

MALLESONS STEPHEN JAQUES

For public register

21 July 2009

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Attention: Mr David Hatfield and Ms Jaime Martin

Dear Dr Chadwick

Port Waratah Coal Services Limited, Newcastle Coal Infrastructure Group Pty Ltd and Newcastle Port Corporation - Applications for authorisation A91147-A91149

1 Revised applications for authorisation

1.1 As discussed, we attach the following revised application forms on behalf of Port Waratah Coal Services Limited ("PWCS"), Newcastle Coal Infrastructure Group Pty Limited ("NCIG") and Newcastle Port Corporation ("NPC"):

- (a) **Form A** - application for authorisation to make or give effect to a contract, arrangement understanding, a provision of which may be a cartel provision within the meaning of Division 1 of Part IV of the *Trade Practices Act 1974* (Cth) ("TPA") or which may be an exclusionary provision within the meaning of section 45 of the TPA; and
- (b) **Form B** - application for authorisation to make or give effect to a contract, arrangement or understanding, a provision of which may be a cartel provision within the meaning of Division 1 of Part IV of the TPA or which may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the TPA.

1.2 The attached forms reflect the amendments to Forms A and B introduced by the *Trade Practices Amendment Regulation 2009 (No 3)* which, in turn, reflect the commencement on 24 July 2009 of the new prohibition against the making of, or giving effect to, a cartel provision. Under the Regulations, no changes are required to the Form D application for authorisation which the Applicants lodged with the Commission on 29 June 2009.

1.3 The attached Forms A and B are provided for lodgment effective on and from 24 July 2009, when the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* and the *Trade Practices Amendment Regulation 2009 (No 3)* commence.

1.4 Full details in relation to the Capacity Framework Arrangements for which the Applicants seek authorisation, and details of the public benefits associated with those arrangements, are set out in the submission lodged by the Applicants on 29 June 2009. Those details remain unchanged.

2 Interim authorisation and waiver of filing fee

2.1 As the lodgment of the revised forms is essentially a procedural matter, given the commencement of the new cartel prohibitions on 24 July 2009, and does not affect the substantive assessment of the conduct for which authorisation is sought, the Applicants respectfully request that the Commission:

- (a) grants interim authorisation in respect of the Capacity Framework Arrangements as soon as practicable; and
- (b) uses its discretion under section 172(2A) of the TPA and section 75 of the *Trade Practices Regulations 1974* to waive the filing fee for the revised applications. The imposition of the filing fee would impose an unduly onerous burden on the Applicants as they have already paid a lodgment fee in respect of authorisation applications for the same conduct on 29 June 2009.

3 Other matters

3.1 This letter may be placed on the Commission's public register.

3.2 Please contact us if you would like to discuss any aspect of the attached applications for authorisation.

Yours sincerely



Dave Poddar
Partner
Direct line +61 2 9296 2281
Fax +61 2 9296 3999
Email dave.poddar@malleasons.com

Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:• to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also 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 that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- 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)

A91168

Port Waratah Coal Services Limited (“PWCS”);

Newcastle Coal Infrastructure Group Pty Limited (“NCIG”); and

Newcastle Port Corporation (“NPC”).

(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 and is also in negotiations with the NSW Government in relation to the leasing and operation of the proposed new “Terminal 4”

at the Port of Newcastle (together, the “PWCS Terminals”). 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 or third 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.

NPC is a statutory State-owned corporation constituted under the *Ports and Maritime Administration Act 1995 (NSW)* (“Act”). NPC’s principal functions are to establish, manage and operate the port facilities and services in the Port of Newcastle and to exercise the port safety functions set out in the Act and in its operating licence.

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

Port Waratah Coal Services Limited

c/- Mr Dave Poddar

Partner

Mallesons Stephen Jacques

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Newcastle Coal Infrastructure Group Pty Ltd

c/- Mr Peter Armitage

Partner

Blake Dawson

225 George Street

Sydney NSW 2000

Newcastle Port Corporation

c/- Ms Liza Carver

Partner

Gilbert + Tobin

Level 37

2 Park Street

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 Applicants seek authorisation to:

Make a contract or arrangement or arrive at an understanding, or give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in Attachment 1 of the Applicants' Supporting Submission dated 29 June 2009 ("Capacity Framework Arrangements").

