

Letter sent to attached recipients via facsimile



**Australian  
Competition &  
Consumer  
Commission**

Our Ref:  
Contact Officer: Jaime Norton  
Contact Phone: (02) 6243 1208

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602

6 October 2004

ph (02) 6243 1111  
fax (02) 6243 1199

Mr Rex Littlewood  
General Manager Asia Pacific  
Noble Asia Pacific Ltd  
PO Box 525  
NEWCASTLE NSW 2300

[www.accc.gov.au](http://www.accc.gov.au)

Dear Mr Littlewood

**Applications for Authorisation A30236 – A30238 lodged by Port Waratah Coal Services (PWCS) – medium term capacity distribution system**

On 1 October 2004 the Australian Competition and Consumer Commission (the ACCC) received applications for authorisation (A30236, A30237 and A30238) from Port Waratah Coal Services Limited (PWCS) in relation to the medium term capacity distribution system (the 'medium term CDS'). PWCS has lodged this application because it is concerned that its proposal might breach the provisions of the *Trade Practices Act 1974* which prohibit anti-competitive conduct.

PWCS has also requested interim authorisation so that it can begin the steps necessary to implement the proposed medium term CDS – in particular, to conduct the auction – and to commence the medium term CDS on 1 January 2005. The ACCC seeks your comments on the requests for interim authorisation by **Monday, 18 October 2004** – comments can be provided by email or fax to the contacts shown at the end of this letter. The request for interim authorisation is discussed further on page 3 of this letter.

The ACCC previously granted authorisation to the short term CDS on 9 July 2004. As you would be aware, the immunity provided by this authorisation expires on 31 December 2004. PWCS submits that the proposed medium term CDS is the next stage in the transition process for a more efficient coal chain in the Hunter Valley in the long term.

**Authorisations**

The ACCC is the Commonwealth agency responsible for administering the Trade Practices Act, a key objective of which is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.



The Trade Practices Act, however, recognises that the public interest may not always be met by the operation of competitive markets. The authorisation process in the Trade Practices Act addresses this eventuality by allowing the ACCC to grant immunity from the application of many of the restrictive trade practices provisions of the Act in certain circumstances. In order to grant authorisation the ACCC must generally be satisfied that the public benefit arising from the particular conduct outweighs any detriment, particularly anticompetitive detriment, arising from the conduct.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties such as yourself. Following an initial consultation process, the ACCC will issue a draft decision for comment. Further information regarding the authorisation process is available from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)).

### **The application**

PWCS has applied for authorisation to implement a medium term CDS to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain. Broadly, under the medium term CDS coal producers are provided with the option to accept a pro-rata reduction in coal demand nominations, or participate in a demand auction, in the event that demand for coal shipping services on the Hunter Valley coal chain exceeds available capacity by 3 million tonnes.

The parties seek authorisation for a period of between three and five years.

A copy of PWCS' applications, supporting submission and non-confidential attachments will be available from the ACCC's website. Attachment H, the Objectives, Principles and Protocols for the Medium Term Capacity Distribution System, will also soon be available from the ACCC's website at <http://www.accc.gov.au> and follow the public registers link, to the authorisations public register. If you do not have access to the internet, please contact Ms Jaime Norton on (02) 6243 1208 to have a paper copy forwarded to you.

### **Request for submissions on application for authorisation**

As a potentially interested party you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

In support of its application, PWCS claims that the medium term CDS will result in a range of public benefits, including:

- cost savings to the industry in the form of reduced demurrage fees;
- efficiencies arising from the auction which permits coal producers to trade demand reductions, thus producing a more efficient allocation of a scarce resource;
- the provision of certainty for coal producers and buyers regarding coal volumes, loading times and vessel schedules which will lead to improved international competitiveness of Hunter Valley Coal; and
- improving the international reputation of the Port of Newcastle as a result of reducing the vessel queue.

PWCS also claims that the medium term CDS will not have a significant effect on competition for the following reasons:

- it will not impact the total volume of coal shipped through the Port of Newcastle as the coal chain will continue to operate at maximum capacity; and
- exporters will continue to compete against each other for overseas customers.

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on PWCS' claims. Please note, the ACCC recommends that you access a copy of the PWCS' supporting submission before making a submission.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached (Attachment A).

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Please ensure that your submission reaches the ACCC by **cob Friday, 5 November 2004**.

### **Request for submissions on request for interim authorisation**

As previously mentioned, PWCS has also requested interim authorisation in two parts. Firstly, it has requested interim authorisation so that it can begin the steps necessary to implement the medium term CDS – in particular, to conduct the auction in October 2004. Secondly, it has requested interim authorisation to commence the medium term CDS on 1 January 2005.

