



**Australian  
Competition &  
Consumer  
Commission**

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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

### **Port Waratah Coal Services Ltd - 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 Limited (PWCS) on 27 February 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 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).

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 is then for the ACCC to 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 contact Jaime Martin on (03) 9290 1477 ([jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au)) or David Hatfield on (02) 6243 1266 ([david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)).

Yours sincerely



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