



**Australian  
Competition &  
Consumer  
Commission**

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Our reference: A91060-A91062  
Contact Officer: Hew Atkin  
Contact Number: (02) 6243 1363

27 September 2007

Dear Sir or Madam

**Dalrymple Bay Coal Terminal Pty Ltd application for revocation of A30239-A30241  
and substitution by A91060-A91062 – interested party consultation**

I refer to the above application for revocation and substitution lodged with the Australian Competition & Consumer Commission (ACCC) by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) on 26 September 2007. For more information on the authorisation process please see the **Attachments**.

The purpose of this letter is to seek your comments in relation to the application as a potentially interested party.

**Applications for authorisation A91060 – A91062**

DBCTPL has sought re-authorisation of a queue management system (QMS) designed to address the imbalance between the demand for coal loading services at Dalrymple Bay Coal Terminal and the capacity of the Goonyella coal chain. The imbalance between demand and capacity of the coal chain caused a substantial queue of ships to form off Dalrymple Bay. The ACCC previously granted authorisation to these arrangements on 15 December 2005.

DBCTPL has lodged the application because the current arrangements are expected to terminate towards the end of 2007 or early 2008.

**Request for comment on interim authorisation**

DBCTPL has requested interim authorisation to address the excessive and substantial vessel queues off the coast of Australia, and to provide certainty as early as possible that the QMS will continue to operate beyond 2008.

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 and will usually consider a range of factors including; harm to the applicant and other parties if interim is (or is not) granted, possible benefit and detriment 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 seeks your comments on the request for **interim authorisation** by **Friday, 5 October 2007** – comments can be provided by email, fax, or by calling the officers responsible for this matter (contact details provided at the end of this letter).

### **Request for submissions on the application for authorisation**

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 arrangements. In support of its application, DBCTPL claims the QMS will result in a number of public benefits including:

- reducing deadweight demurrage costs by approximately A\$273 million for 2008 – if the vessel queue is reduced to 15 ships
- reducing inefficient coal stockpiling and associated costs by providing greater certainty as to when a particular shipment of coal will be loaded and the volume of coal they will be able to load in a month
- improving the reputation of the Australian coal industry, the Goonyella coal chain, and the Terminal
- facilitating more efficient investment and re-investment in the Bowen Basin coal industry, and specifically funding investment in the capacity of the Goonyella coal chain

reducing the environmental risks associated with a large number of bulk cargo vessels queuing adjacent to the Great Barrier Reef, with positive flow-on effects for Queensland and Australia in tourism and other industries.

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on DBCTPL's claims. Please note, the ACCC recommends that you consider DBCTPL's supporting submission before making a submission.

Based on your experience over the last few years, the ACCC would also appreciate your views on the following issues:

- Has the QMS had any impact on the overall volume of coal exported through DBCT? Has the QMS restricted or discouraged coal producers from increasing production and utilising any spare capacity identified in the Goonyella coal chain?
- The O'Donnell Review identified a lack of rail rolling stock as the current constraint on the capacity of the Goonyella coal chain. Has the QMS affected the incentives for investment in rail capacity or contributed to the undersupply in any way?

- Does the QMS allow for gaming by industry participants and, if so, is this likely to get worse the longer the QMS is in operation?
- Has the QMS consultative process been successful in accommodating planned outages and identifying capacity constraints within the Goonyella coal chain?
- The ACCC notes that a significant vessel queue formed at Dalrymple Bay during 2007 while the QMS was operating. What do you believe led to this occurring and do you consider it is likely to happen again if the operation of the QMS is extended? Would the vessel queue have been longer in the absence of the QMS?

The ACCC seeks your comments on the application for authorisation by **Friday, 26 October 2007**. The ACCC asks for submissions to be in writing so they can be made publicly available. All submissions will be placed on the ACCC's public register subject to any request for exclusion (see **attached** guidelines).

### **Timetable**

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information.

<b>26 September 2007</b>	Lodgement of application and supporting submission
<b>27 September 2007</b>	Public consultation process begins
<b>5 October 2007</b>	Closing date for comment on interim authorisation
<b>26 October 2007</b>	Closing date for submissions on the application for authorisation
<b>November 2007</b>	Applicant responds to issues raised in the public consultation process
<b>December 2007</b>	Draft determination
<b>December 2007 / January 2008</b>	Public consultation on draft determination including any conference if called
<b>January 2008 / February 2008</b>	Final determination

If you wish to lodge a submission please address it to:

The General Manager  
 Adjudication Branch  
 Australian Competition & Consumer Commission  
 GPO Box 3131  
 Canberra ACT 2601

Submissions can also be lodged by email to: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or faxed to: (02) 6243 1211.

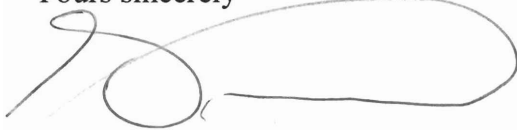
Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages.

