



**Australian
Competition &
Consumer
Commission**

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Our Ref: A91033-A91035
Contact Officer: Jaime Martin
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23 May 2007

Dear Sir/Madam

Re: Port Waratah Coal Services Limited - final determination

The Australian Competition and Consumer Commission (the ACCC) has issued a determination revoking authorisations A30236 – A30238 and granting substitute authorisations A91033 – A91035 in respect of the application for reauthorisation lodged by PWCS on 27 February 2007.

PWCS sought authorisation to reinstate the modified Medium Term Capacity Balancing System (CBS) 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 has decided to grant authorisation to PWCS to reinstate the modified Medium Term CBS until 31 December 2007.

A copy of the determination is attached. It 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.



The ACCC considers that ultimately, current limits on the production levels of coal producers arise as a result of the capacity of the Hunter Valley coal chain, rather than the introduction of the modified Medium Term CBS. The modified Medium Term CBS merely seeks to provide producers with a proportionate allocation of the available capacity of the Hunter Valley coal chain. In the absence of the scheme, it is likely that producers would have been required to reduce production due to vessels waiting even longer in the queue to load coal and to avoid excess stockpiling at mines.

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. If anything, the pressure to invest from commercial signals, media and political interest has never been greater.

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 an excessive 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.

Therefore, after considering all the information before it, the ACCC is of the view that the public benefits flowing from the arrangements are likely to outweigh the public detriments and the ACCC has decided to grant authorisation.

Application for review

Pursuant to section 101 of the *Trade Practices Act 1974*, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 13 June 2007. If no application to review is lodged by this date, the ACCC's determination will come into force on 14 June 2007.

Interim authorisation, granted by the ACCC on 14 March 2007, will continue to protect the arrangements until the ACCC's final determination comes into effect or unless revoked.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Ms Jaime Martin on (03) 9290 1477 or at jaimie.martin@accc.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', written over a horizontal line.

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