



Our ref: AA1000473
Contact officer: Jaime Martin
Contact phone: (03) 9290 1477

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111

11/03/2020

adjudication@acc.gov.au
www.acc.gov.au

Sent via email

Dear Madam / Sir

New South Wales Minerals Council collective bargaining application for authorisation AA1000473 — interested party consultation

The Australian Competition and Consumer Commission (the ACCC) recently received an application for authorisation from the New South Wales Minerals Council and ten mining companies that export coal through the Port of Newcastle (the **Applicants**) to collectively bargain with Port of Newcastle Operations Pty Ltd (**PNO**).

The mining companies are Glencore Coal, Yancoal, Peabody Energy, Bloomfield Collieries, Centennial Coal, Malabar Coal; Whitehaven Coal, Hunter Valley Energy Coal, Idemitsu Australia, and MACH Energy Australia.

The ACCC invites you to comment on the proposed collective bargaining conduct, including the Applicants request for urgent interim authorisation. Further information about the authorisation process is provided in the ACCC's [Guidelines for authorisation of conduct \(non-merger\)](#).

The application for authorisation

The Applicants seek authorisation to collectively negotiate with PNO all terms and conditions of access relating to the export of coal from Port of Newcastle. Specifically, the Applicants seek authorisation to:

- collectively discuss and negotiate the terms and conditions of access, including price, to the Port of Newcastle (the **Port**) for the export of coal (and any other minerals) through the Port
- discuss amongst themselves matters relating to the above discussion and negotiations, and
- enter into and give effect to contracts, arrangements or understandings with PNO containing common terms which relate to access to the Port and the export of minerals through the Port (the **Proposed Collective Bargaining Conduct**).

Participation in the Proposed Collective Bargaining Conduct is voluntary, and no proposed collective boycott activity is included. Authorisation is sought for ten years.

A full copy of the application for authorisation is available on the ACCC's [Authorisations Public Register](#) on its website.

Interim authorisation

The Applicants have also requested urgent interim authorisation to commence collective negotiations with PNO in relation to the terms and conditions of a pro forma ten year pricing Deed recently offered to port users by PNO. In particular, the Applicants submit that:¹

The industry is concerned that the 'alternative' terms and conditions as set out under the [10 year pricing] Deed are offered completely at PNO's discretion, particularly as the 2020 Schedule of Charges came into effect on 1 January 2020.

The Applicants advise that they seek urgent interim 'so as to consider whether mutually beneficial outcomes may be reached in the most efficient way possible.'

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefits and detriments likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. When it receives a request for interim authorisation, the ACCC will usually consider a range of factors, including:

- harm to the applicant and other parties if interim is or is not granted
- the urgency of the matter and
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

Request for submissions

The ACCC invites you to make a submission on the request for interim authorisation by **Wednesday, 18 March 2020**.

Alternatively, if you would like to provide comments orally, please contact Jaime Martin (on 03 9290 1477) or Anna Pound (on 03 9290 6920) to organise a suitable time.

The ACCC also invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the Proposed Collective Bargaining Conduct.

If you intend to provide a submission in relation to the substantive application for authorisation, please do so by **Friday, 3 April 2020**.

All submissions should be emailed to adjudication@acc.gov.au with the subject 'AA1000473 – NSW Minerals Council – submission'.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion. For further information, please refer to the ACCC's publication [Guidelines for excluding information from the public register](#).

If you do not wish to make a submission at this time, but would like to be informed of the progress of the application, please provide a nominated contact email address for future correspondence.

¹ NSM Minerals Council supporting submission to application for authorisation AA1000473, 6 March 2020, paragraph 1.41.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the application.

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information:

6 March 2020	Lodgement of application and supporting submission.
11 March 2020	Public consultation process begins.
18 March 2020	Closing date for submissions on interim authorisation.
20 March 2020	Applicant responds to public submissions on interim authorisation.
March/April	ACCC decision regarding interim authorisation.
3 April 2020	Closing date for submissions on the substantive application for authorisation from interested parties.
April 2020	Applicant responds to issues raised in the public consultation process.
May/June 2020	Draft determination.
June/July 2020	Public consultation on draft determination including any conference if called.
July/August 2020	Final determination.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Jaime Martin on (03) 9290 1477 or Anna Pound on (03) 9290 6920, or via email at adjudication@acc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication

NSW Minerals Council and ors – application for authorisation AA1000473

Initial consultation process – list of interested parties

- 1 Glencore Coal
- 2 Yancoal Australia
- 3 Peabody Energy
- 4 Bloomfield Collieries
- 5 Centennial Coal Company
- 6 Malabar Coal
- 7 Whitehaven
- 8 Hunter Valley Energy Coal
- 9 Idemitsu
- 10 MACH Energy Australia
- 11 Port of Newcastle Operations Pty Ltd

- 12 Pacific National
- 13 Aurizon
- 14 Genesee & Wyoming
- 15 Southern Shorthaul Railroad
- 16 Australian Rail Track Corporation
- 17 Newcastle Coal Infrastructure Group
- 18 Port Waratah Coal Services
- 19 Hunter Valley Coal Chain Coordinator
- 20 NSW Treasury
- 21 Port Authority of NSW
- 22 Transport for NSW
- 23 National Competition Council
- 24 The Treasury
- 25 Australian Government Department of Infrastructure,
Transport, Regional Development and Communications