

Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsections 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. Applicant

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

A91181

Australian Amalgamated Terminals Pty Limited (ACN 098 452 229) (AAT).

This Application is to be read and determined together with the following application (which will be referred to as the **Related Application**):

- (i) Form B: Agreements Affecting Competition or Incorporating Related Cartel Provisions
Application for Authorisation by AAT in respect of the AAT Joint Venture (as described in paragraph 2(a) of this Application, dated the same date as this application).

A copy of the submission made in support of the Application and Related Application was submitted to the Australian Competition and Consumer Commission on 10 June 2009 (**Submission**).

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

The AAT Joint Venture operates terminal facilities and related services provided to stevedores and other terminal users – on a multi-user, open access basis – to facilitate the loading and unloading of automotive and general cargo. AAT currently operates in five ports around Australia. Further details of AAT's operations are provided in the Submission.

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

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

and

Gilbert + Tobin

Level 37, 2 Park Street

Sydney, NSW 2000

Attention: Elizabeth Avery

Direct: 02 9263 4362

Fax: 02 9263 4111

eavery@gtlaw.com.au

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)

AAT seeks authorisation to:

- (a) give effect to the joint venture of AAT (**AAT Joint Venture**), including section 2 of the shareholders' agreement dated 2 December 2002 between AAT, P&O Wharf Management

Pty Limited and Plzen Pty Limited (**Shareholders' Agreement**), related provisions and the Constitution of AAT; and

(b) engage in conduct under or pursuant to, and in fulfilment of, the AAT Joint Venture, on its own behalf and on behalf of parties to the AAT Joint Venture and any future parties to the AAT Joint Venture.

(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)

Section 2 of the Shareholders' Agreement, and related provisions taken together with the Constitution of AAT, might be considered exclusionary provisions (if s 76C of the *Trade Practices Act 1974 (Cth)* did not apply) or cartel provisions (if s 44ZZRO and/or s 44ZZRP of *Trade Practices Act 1974 (Cth)* did not apply).

Section 2 of the Shareholders' Agreement relevantly provides for the establishment of the joint venture between the parties for carrying on the Business of AAT. The Shareholders' Agreement defines the Business as:

"the management and development of wharf facilities and related infrastructure for motor vehicle cargo and for on wharf PDI processing of motor vehicle cargo stevedoring and for on wharf PDI processing of motor vehicles more fully described in Annexure A [of the Shareholders' Agreement (Confidential)], and any other business which the Directors resolve should be a business of [AAT] or any subsidiary of [AAT]."

We note that since the time the Shareholders' Agreement was entered into, the business model of AAT has evolved to include provision of facilities and related services for the stevedoring of general cargo also, and provides for open access at all AAT terminals. AAT terminals are located at Fisherman Islands, Brisbane; Port Kembla, NSW; Webb Dock West, Melbourne; in addition to the lease of land behind terminals 3 and 4 at Adelaide Outer Harbour, South Australia.

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

The AAT Joint Venture operates terminal facilities and related services provided to stevedores and other terminal users – on a multi-user, open access basis – to facilitate the loading and unloading of automotive and general cargo. AAT currently operates in five ports around Australia.

- (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:**

AAT seeks authorisation for the period of the AAT Joint Venture. The arguments in support are set out in AAT's supplementary submission dated 15 July 2009.

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:**

For the purposes of, and so as to have the benefit and protection conferred by section 88(6) of the Act:

- (i) AAT

The address for service of documents for AAT is

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

Greg Kneebone

Direct: 03 8698 9917

Fax: 03 9681 7015

greg.kneebone@aat.auz.biz

- (ii) P&O Wharf Management Pty Limited (POWM) (ACN 100 737 264)

The address for service of documents for POWM is:

P&O Wharf Management Pty Limited

Level 9

160 Sussex Street

Sydney NSW 2000

Attention: Andrew Cridland

Direct: 02 9364 8907

Fax: 02 9364 8408

Andrew.Cridland@dpworld.com

(iii) Plzen Pty Limited (**Plzen**) (ACN 065 905 571)

The address for service of documents for Plzen is

c/- Company Secretary

Plzen Pty Limited

Level 6, 380 St Kilda Road

Melbourne VIC 3000

(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)

This Application is made on behalf of:

(i) AAT

(ii) POWM

P&O Wharf Management Pty Limited

Level 9

160 Sussex Street

Sydney NSW 2000

For a description of POWM's business, please refer to the Submission.

(iii) Plzen

c/- Company Secretary

Plzen Pty Limited

Level 6, 380 St Kilda Road

Melbourne VIC 3000

For a description of Plzen's business, please refer to the Submission.

In addition, the authorisation being applied for by this Application is to be expressed so as to apply to or in relation to each other person who may be future parties to the AAT Joint Venture.

4. Public benefit claims

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

The arguments in support of Authorisation are set out in the Submission.

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

The facts and evidence relied upon in support of these claims are set out in the 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 markets in which services in 2(c) are supplied are set out in the 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)**

As explained in the submission, no detriments to the public will result or be likely to result from the Shareholders' Agreement and/or the conduct engaged under or pursuant to, and in fulfilment of, the AAT Joint Venture.

(b) Facts and evidence relevant to these detriments:

Not applicable.

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

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

Yes, the Related Application.

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

The Related Application is being made by AAT on its own behalf and on behalf of parties to the AAT Joint Venture and any future parties to the AAT Joint Venture.

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:**

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

Greg Kneebone

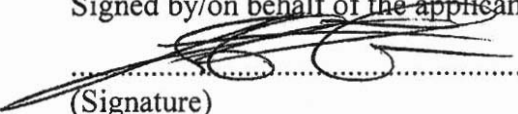
Direct: 03 8698 9917

Fax: 03 9681 7015

greg.kneebone@aat.auz.biz

Dated..... 5/8/09.....

