

For Public Register

Mr Richard Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

19 November 2008

Attention: Mr David Hatfield / Ms Jaime Martin

Dear Mr Chadwick

Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited - Application for authorisation under sections 88(1) and 88(7) for the provision of coal loading services at the Port of Newcastle

We act for Port Waratah Coal Services Limited ("PWCS").

1 Application for authorisation

PWCS and Newcastle Coal Infrastructure Group Pty Limited ("NCIG") (together, the "Terminal Operators") 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 either:

- (a) between PWCS, NCIG and/or any future terminal operator at the Port of Newcastle; or
- (b) between either PWCS or NCIG and any Hunter Valley Coal Chain participant, including all producers of coal for export through the Port of Newcastle, or exporters of coal through the Port of Newcastle (whether or not they are shareholders in PWCS or NCIG),

which relates to or is in any way associated with the proposed PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the attached Submission and which may constitute:

- a provision having the effect of substantially lessening competition within the meaning of section 45 of the TPA;
- an exclusionary provision within the meaning of section 45 of the TPA; or
- a provision to which sections 45D, 45DA or 45DB of the TPA might apply.

The PWCS Tonnage Allocation Stage 1, together with the process and timetable set out in the attached Submission, provide the necessary foundation for the Hunter Valley coal industry to develop and implement a long term solution. The key aspects for a potential long term solution are set out in Attachment 2 to the Submission.

If the PWCS Tonnage Allocation Stage 1 and long term solution are implemented, they will deliver substantial benefits to the NSW and Australian economies. In particular, they provide a route to enabling coal loading capacity at the Port of Newcastle to be increased from the current 102 million tonnes per annum (“mtpa”) to 211 mtpa and beyond to potentially 300 mtpa of coal exports from NSW. This will potentially involve incremental expansions of approximately \$ 1.5 billion at the PWCS terminals, \$2 billion at the NCIG terminal (to Stage 2) and approximately \$2-3 billion at subsequent terminal developments at the Port of Newcastle.

It would also see capacity expansions involving capital expenditure over the next 4 years of approximately \$950 million on track and \$502 million on additional train sets in the Hunter Valley. This is in addition to \$1.3 billion spent since 2004 on terminal, track and train infrastructure.

These non-government funded infrastructure upgrades due to the increased certainty arising from the Long Term Terminal Access Protocols and associated long term contractual arrangements are a very substantial public benefit.

The PWCS Tonnage Allocation Stage 1 and the long term solution being developed by Producers and Terminal Operators will also result in a substantial increase in export revenue for the State of NSW, together with substantial increases in both employment in NSW (particularly during the major construction phases) and export royalties payable to NSW.

Again, these are very significant public benefits funded by the private sector, particularly in the current economic environment.

The authorisation is sought on the express condition that there are reporting obligations and that:

- (a) the Terminal Operators submit to the ACCC a Memorandum of Understanding and associated Terms Sheet (“MOU”) setting out the likely terms of the Long Term Terminal Access Protocols which will be an element of the potential long term solution described in Attachment 2 to the Submission on or before 31 March 2009 (unless otherwise agreed with the Commission having regard to the progress of ongoing discussions with the NSW Government to agree a long term access solution at the Terminals);

- (b) the Terminal Operators will submit to the Commission by 30 June 2009 the new Long Term Terminal Access Protocols which, subject to ACCC approval, will form part of the Commission's authorisation; and
- (c) the Terminal Operators will implement contracted arrangements which give effect to such Long Term Terminal Access Protocols as are submitted to the ACCC for approval by a date which is no later than 6 weeks after the date on which those Long Term Access Protocols are approved by the Commission. If accepted by the Commission, any Long Term Terminal Access Protocols will apply retrospectively from 1 July 2009, or such date as agreed by the Terminal Operators and the Commission.

2 Application for urgent interim authorisation

The existing authorisation from the Commission for the Capacity Balancing System ("CBS") granted to Newcastle Port Corporation expires on 31 December 2008.

Due to the cessation of the authorisation of the CBS, the Terminal Operators also seek an urgent interim authorisation for the PWCS Tonnage Allocation Stage 1 (and not a rollover of the CBS), so that it is in place prior to 31 December 2008 and provides commercial certainty that there will be in place a mechanism to manage the vessel queue initially together with a plan for a long term solution to be established by a specified date.

The Hunter Valley Coal Chain Logistics Team has independently estimated 2009 Coal Chain capacity as 94 mtpa. Coal Chain capacity is insufficient to meet demand for coal which is being exported from the PWCS coal terminals at the Port of Newcastle to offshore buyers. In this environment, substantial demurrage costs will be incurred by the industry associated with vessel queues arising from insufficient Coal Chain capacity in the Hunter Valley.

