



**DLA PHILLIPS FOX**

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Our ref: SGC:0458799

14 November 2008

Mr Richard Chadwick  
General Manager, Adjudication  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601  
**By Hand**

FILE No:

DOC

MARS/PRISM:

Dear Mr Chadwick

### **Dalrymple Bay Coal Terminal - Applications for authorisations**

We act for the following eight coal producers using the Dalrymple Bay Coal Terminal (DBCT) at the Port of Hay Point, south of Mackay in Queensland (**Applicant Users**):

- Anglo Coal Australia Pty Ltd
- BHP Billiton Mitsubishi Alliance  
Isaac Plains Coal Management Pty Ltd  
Macarthur Coal (C & M Management) Pty Ltd
- Peabody Pacific Pty Ltd
- Rio Tinto Coal Australia Pty Ltd
- Vale Australia Pty Ltd
- Xstrata Coal Queensland Pty Ltd

The Applicant Users are seeking authorisation to extend the term of the Queue Management System (QMS) which is designed to address an imbalance between the demand for coal loading services at DBCT and the capacity of the Goonyella Coal chain.

Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) operates DBCT under a contract with the lessee of DBCT, Babcock and Brown Infrastructure (BBI).

AUST. COMPETITION &  
CONSUMER COMMISSION

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DLA Phillips Fox is a member of DLA Piper Group, an alliance of independent legal practices. It is a separate and distinct legal entity.

DLA Phillips Fox offices are located in Adelaide Auckland Brisbane Canberra Melbourne Perth Sydney and Wellington.

## **1 Applications for authorisation**

The Applicant Users apply for authorisation pursuant to sub-sections 88(1) and 88(7) of the Trade Practices Act 1974 (Cth) (TPA) for the making of, or giving effect to, any contract arrangement or understanding involving DBCTPL and any producer of coal for export through DBCT, or exporter or exporters of coal through DBCT (whether they are shareholders in DBCTPL or not) or any other party, which relates to or is in any way associated with the QMS that is described in the attached supporting submission and which may constitute:

- An exclusionary provision within the meaning of section 4D and section 45 of the TPA;
- A provision having the purpose, effect or likely effect of substantially lessening competition within the meaning of section 45 of the TPA; and
- A provision to which sections 45D, 45DA or 45DB of the TPA might apply.

## **2 Application for urgent interim authorisation**

The Applicant Users are also seeking urgent interim authorisation of the Amended QMS under section 91 of the TPA for the reasons set out in section 6 of the supporting submission.

## **3 Supporting materials**

We enclose:

- (a) A non-confidential supporting submission to the Commission;
- (b) A confidential supporting submission to the Commission containing commercially sensitive information over which confidentiality is sought;
- (c) Forms A, B and D, the application forms prescribed by regulation for authorisation of exclusionary provisions, agreements affecting competition and secondary boycotts; and
- (d) A cheque for \$10,500.

## **4 Confidentiality**

The supporting submission contains some commercially sensitive and confidential information in Attachment F. Pursuant to section 89(5), the Applicant Users request that the Commission exercises its power under section 89(5A) to exclude this information from the register kept by the Commission pursuant to section 89(3).

The Applicant Users request the Commission place only this letter, Forms A, B and D and the non-confidential version of the Submission (with Confidential Attachment F removed) on the public register.

Should you have any questions in relation to this application, please do not hesitate to contact me.

Yours sincerely



**Stephen Corones**

Consultant

Direct +61 7 3246 4228

[stephen.corones@dlaphillipsfox.com](mailto:stephen.corones@dlaphillipsfox.com)

Encl

## Form A

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1)*

### **EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

**PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM**

#### **1. Applicant**

- (a) Name of Applicant:  
*(Refer to direction 2)*

This application is made by the following eight coal producers (**Applicant Users**):

