



**Australian
Competition &
Consumer
Commission**

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Our Ref: A91110 – A91112
Contact Officer: Jaime Martin
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Dear Sir / Madam

**Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group
applications for authorisation A91110 – A91112 — interested party consultation**

The Australian Competition and Consumer Commission (the ACCC) has received applications for authorisation from Port Waratah Coal Services Limited (PWCS) and the Newcastle Coal Infrastructure Group (hereafter referred to as the ‘Applicants’) concerning the Hunter Valley coal chain.

A copy of the application and supporting submission is attached.

The ACCC invites you to comment on the application. Please refer to the attached summary of the authorisation process for further information, including on how to make a submission to the ACCC.

The Applicants are seeking authorisation of:

- the PWCS ‘Tonnage Allocation Stage 1’ (Stage 1 Allocation) and
- any Long Term Terminal Access Protocols (Long Term Protocols) which are developed and agreed in the future by producers, the Applicants and any Hunter Valley coal chain participant. It is proposed that the Applicants will submit to the ACCC a Memorandum of Understanding and associated Terms Sheet (MOU) setting out the likely terms of any Long Term Protocols on or before 31 March 2009. The Applicants then propose to submit the final Long Term Protocols to the ACCC for approval by 30 June 2009.

The proposed Stage 1 Allocation and Long Term Protocols are designed to replace the Capacity Balancing System currently operating at the Port of Newcastle, for which authorisation will expire on 31 December 2008.

Under the Stage 1 Allocation, it is proposed that base tonnages for exporting coal will be allocated to existing coal producers that reflect the greater of each producer’s highest allocation usage between 2004 and 2007, or their binding nomination at PWCS for 2008. These base tonnages will then be proportionally increased or decreased to match the capacity

of the Hunter Valley coal chain. The Stage 1 Allocation process is described in further detail in Section 4 of the supporting submission to the authorisation application.

The Applicants propose that the Stage 1 Allocation will be superseded by the Long Term Protocols, which will provide a system to manage access to and expansion of terminal capacity at the Port of Newcastle on an ongoing basis. If approved by the ACCC, the Long Term Protocols are proposed to apply retrospectively from 1 July 2009, or such later date as agreed by the Terminal Operators and the ACCC.

The Applicant seek authorisation of the proposed Stage 1 Allocation and Long Term Protocols for a period of ten years.

Interim authorisation

The Applicants have also requested interim authorisation of the proposed arrangements as soon as practicable so that PWCS can begin the steps necessary to implement the Stage 1 Allocation at the Port of Newcastle and industry participants can move forward with greater certainty in developing the Long Term Protocols.

The Applicants submit that forecast demand for coal loading services in 2009 will remain well above the available coal chain capacity. Therefore, the Applicants argue that unless interim authorisation is granted to the proposed arrangements, a large vessel queue is likely to re-form at the Port of Newcastle when the current authorisation of the Capacity Balancing System expires on 31 December 2008.

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. When an application for interim authorisation is received, the ACCC 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 notes the tight timeframe within which it has been asked to consider interim authorisation. The ACCC endeavours to deal with requests for interim authorisation quickly. The ACCC therefore seeks your comments on the request for interim authorisation by **Friday, 5 December 2008** – comments can be provided by email to adjudication@accc.gov.au. Other contact details are provided in the attached publication, *Authorisation process – the basics*.

Request for submissions

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.

For further details on the public benefits and detriments the Applicants claim are likely to result from the proposed arrangement, please refer to Section 5 of the supporting submission to the application.

If you intend to provide a submission in relation to the substantive application for authorisation, please do so by close of business **Friday, 19 December 2008**. As noted above, submissions in relation to the request for interim authorisation should be provided by **5 December 2008**.

Alternatively, if you would like to provide comments orally, please contact Ms Jaime Martin on (03) 9290 1477 to organise a suitable time.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

A full copy of the application for authorisation and all public submissions will be available from the ACCC's website <www.accc.gov.au> (by following the 'Public registers' and 'Authorisations and notifications registers' links).

Timetable

An indicative timetable of how the ACCC will progress its assessment of the application for the remainder of 2008 is set out below for your information.

19 November 2008	Lodgement of application and supporting submission, including request for interim authorisation.
20 November 2008	Public consultation process begins.
5 December 2008	Closing date for submissions on interim authorisation.
December 2008	ACCC decision regarding interim authorisation.
19 December 2008	Closing date for submissions on the substantive application from interested parties.

As outlined in the attached supporting submission to the application, the Applicants propose to progress the development of the Long Term Protocols during the first half of 2009. In particular, the Applicants propose to submit a MOU setting out the likely terms of any Long Term Protocols on or before 31 March 2009. The Applicants propose to submit the final Long Term Protocols to the ACCC by 30 June 2009, which they propose will form part of the current authorisation, subject to ACCC approval.

The ACCC will provide interested parties with further details of an indicative timetable for its assessment of the substantive application for authorisation in due course.

The ACCC's list of interested parties

Please advise if you do not wish to make a submission at this time, but would like to be kept informed about the progress of this matter, including receiving a copy of the ACCC's draft and final determinations. In doing so, please provide an appropriate contact person and email address for future correspondence.

You can also 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 Mr David Hatfield on (02) 6243 1266 (david.hatfield@accc.gov.au) or Ms Jaime Martin on (03) 9290 1477 (jaimemartin@accc.gov.au).

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch

20 / 11 / 2008

**Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group –
applications for authorisation A91110 –A91112**

Initial consultation – interested parties

1. Anglo Coal Australia Pty Ltd
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. Idemitsu Australia Resources Pty Limited
10. Integra Coal Operations Pty Ltd
11. Muswellbrook Coal Company Limited
12. Resource Pacific Limited
13. Peabody Pacific Pty Limited
14. White Mining Limited
15. Whitehaven Coal Mining Pty Ltd
16. Xstrata Coal Australia Pty Ltd
17. Werris Creek Coal Sales Pty Ltd
18. Peabody Coal Trade Australia
19. Ashton Coal Mines Limited
20. NSW Minerals Council
21. Australian Rail Track Corporation
22. Hunter Valley Coal Chain Logistics Team
23. SCT Logistics
24. Pacific National (NSW) Pty Limited
25. QR National
26. Genesee & Wyoming Australia Pty Ltd (on behalf of Fenwick Elliot Grace)
27. The Hon Joseph Tripodi MP, NSW Minister for Ports and Waterways
28. The Hon Joel Fitzgibbon MP, Federal Member for Hunter
29. The Hon George Souris MP, NSW Member for Upper Hunter
30. The Treasury (Energy, Transport and Communications Unit)
31. Australian Government Department of Resources, Energy and Tourism (Minerals Branch)
32. Australian Government Department of Infrastructure, Transport, Regional Development and Local Government (Infrastructure Investment)
33. Infrastructure Australia
34. National Transport Commission
35. Newcastle Port Corporation
36. NSW Department of Planning (Major Project Assessments Division)
37. NSW Department of Primary Industry (Mineral Resources Division)

38. NSW Maritime
39. Australian Transport Safety Bureau
40. Maritime Union of Australia
41. United Mine Workers Federation
42. The Hon Nick Greiner AC
43. Embassy of Japan
44. Rail Corporation NSW
45. NSW Ministry of Transport
46. Rail Infrastructure Corporation