

For the public register

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23 MAY 2012

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Our ref 0104611-0000001 AU:1686114.8

22 May 2012

Dear Dr Chadwick

Application for Authorisation of Collective Bargaining with Surat Basin Rail for Access to Rail Capacity associated with Wiggins Island Coal Export Terminal

We act for Cockatoo Coal Ltd and Stanmore Coal Ltd (together the “**Applicants**”), in relation to a collective bargaining authorisation application relating to the Surat Basin Rail Line below-rail infrastructure associated with the Wiggins Island Coal Export Terminal (the “**Terminal**”) in the Port of Gladstone, Queensland.

1 Application for authorisation for collective bargaining

We enclose:

- an application for authorisation, and a submission in support of the application, pursuant to sections 88(1A) and 88(1) of the *Competition and Consumer Act 2010* (Cth) (“**CCA**”); and
- a cheque payable to the Commission in the amount of \$7,500.00, being the prescribed lodgement fee for the application for authorisation.

The application for authorisation is submitted jointly by the Applicants.

2 Conduct and time period for which the authorisation is sought

The Applicants, and certain other coal producers, are participating in the joint expansion of the Terminal in Gladstone, being a significant infrastructure project which will have substantial benefits in terms of the exports of coal from Australia. An important element associated with the expansion of the Terminal is for the producers to secure rail access to the Terminal in order to ensure that transportation of coal to the Terminal for export can occur.

This application requests authorisation for the Applicants to engage in collective bargaining under sections 88(1A) and 88(1) of the CCA for access to:

- the Surat Basin Rail line below-rail infrastructure connecting the Western system approximately 7 km from Wandoan with the Moura system near Banana, including all expansions and extensions to this system (“**Surat Basin Rail Line**”); and

- any other below-rail infrastructure connected directly or indirectly to the Surat Basin Rail Line (excluding the Moura Rail Line and the Miles to Wandoan Rail Line),

as well as all services relating to such access (together, the "**Identified Rail Infrastructure and Services**")

with

- the Surat Basin Rail Joint Venture ("**Surat Basin Rail**");
- any entity which acquires an interest in Surat Basin Rail; and/or
- any future owner or operator of any part of the Identified Rail Infrastructure,

(together, the **Access Provider**).

The processes through which parties can apply for access rights to the Identified Rail Infrastructure and Services, and the way in which Surat Basin Rail will negotiate the terms for and grant access to those access rights, are governed by an Access Policy, a draft of which was issued by Surat Basin Rail in January 2012. As set out in the attached submission in support of the Applicants' application for authorisation, the negotiation process and documents required under that process are extensive.

The Applicants consider that a process of collective discussion and negotiation will enable the producers to determine when infrastructure projects and financing arrangements will be required and will facilitate the ability to work collaboratively with the Access Provider in a constructive manner in relation to such projects.

The Applicants, therefore, seek authorisation pursuant to sections 88(1A) and 88(1) of the CCA to:

- collectively discuss and negotiate terms and conditions, including price, under which access to the Identified Rail Infrastructure and Services will be acquired from the Access Provider; and
- enter into and give effect to contracts, arrangements or understandings between the Access Provider and the Applicants (their successors and assigns and/or their related bodies corporate, associated entities and the parties in the joint ventures for which they are contracting), containing terms and conditions, including price, upon which access to the Identified Rail Infrastructure Services will be acquired, and which terms may contain a provision that might technically be considered to be a cartel provision within the meaning of Division 1 of Part IV of the CCA.

The form of the authorisation that is being requested is on the basis that, in the resources industry, mining companies frequently act as operators of various mines on behalf of joint ventures. In that capacity, the mining companies frequently negotiate on behalf of various joint ventures. Accordingly, the statutory immunity that is sought is requested to allow the Applicants, their successors and assigns and/or their related bodies corporate, associated entities and joint venture partners (for convenience, collectively referred to as the "**Applicants**") to discuss amongst themselves matters relating to those negotiations, contracts, arrangements or understandings related to access to the Identified Rail Infrastructure and Services associated with transportation of coal to the Terminal.