A91107

Anglo Coal Australia Pty Ltd

BHP Billiton Mitsubishi Alliance

Isaac Plains Coal Management Pty Ltd

Macarthur Coal (C & M Management) Pty Ltd

Peabody Pacific Pty Ltd

Rio Tinto Coal Australia Pty Ltd

Vale Australia Pty Ltd

Xstrata Coal Queensland Pty Ltd

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

The Applicant Users produce metallurgical and thermal coal from mines in the Central Bowen Basin. Each of the Applicant Users has entered into a

User Agreement with BBI (DBCT) Management Pty Limited and BBI (DBCT) Investor Services Pty Ltd together referred to as BBI for the receiving and unloading of coal, the storage of coal and loading of coal into vessels for export at the Dalrymple Bay Coal Terminal (DBCT) at the Port of Hay Point south of Mackay. DBCT is operated by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL).

- (c) Address in Australia for service of documents on the applicant:

Stephen Corones  
DLA Phillips Fox  
PO Box 7804  
Waterfront Place  
BRISBANE QLD 4001

## 2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

Any contract, arrangement or understanding which relates to, or is in any way associated with, the proposed queue management system described in the **attached** submission which is designed to address the imbalance between the demand for coal loading services at the DBCT and the capacity of the Goonyella coal chain.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:  
(Refer to direction 4)

In accordance with the contracts, arrangements or understandings described in 2(a) above, the Applicant Users and the parties referred to in 3(a) below may, from time to time, make and/or give effect to contracts, arrangements or understandings that contain provisions that are, or may be, exclusionary provisions within the meaning of sections 45 and 4D of the *Trade Practices Act 1974* (Cth) in connection with the supply and/or acquisition of coal handling services at the Terminal, in particular arising from the proposed queue management system, which is described in the **attached** submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Services for the receiving and unloading of coal, storage of coal and loading of coal into vessels for export, and rail haulage services.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

See the **attached** submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Any producer of coal for export through the DBCT or exporter of coal from the DBCT may be a party to a contract, arrangement or understanding referred to in 2(a) and DBCT PL and BBI. These producers and exporters include the shareholders in DBCTPL listed in the **attached** submission, as well as other coal companies in the Goonyella coal chain producing coal for export.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
(Refer to direction 5)

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of application for authorisation:  
(Refer to direction 6)

See **attached** submission.

- (b) Facts and evidence relied upon in support of these claims:

See **attached** submission.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

- the global market for coal (or at least the Asian coal market);
- the market for the provision of coal loading services for bulk carrying ships at DBCT; and
- the market for the provision of rail haulage services in the Bowen Basin.

### **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in

particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
(Refer to direction 8)

See **attached** submission.

- (b) Facts and evidence relevant to these detriments:

See **attached** submission.

## 7. **Contracts, arrangements or understandings in similar terms**

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:  
(Refer to direction 10)

Not applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## 8. **Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes, DBCTPL is an incorporated joint venture between its shareholder companies (listed in the **attached** submission).

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?  
No.

**9. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Stephen Corones  
DLA Phillips Fox  
Level 29, 1 Eagle Street  
Brisbane QLD 4000

Dated.....13 November 2008.....

Signed by/on behalf of the applicant

.....*Stephen Corones*.....

(Signature)

.....STEPHEN GEORGE CORONES.....

(Full Name)

.....DLA PHILLIPS FOX.....

(Organisation)

.....CONSULTANT.....

(Position in organisation)



## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions.

In providing these details —

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
  10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

## Form B

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1)*

### AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of Applicant:  
*(Refer to direction 2)*

This application is made by the following eight coal producers (**Applicant Users**):

A 91108 Anglo Coal Australia Pty Ltd  
BHP Billiton Mitsubishi Alliance  
Isaac Plains Coal Management Pty Ltd  
Macarthur Coal (C & M Management) Pty Ltd  
Peabody Pacific Pty Ltd  
Rio Tinto Coal Australia Pty Ltd  
Vale Australia Pty Ltd  
Xstrata Coal Queensland Pty Ltd

- (b) Description of business carried on by applicant:  
*(Refer to direction 3)*

The Applicant Users produce metallurgical and thermal coal from mines in the Central Bowen Basin. Each of the Applicant Users has entered into a User Agreement with BBI (DBCT) Management Pty Limited and BBI

(DBCT) Investor Services Pty Ltd together referred to as BBI for the receiving and unloading of coal, the storage of coal and loading of coal into vessels for export at the Dalrymple Bay Coal Terminal (DBCT) at the Port of Hay Point south of Mackay. DBCT is operated by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL).