The Terminal Operators note the difficult timing constraint placed on the Commission. However, the coal industry through the consultation process on the Hunter Valley Coal Chain led by the Honourable Nick Greiner AC, has made progress on a long term solution. However, agreement on the detailed final solution on long term terminal access is still being discussed.

In this situation, the Terminal Operators have recognised the need for a solution to manage access to terminal capacity and the likely vessel queue and have submitted the proposed PWCS Tonnage Allocation Stage 1 to replace the existing CBS which will expire on 31 December 2008. Given the expiry of the CBS on 31 December 2008, it is necessary to address the potential for Producers and customers to send vessels to join the queue in advance of the expiration date as occurred in late 2006. This is likely to lead to the queue again reaching a substantial number of vessels (estimated to be

possibly averaging 55 vessels and peaking as high as 70 vessels as occurred in 2007), which will not only incur substantial deadweight demurrage costs for producers, but also lead to Terminal congestion at the rail interface and a vessel queue of proportions that are difficult to manage with associated issues for marine navigation, the marine environment and associated environmental issues.

The PWCS Tonnage Allocation Stage 1, therefore, needs to be subject to urgent implementation to provide certainty for Producers and service providers as well as relevant port authorities that the vessel queue will be managed. In these circumstances, the Terminal Operators submit that this is an urgent matter, being of a kind with respect to which it is appropriate for the Commission to grant interim authorisation.

3 Supporting materials

We enclose:

- (a) Forms A, B and D, the application forms prescribed by regulation for authorisation of exclusionary provisions, agreements affecting competition and boycotts;
- (b) a confidential supporting Submission, of which Confidential Attachments 3, 6 and 7 contain commercially sensitive information, which the Terminal Operators request be excluded from the public register;
- (c) a non-confidential version of the supporting Submission for the public register, from which the confidential parts of Confidential Attachments 3, 6 and 7 have been withheld; and
- (d) a cheque for \$10,500 (being \$7,500 for lodgment of the application made under Form A and a concessional fee of \$1,500 for each of the related applications made under Form B and Form D).



4 Confidentiality

As noted, Confidential Attachments 3, 6 and 7 to the Terminal Operators' Submission contain commercially sensitive and confidential information. The Terminal Operators therefore 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 Terminal Operators request the Commission to place only this letter, Forms A, B and D, and the non-confidential version of the Submission (with Confidential Attachments 3, 6 and 7 removed) on the public register.

Should you have any questions relating to this application, please contact me, Wayne Leach on (02) 9296 2327 or Stefanie Benson on (02) 9296 2435.

Yours sincerely


for 

Dave Poddar

Partner

Direct line +61 2 9296 2281

Direct fax +61 2 9296 3961

Email dave.poddar@mallesons.com

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. Applicants

(a) Name of Applicants:

(Refer to direction 2)

A91110

Port Waratah Coal Services Limited (“PWCS”)

Newcastle Coal Infrastructure Group Pty Limited (“NCIG”)

(b) Description of business carried on by applicants:

(Refer to direction 3)

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“PWCS Terminal”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

NCIG is a consortium formed in 2004 in response to the NSW Government’s invitation for submissions to develop an additional coal terminal at the Port of Newcastle (“NCIG Terminal”). The first stage of the NCIG Terminal, with a capacity to load approximately 30 Mtpa, is expected to become operational in 2010.

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

**Port Waratah Coal Services Limited and Newcastle Coal
Infrastructure Group Pty Limited**

c/- Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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)

The making of, or giving effect to, any contract, arrangement or understanding, either:

- (i) between PWCS, NCIG and/or any future terminal operator at the Port of Newcastle; or
- (ii) between either PWCS or NCIG and any Hunter Valley Coal Chain participant, including all producers of coal for export through the PWCS Terminal, the NCIG Terminal or any future terminal at the Port of Newcastle (“together, the **Terminals**”), or exporters of coal through the Terminals (whether or not they are shareholders in PWCS or NCIG),

which relates to, or is in any way associated with, the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the attached supporting Submission.

- (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 Applicants and the coal chain participants, producers or exporters with whom they may each enter into contracts may, from time to time, make and/or give effect to contracts, arrangements or understandings that are, or may be exclusionary provisions within the meaning of section 45 and section 4D of the *Trade Practices Act 1974 (Cth)* in connection with the supply and/or acquisition of coal handling services at the Terminals, in particular arising from the proposed PWCS Tonnage Allocation Stage 1 or Long Term Terminal Access Protocols as described in the Submission.

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

The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export pursuant to and in accordance with the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the Submission.