In addition, as provided under section 88(10) of the CCA, it is requested that any authorisation granted by the Commission be expressed to apply to producers at future stages of the expansion and future users of the Terminal who will similarly need to negotiate below-rail access as the staged expansion of the Terminal occurs.

By way of further explanation, it is expressly noted that the introduction of the criminal cartel provisions into the CCA (formerly the *Trade Practices Act 1974*) have seen an increased desire by companies involved in large mining infrastructure projects to seek authorisation from the Commission for conduct. The reason for seeking authorisation is to ensure CCA compliance and certainty, and not because the commercial provisions involved are unusual or untoward.

Authorisation is sought for a period of 20 years. This period is considered appropriate in the circumstances relating to the Surat Basin Rail project and to the Terminal project because:

- the development of the Terminal is proposed to occur in multiple stages over a period of several years as mines in the region are developed and the Terminal is expanded accordingly. As such, certain producers (stage 2 producers) will need to secure rail access at this stage of the Terminal project, whereas other producers will need to secure rail access at future expansion stages when their mines come on stream. In addition, Surat Basin Rail has agreed to undertake expansions to the Identified Rail Infrastructure, on a staged basis, over a similar period of time which will require staged negotiations with future users selected under the terms of the Access Policy;
- both the Applicants and the Access Provider may be required to undertake extensive capital investment in connection with coal production and infrastructure investment respectively, and the long lead times involved in such investment require long term contractual commitment to deliver the necessary certainty for such long term investment; and
- rail access agreements and Terminal access agreements are typically entered into for periods of a minimum of 10 years on take or pay terms and it is, therefore, important to seek contractual alignment in relation to these agreements.

It is noted that the impact on competition of such a 20 year authorisation period is expected to be minimal, if any, in the context of the Terminal project, with no negative impact on the global markets for thermal or coking coal. However, it is submitted that there is a likely positive impact connected with the development of the Terminal project and increased exports.

Similar arguments as to the need for a long-term authorisation were accepted by the Commission in relation to the Wiggins Island Coal Export Terminal authorisation applications¹ where similar long term investment in coal terminal infrastructure was required with staged expansions.

3 Interim authorisation is requested because of the need to expeditiously proceed with the rail infrastructure associated with the Terminal project

Negotiation for access is a time sensitive matter because:

- avoiding delays in respect of the project as a whole and is important in light of the significant amount of investment involved in relation to development of the Terminal, as well as significant investment in below-rail infrastructure which is required to support the Terminal.
- it will enable more meaningful negotiations with the Access Provider to commence on a collective basis as soon as possible.
- the project time frames are being driven by the Queensland Government's mandate;

¹ Determination of Application for Authorisation lodged by Wiggins Island Coal Export Terminal producers No. A91241 2 December 2010.

- it will facilitate an equality of bargaining power for the Applicants when commencing negotiations for access to the Identified Rail Infrastructure and Services. The Applicants believe that this will be commercially beneficial for the Applicants and the industry as a whole;
- it will allow for an early assessment of the likely costs of the Applicants securing access to the Identified Rail Infrastructure and Services required for the transportation of coal to the Terminal. The Applicants can only proceed with their respective further individual project feasibility studies on the basis of an understanding of the likely costs of obtaining access to the relevant Identified Rail Infrastructure and Services in order to determine whether to proceed with the project;
- it will provide increased certainty in relation to the overall estimated demand for access to the Identified Rail Infrastructure and Services required for the transportation of coal to the Terminal, to enable the Access Provider and the Applicants to jointly consider at an early stage the extent of investment required to be made in infrastructure. Surat Basin Rail can only determine the level of investment in rail infrastructure that may be necessary in order to provide sufficient rail capacity to meet the demand of each of the Applicants further to the initial stages of negotiations for access to the Identified Rail Infrastructure and Services. If interim authorisation is granted, it will facilitate an understanding of what infrastructure investments are required. Alternatively, a delay in potential infrastructure upgrades and investment may result in avoidable capacity constraints in the coal supply chain; and
- it will assist the Access Provider (and the Applicants) to substantially reduce the transaction costs associated with the initial complex negotiations which can commence on a collective basis as a result of an interim authorisation being granted. Further reductions in transaction costs will be achieved on a long term basis, in the event that final authorisation is granted.

