



**Australian
Competition &
Consumer
Commission**

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www.accc.gov.au

Our Ref: C2007/611
Contact Officer: Jaime Martin
Contact Phone: (03) 9290 1477

4 April 2007

Dear Sir/Madam

Re: Port Waratah Coal Services Limited - draft determination

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination 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.

PWCS is seeking authorisation to allow it to reinstate an amended Medium Term Capacity Balancing System (CBS) at the Port of Newcastle until 31 December 2007.

The key amendments to the Medium Term CBS are to introduce monthly allocation for ‘large producers’ and to double the flexibility amounts for all producers.

Summary of ACCC considerations

Having considered the application and submissions from PWCS and interested parties, the ACCC proposes to grant authorisation, as requested, until 31 December 2007.

A copy of the draft determination is attached and is also available on the ACCC’s website at www.accc.gov.au.

The ACCC considers that any public detriment arising from the amended Medium Term CBS is likely to be negligible. In particular, the ACCC is satisfied that the introduction of monthly loading allocation for large producers and increasing the flexibility limits for all producers is unlikely to result in a reduction in the total volume of coal moved through the port.



Further, given the recent and ongoing expansion initiatives along the coal chain, and particularly at the port, the ACCC considers reinstating the modified Medium Term CBS for the remainder of 2007 is unlikely to defer necessary investment.

The ACCC is satisfied that the modified Medium Term CBS is likely to result in a significant benefit to the public, particularly by reducing demurrage costs for the industry and hence improving economic efficiency relative to a situation where the current queue persists. The ACCC considers that producers would face significantly higher demurrage costs for the remainder of 2007 without the reinstatement of the amended Medium Term CBS.

Overall, the ACCC considers that in all the circumstances, the public benefit generated by the modified Medium Term CBS is likely to outweigh the public detriment. Therefore, the ACCC proposes to grant authorisation.

Next steps

Once the ACCC issues a draft determination, the applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested.

Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **cob 18 April 2007**. Conferences are conducted informally, without the participation of legal or other professional advisers.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **20 April 2007** at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

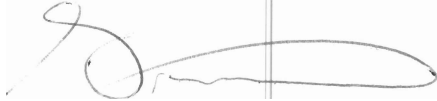
Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on (02) 6243 1211.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an authorisation application. Guidelines for seeking exclusion from the public register are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a conference be called, and will then release a final determination in relation to PWCS' application.

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 or at jaime.martin@acc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', written over a light grey rectangular background.

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

Draft determination - list of interested parties

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

Rail

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

Other

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