Interim authorisation would allow this arrangement to operate as if it had full authorisation while the substance of the merits of the application are considered by the ACCC.

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 benefit and anti-competitive detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request 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, possible benefit and anti-competitive detriment to the public, the urgency of the matter and whether the market would be able to return to substantially to its pre-interim state if the ACCC should

later deny authorisation.

PWCS considers that an interim authorisation to conduct the auction in October is necessary to provide industry participants with greater commercial certainty regarding allocations for the year ahead. In addition, PWCS considers that an interim authorisation to implement the medium term CDS on 1 January 2005 is necessary to prevent the industry incurring substantial demurrage costs arising from the long vessel queue which it expects to reform when the current authorisation expires on 31 December 2004.

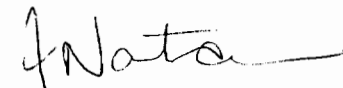
Further details of PWCS' request for interim authorisation is in Section 2 of its supporting submission.

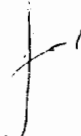
The ACCC would also appreciate your views in relation to the request for interim authorisation. To facilitate this, you may wish to provide your views in writing to the above email address; by faxing your comments to the General Manager, Adjudication, (02) 6243 1211; or by calling the officers responsible for this matter, Jaime Norton or David Hatfield (contact details provided below), by **Monday, 18 October 2004**.

Should you have any queries or if you wish to discuss any aspect of the applications for authorisation please contact Jaime Norton on (02) 6243 1208 or David Hatfield on (02) 6243 1266.

A copy of this letter will be placed on the public register.

Yours sincerely



 Tim Grimwade  
General Manager  
Adjudication Branch

**GUIDELINES FOR CONFIDENTIALITY CLAIMS**

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the Trade Practices Act.

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**FACSIMILE TRANSMISSION**

**DATE:** 6.10.2004  
**TO:** Mr Rex Littlewood  
**ORGANISATION:** Noble Asia Pacific Ltd  
**FAX:** (02) 4925 2167  
**FROM:** Jaime Norton  
**TEL:** (02) 6243 1208  
**FAX:** 02 6243 1211  
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## FACSIMILE TRANSMISSION

DATE: 6.10.2004  
TO: **The Manager**  
ORGANISATION: Idemitsu Boggabri Coal Pty Ltd  
FAX: (07) 3211 7133  
FROM: **Jaime Norton**  
TEL: (02) 6243 1208  
FAX: 02 6243 1211  
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**FACSIMILE TRANSMISSION**

DATE: **6.10.2004**

TO: **Mr J Boyle**

ORGANISATION: **The Maritime Union of Australia**

FAX: **(02) 4929 6618**

FROM: **Jaime Norton**

TEL: **(02) 6243 1208**

FAX: **02 6243 1211**

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**FACSIMILE TRANSMISSION**

DATE: 6.10.2004  
TO: Mr John Hughes  
ORGANISATION: Coal Link Australia  
FAX: (02) 4958 4255  
FROM: Jaime Norton  
TEL: (02) 6243 1208  
FAX: 02 6243 1211  
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**FACSIMILE TRANSMISSION**

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TO: **The Manager**  
ORGANISATION: Namoi Valley Coal  
FAX: (02) 6577 3144  
FROM: **Jaime Norton**  
TEL: (02) 6243 1208  
FAX: 02 6243 1211  
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**FACSIMILE TRANSMISSION**

DATE: **6.10.2004**

TO: **The Manager**

ORGANISATION: **Oceanic Coal Australia**

FAX: **(02) 4955 2314**

FROM: **Jaime Norton**

TEL: **(02) 6243 1208**

FAX: **02 6243 1211**

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**FACSIMILE TRANSMISSION**

DATE: **6.10.2004**

TO: **The Manager**

ORGANISATION: Newcastle Coal Company

FAX: (02) 4934 2866

FROM: **Jaime Norton**

TEL: (02) 6243 1208

FAX: 02 6243 1211

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## FACSIMILE TRANSMISSION

DATE: 6.10.2004  
TO: Mr Kerry Heywood  
ORGANISATION: Lake Coal  
FAX: (02) 4350 0779  
FROM: Jaime Norton  
TEL: (02) 6243 1208  
FAX: 02 6243 1211  
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**FACSIMILE TRANSMISSION**

DATE: **6.10.2004**  
TO: **Mr RJ Reynolds**  
ORGANISATION: Southland Coal  
FAX: (02) 9251 2666  
FROM: **Jaime Norton**  
TEL: (02) 6243 1208  
FAX: 02 6243 1211  
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