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L A W Y E R S

26 July 2010

By email

Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Email: adjudication@accc.gov.au

Gilbert + Tobin

2 Park Street  
Sydney NSW 2000  
Australia

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Sydney NSW 2001

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Dear Sir/Madam,

**Pozzolanic Enterprises Pty Ltd – Application for Authorisation**

We act for Pozzolanic Enterprises Pty Ltd (ACN 010 367 898) (**Pozzolanic**).

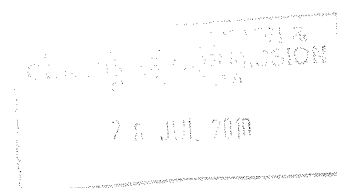
Pozzolanic applies for authorisation pursuant to section 88(1) of the *Trade Practices Act 1974* (Cth) (**TPA**) in relation to its proposed Fly Ash Supply Agreement with Tarong Energy Corporation Limited and Tarong North Pty Ltd granting Pozzolanic the right to purchase fly ash from the Tarong and Tarong North coal-fired power stations in Queensland.

We enclose:

- a Form B application for authorisation (**Application**);
- a confidential submission in support of the Application;
- a public version of the submission in support of the Application; and
- a cheque for the appropriate filing fee of \$7,500 in due course.

We request that the confidential submission in support of the Application be excluded from the ACCC's Public Register. The submission contains information that is commercially sensitive to Pozzolanic as well as third parties. The disclosure of this information would unreasonably and adversely affect Pozzolanic and third parties in respect of their lawful business, commercial and financial affairs.

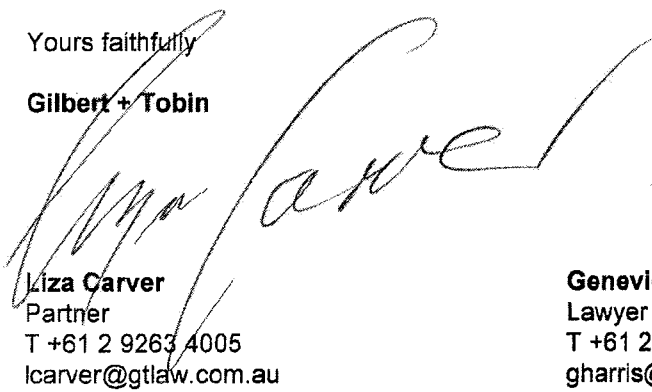
We have enclosed a public version of the submission (with confidential information removed) for publication on the ACCC's Public Register.



Please contact us if you would like to discuss this letter or the enclosed application and submission. Pozzolanica would be happy to meet with the ACCC and to provide further information to assist in its consideration of the Application if required.

Yours faithfully

**Gilbert + Tobin**



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## 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**

(regulation 70)

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.

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#### **1 Applicant**

##### **(a) Name of Applicant**

A91245 Pozzolanic Enterprises Pty Ltd (ACN 010 367 898) (**Pozzolanic**);

##### **(b) Short description of business carried on by applicants:**

Pozzolanic carries on the business of collecting and processing fly ash for use as a partial substitute for cement in the production of premixed concrete and concrete products.

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

Gilbert + Tobin  
Level 37, 2 Park Street  
SYDNEY NSW 2000

Attention:

Liza Carver  
Tel: 02 9236 4005  
Fax: 02 9263 4111  
lcarver@gtlaw.com.au

and

Genevieve Harris  
Tel: 02 9263 4194  
Fax: 02 9263 4111  
gharris@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:**

Pozzolanica, which is a wholly owned subsidiary of Cement Australia Holdings Pty Ltd (CAH) (CAH in turn receives management services from Cement Australia Pty Ltd (Cement Australia) pursuant to a management agreement), proposes to enter into a Fly Ash Supply Agreement (Agreement) with Tarong Energy Corporation Limited and Tarong North Pty Ltd, granting Pozzolanica the right to purchase fly ash from the Tarong and Tarong North coal-fired power stations in Queensland.

A confidential copy of the Fly Ash Supply Agreement is attached (see Attachment B).

### **(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:**

Clause 4.1 of the enclosed Agreement allows Pozzolanica to purchase any and all fly ash obtained from the Ash Transfer Points and removed from the Tarong or Tarong North Power Station sites (as the case may be). However the operation of clause 4.1 is limited by clause 4.2 as well as other provisions of the Agreement.

For further details please see attached Submission.

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

The relevant service is the collection and processing of fly ash. The relevant good is the fly ash which, when of suitable quality, may be used as a partial substitute for cement in the production of concrete.

### **(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 Agreement provides for a term of 3 years.

The grounds supporting this period of authorisation are set out in the attached Submission.

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

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

- (i) Tarong Energy Corporation Limited (ABN 52 078 848 736) (TEC),  
Level 13  
42 Albert Street  
Brisbane QLD 4001

TEC is a Queensland government owned corporation trading as Tarong Energy, which supplies about 25% of Queensland's electricity supply through hydro and coal-fired generation. It holds interests in both the Tarong and Tarong North coal-fired power stations. Further detail is set out in the attached Submission.

- (ii) Tarong North Pty Ltd (ABN 91 102 191 793) (**Tarong North**),  
Level 13  
42 Albert Street  
Brisbane QLD 4001

Tarong North operates and manages the Tarong North power station on behalf of the power plant's owner TN Power Pty Ltd (ABN 56 099 730 042). Further detail is set out in the attached Submission.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

- (i) Cement Australia Holdings Pty Ltd (ABN 99 001 085 561) (**CAH**),  
Suite 1, level 19  
111 Pacific Highway  
North Sydney NSW 2060

CAH is the 100% owner of Pozzolanica and also owns a number of related companies. While CAH is not a party to the Agreement, it seeks the benefit of the authorisation in its capacity as Pozzolanica's parent company.

- (ii) Cement Australia Pty Ltd (ABN 75 104 053 474) (**Cement Australia**),  
Suite 1, level 19  
111 Pacific Highway  
North Sydney NSW 2060

Cement Australia provides management services to CAH and its subsidiaries pursuant to a management agreement. Cement Australia, as agent for the Cement Australia Partnership, also sells and distributes a range of cementitious products including bagged cement, bulk cement, fly ash, lime and slag which is produced by CAH and its subsidiaries.

**4 Public benefit claims**

**(a) Arguments in support of application for authorisation:**

See attached Submission.

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

See attached Submission.

**5 Market definition**

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

See attached 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:**

No detriments to the public will result from the Fly Ash Supply Agreement, for further details see attached Submission.

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

See attached Submission.

**7 Contracts, 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:**

**Is this application to be so expressed?**

No.

**(a) 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:**

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*)?**

No.

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

Not applicable.

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

Not applicable.

**9 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:**

Gilbert + Tobin  
Level 37, 2 Park Street  
SYDNEY NSW 2000

Attention: Liza Carver  
Tel: 02 9236 4005  
Fax: 02 9263 4111  
lcarver@gtlaw.com.au

and

Genevieve Harris  
Tel: 02 9263 4194  
Fax: 02 9263 4111  
gharris@gtlaw.com.au

Dated 26 July 2010

Signed by/on behalf of the applicants

  
.....  
(Signature)

Liza Carver  
.....  
(Full Name)

Gilbert + Tobin  
.....  
(Organisation)

Partner  
.....  
(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.