- (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:

The period of authorisation sought is from 1 January 2009 to 31 December 2018. In relation to the grounds supporting this period of authorisation, please refer to the supporting 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:

Port Waratah Coal Services Limited
PO Box 57
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

Newcastle Coal Infrastructure Group Pty Limited
Level 7, 167 Macquarie Street
Sydney NSW 2000

(For a description of NCIG's business, please refer to the supporting Submission).

Additionally, any Terminal operator, producer of coal for export through the Terminals or exporter of coal from the Terminals may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in PWCS listed in Attachment 4 of the supporting Submission, the shareholders in NCIG listed in Attachment 5 of the supporting Submission as well as other coal companies in the Hunter Valley in New South Wales producing coal for export or otherwise exporting coal.

- (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)

Please refer to the supporting Submission.

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

Please refer to the supporting 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)

Please refer to the supporting Submission.

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)

Please refer to the supporting Submission.

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

Please refer to the supporting 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)

N/A.

- (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)

N/A.

- (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:

N/A.

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, PWCS is an incorporated joint venture between the companies listed in Attachment 4 of the supporting Submission. NCIG is an incorporated joint venture vehicle between the companies listed in Attachment 5.

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

Yes. PWCS and NCIG have also submitted a Form B and Form D with this Form A.

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

Please refer to 8(b).

9. Further information

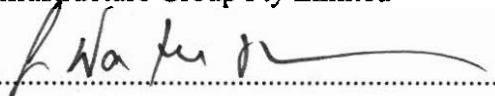
- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

**Port Waratah Coal Services Limited and Newcastle Coal
Infrastructure Group Pty Limited**

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Telephone: (02) 9296 2281
Facsimile: (02) 9296 3999

Dated..... 19 . 11 . 08

Signed by/on behalf of Port Waratah Coal
Services Limited and Newcastle Coal
Infrastructure Group Pty Limited


.....
(Signature)

for

Dave Poddar
Mallesons Stephen Jaques
Partner

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. Applicants

- (a) Name of Applicants:
(Refer to direction 2)

A91111

Port Waratah Coal Services Limited (“PWCS”)

Newcastle Coal Infrastructure Group Pty Limited (“NCIG”)

- (b) Short description of business carried on by applicants:
(Refer to direction 3)

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“**Terminal**”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

NCIG is a consortium formed in 2004 in response to the NSW Government’s invitation for submissions to develop an additional coal terminal at the Port of Newcastle (“**NCIG Terminal**”). The first stage of the NCIG Terminal, with a capacity to load approximately 30 Mtpa is expected to become operational in the first quarter of 2010.

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

Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Ltd

c/- Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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)

The making of, or giving effect to, any contract, arrangement or understanding either:

- (i) between PWCS, NCIG and/or and future terminal operator at the Port of Newcastle; or
- (ii) between either PWCS, NCIG and any Hunter Valley Coal Chain participant, including all producers of coal for export through the PWCS Terminal, the NCIG Terminal or any future terminal at the Port of Newcastle (together, the “Terminals”), or exporters of coal through the Terminals (whether or not they are shareholders in PWCS or NCIG),

which relates to, or is in any way associated with, the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the attached supporting Submission.

- (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 Applicants and the coal chain participants, producers or exporters with whom they may each enter into contracts may, from time to time, make and/or give effect to contracts, arrangements or understandings that have the purpose or effect or likely effect of substantially lessening competition in a market 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 Terminals, in particular arising from the proposed PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the Submission.

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

The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export pursuant to and in accordance with the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the Submission.

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

The period of authorisation sought is from 1 January 2009 to 31 December 2018. In relation to the grounds supporting this period of authorisation, please refer to the supporting 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:

Port Waratah Coal Services Limited

PO Box 57
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

Newcastle Coal Infrastructure Group Pty Limited

Level 7, 167 Macquarie Street
Sydney NSW 2000

(For a description of NCIG's business, please refer to the supporting Submission).

Additionally, any Terminal operator, producer of coal for export through the Terminals or exporter of coal from the Terminals may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include the shareholders in PWCS listed in Attachment 4 of the supporting Submission, the shareholders in NCIG listed in Attachment 5 of the supporting Submission as well as other coal companies in the Hunter Valley in New South Wales producing coal for export or otherwise exporting coal.

- (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)

Please refer to the supporting Submission.

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

Please refer to the supporting 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)

Please refer to the supporting Submission.

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)

Please refer to the supporting Submission.

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

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

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, PWCS is an incorporated joint venture between the companies listed in Attachment 4 of the supporting Submission. NCIG is an incorporated joint venture between the companies listed in Attachment 5.
- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?
Yes. PWCS and NCIG have also submitted a Form A and Form D with this Form B.
- (c) If so, by whom or on whose behalf are those other applications being made?
Please refer to 8(b).

