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Our ref: AA1000473  
Contact officer: Jaime Martin  
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1 May 2020

Dave Poddar  
Partner  
Clifford Chance

***Via email***

Dear Mr Poddar

**Re: NSW Minerals Council and Ors application for authorisation AA1000473 - request for information**

Thank you for the Applicants' submission of 30 April 2020 in response to the issues raised by interested parties in relation to the above mentioned substantive application for authorisation.

As you are aware, the next step is for the ACCC to consider all submissions received before it makes its draft determination. The ACCC has previously indicated that it intends to make its draft determination in May / June 2020. The ACCC is still working towards this timeframe.

To assist the ACCC's consideration of this collective bargaining application for authorisation, we seek further information or clarification of several issues, generally relating to the scope of the application itself or how the collective bargaining is proposed to work in practice. These issues are outline at **Attachment A**.

We request the Applicants' response to the attached issues by **Friday, 22 May 2020**.

If you have any questions about the issues raised in this letter, please contact Jaime Martin (03) 9290 1477 (or at [jaime.martin@accc.gov.au](mailto:jaime.martin@accc.gov.au)).

Yours sincerely

David Hatfield  
Director  
Adjudication

**NSW Minerals Council and Ors – collective bargaining application for authorisation  
AA1000473 – ACCC information request**

1. At item 2(b) of the original application form, the Applicants have listed the provisions under the *Competition and Consumer Commission Act 2010* (Act) that might apply to the proposed collective bargaining conduct. This appears to be the full list of provisions that parties can seek authorisation for under the Act.
  - (a) Please explain how all of these provision might apply to the proposed conduct or identify only the specific provisions under the Act that the Applicants consider might apply to the proposed collective bargaining conduct.
2. At paragraph 3.5 of the supporting submission to the application, the Applicants seek authorisation for future 'access seekers / Port users' that join the proposed collective bargaining group in the future.
  - (a) Please clarify whether the Applicants contemplate access seekers other than coal mining companies potentially joining the proposed collective bargaining group in the future.
3. At page 2 of the Applicants' submission of 30 April 2020 it states that the NSW Minerals Council intends to lodge an application with the National Competition Council (NCC) for declaration of the channel services at the Port of Newcastle.
  - (a) Can you please indicate when the NSW Minerals Council is considering lodging this proposed declaration application with the NCC?
  - (b) Please explain what impact, if any, this is likely to have on the current collective bargaining application, including over the proposed ten year period for which the Applicants seek authorisation.
4. At page 1 of the Applicants' submission of 30 April 2020 it states that following interim authorisation, the Applicants have formed a collective bargaining negotiating committee (Negotiating Committee), to discuss key industry issues related to the terms and conditions of access to the Port, and intend to approach Port of Newcastle Operations soon.
  - (a) Can you please provide further information about how the proposed collective bargaining conduct will work in practice, including:
    - the composition of the Negotiating Committee
    - anticipated timeframes for any collective negotiations with the Port, including any key deadlines
    - proposed processes for the Negotiating Committee seeking and providing feedback to the members of the collective bargaining group about the outcomes of any collective negotiations
    - proposed processes for the Negotiating Committee collectively negotiating any annual price changes under any long term access contract signed as a result of proposed collective negotiations

- proposed contracting processes for any applicant coal producers that seek to enter into a collectively negotiated long term access arrangement with Port of Newcastle Operations and
- an update on any collective negotiation that has occurred already.