Accordingly, the Applicants request that the Commission consider this application as soon as practicable. In particular, the Applicants request that the Commission grant interim authorisation in order to ensure that negotiations for access to the Identified Rail Infrastructure and Services can commence as soon as possible.

If interim authorisation is not granted, the Applicants will face a delay of six months or more before they might obtain a final authorisation decision which may permit them to engage in collective bargaining with the Access Provider.

Participation in the collective bargaining process is voluntary and it is, therefore, difficult to identify any long term detriment if the authorisation were ultimately not granted following an interim authorisation because of the voluntary nature of participation in this process between the parties.

4 The conduct for which authorisation is sought will give rise to a net public benefit

The conduct for which authorisation is sought will give rise to a net public benefit. It will enable the Applicants and the Access Provider to negotiate and agree terms for access to the Identified Rail Infrastructure and Services required for the transportation of coal to the Terminal, through a process which will be clearer as to the coal producers' capacity and timing requirements. The conduct for which authorisation is sought is likely to generate more efficient investment through the coal export supply chain associated with the Terminal. This includes increased ability to invest in infrastructure, either directly or through long-term contracts with the Access Provider, lower transaction costs and increased certainty and timeliness of commercial outcomes (including price) associated with access to the Identified Rail Infrastructure and Services. In addition, it is anticipated to assist in achieving contractual alignment of all service providers' contracts in the coal supply chain which will result in

the more efficient operation of the export supply chain, which will benefit the coal industry as a whole.

In addition, the expansion of mining activities and more efficient transportation of coal, will facilitate greater exports of coal by the Applicants which will have broader economic benefits for the Queensland and Australian economies, as well as increased job creation.

In particular, the conduct for which authorisation is sought will result in key public benefits, including:

- facilitating investment in infrastructure along the coal chain associated with the Terminal by providing greater commercial certainty for the investment in the infrastructure;
- fostering business efficiency in understanding likely demand and timing requirements by coal producers using the Terminal, resulting in improved commercial outcomes particularly where this results in increased exports and enhanced international competitiveness;
- lowering transaction costs for the Applicants and the Access Provider, and lowering negotiation risk resulting in more timely growth in export markets and the volumes of coal that will be exported by Australian producers to international customers;
- assisting in addressing the lack of contractual alignment in coal supply chains which has existed in recent years by assisting the Applicants to reach satisfactory commercial terms for access to the Identified Rail Infrastructure, thereby facilitating the formation of long term contracts to underpin investment;
- enabling the Applicants, who are relatively small producers of coal, to be more competitive vis-à-vis the larger producers, in particular, by facilitating more equal negotiating positions in relation to the Access Provider;
- benefitting the Queensland and Australian economies as a result of increased exports, which will likely lead to increased employment opportunities being created; and
- providing a number of environmental and safety benefits associated with contractual alignment which may assist in reducing any vessel queues due to constrained coal supply chains in Queensland.

Accordingly, the Applicants respectfully submit that the proposed conduct will give rise to a net benefit to the Australian public and should, therefore, be authorised by the Commission.

5 Claim for confidentiality

The application for authorisation, supporting submission, and attachments to the supporting submission contain certain information that is confidential to the Applicants.

The Applicants, accordingly, request that the parts of the application for authorisation, supporting submission, and attachments to the supporting submission which are identified as confidential (including, in some instances, attachments to the supporting submission in their entirety) be excluded from the Commission's public register, by reason of the confidential nature of the matters contained in them.

We attach confidential and non-confidential versions of the application for authorisation and supporting submissions. The non-confidential versions of these documents are intended for inclusion on the Commission's public register.

6 Authority to lodge this application on behalf of the Applicants

Attached as **Appendix 1**, is a side letter signed in counterparts by each of the Applicants which confirms their consent to authorisation being sought on their behalf and which authorises Allen & Overy to lodge this authorisation application, and to accept service of process, on behalf of each of the Applicants.

