



**Australian  
Competition &  
Consumer  
Commission**

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Our Ref: C2004/1473-04  
Contact Officer: Jaime Norton  
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16 December 2004

Dear Sir/Madam

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

I refer to our most recent letter of 11 October 2004 in relation to the above mentioned applications for authorisation. As you are aware, the Australian Competition and Consumer Commission (ACCC) is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act 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 Act, however, recognises that competition may not always be in the public interest. It therefore allows the ACCC to grant immunity from the Act for anti-competitive conduct in certain circumstances.

One way organisations may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' organisations to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

**The draft determination**

The ACCC has considered applications for authorisation (A30326 – A30328) lodged by Port Waratah Coal Services (PWCS) for the proposed Medium Term capacity distribution system (CDS) designed 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.

The ACCC has issued a draft determination (enclosed). The ACCC proposes to grant authorisation to PWCS for the Medium Term CDS until 31 December 2007.

A copy of the draft determination will also be available on the ACCC's website at [www.accc.gov.au](http://www.accc.gov.au) (follow the public registers link to the authorisations public register).



### **Interim authorisation**

The ACCC has also granted interim authorisation to PWCS to:

- commence the tonnage tacking and management elements of the proposed Medium Term CDS and
- decline to load vessels that exceed the first (2005) quarter's allocation by producer.

The interim authorisation will commence on 1 January 2005 and will remain in place until the date the ACCC's final determination comes into effect.

### **Conference**

In accordance with section 90A of the Act, you may notify the ACCC in writing by close of business on **24 January 2005** if you wish the ACCC to hold a conference in relation to the draft determination. The Act does not allow the ACCC to extend this deadline.

A conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the ACCC's draft determination, to make an oral submission in response to the ACCC's draft determination. In the event of such a conference taking place it would be likely to be held in the week commencing **14 February 2005**. The Act requires that the conference be held no later than 23 February 2005.

### **Further submissions**

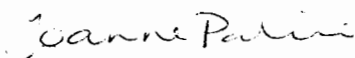
You may wish to lodge a written submission to the ACCC in response to the draft determination. We request that any submission be provided to the ACCC by **9 February 2005**. Submissions will be placed on the Public Register kept by the ACCC.

However, 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 it is not publicly available. Guidelines for seeking confidentiality are attached.

If you require further information 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 kept by the ACCC.

Yours sincerely



Joanne Palisi  
A/g 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.