



Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group Pty Limited applications for authorisation [A91110-A91112] – request for interim authorisation

REASONS

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation until 31 March 2009 in respect of the applications for authorisation lodged by Port Waratah Coal Services Limited (PWCS) and the Newcastle Coal Infrastructure Group Pty Limited (NCIG) on 19 November 2008. Interim authorisation extends only to the PWCS Tonnage Allocation Stage 1 and is conditional upon the ACCC being satisfied that work to finalise the long term solution continues, with monthly progress reports to be provided by the parties.

THE APPLICATION

PWCS and NCIG ('The Applicants') seek authorisation of:

- i. the PWCS Tonnage Allocation Stage 1 (Stage 1 Allocation) and
- ii. any Long Term Terminal Access Protocols (the Long Term Protocols) which are developed and agreed in the future by producers, the Applicants and/or any Hunter Valley coal chain participant, and which are submitted to the ACCC for approval.

The proposed Stage 1 Allocation system is intended to replace the Capacity Balancing System currently operating at the Port of Newcastle, authorisation of which is due to expire on 31 December 2008.

The Applicants submit that the Stage 1 Allocation system will provide for access to terminal capacity and manage the coal vessel queue while the long term arrangements for access and capacity expansion of coal terminal infrastructure are developed and finalised by the industry. It is proposed that the Stage 1 Allocation system will operate until such time as it is superseded by the Long Term Protocols, which will provide a system to manage access to, and expansion of, terminal capacity at the Port of Newcastle on an ongoing basis.

In this regard, the Applicants propose that any authorisation be conditional upon the development and finalisation of the Long Term Protocols in accordance with the following timetable:¹

- The Applicants will submit a Memorandum of Understanding and associated Terms Sheet (MOU) to the ACCC setting out the likely terms of any Long Term Terminal Access Protocols which will be an element of the potential long term solution on or before 31 March 2009.

Should the Applicants not be able to submit the MOU to the ACCC on or before 31 March 2009, they submit that the ACCC and the Applicants would work together (both 'acting reasonably and in good faith') to determine any later date that should apply.

- Prior to 31 March 2009, the Applicants will provide monthly reports to the ACCC on progress made by the Producers' Steering Committee and the Applicants towards developing the MOU.
- The Applicants will submit the new Long Term Protocols to the ACCC by 30 June 2009 which, subject to ACCC approval, the Applicants propose will form part of the authorised arrangements.
- Between 31 March 2009 and 30 June 2009, the Applicants will provide monthly reports to the ACCC on progress made by the Producers' Steering Committee and the Applicants in developing the Long Term Protocols.
- The Applicants will implement contractual arrangements which give effect to such Long Term Protocols as are submitted to the ACCC for approval by a date which is *no later than 6 weeks* after the date on which the Long Term Protocols are approved by the ACCC. If accepted by the ACCC, any Long Term Terminal Protocols will apply retrospectively from 1 July 2009, or such later date as agreed by the Terminal Operators and the ACCC.

The Applicants seek authorisation of the Stage 1 Allocation system and any Long Term Protocols for ten years. They propose that any authorisation granted by the ACCC will cease if any one of the above mentioned reporting deadlines are not met.

It is proposed that the Stage 1 Allocation will be implemented by amending the Coal Handling Services Agreement that PWCS has in place with its customers. The rules for the operation of the proposed Stage 1 Allocation are detailed in *PWCS Tonnage Allocation Stage 1*.²

Broadly, under the proposed Stage 1 Allocation system 'base tonnages' are established for existing producers that reflect either their highest allocation usage between 2004 and 2007 or their binding nomination at PWCS for 2008, proportionately reduced to 95 million tonnes (being the initial declared coal chain capacity for 2008).

¹ The Applicants' supporting submission to the applications for authorisation (A91110-A91112), 19 November 2008, pp 2, 3.

² Attachment 1 to the Applicants' applications for authorisation (A91110-A91112), 19 November 2008.

The Applicants request interim authorisation of the proposed arrangements so that PWCS can begin the steps necessary to implement the Stage 1 Allocation system and industry participants can move forward with greater certainty in developing a long term solution.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in special circumstances. This is because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

Some of the key factors typically taken into account by the ACCC when assessing an application for interim authorisation include:

- The urgency of the need for interim authorisation.
- The extent to which the relevant market will change if interim authorisation is granted.
- The possible harm, if any, to the applicant if a grant of interim authorisation is denied.
- The possible harm to other parties (such as customers and competitors) if a request for interim authorisation is granted or denied.
- Any possible benefit or detriment to the public that the ACCC could assess at the time of considering the request for interim authorisation. However, the ACCC is not required to determine whether the relevant conduct would satisfy the authorisation test.

BACKGROUND

Previous authorisations of capacity balancing systems at the Port of Newcastle

An authorised capacity balancing system has essentially been in operation at the Port of Newcastle since interim authorisation was first granted by the ACCC in March 2004. The ACCC has always considered that queue management systems are in the public interest as short term transitional measures only.

Most recently, in April this year the ACCC granted authorisation to the Capacity Balancing System currently operating at the Port of Newcastle until 31 December 2008, to provide a transition period that would allow the industry to develop a long term solution to address the ongoing capacity constraints within the Hunter Valley coal chain.

In its determination³, the ACCC expressed doubts as to whether the continued operation of a Capacity Balancing System beyond 2008, in the absence of a long term solution to the ongoing capacity issues, would be in the public interest.

In particular, the ACCC considered that the Capacity Balancing System had acted to reduce the incentive to develop a long term solution to the ongoing capacity constraints in the Hunter Valley coal chain. The ACCC considered that, while the Capacity Balancing System has effectively been in operation at the Port of Newcastle since March 2004, industry and governments have failed to adequately address ongoing capacity issues within a reasonable amount of time.

The ACCC considered that there are a number of structural, regulatory and contractual issues in the coal chain that appear to be contributing to the ongoing capacity imbalance, including:

- The 'common user' provisions in PWCS' lease with the NSW Government (or its interpretation of them) have meant that PWCS has not been able to enter into long term contracts to underpin future investment with certainty.
- Service providers contracting based on assessments of individual capacity without reference to the capacity of the coal chain as a whole, and on the basis of what appear to be optimistic assumptions.

The Greiner Review⁴

In January 2008, the Hon. Nick Greiner AC was appointed by the NSW Government to conduct a review of the Hunter Valley coal chain.

Following initial meetings with producers and service providers, Mr Greiner's brief was expanded in February to develop a long term framework for the expansion and management of the Hunter Valley coal chain.

In June 2008, coal producers developed a proposal for access to the coal terminals at the Port of Newcastle which was submitted to Mr Greiner. In July 2008, Mr Greiner provided his report to the Minister for Ports and Waterways. The report identified the following key requirements to achieve the major expansion of the capacity of the Hunter Valley coal chain:

- improve information sharing with the logistics coordinator
- enhance coordination of the coal chain
- develop a long term framework for export terminal access to ensure access of capacity and
- develop a framework for track access to ensure expansion of track capacity.

³ ACCC determination in relation to applications for authorisation (A91072-A91074) and (A91075-A91077) lodged by Newcastle Port Corporation and Donaldson Coal Pty Limited, 23 April 2008.

⁴ Unless otherwise stated, the information contained under this heading was sourced from the Applicants' supporting submission to the applications for authorisation (A91110-A91112), 19 November 2008, pp 9, 15, 16.

The initial proposal developed by coal producers in relation to the issue of access to the PWCS and NCIG coal loading terminals, formed part of Mr Greiner's Report to the NSW Government.⁵

At the time the application for authorisation and interim authorisation was lodged with the ACCC, industry representatives were still negotiating with the NSW Government about a proposed modified long term solution which provided an avenue for new entrants to access coal loading capacity. The NSW Government had indicated that it required the long term solution to contain a mechanism that catered more expressly for new entrants to the Hunter Valley to access export capacity.

The NSW Government has recently passed legislation which, among other things, provides new regulatory powers for it to intervene in port logistics systems.

On 9 December 2008, Ports and Waterways Minister Joe Tripodi announced a two-stage trial of a vessel arrival system. The new system would replace the current turn of arrival system and involve issuing ships with individual recommended arrival times after monitoring their movement for 14 days. Minister Tripodi anticipated the new system would reduce ship pollution, reduce the risk of environmental accidents and address the ship queue by enabling coal exporters to better time their ships' arrivals at the Port of Newcastle.

NSW Government proposal of 12 December 2008

On 12 December 2008, the Minister for Ports and Waterways, the Hon. Joe Tripodi MP, announced a proposed terminal access framework to resolve outstanding issues in the negotiations between the coal industry and the NSW government in response to the Greiner review.

