



**Australian
Competition &
Consumer
Commission**

Our Ref: C2005/583
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Mr Dave Poddar
Partner
Mallesons Stephens Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Poddar

**Applications for Authorisation (A30239-A30241) lodged by Dalrymple Bay Coal
Terminal Pty Limited – interim authorisation**

The Australian Competition and Consumer Commission (the ACCC) has considered Dalrymple Bay Coal Terminal Pty Limited's (DBCTPL) request for interim authorisation in relation to the above mentioned applications for authorisation.

As you are aware, interim authorisation allows the applicant to engage in the conduct prior to the ACCC considering the substantive merits of the application.

Based on the information provided and submissions received from interested parties, the ACCC has decided to grant interim authorisation to DBCTPL to commence the operation of the proposed queue management system (QMS) as soon as possible, in accordance with the *Dalrymple Bay Coal Terminal, Queue Management System Amendments to Terminal Regulations, 15 April 2005* (Terminal Regulations).

This interim authorisation does not extend to any subsequent variations made to the Terminal Regulations.

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.



The ACCC recognises that there is currently significant focus on infrastructure bottlenecks throughout Australia, including the current review by the Exports and Infrastructure Taskforce. The outcomes of this and other government reviews may be relevant to the ACCC's consideration of this application for authorisation, including issues as to the length of any authorisation granted.

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

- the extensive queue of vessels at the Dalrymple Bay Coal Terminal is likely to be maintained in the short term, with the resultant high demurrage costs continuing to be incurred by Australian coal producers
- there is a degree of urgency to implement the proposed QMS as soon as possible to start reducing the queue to a workable length
- the proposed QMS is likely to result in significant demurrage savings for Australian coal producers in 2005
- any potentially significant detriments are likely to arise in the longer term, and
- if authorisation is later denied, producers have the ability to re-schedule vessels and production timetables based on annual contract tonnages for the balance of 2005.

The ACCC recognises the urgency of this request for interim authorisation given significant ongoing demurrage payments due to the large queue of ships at Dalrymple Bay.

Indeed it is this sense of urgency that has resulted in the proposed arrangements being developed quite rapidly. The ACCC has consulted widely on this request for interim authorisation and understands that while generally supported, there are some concerns with the proposed arrangements which it will be further investigating and assessing over the coming weeks - in particular, the potential impact of the definition of Monthly Contract Tonnage in the Terminal Regulations on new entrants.

The ACCC may review the interim authorisation following this further consideration.

Should you have any questions please contact Ms Jaime Norton (03) 9290 1885 or David Hatfield on (02) 6243 1266.

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

Yours sincerely



Scott Gregson
A/g General Manager
Adjudication Branch