- (c) Address in Australia for service of documents on the applicant:

Stephen Corones  
DLA Phillips Fox  
PO Box 7804  
Waterfront Place  
BRISBANE QLD 4001

## 2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:  
(Refer to direction 4)

Any contract, arrangement or understanding which relates to, or is in any way associated with, the proposed queue management system described in the **attached** submission which is designed to address the imbalance between the demand for coal loading services at the DBCT and the capacity of the Goonyella coal chain.

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:  
(Refer to direction 4)

In accordance with the contracts, arrangements or understandings described in 2(a) above, the applicant and the parties referred to in 3(a) below may, from time to time, make and/or give effect to contracts, arrangements or understandings that contain provisions that may have the purpose, effect or likely effect of substantially lessening competition within the meaning of section 45 of the *Trade Practices Act 1974* (Cth) in connection with the supply and/or acquisition of coal handling services at the Terminal, in particular arising from the proposed queue management system, which is described in the **attached** submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Services for the receiving and unloading of coal, storage of coal and loading of coal into vessels for export, and rail haulage services.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

See the **attached** submission.

### **3. Parties to the proposed arrangement**

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Any producer of coal for export through the DBCT or exporter of coal from the DBCT may be a party to a contract, arrangement or understanding referred to in 2(a) and DBCT PL and BBI. These producers and exporters include the shareholders in DBCTPL listed in the **attached** submission, as well as other coal companies in the Goonyella coal chain producing coal for export.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:  
(Refer to direction 5)

Not applicable.

### **4. Public benefit claims**

- (a) Arguments in support of authorisation:  
(Refer to direction 6)

See **attached** submission.

- (b) Facts and evidence relied upon in support of these claims:

See **attached** submission.

### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 7)

- the global market for coal (or at least the Asian coal market);
- the market for the provision of coal loading services for bulk carrying ships at DBCT; and
- the market for the provision of rail haulage services in the Bowen Basin.

## **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:  
(Refer to direction 8)

See **attached** submission.

- (b) Facts and evidence relevant to these detriments:

See **attached** submission.

## **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:  
(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

## **8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes, DBCTPL is an incorporated joint venture between its shareholder companies (listed in the attached submission).

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

No.

**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Stephen Corones  
DLA Phillips Fox  
Level 29, 1 Eagle Street  
Brisbane QLD 4000

Dated.....13 November 2008

Signed by/on behalf of the applicant



(Signature)

STEPHEN GEORGE CORONES

(Full Name)

CONSULTANT

(Position in Organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

## Form D

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (7)*

### SECONDARY BOYCOTTS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (7) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to engage, in concert with other persons, in conduct that hinders or prevents, or may hinder or prevent, a third person supplying goods to services to, or acquiring goods or services from, a fourth person
- to engage, in concert with other persons, in conduct that prevents or substantially hinders, or may prevent or substantially hinder, a third person from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

*(Strike out whichever is not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of Applicant:  
*(Refer to direction 2)*

This application is made by the following eight coal producers (**Applicant Users**):

A91109

Anglo Coal Australia Pty Ltd

BHP Billiton Mitsubishi Alliance

Isaac Plains Coal Management Pty Ltd

Macarthur Coal (C & M Management) Pty Ltd

Peabody Pacific Pty Ltd

Rio Tinto Coal Australia Pty Ltd

Vale Australia Pty Ltd

Xstrata Coal Queensland Pty Ltd

- (b) Description of business, activity or occupation carried on by applicant:  
*(Refer to direction 3)*

The Applicant Users produce metallurgical and thermal coal from mines in the Central Bowen Basin. Each of the Applicant Users has entered into a User Agreement with BBI (DBCT) Management Pty Limited and BBI (DBCT) Investor Services Pty Ltd together referred to as BBI for the



receiving and unloading of coal, the storage of coal and loading of coal into vessels for export at the Dalrymple Bay Coal Terminal (DBCT) at the Port of Hay Point south of Mackay. DBCT is operated by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL).