As announced by the NSW Government, the key elements of the proposal are:

- Triggers requiring terminals to build new capacity on demand
- Long term contracts to underpin investment in terminal capacity
- An industry levy to help fund new terminal infrastructure where required
- Guaranteed access for new entrants and expanding producers
- Business and planning certainty for existing producers
- Protection for small producers, and
- A proposal for a fourth coal terminal.⁶

PWCS notes that the framework includes:

- the opportunity for PWCS to lease additional government land and build a fourth coal loading terminal on Kooragang Island

⁵ Submission received from Coal and Allied, 5 December 2008, p 2.

⁶ The Hon. Joe Tripodi, Minister for Port and Waterways, Media Release, *Plan to end coal supply chain deadlock*, 12 December 2008.

- an ability for all producers to commit to long term terminal contracts, creating export certainty and security and a solid foundation for future infrastructure investment along the entire coal chain
- a trigger whereby new producers and existing producers wanting to expand give between two and four years' notice, enabling infrastructure to be built for them
- an ability for a pro-rata levy on all coal exports to cover the cost of any terminal expansion shortfalls (e.g. when contracts do not align exactly with construction needs)
- a mechanism enabling larger producers to have their contracts compressed up to a maximum of five per cent per annum if PWCS expansions are delayed or fall short of targeted capacity. Smaller producers (exporting less than five million tonnes annually) would not be subjected to compression.⁷

The NSW Government advises that the framework has the support of all 14 Hunter Valley coal producers as providing the basis for a long term solution in the Hunter Valley.

PWCS also expressed its support for the terminal access framework in a submission to the ACCC dated 16 December 2008. PWCS submitted that the framework would allow it to implement those elements of terminal access that related to PWCS independent of NCIG and issue long term contracts. PWCS expected this would facilitate contractual alignment in the Hunter Valley Coal Chain. PWCS did not consider that amendments to the applications for authorisation were necessary.

CONSULTATION

Upon receipt of the authorisation application on 19 November 2008, the ACCC undertook interested party consultation on an urgent basis in order to consider the request for interim authorisation. The ACCC received public written submissions from a number of producers, the Australian Rail Track Corporation, rail providers and others.

The majority of interested parties who lodged a submission with the ACCC support the grant of interim authorisation, although some interested parties raised concerns with the ACCC.

Copies of all public submission are available on the ACCC's website www.accc.gov.au (by following the 'Public registers' and 'Authorisations and notifications' links).

REASONS FOR DECISION

Urgency

The Applicants note that the authorisation for the current Capacity Balancing System expires on 31 December 2008. At this time, there will be no ACCC-authorized system in place to align or manage vessel arrivals more efficiently with coal chain capacity. The Applicants believe that a substantial vessel queue will quickly re-form off the Port of Newcastle and producers will incur substantial demurrage costs. For this reason, the Applicants submit that urgent interim authorisation is required.

⁷ PWCS, Media Release, *PWCS welcomes new Hunter Terminal Access Proposal*, 12 December 2008.

The ACCC considers that the industry has long known that the current Capacity Balancing System will expire at the end of 2008. However, the ACCC acknowledges that during the year, producers developed and agreed to long term terminal access principles as part of the Greiner Review, which were provided to the NSW Government in July 2008. The ACCC also understands that the development of the long term solution has required detailed negotiation between the industry and the NSW Government.

In this context, the proposed terminal access framework announced on 12 December 2008 constitutes a significant breakthrough in the development and implementation of a long term solution.

Claimed public benefits

The Applicants submit that there are a number of short term benefits from the proposed arrangements, including:

- the application includes a timetable which provides an incentive for the industry to develop and agree on a long term solution
- savings to the industry from reduced demurrage costs and
- the Stage 1 Allocation system will reduce the environmental and safety risks associated with a large number of bulk cargo vessels offshore.

In turn, the Applicants submit that the development of a long term solution will result in major capacity expansions (and therefore increased coal exports, export revenue and government royalties) and increased employment in the Hunter Valley.