Please provide a preferred contact email address for future correspondence.

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

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 Hew Atkin on (02) 6243 1363 or 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

Encl



**Australian  
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Consumer  
Commission**

# Authorisation process—the basics

## What is authorisation?

The ACCC is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows businesses to obtain protection from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way businesses may obtain protection is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may authorise businesses to engage in such conduct where it is satisfied that the public benefit outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process, placing submissions on a public register. After considering submissions, the ACCC will issue a draft decision and provide an opportunity for a conference. The ACCC will then reconsider the application in light of any further submissions and release its final decision.

## Varying authorisations

The Act also provides two mechanisms for varying authorisations. Depending on the nature of the proposed variation, an applicant may apply to the ACCC for a minor variation or a substitution.

### Minor variation

The minor variation process is only available for changes that are not substantial or significant.

When the ACCC receives a request for a minor variation, it first assesses whether the variation sought is minor, and then invites submissions from interested parties.

To allow the minor variation, the ACCC must be satisfied that the variation would not result reduce the extent to which the public benefit outweighs any public detriment. The ACCC must then issue a determination either varying the original authorisation or dismissing the application.

### Revocation and substitution

For more substantive changes, applicants may seek revocation and substitution of an authorisation. As for the authorisation process, the ACCC undertakes a public consultation process, issues a draft decision and provides an opportunity for a conference before issuing a final decision. The ACCC must assess whether the benefit from the conduct proposed to be authorised under the substitute authorisation outweighs the likely detriment.

Parties may also seek to revoke an existing authorisation.

In some cases the ACCC may also instigate a review of an authorisation with a view to possible revocation or substitution.

# Authorisation process—the basics

## Making submissions

Upon receipt of an application, the ACCC writes to parties it considers may be interested in the matter, inviting submissions. It also encourages those parties to forward its letter to others who may be interested and places the application on its public register for all to see.

When preparing your submission, please remember to provide details of the reasons for your particular views and any supporting materials you may have.

The ACCC encourages submissions in writing; however, oral submissions can also be made. Both written and oral submissions are placed on a public register.

You may request that information included in the submission be excluded from the public register. Submissions that are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an authorisation application. The ACCC has prepared guidelines for seeking exclusion from the public register, which are available on its website.

Submissions should be addressed to:

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

They can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) or by facsimile on 02 6243 1211.

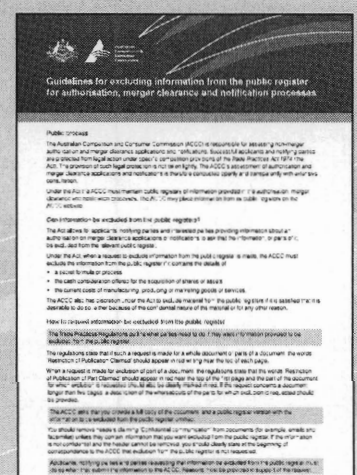
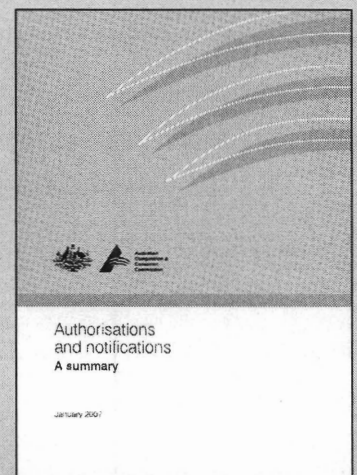
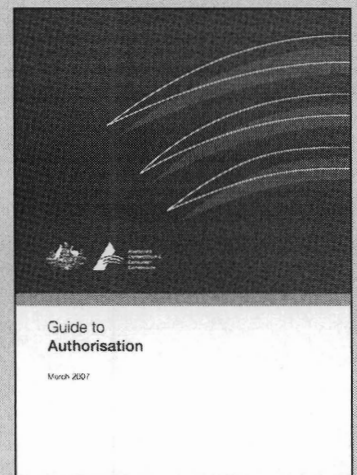
## Further information

The ACCC has a number of publications that may assist in answering further queries in relation to authorisation processes. The ACCC publications listed below are available on its website and in some cases in hard copy form.

*Guide to Authorisation*

*Authorisations and notifications: a summary*

*Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes*





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## Guidelines for excluding information from the public register for authorisation, merger clearance and notification processes

### Public process

The Australian Competition and Consumer Commission (ACCC) is responsible for assessing non-merger authorisation and merger clearance applications and notifications. Successful applicants and notifying parties are protected from legal action under specific competition provisions of the *Trade Practices Act 1974* (the Act). The provision of such legal protection is not taken lightly. The ACCC's assessment of authorisation and merger clearance applications and notifications is therefore conducted openly and transparently with extensive consultation.

Under the Act the ACCC must maintain public registers of information provided in the authorisation, merger clearance and notification processes. The ACCC may place information from its public registers on the ACCC website.

