Coal once the current contract expires in 2010.
- The Kunioon Thermal Coal deposit:
  - Is completely surrounded by EPC 882 (Taabinga Deposit owned by Metallica Minerals Limited)
  - Is adjacent to the Taabinga Coal Deposit
  - Shares some common coal seams with the Taabinga Coal Deposit.
- Tarong have been supplied with thermal coal by Rio Tinto Coal Australia from the Tarong Basin for the past 22 years.
- This thermal coal is supplied from the Meandu Mine, located only 1.5km from the Power Station.
- In economic terms, supply of Coal from a Thermal Coal resource that is in close proximity to a power station is generally considered to be the most cost effective (Mine Mouth Coal Supply)

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- CS Energy's KOGAN Creek is a new \$1 Billion Government Owned Power Station and is a current example of the economics of Mine Mouth Coal Supply.
  - Callide Power Stations are supplied by the adjacent Callide Thermal Coal Deposit. This is a further example of the economics of Mine Mouth Coal Supply.
  - Tarong's stated reason for the 30/7/07 deadline to make a decision appears to be based on an estimated 3 year lead time for construction of the 70-90 km transport infrastructure and for Mine development for the New Acland Mine.
  - Tarong's stated reason for a 25 year contract term is to cover amortisation of the capital cost of the transport infrastructure and Mine development at New Acland Coal Mine.
  - Tarong submit that a long term stable supply of coal of a consistent quality at a competitive price will enable Tarong to operate competitively in the national electricity market.
  - Before a competitive rate for the supply of coal was determined, Tarong would need to undertake feasibility studies on all coal supply options before it could conclusively determine which coal supply provides the most economical and competitive price.
  - Tarong has stated that it has several options:
    - Glen Wilga
    - New Acland
    - Meandu
    - Kunioon

Each of these options have a substantial number of different conditions to satisfy,

- Glen Wilga requires substantial capital for Transport Infrastructure and for mine development. This will require State Government approval and funding.
- New Acland requires substantial capital for Transport Infrastructure and mine development. This will require State Government approval and funding.
- The exercise of the option with Rio Tinto Coal Australia over Meandu and Kunioon will require substantial capital for the acquisition and mine development. This will require State Government approval and funding.
- Tarong have rejected Metallica's Taabinga Thermal Coal Resource, however if it is taken into consideration that Taabinga is in the Tarong Basin and is in close proximity to the Power Station and is adjacent to the Kunioon Deposit, then it should be included as a option for a supplemental supply of coal from a different supplier (i.e Metallica). Taabinga has a measured and indicated thermal coal resource of 196 million tonnes.
- Tarong have been exempted from complying with the State Government's Purchasing Policy on the Basis that for the past 22 year the Meandu Mine owned and operated by Rio Tinto Coal Australia and has been the sole supplier.
- Tarong's circumstances have now changed and Tarong now has a number of separate options to consider from a number of separate suppliers.
- If Tarong entered into the 25 year agreement with New Acland to supply 5.7 million tonnes a year it would prevent the development of coal deposits in the Tarong Basin and it would be anti- competitive in that it would lock out all other competitors.

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### Public Benefit and or Detriment from the Agreement

- Meandu Mine would be closed and the Kunioon and Taabinga Thermal Coal Resources would remain undeveloped. This would mean a loss of jobs and benefits to Kingaroy and a migration of jobs and benefits for the New Acland area. This appears to be a zero net gain.
- Tarong have offered to fund the Transport Infrastructure and Mine Development under the terms of the New Acland Agreement presumably this will require Queensland Government approval and funding which in effect is the use of tax payers money.
- The Queensland Coordinator-General has given Tarong Energy approval to undertake certain works to evaluate potential corridors for transporting coal between the coal deposits at the Kunioon and New Acland mines and the Tarong power stations. If the New Acland option proceeds, this will necessarily result in the resumption of land which will require both government approval and government funding.
- The 25 year contract will have an estimated gross value of \$8.5 billion and could potentially deliver an estimated profit of \$2.85 billion to NHC
- Without a competitive public tender it would be impossible to determine if the cost of coal to be provided to the power station would be the lowest cost available.
- Tarong Energy's Annual Report 05/06 indicates that fuel consumption represents 32% of revenue which is by far the greatest cost item. Consequently the cost of coal is material to the cost of production of electricity.

Whilst these and other matters will be raised by our client with the ACCC at the pre-decision conference on 27 November 2006, our client felt it was important that these matters be brought to your attention.

Finally, please note that each of the factual matters mentioned above are matters of the public record.

Yours faithfully  
**SHAND TAYLOR LAWYERS**



John Saunders  
Partner