- (c) Address in Australia for service of documents on the applicant:

Stephen Corones  
DLA Phillips Fox  
PO Box 7804  
Waterfront Place  
BRISBANE QLD 4001

## 2. Conduct

- (a) Description of the conduct proposed to be engaged in, for which authorisation is sought:  
(Refer to direction 4)

The engaging in conduct to which sections 45D, 45DA or 45DB of the Trade Practices Act 1974 might apply involving BBI, DBCTPL and any producer of coal for export through the Terminal, or exporter or exporters of coal through the Terminal (whether they are shareholders of DBCTPL or not) or any other person, which relates to, or is in any way associated with, the proposed queue management system, which is described in the attached submission.

- (b) Number of persons proposing to engage, in concert, in the conduct:

BBI, DBCT PL as well as any producer of coal for export through DBCT or exporter of coal from the DBCT. These include the shareholders in DBCTPL listed in the attached submission, and the owners and operators of the mines that ship coal through the DBCT listed in the attached submission.

- (i) Where number of persons stated in item 2 (b) is less than 50, their names and addresses:

See **attached** submission.

- (c) Description of the goods or services to which the conduct (whether proposed or actual) relate:

Services for the receiving and unloading of coal, storage of coal and loading of coal into vessels for export, and rail haulage services.

- (d) The term for which authorisation of the provision of the conduct is being sought and grounds supporting this period of authorisation:

See **attached** submission.

### 3. Parties

- (a) Name and address of the third person whose supply or acquisition of goods or services, or whose trade or commerce involving the movement of goods overseas, is to be, or may be, hindered or prevented by the conduct:

As a result of the conduct described in 2(a) above, the parties referred to in 2(b) above may, from time to time, be hindered or prevented in relation to the export of coal through the Terminal.

- (b) Name and address of person to or from whom, or the place to or from which, supply or acquisition of goods or services is to be, or may be, hindered or prevented by the conduct:

See 3 above.

- (c) Names and addresses of persons on whose behalf application is made:

Not applicable

### 4. Public benefit claims

- (a) Arguments in support of application for authorisation:  
(Refer to direction 5)

See **attached** submission.

- (b) Facts and evidence relied upon in support of these claims

See **attached** submission.

### 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):  
(Refer to direction 6)

- the global market for coal (or at least the Asian coal market);
- the market for the provision of coal loading services for bulk carrying ships at DBCT; and
- the market for the provision of rail haulage services in the Bowen Basin.

### 6. Public detriments

- (a) Detriments to the public resulting or likely to result from the conduct for which authorisation is sought, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (c) above and the prices of goods or services in other affected markets:

(Refer to direction 7)

See **attached** submission.

- (b) Facts and evidence relevant to these detriments:

See **attached** submission.

**7. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*):

Yes, DBCTPL is an incorporated joint venture between its shareholder companies (listed in the **attached** submission).

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

- (c) If so, by whom or on whose behalf are those other applications being made?

No.

**8. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Stephen Corones  
DLA Phillips Fox  
Level 29, 1 Eagle Street  
Brisbane QLD 4000

Dated..... 13 November 2008 .....

Signed by/on behalf of the applicant

.....  .....

(Signature)

..... STEPHEN GEORGE CORONES .....

(Full Name)

..... DLA PHILLIPS FOX .....

(Organisation)

..... CONSULTANT .....

(Position in Organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the conduct in respect of which authorisation is sought.
4. Provide details of the conduct in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
  6. Provide details of the market(s) likely to be effected by the conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  7. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed conduct. Provide quantification of those detriments where possible.