Incentive to develop a long term solution

At the time the application for interim authorisation was lodged, the recommendations of the Greiner review had not been accepted by the NSW Government and the industry and the NSW government were still in negotiations on the way forward for the development of a long term solution. In this context, the applicants submitted that 'the application sets out a clear (and aggressive) timetable' for the resolution of the outstanding issues that need to be resolved before a long term solution can be finalised and implemented.⁸

For example, Xstrata Coal expressed the view that:

...the PWCS Tonnage Allocation Stage 1 will provide a structured context in which the producers will have the incentive and ability to focus their attention to finalise the long term solution.⁹

Conversely, Asciano considers that granting interim authorisation will actually reduce the incentives for the industry to develop and agree on a long term solution in a timely manner. In particular, Asciano submits that:

...the availability of a mechanism that mitigates the most obvious symptom of the underlying problem...significantly undermines the urgency that would otherwise prevail amongst a number of the stakeholders to find a workable solution. This allows the parties the luxury of seeking to defend or

⁸ Submission from the Applicants, 11 December 2008, p 2.

⁹ Submission from Xstrata Coal, 5 December 2008, p 1.

improve their positions that they might otherwise be willing to compromise for the benefit of the system as a whole...¹⁰

...it is no longer appropriate to support temporary solutions that do not lead directly and with reasonable certainty to the achievement of a LTS [long term solution].¹¹

The ACCC notes that while the 12 December 2008 terminal access framework is a significant breakthrough, there is considerable work to be done in finalising the details of the long term solution. The ACCC is concerned that the timetable set out in the application may lead to unnecessary delays, particularly in light of the recently announced framework.

As a result, the ACCC considers there is likely to be benefit from having a shorter timeframe for finalisation of the details of the long term solution and implementation of a long term solution than that proposed by the applicants.

Demurrage savings and international reputation of the industry

If no system is in place, the Applicants submit that the vessel queue could again increase to levels in excess of 70 vessels, which would result in producers incurring significant demurrage costs. In addition, the Applicants argue that vessel queues and increased delays in delivery of coal to international customers is likely to damage the reputation of the Australian and Hunter Valley coal industry.

Based on producers' demurrage rate estimates, the Applicants submit that an average vessel queue of 55 vessels during 2009 could generate an estimated US\$400 million in demurrage costs.¹² The Applicants argue that implementing the Stage 1 Allocation system from 1 January 2009 will 'ensure that the vessel queue can be managed to a level of around 20-25 vessels', representing a saving of around US\$300 million in demurrage costs for producers during 2009.¹³

In regard to the potential size of the queue, the ACCC notes the recent significant reduction in demand for coking coal. Having said this, the ACCC recognises that coking coal currently comprises some 20 per cent of coal exported from the Hunter Valley, with thermal coal accounting for the remaining 80 per cent.¹⁴ The ACCC understands that the demand for thermal coal has not softened to the same extent, although the spot price fell sharply in October 2008.¹⁵

Further, the ACCC understands that the vessel queue in the Port of Newcastle is trending upwards and is currently expected to reach 50 vessels by mid December 2008.

Accordingly, it appears that with or without authorisation, in the short term a large queue will exist with resultant demurrage costs. However, the ACCC considers that the size of the vessel queue is likely to be larger without an authorised capacity balancing system in place. Therefore, the ACCC considers that some demurrage savings are likely to result from

¹⁰ Submission from Asciano, 7 December 2008, pp 3, 4.

¹¹ Ibid, p 3.

¹² The Applicants' supporting submission to the applications for authorisation (A91110-A91112), 19 November 2008, p 9.

¹³ Ibid, p 24.

¹⁴ *November 2008 End of Month Charts*, viewed at www.pwcs.com.au on 10 December 2008.

¹⁵ D O'Leary, Lloyd's List, *Big two miners trim output as trade slows, prices fall*, 4 November 2008.

introduction of the Stage 1 Allocation system. Similarly, it is also likely to reduce the potential for damage to the international reputation of the Hunter Valley coal industry.

Regarding the vessel queue, the ACCC notes recent announcements that a new 'ship arrival system' will be trialled by the Newcastle Port Corporation (NPC) from early 2009. The ACCC understands that the aim of this new system is to reduce shipping costs and improve vessel safety at the Port of Newcastle. The ACCC understands that the first phase of the trial will be conducted in the first quarter of 2009 and will involve NPC tracking the movement of vessels using satellite technology for 14 days prior to their arrival. In the second stage, the port will use this information to program the arrival of the vessel based on its location, speed and performance during the trial. The vessel will be given a recommended arrival time based on the loading date advised by PWCS, which will avoid the vessel 'racing' to the Port of Newcastle, with resultant reductions in fuel consumption.¹⁶

If implemented, the ACCC considers that such a vessel arrival system might result in a reduction in the number of ships anchored off the Port of Newcastle. However, the ACCC notes that the proposed ship arrival system does not appear to address the underlying structural, regulatory and contractual issues contributing to the capacity constraints in the Hunter Valley. It is also unclear what impact it may have on demurrage costs incurred by coal producers.

