



**Australian
Competition &
Consumer
Commission**

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Our Ref: A30236-A30238
Contact Officer: Jaime Norton
Contact Phone: (03) 9290 1885

15 April 2005

Dear Sir or Madam

**Re: Port Waratah Coal Services (PWCS) applications for authorisation
A30236 to A30238 - final determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a determination granting authorisation, subject to a condition, in respect of the application for authorisation lodged by Port Waratah Coal Services (PWCS) on 1 October 2004

PWCS sought authorisation 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. 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.

After considering all the information before it, the ACCC is of the view that the public benefit flowing from the Medium Term CDS is likely to outweigh the public detriments. Having said this, the ACCC considers the potential detriments are more likely to eventuate the longer the authorisation runs and over time, there is a risk that the net public benefit could be reduced.

To remove any uncertainty that the net public benefit will be maintained over the length of the authorisation, the ACCC has decided to grant authorisation on condition that PWCS provide a report to the ACCC by 21 January of each year, commencing in 2006. This report will provide at least the following information:



- rail, port and other capacity expansion projects completed during the preceding calendar year, including the volume of increased capacity delivered
- the nature of ongoing rail, port and other capacity expansion projects in the preceding year, including an estimated date of completion and the volume of capacity to be delivered
- the nature of any proposed capacity expansion investment along the coal chain for the following year(s)
- the annual total volume of coal exported through the Port of Newcastle for the preceding year
- the declared annual coal chain capacity, the volume of allocation utilised during each quarter of the preceding year and the total volume of available allocation for each quarter of the preceding year.

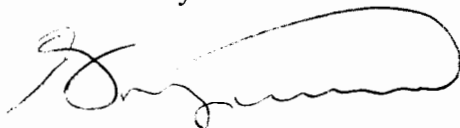
Application for review

Pursuant to section 101 of the *Trade Practices Act 1974*, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 6 May 2005. If no application to review is lodged by this date, the ACCC's determination will come into force on **7 May 2005**.

A copy of the determination is attached. It will also be available on the ACCC's website at www.accc.gov.au (by following the Public Registers and Authorisations links).

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter or would like a hard copy of the determination sent to you, please do not hesitate to contact Ms Jaime Norton on (03) 9290 1885.

Yours sincerely



Scott Gregson
A/g General Manager
Adjudication Branch