Australian Government

Department of Industry
Tourism and Resources

Level 10, 10 Binara Street
Canberra ACT 2601

GPO Box 9839
Canberra ACT 2601 Australia

Web: www.industry.gov.au

ABN: 51 835 430 479

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Gregson

Ref No: C07/10542

PORT WARRATAH COAL SERVICES (PWCS), PACIFIC NATIONAL (PN) AND QUEENSLAND RAIL (QR) APPLICATIONS FOR AUTHORISATION OF VESSEL QUEUE MANAGEMENT SYSTEM.

I refer to your letter of 19 November 2007 seeking comments on the application by the above parties to authorise a new Vessel Queue Management System (VQMS). This submission relates only to the request for an interim authorisation of these arrangements commencing on 1 January 2008.

The Department considers that the international demand for Australian coal will remain strong for the foreseeable future and demand for coal from the Hunter Valley will continue to expand. This will mean that the Hunter Valley Coal supply chain will continue to experience ongoing coal transport infrastructure capacity constraints for the short to medium term. Given this scenario it is likely that the absence of any vessel management or coal export rationing system pending final decisions by the ACCC on arrangements for the remainder of 2008 will result in a rapid build up of the current coal vessel queue with consequential increased demurrage costs to coal exporters using the terminal.

In this regard we note that such an outcome occurred following the decision by Hunter Valley coal producers in September 2006 to terminate the previous vessel queue management arrangements (the medium term Capacity Balancing System (CBS)) from 1 January 2007 i.e. the length of the vessel queue rose sharply. The CBS with revisions was subsequently reinstated at the request of producers.

At a broad policy level, the Department believes that the only viable long term solution to ongoing supply chain capacity constraints is investment in new infrastructure capacity to meet the increased demand for coal. This includes possible further expansions at PWCS, the development of the new coal export terminal by the Newcastle Coal Infrastructure Group, investments in

Newcastle port facilities and services, investments in rail infrastructure, and expansions in coal rail freight services by existing players and potential new entrants. Rationing systems should, be considered as transitional measures pending increased capacity coming on line and only then when the national benefits exceeds the costs of not having a rationing system in place. As well as the direct costs associated with queues and long shipping delays, we consider that cost benefit analysis should also consider the indirect impact that long shipping queues have on Australia's reputation as a reliable and secure supplier of coal. This includes possible adverse perceptions (especially given the experience of late 2006) if the current system is disbanded without having a new system in place when it is likely that capacity constraints will continue.

In the current circumstances where additional capacity is unlikely to be available for the next few years and based on previous cost benefit analysis by the ACCC and submissions to the ACCC, we consider the implementation of a supply chain rationing system from 1 January 2008, pending a final determination on this application by the ACCC, is justified. We consider the level of any public detriment arising from a discontinuation of some type of allocation/rationing system is likely to be greater than any public detriment that might arise from maintaining such a system after the expiry of the current ACCC authorisation on 31 December 2007.

We note, however, that while there appears to be broad industry agreement on the need for a coal export allocation system for 2008, producers have not been able to reach agreement on the formula for determining individual company allocations under a renewed rationing system. In this regard the application proposes altering the basis of the coal export allocation arrangements that apply under the existing CBS. The proposed VQMS would be based on the lesser of existing rail and port contracts whereas allocations under the CBS are based on port nominations (contracts) alone. This change in the allocation formula will potentially have differing impacts on some individual producers proposing to export coal in 2008, particularly those companies that may not have rail contracts in place to meet their 2008 port contracts.

Accordingly, the ACCC will need to not only determine whether a coal supply chain allocation system should be authorised to continue after 31 December 2007, but also consider the basis for calculating individual company allocations under such a system. In reaching a determination on the latter the ACCC should have regard to the following types of issues;

- The impacts of various coal allocation options on the operating and economic efficiency of the Hunter Valley coal supply chain;
- The potential impacts of the various coal allocation options on incentives to invest in new or expanded system (port and rail) infrastructure capacity;
- The fairness and equity of proposed changes in allocation arrangements on individual coal exporters;
- The impact of the various allocation options on the contractual arrangements of the individual rail and port infrastructure providers; and

  The impact of tying the allocation system to rail freight contracts on the ability of potential new coal rail freight service providers entering the market.

These issues will also need to be considered by the ACCC in reaching its final determination on this application.

Yours sincerely

John Karas
Acting General Manager
Mining Industries Branch
Resources Division

30 November 2008