



**Australian
Competition &
Consumer
Commission**

Our Ref: C2004/1474
Contact Officer: Jaime Norton
Contact Phone: 02 6243 1208

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

3 November 2004

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

Mr GD Sefton
Partner
Hunt and Hunt Lawyers
PO Box 492
Newcastle NSW 2300

www.accc.gov.au

Dear Mr Sefton

**Applications for Authorisation (A30236-A30238) lodged by Port Waratah Coal Services
– interim authorisation**

The Australian Competition and Consumer Commission (ACCC) has considered the first part of the request by Port Waratah Coal Services (PWCS) for interim authorisation in relation to the above mentioned applications for authorisation.

Based on the information provided and submissions received from interested parties, the ACCC has decided to grant interim authorisation to PWCS to conduct the demand reduction auction, in accordance with Annexure 4F *Objectives, Principles and Protocols for the Medium Term Capacity Distribution System* (schedule 4, clause 7) to the Coal Handling Services Agreement. Interim authorisation allows the parties to engage in the conduct prior to the ACCC considering the substantive merits of the application.

This interim authorisation is granted until such time as the ACCC makes a determination in respect of this matter (or should circumstances warrant revocation or amendment of the interim authorisation at some earlier time).

In deciding to grant this interim authorisation, the ACCC took into account the following:

- a large queue is likely to redevelop after 1 January 2005, with resultant high demurrage costs, if a medium term CDS is not operational by that date
- the auction will enable producers to implement production decisions for 2005 based on capacity allocations
- the auction itself does not appear to have any significant anti-competitive effects
- the potential efficiency gains from the auction as a result of low cost coal producers acquiring capacity from high cost coal producers, and



- any allocation transfers for 2005 that would have occurred as a result of the auction outcome could be unwound. PWCS has committed to not implement any financial consequences of the auction until such time as final authorisation is granted to a medium term CDS.

The ACCC will continue to consult with interested parties to inform its consideration of the substantive application for authorisation, as well as the second part of PWCS' request for interim authorisation.

The ACCC intends to consider the second part of PWCS' request for interim authorisation as part of its draft determination. The second part of the interim request relates to commencing tonnage tracking and the ability to decline to load vessels for producers that have exceeded their first quarter's allocation.

You should be aware that the ACCC's decision in relation to interim authorisation should not be taken as an indication that the ACCC would make a similar decision in its final determination.

Should you have any questions please contact Jaime Norton (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

CC: Dave Poddar, Mallesons Stephen Jaques