7 Meeting with the Commission and requests for further information

If the Commission wishes to meet with the Applicants, or requires any further information about the application, please contact us.

Yours sincerely



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ACN 131 920 968

22 May 2012

Allen & Overy
ATTN: Mr Dave Poddar, Partner
Level 25, 85 Castlereagh Street
SYDNEY NSW 2000

Dear Mr Poddar

Application to the Australian Competition and Consumer Commission for Authorisation of Collective Bargaining

The purpose of this letter is to confirm our consent to the attached application for authorisation in respect of collective bargaining with Surat Basin Rail or any future operator of the Surat Basin Rail Line to be made to the Australian Competition & Consumer Commission on our behalf.

We authorise Allen & Overy to lodge this application, and to accept service of process, on behalf of Stanmore Coal.

Yours sincerely



Doug McAlpine
Chief Financial Operator
Stanmore Coal Limited

Mr Dave Poddar
Partner
Allen & Overy
Level 25, 85 Castlereagh Street
SYDNEY NSW 2000

25 April 2012

Dear Mr Poddar

Application to the Australian Competition and Consumer Commission for Authorisation of Collective Bargaining

The purpose of this letter is to confirm our consent to the attached application for authorisation in respect of collective bargaining with Surat Basin Rail or any future operator of the Surat Basin Rail Line to be made to the Australian Competition & Consumer Commission on our behalf.

We authorise Allen & Overy to lodge this authorisation application, and to accept service of process, on behalf of Cockatoo Coal.

Yours sincerely

.....
For and on behalf of Cockatoo Coal Ltd

23 MAY 2012

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010* (**the Act**) 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)

A91311

Cockatoo Coal Limited, an Australian public company whose registered office and principal place of business is Level 2, 66 Hunter Street, Sydney, New South Wales, Australia (**Cockatoo Coal**).

Stanmore Coal Limited, an Australian public company whose registered office and principal place of business is Level 11, 10 Market Street, Brisbane, Queensland, Australia (**Stanmore Coal**).

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

Cockatoo Coal and Stanmore Coal ('the Applicants') are coal producers and mine and supply coal to customers. Coal which is to be exported to global customers is transported from the Applicants' mines to export ports by rail.

Please see Schedule 1 attached for further details on each of the Applicants' business activities.

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

Allen & Overy,
Level 25
85 Castlereagh Street
Sydney NSW 2000

Attention: Dave Poddar
 Partner
 Tel: (02) 9373 7722
 Fax: (02) 9373 7710
dave.poddar@allenavery.com

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)

- Definition of key terms in this Form include:

"Access Provider" means Surat Basin Rail, any entity which acquires an interest in Surat Basin Rail and/or any future owner or operator of any part of the Identified Rail Infrastructure;

"Applicants" includes the Applicants, their successors and assigns, as well as their related bodies corporate, associated entities and joint venture partners (in light of the fact that negotiations for access to rail are not always undertaken by the Applicants directly);

"Identified Rail Infrastructure" means the Surat Basin Rail Line and any other below-rail infrastructure connected directly or indirectly to the Surat Basin Rail Line (excluding the Moura Rail Line and the Miles to Wandoan Rail Line) necessary to support the Terminal, for the purpose of transporting coal to the Terminal for export;

"QR Network" means QR Network Pty Ltd and, given the privatisation or sale of the relevant rail assets by the Queensland Government, any other QR Group entity or any entity which may acquire the relevant rail assets by virtue of the privatisation or sale process;

"Services" means all services associated with providing access to the Identified Rail Infrastructure, for the purpose of transporting coal to the Terminal (as detailed in Annexure 3 of the attached Supporting Submission);

"Surat Basin Rail" means the Surat Basin Rail Joint Venture (including its joint venture parties ATEC (Dawson Valley Railway) Pty Ltd, QR Surat Basin Rail Pty Ltd and Xstrata Coal Surat Basin Rail Pty Ltd;

"Surat Basin Rail Line" means the below-rail infrastructure connecting the Western System approximately 7 km from Wandoan with the Moura system near Banana, including all expansions and extensions to this system; and

"Terminal" means the Wiggins Island Coal Export Terminal.

- Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought

The Applicants seek authorisation under section 88(1A) and section 88(1) of the Act to:

- collectively discuss and negotiate terms and conditions, including price, with the Access Provider for access to the below rail infrastructure necessary to service the proposed expansion of the Terminal;
- discuss matters relating to those discussions and negotiations amongst themselves; and
- enter into and give effect to contracts, arrangements or understandings with the Access Provider containing common terms and conditions, including price, upon which access to the Below Rail Infrastructure will be acquired (**the Proposed Conduct**).

The application covers all actual and proposed contracts, arrangements and understandings that may result from collective negotiations with the Access Provider in relation to the Identified Rail Infrastructure and Services, pursuant to section 88(13) of the Act.

Please see the attached Supporting Submission for further details.

- (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)

Please see section 3 of the attached Supporting Submission for further details.

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

The application relates to proposed collective bargaining for the acquisition of access to below-rail infrastructure, particularly access to the Identified Rail Infrastructure and associated Services.

Please see sections 3.3 and 3.4 of the Supporting Submission for further details.

- (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 Applicants are seeking authorisation for a period of 20 years.

Please see section 3.5 of the attached Supporting Submission for further details and reasons for seeking this period of authorisation.

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:

- Surat Basin Rail (a consortium comprising ATEC (Dawson Valley Railway) Pty Ltd, QR Surat Basin Rail Pty Ltd and Xstrata Coal Surat Basin Rail Pty Ltd);
- any entity which acquires an interest in Surat Basin Rail; and/or
- any future owner or operator of any part of the Identified Rail Infrastructure,

(together, the **Access Provider**)

Surat Basin Rail's address is GPO Box 2009, Brisbane, Queensland 4001. Please see section 2.4 of the Supporting Submission for further details of Surat Basin Rail's business.

(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)

The Applicants' contact details are outlined below (Registered Office Address):

Cockatoo Coal Limited

Level 2, 66 Hunter Street

Sydney NSW 2000

Stanmore Coal Limited

Level 11, 10 Market Street

Brisbane QLD 4001

In addition, as provided under s 88(10) of the Act, the Applicants request that any authorisation granted be expressed to apply to future users of the Terminal who may similarly need to negotiate access to the Below Rail Infrastructure with the Access Provider.

4. Public benefit claims

(a) Arguments in support of authorisation:

(Refer to direction 6)

Collective bargaining by the Applicants for access to the Identified Rail Infrastructure and Services will generate more efficient investment through the coal export supply chain associated with the Terminal. This includes increased ability to invest in infrastructure, either directly or through long-term contracts with the Access Provider, lower transaction costs and increased certainty and timeliness of commercial outcomes (including price) associated with access to the Identified Rail Infrastructure and Services. In addition, it is anticipated to assist in achieving contractual alignment of all service providers' contracts in the coal supply chain associated with the Terminal which will result in the more efficient operation of the export supply chain, with likely growth in exports of coal from the central Queensland region.

The Applicants therefore believe that the public benefits of collective bargaining include:

- facilitating investment in infrastructure along the coal chain associated with the Terminal by providing greater commercial certainty for investment in the infrastructure;
- fostering business efficiency in understanding likely demand and timing requirements by coal producers using the Terminal, resulting in improved commercial outcomes particularly where this results in increased exports and enhanced international competitiveness;
- lowering transaction costs for the Applicants and the Access Provider, and lowering negotiation risk;
- avoiding unnecessary delays in the construction of the Surat Basin Rail Line and the subsequent stages of the Terminal;
- enabling the Applicants who are relatively small producers of coal to be more competitive vis-à-vis the larger producers, in particular, by facilitating more equal negotiating positions vis-à-vis the Access Provider;
- addressing the lack of contractual alignment which has existed in coal supply chains in recent years by assisting the Applicants to reach satisfactory commercial terms for access to the Identified Rail Infrastructure, thereby facilitating the formation of long term contracts to underpin investment;
- growth in export markets and the volumes of coal that will be exported by Australian producers to international customers;
- benefits to the Queensland and Australian economies as a result of increased exports, which will likely lead to increased employment opportunities being created; and
- providing a number of environmental and safety benefits associated with contractual alignment which may assist in reducing any vessel queues due to constrained coal supply chains in Queensland.