9. Further information

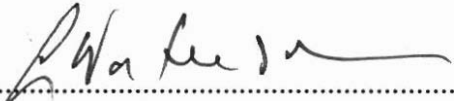
- (a) Name and address of person authorised by the applicants to provide additional information in relation to this application:

Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Telephone: (02) 9296 2281
Facsimile: (02) 9296 3999

Dated..... 19. 11. 08

Signed by/on behalf of Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited


.....
(Signature)

for Dave Poddar
Mallesons Stephen Jaques
Partner

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. Applicants

(a) Name of Applicants:

(Refer to direction 2)

A91112 Port Waratah Coal Services Limited (“PWCS”)

Newcastle Coal Infrastructure Group Pty Limited (“NCIG”)

(b) Description of business, activity or occupation carried on by applicants:

(Refer to direction 3)

PWCS owns and operates the Carrington and Kooragang Island coal loading terminals at the Port of Newcastle (“**Terminal**”). PWCS provides coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export.

NCIG is a consortium formed in 2004 in response to the NSW Government’s invitation for submissions to develop an additional coal terminal at the Port of Newcastle (“**NCIG Terminal**”). The first stage of the NCIG Terminal, with a capacity to load approximately 30 Mtpa is expected to become operational in the first quarter of 2010.

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

Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited

c/- Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

2. Conduct

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

(Refer to direction 4)

The making of, or giving effect to, any contract, arrangement or understanding either:

- (i) between PWCS, NCIG and/or any future terminal operator at the Port of Newcastle; or
- (ii) between either PWCS or NCIG and any Hunter Valley Coal Chain participant including all producers of coal for export through the PWCS Terminal, the NCIG Terminal or any future terminal at the Port of Newcastle (together, the “Terminals”), or exporters of coal through the Terminals (whether or not they are shareholders in PWCS or NCIG),

which relates to, or is in any way associated with, the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the attached supporting Submission.

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

PWCS, NCIG as well as any coal chain participants, including all producers of coal for export through the Terminals or exporter of coal from the Terminals, may be a party to a contract, arrangement or understanding referred to in 2(a). These producers and exporters include shareholders in PWCS listed in Attachment 4 of the supporting Submission, shareholders in NCIG listed in Attachment 5 of the supporting Submission, as well as other coal companies in the Hunter Valley in New South Wales producing coal for export or otherwise exporting coal.

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

Port Waratah Coal Services Limited

PO Box 57
Carrington NSW 2294

(For a description of PWCS' business, please refer to the supporting Submission).

Newcastle Coal Infrastructure Group Pty Limited

Level 7, 167 Macquarie Street
Sydney NSW 2000

(For a description of NCIG's business, please refer to the supporting Submission).

The Newcastle Coal Producers

For the names and addresses of the Coal Producers, please refer to Attachment 7 of the supporting Submission to this Application.

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

The provision of coal handling services to Hunter Valley coal exporters, including receiving and unloading of coal, the stockpiling of coal and loading of coal into vessels for export pursuant to and in accordance with the PWCS Tonnage Allocation Stage 1 or any Long Term Terminal Access Protocols as described in the attached supporting Submission.

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

The period of authorisation sought is from 1 January 2009 to 31 December 2018. In relation to the grounds supporting this period of authorisation, please refer to the supporting 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:

In accordance with the contracts, arrangements or understandings described in 2(a) above, the parties referred to above in 2(b) may, from time to time, be hindered or prevented in relation to the export of coal through the Terminals.

- (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:

Please refer to 3(a).

- (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)

Please refer to the supporting Submission.

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

Please refer to the supporting 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)

Please refer to the supporting Submission.

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)

Please refer to the supporting Submission.

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

Please refer to the supporting 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, PWCS is an incorporated joint venture between the companies listed in Attachment 4 of the supporting Submission. NCIG is an incorporated joint venture between the companies listed in Attachment 5.

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

Yes. PWCS and NCIG have also submitted a Form A and Form B with this Form D.

- (c) If so, by whom or on whose behalf are those other applications being made?
Please refer to 7(b).

8. Further information

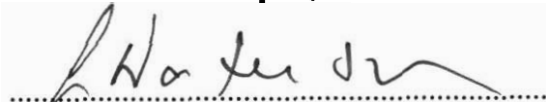
- (a) Name, postal address and telephone contact details of the person authorised by the applicants seeking authorisation to provide additional information in relation to this application:

**Port Waratah Coal Services Limited and Newcastle Coal
Infrastructure Group Pty Limited**

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Telephone: (02) 9296 2281
Facsimile: (02) 9296 3999

Dated..... 19.11.08

Signed by/on behalf of Port Waratah Coal
Services Limited and Newcastle Coal
Infrastructure Group Pty Limited



(Signature)

for

Dave Poddar
Mallesons Stephen Jaques
Partner

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.