



**Australian
Competition &
Consumer
Commission**

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Our Ref: A91072 - A91074
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5 December 2007

The Hon. Joel Fitzgibbon MP
Minister for Defence
PO Box 526
CESSNOCK NSW 2325

By email: J.Fitzgibbon.MP@aph.gov.au

Dear Minister

Newcastle Port Corporation – applications for authorisation A91072 - A91074 – interested party consultation

I refer to your letter of 1 November 2007 to the Australian Competition and Consumer Commission (the ACCC) regarding coal loading allocations for Hunter Valley coal producers in 2008, and to the response from the Chief Executive Officer of the ACCC, Mr Brian Cassidy, dated 30 November 2007.

I wish to advise that on 4 December 2007, the ACCC received applications for authorisation A91072-A91074 from Newcastle Port Corporation.

Newcastle Port Corporation is seeking authorisation for a proposed system (the Proposed System) 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 in 2008. Newcastle Port Corporation has indicated that the Proposed System is, in all material respects, consistent with the Medium Term Capacity Balancing System (CBS) currently in effect but due to expire on 31 December 2007. Newcastle Port Corporation is seeking authorisation of the Proposed System from 1 January 2008 to 31 December 2008.

A full copy of the applications for authorisation and supporting submission lodged by Newcastle Port Corporation will be available on the ACCC's website <www.accc.gov.au>.

The applications for authorisation lodged by Newcastle Port Corporation relate to the same issue as the applications lodged by Port Waratah Coal Services Limited (Port Waratah), Pacific National (NSW) Pty Limited (Pacific National) and QR Limited (QR) on 16

November 2007. In both cases, the applicants are seeking authorisation of arrangements 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 for 2008. However, while the system proposed by Newcastle Port Corporation is to effectively maintain the current CBS arrangement, Port Waratah, Pacific National and QR are seeking authorisation for a new Vessel Queue Management System (VQMS).

On 19 November 2007, the ACCC sent a letter to interested parties seeking their views in relation to the VQMS proposed by Port Waratah, Pacific National and QR. The purpose of this letter is to advise you of the applications lodged by Newcastle Port Corporation, and to seek your views in relation to Newcastle Port Corporation's Proposed System.

Interim authorisation

Newcastle Port Corporation has requested interim authorisation of the Proposed System due to the pending expiration of the authorisation of the CBS.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefits and detriments likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including harm to the applicant and other parties if interim is or is not granted, possible benefits and detriments to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC has sought comments on the request for interim authorisation by **Tuesday, 11 December 2007**.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the Proposed System.

If you intend to provide a submission in relation to Newcastle Port Corporation's applications for authorisation, please do so by **Friday, 21 December 2007**. As noted above, submissions in relation to the request for interim authorisation should be provided by **11 December 2007**.

Submissions will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached). Submissions may be addressed to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Alternatively, submissions may be lodged by email to adjudication@acc.gov.au.

Please advise if you do not wish to make a submission at this time, but would like to be kept informed about the progress of this matter, including receiving a copy of the ACCC's draft and final determinations. In doing so, please provide the appropriate contact person and email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the applications.

This letter has been placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact David Hatfield on (02) 6243 1266.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch