



4 December 2006

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

Dear Mr Gregson

Applications for authorisation A91009 and A91010 lodged by Tarong Energy Corporation Limited, New Hope Corporation Limited and New Acland Coal Pty Ltd

On 2 November 2006, Tarong Energy Corporation Limited (**Tarong Energy**) was informed that the ACCC proposed to grant authorisation to certain restrictions contained within a conditional coal supply agreement dated 13 June 2006 between Tarong Energy, New Acland Coal Pty Ltd (**New Acland**) and New Hope Corporation Limited (**New Hope**) until 31 December 2035.

By letter dated 14 November 2006, International Gold Mining Limited (previously known as InterCOAL Limited) advised the ACCC that it was dissatisfied with the draft decision to grant authorisation to the restrictive provisions within the coal supply agreement and requested a pre-decision conference.

A pre-decision conference was held on 27 November 2006 and was attended by Tarong Energy, New Acland, New Hope, International Gold Mining Limited (**International Gold**) and Metallica Minerals Limited (**Metallica**). International Gold and Metallica provided written submissions to the ACCC prior to the conference, copies of which were subsequently provided to Tarong Energy. This submission by Tarong Energy is in response to those written submissions.

The Draft Determination

There is no need to cover in any detail in this submission the material that is already covered in the draft determination dated 2 November 2006 suffice to say that some aspects of the conditional coal supply agreement dated 13 June 2006 (the **Agreement**) were noted by the ACCC. In particular, the ACCC has highlighted the following:

- (a) the limit on the quantity of coal New Acland can sell from the New Acland mine each year to parties other than Tarong Energy; and

- (b) the restriction on Tarong Energy's ability to on-sell coal purchased under the Agreement to third parties.

The relevant test for consideration is whether the above restrictions for which authorisation is sought are likely to result in a public benefit that will outweigh any public detriment. The ACCC has formed a preliminary view that in all the circumstances, the public benefit is likely to outweigh the public detriment.

Response in Summary

1. Upon corporatisation in 1997, Tarong Energy inherited a monopoly coal supply arrangement with Rio Tinto Coal Australia.
2. Since corporatisation, Tarong Energy has implemented a fuel procurement strategy aimed at ensuring that the monopoly coal supply arrangement is replaced with competitive coal supply alternatives.
3. The comparative economic assessment of the various coal supply options is a matter for Tarong Energy's commercial judgment.
4. The Taabinga resource owned by Metallica was previously owned by Tarong Energy (and New Hope Coal and Rio Tinto Coal Australia) and has been assessed as part of the fuel procurement strategy as not being credible.
5. The misuse of market power allegation by International Gold in relation to a failed prospectus is the subject of separate Federal Court proceedings and is not relevant to the Agreement or the authorisation test for the Agreement.
6. The submissions of Metallica and International Gold do not demonstrate that any public detriment arising from the Agreement outweighs the public benefit arising from Tarong Energy developing a competitive and credible fuel supply option that will ultimately result in the corporation continuing to be a competitive player in the National Electricity Market.

Response to Submissions from Metallica and International Gold

Metallica

With respect to Metallica's submission, Tarong Energy makes the following comments:

1. Tarong Energy does not believe it is necessary to respond to each of the assertions made by Metallica however, to the extent that Tarong Energy has not responded to particular assertions it is not to be taken as necessarily being in agreement with them.
2. Since 1983, Tarong Energy has been beholden to a monopoly supplier of coal, Rio Tinto Coal Australia. Since corporatisation Tarong Energy has sought to identify credible coal supply alternatives.
3. Part of the identification and assessment process undertaken by Tarong Energy was the review of the Taabinga resource that it previously owned and which is now owned by Metallica. As a previous owner of the resource, Tarong Energy has assessed its overall

suitability as a potential coal source. It is Tarong Energy's view that the Taabinga resource does not provide a viable alternative to its other options.

4. International Gold and Metallica have both stated that the Taabinga resource, if it can be successfully developed, only has potential to supply up to 1½ million tonnes per annum of coal. Tarong Energy's yearly coal requirements are approximately 7 million tonnes of coal of an equivalent calorific value. The New Acland option can supply the whole of the corporation's coal requirements for the likely balance of the station's life. Also, supply ex Taabinga would not be a mine mouth option as described by Metallica but would in fact require 20 to 25km of coal transport infrastructure.
5. Metallica submitted that Tarong Energy has attempted to exclude it as a potential supplementary supplier of coal by setting unreasonable timelines on it presenting a credible alternative supply. This is refuted by Tarong Energy. Although Metallica assert they are able to present a viable alternative coal supply option, Metallica have not demonstrated that to be the case.
6. Tarong Energy submits that the issues raised by Metallica do not show that any public detriment arising from the authorisation of the Agreement outweighs the public benefit that increased competition in the National Electricity Market creates.
7. Tarong repeats and relies on the matters set out in its application dated 25 August 2006.

International Gold

With respect to the submissions by International Gold, Tarong Energy makes the following comments:

1. Tarong does not believe it is necessary to respond to each of the assertions made by International Gold however to the extent that Tarong has not responded to particular assertions it is not to be taken as necessarily being in agreement with them.
2. The Federal Court litigation was raised with the ACCC in a pre-lodgement meeting in August 2006 and they have subsequently been kept informed of those proceedings.
3. Tarong Energy strongly refutes the assertions made by International Gold in the Federal Court proceedings. However that litigation is not in any way relevant to the current authorisation process. Whether International Gold is entitled to damages (which is denied) is a matter to be determined in another forum and in no way impacts upon the application for authorisation.
4. A complaint was made by International Gold to the ACCC regarding Tarong Energy's conduct which is the subject of the litigation. The ACCC has decided not to intervene in the matter.
5. Tarong Energy provided the ACCC with all relevant information relating to the Agreement. The broader commercial affairs of Tarong Energy, as noted by International Gold in its submission, are all matters on the public record. The facts complained of as not being disclosed are not relevant to the authorisation of the particular Agreement in question.
6. The assertion that Taabinga is a viable alternative supply is addressed above in respect of Metallica's submission.

7. Tarong Energy's fuel procurement strategy is criticised in International Gold's submission as being "anti-competitive" because it has not been run as a public tender process. Tarong Energy notes that there is no obligation under the Queensland Government's State Purchasing Policy and likewise, no requirement under the *Trade Practices Act*, for corporations to run public tender processes. That said, Tarong Energy has complied with the Queensland Government's State Purchasing Policy. This policy is about ensuring value for money and choosing the right procurement method. The procurement method adopted by Tarong Energy is a result of the highly strategic value of the fuel options to the corporation and the diverse nature of those options.

Tarong Energy would be happy to provide the ACCC with further information that may be required.

Yours sincerely

A handwritten signature in black ink, appearing to be 'G. Shann', with a long horizontal line extending to the right.

Grahame Shann
A/GENERAL MANAGER
FUEL STRATEGY

Enquiries: Mr John Powell, Clayton Utz
Telephone: (07) 3292 7010
Facsimile: (07) 3221 9669