



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: A91033 – A91035  
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14 March 2007

Dear Sir/Madam

**Re: Port Waratah Coal Services Ltd - request for interim authorisation**

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the application for revocation of authorisations (A30236 – A30238) and substitution of new authorisations (A91033 – A91035) lodged by Port Waratah Coal Services Ltd (PWCS) on 27 February 2007.

PWCS is seeking authorisation to reinstate a modified Medium Term Capacity Balancing System at the Port of Newcastle until 31 December 2007.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Trade Practices Act 1974* while the ACCC considers and evaluates the merits of the application.

**Summary of ACCC considerations**

The ACCC has considered the request for interim authorisation and has decided to grant interim authorisation until it issues a determination in this matter (unless circumstances warrant revocation or amendment of the interim authorisation at an earlier stage).

In particular, interim authorisation is granted to PWCS to reinstate the amended Medium Term Capacity Balancing System (CBS) at the Port of Newcastle in accordance with *Annexure 4F Medium Term Balancing System Objectives, Principles and Protocols* (the Protocols), provided to the ACCC on 27 February 2007.

In assessing the request for interim authorisation the ACCC took into account the following:

- if the amended Medium Term CBS is not reinstated, the large queue of vessels currently at the Port of Newcastle is likely to persist at least in the short term, with the resultant high demurrage costs continuing to be incurred by Australian coal producers
- there appears to be a degree of urgency to implement the amended Medium Term CBS as soon as possible to start reducing the queue of over 60 vessels to a workable length



- the proposed QMS is likely to result in significant demurrage savings for Australian coal producers in 2007
- no information has been received to suggest that there is likely to be a reduction in the aggregate volume of coal exported through the Port of Newcastle
- if authorisation is later denied, producers have the ability to re-schedule vessels and production timetables based on annual demand nominations for the balance of 2007
- the ACCC has been assisted by its 2005 consideration of the scheme and its acceptance at that time - with the benefit of comprehensive consultation and assessment - that continuation of the scheme to the end of 2007 was likely to be in the public interest.

Please be advised that the ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

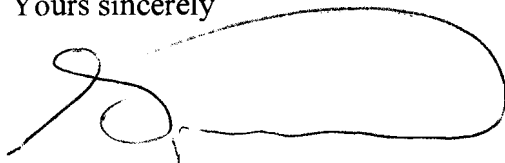
### **Next steps**

The ACCC will continue to consult with interested parties to inform its consideration of the substantive application for re-authorisation of the modified Medium Term CBS. As previously advised, the closing date for submissions on the substantive application is 19 March 2007.

The next step in the process is for the ACCC to then release a draft determination which will take account of any submissions from PWCS and interested parties and will indicate the ACCC's preliminary views on the merits of the application. The ACCC will provide both PWCS and interested parties with the opportunity to provide a further submission on the draft determination before the ACCC issues its final decision.

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 Ms Jaime Martin on (03) 9290 1477.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Gregson', with a large, sweeping loop extending to the right.

Scott Gregson  
General Manager  
Adjudication Branch

**PWCS – application for revocation of authorisations A30236 – A30238 and substitution of authorisations A91033 – A91035**

**Re: proposed re-instatement of the Medium Term Capacity Balancing System for 2007**

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**Producers**

1. Anglo Coal Australia Pty Limited
2. Austar Coal Mine Pty Limited
3. BHP Billiton - Energy Coal
4. Bloomfield Collieries Pty Limited
5. Centennial Coal Company Limited
6. Coal & Allied (Rio Tinto Coal Australia Pty Ltd)
7. Donaldson Coal Pty Ltd
8. Gloucester Coal Limited
9. Integra Coal Operations Pty Ltd
10. Resource Pacific Limited
11. Peabody Pacific Pty Limited
12. White Mining limited
13. Whitehaven Coal Mining Pty Ltd
14. Idemitsu Australia Resources Pty Limited
15. Xstrata Coal Australia Pty Ltd
16. Camberwell Coal Pty Ltd
17. Newcastle Coal Infrastructure Group
18. Muswellbrook Coal Company Ltd

**Government**

19. NSW Minerals Council
20. NSW Department of Mineral Resources
21. Ministry of Transport (NSW)
22. Department of Industry, Tourism and Resources
23. Department of Foreign Affairs and Trade – Trade Development Division

**Rail**

24. Australian Rail Track Corporation Ltd
25. QR
26. Pacific National

**Other**

27. Hunter Valley Coal Chain Logistics Team
28. United Mine Workers Federation
29. The Maritime Union of Australia
30. Hunter Valley Coal Chain Logistics Team