The conduct for which authorisation is sought will be reflected in a range of agreements and other documents between various participants in the Hunter Valley coal chain.

In particular, the Capacity Framework Arrangements (for which the Applicants seek authorisation) include:

- (i) the allocation of capacity to access seekers at the PWCS Terminals under long term contracts in accordance with the PWCS Nomination and Allocation Procedure;**
- (ii) the allocation of up to 12 Mtpa of capacity to access seekers (initially exclusively to Non-NCIG Producers) at NCIG Stage 2 under long term contracts in accordance with the NCIG Nomination and Allocation Procedure;**
- (iii) the ability for terminal operators to impose (at their election) an industry levy payable by all users of the Terminals in specified circumstances to facilitate an expansion of capacity at their respective Terminals;**
- (iv) certain agreed triggers and processes for determining whether and when expansions of the PWCS Terminals are required (including the construction of a new terminal, where necessary);**
- (v) the "compression" and "decompression" of certain capacity allocations in circumstances where there is a delay or shortfall in any expansion of the PWCS Terminals (including completion of a new terminal) or in the completion of NCIG Stage 2;**

- (vi) a limitation on the maximum fees for transfers of unused capacity allocations and the introduction of a transparent and efficient capacity transfer system to limit commercial incentives to hoard capacity to the detriment of all industry participants; and
 - (vii) proposed principles to facilitate the alignment of commercial contracts with service providers across the coal chain, including above and below rail.
- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel 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 cartel provisions and/or 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 PWCS Terminals and/or NCIG Terminal, in particular arising from the Capacity Framework Arrangements and associated arrangements as described in the Applicants' Supporting Submission dated 29 June 2009.

- (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 various commercial agreements to be entered into, including to give effect to the principles and framework set out in the Implementation Memorandum signed by PWCS, NCIG and NPC (and provided to the Commission) in April 2009 as described in the Supporting 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 July 2009 to 30 June 2024. 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 1(b) above).

Newcastle Coal Infrastructure Group Pty Limited

Level 7, 167 Macquarie Street

Sydney NSW 2000

(For a description of NCIG's business, please refer to 1(b) above).

Newcastle Port Corporation

PO Box 663

Newcastle NSW 2300

(For a description of NPC's business, please refer to 1(b) above).

Others Additionally:

- (i) any 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 3 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 (including those listed in Attachment 6 of the Supporting Submission); and
 - (ii) any above or below rail service provider in the Hunter Valley referred to in Attachment 6 of the Supporting Submission may be a party to a contract, arrangement or understanding in 2(a); and
 - (iii) the Hunter Valley Coal Chain Coordinator (or equivalent body) (yet to be constituted).
- (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)

The Applicants consider that the relevant market is the market for the provision of coal handling services for coal exported from the Hunter Valley.

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. However, as set out above, the Capacity Framework Arrangements for which authorisation is sought (or aspects of the Capacity Framework Arrangements) are likely to be reflected in a range of formal agreements and other documents as set out in the Supporting Submission.

- (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 3 of the Supporting Submission. NCIG is an incorporated joint venture vehicle between the companies listed in Attachment 5 of the Supporting Submission.

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

Yes. PWCS, NCIG and NPC 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

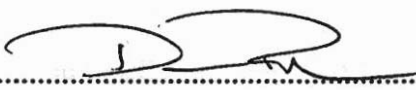
- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

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

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

Dated: 24 July 2009

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

A handwritten signature in black ink, appearing to be 'D. Poddar', is written over a horizontal dotted line.

(Signature)

**Dave Poddar
Partner
Mallesons Stephen Jaques**

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel 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 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also 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 that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would 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)

A91169 Port Waratah Coal Services Limited ("PWCS");
Newcastle Coal Infrastructure Group Pty Limited ("NCIG"); and
Newcastle Port Corporation ("NPC").

- (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 and is also in negotiations with

the NSW Government in relation to the leasing and operation of the proposed new "Terminal 4" at the Port of Newcastle (together, the "**PWCS Terminals**"). 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 or third 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.

NPC is a statutory State-owned corporation constituted under the *Ports and Maritime Administration Act 1995 (NSW)* ("**Act**"). NPC's principal functions are to establish, manage and operate the port facilities and services in the Port of Newcastle and to exercise the port safety functions set out in the Act and in its operating licence.

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

Port Waratah Coal Services Limited,

c/- Mr Dave Poddar

Partner

Mallesons Stephen Jaques

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Newcastle Coal Infrastructure Group Pty Ltd

c/- Mr Peter Armitage

Partner

Blake Dawson

225 George Street

Sydney NSW 2000

Newcastle Port Corporation

c/- Ms Liza Carver

Partner

Gilbert + Tobin

Level 37

2 Park Street

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 Applicants seek authorisation to:

Make a contract or arrangement or arrive at an understanding, or give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in Attachment 1 of the Applicants' Supporting Submission dated 29 June 2009 ("Capacity Framework Arrangements").

The conduct for which authorisation is sought will be reflected in a range of agreements and other documents between various participants in the Hunter Valley coal chain.

In particular, the Capacity Framework Arrangements (for which the Applicants seek authorisation) include:

- (i) the allocation of capacity to access seekers at the PWCS Terminals under long term contracts in accordance with the PWCS Nomination and Allocation Procedure;
- (ii) the allocation of up to 12 Mtpa of capacity to access seekers (initially exclusively to Non-NCIG Producers) at NCIG Stage 2 under long term contracts in accordance with the NCIG Nomination and Allocation Procedure;
- (iii) the ability for terminal operators to impose (at their election) an industry levy payable by all users of the Terminals in specified circumstances to facilitate an expansion of capacity at their respective Terminals;

- (iv) certain agreed triggers and processes for determining whether and when expansions of the PWCS Terminals are required (including the construction of a new terminal, where necessary);
 - (v) the “compression” and “decompression” of certain capacity allocations in circumstances where there is a delay or shortfall in any expansion of the PWCS Terminals (including completion of a new terminal) or in the completion of NCIG Stage 2;
 - (vi) a limitation on the maximum fees for transfers of unused capacity allocations and the introduction of a transparent and efficient capacity transfer system to limit commercial incentives to hoard capacity to the detriment of all industry participants; and
 - (vii) proposed principles to facilitate the alignment of commercial contracts with service providers across the coal chain, including above and below rail.
- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening 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 might be cartel provisions or which might have the purpose, 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 each case in connection with the supply and/or acquisition of coal handling services at the PWCS Terminals and/or NCIG Terminal, in particular arising from the Capacity Framework Arrangements and associated arrangements as described in the Applicants’ Supporting Submission dated 29 June 2009.

- (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 various commercial agreements to be entered into, including to give effect to the principles and framework set out in the Implementation Memorandum signed

by PWCS, NPC and NCIG (and provided to the Commission) in April 2009 as described in the Supporting 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 July 2009 to 30 June 2024. 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 1(b) above).

Newcastle Coal Infrastructure Group Pty Limited

Level 7, 167 Macquarie Street

Sydney NSW 2000

(For a description of NCIG's business, please refer to 1(b) above).

Newcastle Port Corporation

PO Box 663

Newcastle NSW 2300

(For a description of NPC's business, please refer to 1(b) above).

Others

Additionally:

- (i) any 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 3 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 (including those listed in Attachment 6 of the Supporting Submission);

- (ii) any above or below rail service provider in the Hunter Valley including those referred to in Attachment 6 of the Supporting Submission may be a party to a contract, arrangement or understanding referred to in 2(a); and
 - (iii) the Hunter Valley Coal Chain Coordinator (or equivalent body) (yet to be constituted).
- (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)

The Applicants consider that the relevant market is the market for the provision of coal handling services for coal exported from the Hunter Valley.

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. However, as set out above, the Capacity Framework Arrangements for which authorisation is sought (or aspects of the Capacity Framework Arrangements) are likely to be reflected in a range of formal agreements and other documents, as set out in the Supporting Submission.

- (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 3 of the Supporting Submission. NCIG is an incorporated joint venture between the companies listed in Attachment 5 of the Supporting Submission.

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

Yes. PWCS, NCIG and NPC 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, Newcastle Coal Infrastructure Group Pty Limited and Newcastle Port Corporation

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: 24 July 2009

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


.....
(Signature)

Dave Poddar
Partner
Mallesons Stephen Jaques

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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 be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, 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 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.