Please see sections 4.3 to 4.10 of the attached Supporting Submission for further details.

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

Please see sections 4.3 to 4.10 of the attached Supporting Submission for further details.

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 submit that the potential relevant markets are:

- (a) the primary market for the supply and acquisition of access to the Surat Basin Rail below-rail infrastructure connecting with the Moura system which in turn connects to the Terminal in Queensland;

- (b) the global market for the supply of coking coal, in which the Applicants supply coking coal (as a product transported along the Identified Rail Infrastructure) to export customers; and
- (c) the global market for the supply of thermal coal, in which the Applicants supply thermal coal (as a product transported along the Identified Rail Infrastructure) to export customers.

Please see section 4.2 of the attached Supporting Submission for further details.

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)

The proposed collective bargaining arrangements have no identifiable negative impacts on competitive outcomes in the primary markets for the reasons identified in section 6(b) below. If anything, the proposed collective bargaining arrangements are likely to have a pro-competitive impact in both the primary market for the provision of access to below-rail infrastructure associated with the Terminal and will have a positive impact in the markets for the supply of coking coal and thermal coal (as products exported along the Identified Rail Infrastructure).

Please see sections 4.11, 4.12, 4.13 and 4.14 of the attached Supporting Submission for further details.

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

The proposed collective bargaining arrangements will not cause any material detriment to Surat Basin Rail, the joint venture between ATEC (Dawson Valley Railway) Pty Ltd, QR Surat Basin Rail Pty Ltd and Xstrata Coal Surat Basin Rail Pty Ltd, which is the only provider of the Services and accordingly has a substantial market position from which to deal with the Applicants as a collective negotiating group. The benefits arising from with the collective bargaining will have a positive impact on prices of the Services and certainty associated with the provision of the Services and, therefore, on the exports of coking and thermal coal.

Please see sections 4.12, 4.13 and 4.14 of the attached Supporting Submission for further details.

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 *Competition and Consumer Act 2010*)?
- 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 and address of persons authorised by the applicants to provide additional information in relation to this application:

Dave Poddar
Partner
Allen & Overy
Level 25
85 Castlereagh Street
Sydney NSW 2000

Tel: (02) 9373 7722
Fax: (02) 9373 7710
dave.poddar@allenover.com

Dated 22 May 2012

Signed by/on behalf of the applicant



Dave Poddar

Partner

Allen & Overy, Sydney

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

23 MAY 2012

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.

Schedule 1- Details of the Applicants business activities

1 Cockatoo Coal Ltd ("Cockatoo")

Cockatoo is listed on the ASX. Cockatoo exports PCI metallurgical and thermal coal from the Baralaba mine in the Bowen Basin, Queensland.

In addition to Baralaba, Cockatoo is developing a portfolio of advanced projects in the Surat Basin, Queensland. The Surat exploration portfolio encompasses more than 3,800 square kilometres of tenements.

Cockatoo currently plans to mobilise its assets to expand production from 500,000 tpa in 2009/10, to 750,000 tonnes in the 2012 year and to in excess of 9 mtpa from 2015/2016.

Cockatoo has an allocation of 3 million tonnes per year at the Terminal commencing from 2014.

2 Stanmore Coal Ltd ("Stanmore Coal")

Stanmore Coal is an Australian-based company focused on the exploration and development of export coking, PCI and thermal coal deposits within the prime coal bearing regions of Eastern Australia. Stanmore Coal owns 100% of its projects which are located in the Bowen and Surat Basins.

Stanmore Coal is a relatively new producer, having been listed on the ASX in 2009. Stanmore Coal has an initial production plan for seven million tonnes per annum by 2015.