

# Form FA

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 91A (1)*

## APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Competition and Consumer Act 2010* for a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

(a) Name of applicant:

*(Refer to direction 2)*

A91567

i. The South Australian Chamber of Mines and Energy Inc (**SACOME**)

A91568

ii. Nyrstar Port Pirie Ltd (ABN 31 008 046 428)  
Address: PO Box 219, PORT PIRIE SA 5540

Arrium Limited (ABN 63 004 410 833)  
Address: Locked Bag 3050, ARTARMON NSW 1570

OZ Minerals Limited (ABN 40 005 482 824)  
Address: Level 1, 163 Greenhill Road, PARKSIDE SA 5063

Adelaide Brighton Cement Ltd (ABN 96 007 870 199)  
Address: Level 1, 157 Grenfell Street, ADELAIDE SA 5000

Intercast & Forge Pty Ltd (ABN 28 090 515 334)  
Address: 1 Schumacher Road, WINGFIELD SA 5013

Hillgrove Resources (ABN 73 004 297 116)  
Address: 5-7 King William Road, UNLEY SA 5061

Seeley International (ABN 23 054 687 035)  
Address: 112 O'Sullivan Beach Road, LONSDALE SA 5160

Central Irrigation Trust (ABN 17 023 608 663)  
Address: 4 Fowles Street, BARMERA SA 5345

SMR Automotive (ABN 77 007 550 094)  
Address: 18 Sheriffs Road, LONSDALE SA 5160

Thomas Foods International (ABN 52 008 178 121)  
Address: Level 2, 170 Fullarton Road, DULWICH SA 5013

Rex Minerals (SA) Pty Ltd (ACN 125 407 669) & Rex Minerals Ltd  
(ABN 12 124 960 523)  
Address: Level 19, 11 Waymouth Street, ADELAIDE SA 5000,

Pernod Ricard Winemakers Pty Ltd (ABN 75 007 870 046)  
Address: 16 Byfield Street, North Ryde NSW 2113

Orora Limited (ABN 55 004 275 165)  
Address: 109 Burwood Road, Hawthorn VIC 3122

Impeach Pty Ltd (trading as Foodland Promotions) (ABN 85 528 062 001)  
Address: 292 Grange Rd, Flinders Park SA 5025

Flinders University (ABN 65 542 596 200)  
Address: GPO Box 2100, Adelaide SA 5001

University of South Australia (ABN 37 191 313 308)  
Address: GPO Box 2471, Adelaide SA 5001

Shahin Enterprises Pty Ltd (ABN 46 008 150 543)  
Address: 270 The Parade, Kensington SA 5068

The Bend Motorsport Park Pty Ltd (ABN 91 609 932 685)  
Address: 270 The Parade, Kensington SA 5068

Mardina Pty Ltd (ABN 55 089 128 816)  
Address: 270 The Parade, Kensington SA 5068

Shahin Brothers Pty Ltd (ABN 24 062 060 815)  
Address: 270 The Parade, Kensington SA 5068

Shahin Holdings Pty Ltd (ABN 50 051 187 556)  
Address: 270 The Parade, Kensington SA 5068

Shahin Properties Pty Ltd (ABN 67 641 294 438)  
Address: 270 The Parade, Kensington SA 5068

Brickworks Building Products (ABN 63 119 059 513)  
Address: 738 – 780 Wallgrove Road, Horsley Park NSW 2175

IGA Distribution (SA) Pty Ltd (ABN 57 008 193 155)  
Address: 410-450 Findon Road, Kidman Park SA 5025

Cargill Malt Asia Pacific Pty Ltd (ABN 62 004 287 352)  
Address: Level 11, 28 Freshwater Place, Southbank Victoria, 3006

Viterra Operations Pty Ltd (ABN 88 007 556 256)  
Address: Level 1, 186 Greenhill Road, Parkside SA 5063

Adchem (Australia) Pty Ltd (ABN 87 069 180 258)  
Address: Linkson St, Burra SA 5417

(together, **Participating Members**).

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

SACOME is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive and oil and gas sectors, including those who provide services to these companies.

Over the years SACOME's activities have helped to shape a positive regulatory environment for its members, saving them time and money.

The Participating Members are companies operating in South Australia in the minerals, energy, extractive, oil and gas, manufacturing, retail and agricultural sectors.

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

SACOME

290 Glen Osmond Road

FULLARTON SA 5064

Attention: Mr Dayne Eckermann

Email: [deckermann@sacome.org.au](mailto:deckermann@sacome.org.au)

## 2. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

The Participating Members are seeking to establish a joint electricity purchasing group to aggregate their electricity demand and place a single tender into the market for the supply of their combined loads with the objective of securing a cost competitive and reliable electricity supply.

The ACCC has assigned the authorisation application numbers A91567 and A91568 to the proposed conduct.