Signed by/on behalf of the applicant


.....
(Signature)

CRAIG FAULKNER
.....
(Full Name)

AUSTRALIAN AMALGAMATED TERMINALS
.....
(Organisation)

CHIEF EXECUTIVE
.....
(Position in organisation)

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 — subsections 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. Applicant

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

A91182 Australian Amalgamated Terminals Pty Limited (ACN 098 452 229) (AAT).

This Application is to be read and determined together with the following application (which will be referred to as the **Related Application**):

- (i) Form A: Agreements Affecting Competition and Associated Cartel Provisions

Application for Authorisation by AAT in respect of the AAT Joint Venture (as described in paragraph 2(a) of this Application, dated the same date as this application).

A copy of the submission made in support of the Application and Related Application was submitted to the Australian Consumer and Competition Commission (ACCC) on 10 June 2009 (Submission).

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

The AAT Joint Venture operates terminal facilities and related services provided to stevedores and other terminal users – on a multi-user, open access basis – to facilitate the loading and unloading of automotive and general cargo. AAT currently operates in five ports around Australia. Further details of AAT's operations are provided in the Submission.

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

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

and

Gilbert + Tobin

Level 37, 2 Park Street

Sydney, NSW 2000

Attention: Elizabeth Avery

Direct: 02 9263 4362

Fax: 02 9263 4111

eavery@gtlaw.com.au

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)

AAT seeks authorisation to:

- (a) give effect to the joint venture of AAT (AAT Joint Venture), including section 2 of the shareholders' agreement dated 2 December 2002 between AAT, P&O Wharf Management

Pty Limited and Plzen Pty Limited (**Shareholders' Agreement**), related provisions and the Constitution of AAT; and

(b) engage in conduct under or pursuant to, and in fulfilment of, the AAT Joint Venture, on its own behalf and on behalf of parties to the AAT Joint Venture and any future parties to the AAT Joint Venture.

- (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)

Section 2 of the Shareholders' Agreement, and related provisions taken together with the Constitution of AAT, might be considered to substantially lessen competition under s 45 of the *Trade Practices Act 1974 (Cth)* or to be cartel provisions (if s44ZZRO and/or s44ZZRP of the *Trade Practices Act 1974 (Cth)* did not apply).

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

The AAT Joint Venture operates terminal facilities and related services provided to stevedores and other terminal users – on a multi-user, open access basis – to facilitate the loading and unloading of automotive and general cargo. AAT currently operates in five ports around Australia.

- (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:**

AAT seeks authorisation for the period of the AAT Joint Venture. The arguments in support are set out in AAT's supplementary submission dated 15 July 2009.

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:**

For the purposes of, and so as to have the benefit and protection conferred by section 88(6) of the Act:

- (i) AAT (ACN 098 452 229)

The address for service of documents for AAT is

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

Greg Kneebone

Direct: 03 8698 9917

Fax: 03 9681 7015

greg.kneebone@aat.auz.biz

(ii) P&O Wharf Management Pty Limited (POWM) (ACN 100 737 264)

The address for service of documents for POWM is:

P&O Wharf Management Pty Limited

Level 9

160 Sussex Street

Sydney NSW 2000

Attention: Andrew Cridland

Direct: 02 9364 8907

Fax: 02 9364 8408

Andrew.Cridland@dpworld.com

(iii) Plzen Pty Limited (Plzen) (ACN 065 905 571)

The address for service of documents for Plzen is

c/- Company Secretary

Plzen Pty Limited

Level 6, 380 St Kilda Road

Melbourne VIC 3000

**(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)**

This Application is made on behalf of:

(i) AAT

(ii) POWM

P&O Wharf Management Pty Limited

Level 9

160 Sussex Street

Sydney NSW 2000

For a description of POWM's business, please refer to the Submission.

(iii) Plzen

c/- Company Secretary

Plzen Pty Limited

Level 6, 380 St Kilda Road

Melbourne VIC 3000

For a description of Plzen's business, please refer to the Submission.

In addition, the authorisation being applied for by this Application is to be expressed so as to apply to or in relation to each other person who may be future parties to the AAT Joint Venture.

4. Public benefit claims

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

The arguments in support of Authorisation are set out in the Submission.

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

The facts and evidence relied upon in support of these claims are set out in the 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 markets in which services in 2(c) are supplied are set out in the 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)

As explained in the Submission, no detriments to the public will result or be likely to result from the Shareholders' Agreement and/or the conduct engaged under or pursuant to, and in fulfilment of, the AAT Joint Venture

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

Not applicable.

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.

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

Yes, the Related Application.

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

The Related Application is being made by AAT on its own behalf and on behalf of parties to the AAT Joint Venture and any future parties to the AAT Joint Venture.

9. **Further information**

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

AAT

PO Box 5129

Garden City

Victoria 3207

Attention: Craig Faulkner

Direct: 03 8698 6916

Fax: 03 9681 7015

craig.faulkner@aat.auz.biz

Greg Kneebone

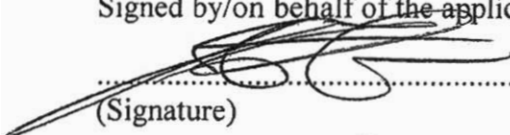
Direct: 03 8698 9917

Fax: 03 9681 7015

greg.kneebone@aat.auz.biz

Dated..... 5/8/09

Signed by/on behalf of the applicant


.....
(Signature)

.....
Craig Faulkner
.....
(Full Name)

.....
Chief Executive
.....
(Position in Organisation)

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.