



**Australian
Competition &
Consumer
Commission**

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17 October 2007

Mr Dave Poddar
Mallesons Stephen Jaques
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Dear Mr Poddar

**Dalrymple Bay Coal Terminal Pty Ltd application for revocation of A30239-A30241
and substitution by A91060-A91062 – request for interim authorisation**

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the above application for revocation and substitution lodged by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) on 26 September 2007. A copy of the ACCC's decision is **attached**.

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

Next steps

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

As noted in the attached decision, the ACCC may review its decision on interim authorisation at any time. 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.

Irrespective of a decision by the ACCC in relation to the current application for revocation and substitution, the ACCC is mindful of the benefits in providing some certainty that the operation of the QMS can continue beyond the first quarter of 2008. The ACCC considers that any decision affecting the operation of the QMS would preferably include a transition period to allow industry to prepare for the change in circumstances.

In the event that the application for revocation and substitution does not receive ACCC approval, the ACCC is likely to provide authorisation for a transition period ending no sooner than 30 June 2008. If the ACCC determines that authorisation should be granted to the substantive application then a decision on an appropriate term of authorisation will be made at that time.

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 myself on (02) 6243 1266.

Yours sincerely



David Hatfield
A/g General Manager
Adjudication Branch



Dalrymple Bay Coal Terminal Pty Ltd revocation and substitution [A91060-A91062]

Interim authorisation decision

The Australian Competition and Consumer Commission (ACCC) has decided to grant interim authorisation in respect of the application for revocation and substitution lodged by Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) on 26 September 2007.

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 has caused a large queue of ships to form off Dalrymple Bay.

Interim authorisation

The ACCC suspends the operation of authorisations A30239, A30240, A30241 and grants interim authorisation to authorisations A91060, A91061, A91062 consistent with section 91(2)(f) of the *Trade Practices Act 1974*.

Reasons for decision

In assessing the request for interim authorisation the ACCC considered that there was benefit in providing coal producers with certainty that the QMS will continue to operate beyond early 2008 (the expected completion of Phase One Expansion). The ACCC notes that coal producers are required to provide quarterly demand forecasts for Terminal coal loading services and, without certainty of the operation of the QMS, demand forecasts for the first quarter of 2008 may be disrupted.

The ACCC acknowledges that without some assurance that the QMS will continue to operate it is possible that the vessel queue could increase substantially causing further deadweight demurrage costs and other associated detriments. The ACCC therefore considers that granting interim authorisation will help to maintain the market status quo and reduce the prospect of any further increase in the number of vessels in the queue at Dalrymple Bay, while the ACCC considers the merits of the substantive application.

Reconsideration of decision

The ACCC may review its decision on interim authorisation at any time. In this regard the ACCC will reconsider this decision at the time of issuing its draft determination. 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.