The Participating Members, together with SACOME as an industry body, seek authorisation to:

- i. collectively investigate potential electricity supply options for their combined electricity loads
- ii. collectively conduct a tender process for the supply of their combined electricity loads that is designed to identify and select an electricity supplier(s) to supply their combined electricity loads

- iii. jointly negotiate an overarching electricity supply contract with the successful electricity supplier(s) that enable Participating Members to gain access to the price and other terms and conditions offered by the successful electricity supplier(s)
- iv. individually enter into an electricity supply agreement with the successful electricity supplier(s) on the same (or substantially similar) terms and conditions
- v. make joint decisions regarding the administration and operation of certain aspects of their electricity supply agreements (specifically, periodic and other price reviews)

(the **Proposed Conduct**).

The Applicants seek authorisation for a total period of 11 years, comprising:

- vi. a 6-12 month period for the joint tender process, including investigation, market approach, negotiation, execution and mobilisation of the electricity supply agreements
- vii. a 3-5 year period for the term of each electricity supply agreement between the successful electricity supplier(s) and each Participating Member
- viii. a 3-5 year period to reflect the ability of each Participating Member to extend the term of an electricity supply agreement.

- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

The proposed conduct relates to sourcing a cost competitive and reliable electricity supply for the Participating Members.

For more detail, please refer to section 3 in the Supporting Submission provided to the ACCC on 4<sup>th</sup> January 2017 as a part of authorisation applications A91567 and A91568.

- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:

*(Refer to direction 4)*

The applicants wish to vary a single company name as written in the original applications (A91567 and A91568) as follows:

From: Arrium Limited (ABN 63 004 410 833)

To: OneSteel Manufacturing Pty Ltd ABN 42 004 651 325 (subject to Deed of Company Arrangement)

OneSteel Trading Pty Limited ABN 50 007 519 646 (subject to Deed of Company Arrangement)

OneSteel Reinforcing Pty Limited ABN 22 004 148 289 (subject to Deed of Company Arrangement)

OneSteel Recycling Pty Limited ABN 28 002 707 262 (subject to Deed of Company Arrangement)

The Australian Steel Company (Operations) Pty Limited ABN 89 069 426 955 (subject to Deed of Company Arrangement)

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

*“Description of business: Arrium is an national diversified mining and steel manufacturing, distribution and recycling business including the Whyalla Steelworks and the Middleback Ranges mining operations located in South Australia.”*

The companies named above (being OneSteel Manufacturing Pty Ltd, OneSteel Trading Pty Limited, OneSteel Reinforcing Pty Limited, OneSteel Recycling Pty Limited and The Australian Steel Company (Operations) Pty Limited) are all subsidiaries of Arrium Limited. The variation of company name is for the purpose of specifying the subsidiary companies that operate the relevant businesses within the Arrium Group and that will be the entities that would enter into any contracts arising out of participation in the joint electricity purchasing group which has been authorised by the ACCC. The Arrium Group of Companies, including the subsidiary companies named above, are currently subject to a Deed of Company Arrangement. The deed administrators are in the process of selling the Arrium Group. However, Arrium Limited is not likely to be included in any sale.

**3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

Not applicable

- (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

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable

#### **4. Public benefit claims**

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

As this minor variation is to amend the name of a company and not the proposed conduct there will be no change to the public benefits discussed in the original application in section 6.

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

The variation of company name is for the purpose of specifying the subsidiary companies that operate the relevant businesses within the Arrium Group and that will be the entities that would enter into any contracts arising out of participation in the joint electricity purchasing group which has been authorised by the ACCC.

#### **5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (b) 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):

The relevant markets are both:

- i. the market for the generation and wholesale supply of electricity governed by the National Electricity Law (i.e. the National Electricity Market (or NEM)) or, in the alternative, the market for the generation and wholesale supply of electricity in South Australia; and
- ii. the market for the retail supply of electricity to commercial and industrial customers in South Australia.

For more detail, please refer to section 4 in the Supporting Submission provided to the ACCC on 4<sup>th</sup> January 2017 as a part of authorisation applications A91567 and A91568.

**6. Public detriments**

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

As this minor variation is to adjust the name of a company and not the proposed conduct there will be no change to the public detriments discussed in the original application in section 7.

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

The variation of company name is for the purpose of specifying the subsidiary companies that operate the relevant businesses within the Arrium Group and that will be the entities that would enter into any contracts arising out of participation in the joint electricity purchasing group which has been authorised by the ACCC.

**7. Further information**

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

SACOME  
290 Glen Osmond Road  
FULLARTON SA 5064  
Attention: Mr Dayne Eckermann  
Email: [deckermann@sacome.org.au](mailto:deckermann@sacome.org.au)

Dated..6<sup>th</sup> July 2017 .....

Signed by/on behalf of the applicant



.....  
(Signature)

Rebecca Knol.....  
(Full Name)

South Australian Chamber of Mines and Energy.  
(Organisation)

CEO.....  
(Position in Organisation)

## **DIRECTIONS**

1. 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. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
  - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an 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 the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
  7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), 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 likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.