### Can information be excluded from the public registers?

The Act allows for applicants, notifying parties and interested parties providing information about an authorisation on merger clearance applications or notifications to ask that the information, or parts of it, be excluded from the relevant public register.

Under the Act, when a request to exclude information from the public register is made, the ACCC must exclude the information from the public register if it contains the details of:

- a secret formula or process
- the cash consideration offered for the acquisition of shares or assets
- the current costs of manufacturing, producing or marketing goods or services.

The ACCC also has discretion under the Act to exclude material from the public registers if it is satisfied that it is desirable to do so, either because of the confidential nature of the material or for any other reason.

### How to request information be excluded from the public register

The Trade Practices Regulations outline what parties need to do if they want information provided to be excluded from the public register.

The regulations state that if such a request is made for a whole document or parts of a document, the words 'Restriction of Publication Claimed' should appear in red writing near the top of each page.

When a request is made for exclusion of part of a document, the regulations state that the words 'Restriction of Publication of Part Claimed' should appear in red near the top of the first page and the part of the document for which exclusion is requested should also be clearly marked in red. If the request concerns a document longer than five pages, a description of the whereabouts of the parts for which exclusion is requested should be provided.

The ACCC asks that you provide a full copy of the document, and a public register version with the information to be excluded from the public register omitted.

You should remove headers claiming 'Confidential communication' from documents (for example, emails and facsimiles) unless they contain information that you want excluded from the public register. If the information is not confidential and the header cannot be removed, you should clearly state at the beginning of correspondence to the ACCC that exclusion from the public register is not requested.

Applicants, notifying parties and parties requesting that information be excluded from the public register must do so when they submit the information to the ACCC. Reasons must be provided in support of the request.

## How does the ACCC assess requests to exclude information from the public register?

Information subject to a request for exclusion will not be placed on the public register while the ACCC assesses the request.

The ACCC will try to respond to requests to exclude information from the public register within one to two business days. The ACCC is generally able to respond much faster if requests are limited to information that is genuinely confidential, if confidential information is clearly marked and if requests are accompanied by a detailed explanation of why it should be excluded from the public register.

When the ACCC agrees to a request, the information will be excluded from the relevant public register. This information may still be used by the ACCC under its powers under the Act. Information withheld from the public register may still be accessed through other legal processes such as under the *Freedom of Information Act 1982*.

If the ACCC denies a request because the request is not accompanied by sufficient supporting information or because it considers that the information is not confidential in nature, the ACCC will inform the party making the request of its decision.

If the ACCC denies a request, the information for which exclusion was denied will be considered as withdrawn from the ACCC's consideration—unless the party advises that it wishes to withdraw or amend the request. As a general rule, the ACCC will allow the party one to two business days to respond.

If a party chooses to withdraw the information subject to an exclusion request, the ACCC will not use the information in its decision-making processes.

Generally speaking, the ACCC **will** decline a request to exclude information from the public register where that information is necessary to identify the conduct or arrangements for which protection is sought.

### *Checklist for requesting that information be excluded from the public register*

- Have you identified the specific sections of the document to which the request relates?
- Have you outlined reasons for requesting that information be excluded from the public register?
- Have you provided a copy of the full document and identified those parts you want excluded?
- Have you provided a public register version of the document and masked or removed those parts you want excluded?
- Are you aware that requests to exclude information from the public register must be submitted at the time the information is provided to the ACCC?

### Related publications

*Access to public registers*

*Merger guidelines 1999*

*Merger review process guidelines*

*Formal merger review process guidelines*

*Guide to authorisation*

*Guide to collective bargaining notifications*

*Guide to exclusive dealing notifications*

### ACCC contacts

Infocentre 1300 302 502

Website [www.accc.gov.au](http://www.accc.gov.au)

For other business information, go to [www.business.gov.au](http://www.business.gov.au).





**Dalrymple Bay Coal Terminal Pty Ltd application for Authorisation A91060-  
A91062 – interested parties**

- Anglo Coal Pty Ltd
- Australian Coal Association
- Babcock Brown Infrastructure (BBI)
- BHP Mitsui Coal Pty Ltd
- BMT Maritime Consultants Pty Ltd
- Companhia Siderurgica Nacional
- CVRD Australia Holdings Pty Ltd
- Department of Foreign Affairs and Trade
- Department of Industry Tourism & Resources
- Foxleigh Mining Pty Ltd
- Gerdau Acominas
- Kobe Steel Ltd
- Macarthur Coal Pty Ltd
- McCullough Robertson
- Peabody Energy Australia Coal Pty Ltd
- Ports Corporation of Queensland
- QR National
- QR Network Access
- Queensland Competition Authority
- Queensland Department of Natural Resources and Mines
- Queensland Department of Transport
- Queensland Environmental Protection Agency
- Rio Tinto Coal Australia Pty Ltd
- Sumitomo Metal Industries Ltd
- The Institute of Energy Economics Japan
- The Maritime Union of Australia
- Xstrata Coal Queensland Pty Limited