Reduced environmental and safety risks

As noted above, the NSW Government is trialling a new vessel arrival system at the Port of Newcastle in 2009, which, if implemented, could potentially address environment and safety risks associated with a large number of vessel anchored offshore.

To the extent that the Stage 1 Allocation system results in smaller vessel queues, the ACCC accepts that this would reduce the environmental and safety risks associated with a larger vessel queue forming offshore.

Possible harm to industry participants

If interim authorisation is not granted, concerns have been raised that coal producers will incur significant demurrage costs and the incentive framework provided by the proposed timetable for the industry to develop and agree on a long term solution by 30 June 2009 will be lost. These issues have been discussed in the Public benefits section above.

Concerns have been raised with the ACCC in relation to the additional costs that port-based capacity balancing systems impose on rail providers in the Hunter Valley. In particular, QR National submits:

...the short term solution does have flow-on costs to other elements of the coal supply chain....QR National Coal is only comfortable with continuing to absorb costs associated with these short term resources issues on the basis that this issue will be addressed through the development of a long term solution.¹⁷

¹⁶ The Hon. Joe Tripodi, Minister for Port and Waterways, Media Release, *Plan to reduce ships anchored off Newcastle*, 9 December 2008.

¹⁷ Submission from QR National, dated 3 December 2008, pp 1, 2.

Asciano submits that to date, its cooperation in relation to the operation of the various port-based capacity balancing systems in the Hunter Valley has had a negative impact on its operational efficiency and commercial outcomes. For instance, it submits that:

There are examples of coal haulage contracts where there is long term commitment by a producer to rail a certain volume which then requires Asciano to provide a certain level of rolling stock, crew, and other resources. However, if the queue management system reduces the producers' entitlement to port capacity, the contracted volumes are not carried notwithstanding that Asciano has had the rolling stock and people available to meet the full contracted volumes.¹⁸

Indeed, Asciano submits that it is no longer prepared to absorb the costs of a capacity balancing system and if authorisation is granted, it should not be assumed that it will continue to run its above rail operations in accordance with port-based capacity balancing mechanisms, in a manner that is inconsistent with its contractual obligations. Instead, Asciano submits the correct assumption is that 'contracts that Asciano has with its customers will apply according to their terms'.¹⁹

Further, Asciano submits that the Hunter Valley Coal Chain Logistics Team has recently reported that the current Capacity Balancing System has led to system underperformance and 'has estimated that approximately 1.4 million tonnes will be lost in 2008 due to consumption of allocation varying from the demand profile assumed in the annual system capacity declaration.'²⁰

Given that the Stage 1 Allocation system does not align load-point, track, above rail and port capacity, Asciano submits that it fails to provide any commercial basis to support necessary capacity expansion across the coal chain. In this environment, Asciano is unwilling to invest in additional rolling stock.²¹

If interim authorisation is granted to the Stage 1 Allocation System in its current form, Centennial Coal considers that it will have an immediate and long lasting detrimental impact on its business. It is concerned that the methodology for calculating coal loading allocation under the proposed Stage 1 Allocation system will significantly reduce its export volumes in 2009 and beyond. In particular, Centennial Coal submits that the coal loading allocation it would receive under the proposed Stage 1 Allocation would mean that it would:

...be effectively locked out from exporting and would not be able to continue supplementing its lower priced domestic contracts with higher prices derived on export. This would force Centennial to reassess its business model and could lead to reduced production and job losses from currently operating mines.²²

Further, Centennial Coal believes that Producer Base Tonnages calculated under the Stage 1 Allocation system will form the basis of allocating capacity under any Long Term Protocols.

¹⁸ Submission from Asciano, 7 December 2008, p 6.

¹⁹ Submission from Asciano, 7 December 2009, p 6.

²⁰ Ibid, p 5.

²¹ Record of meeting with Asciano, 27 November 2008, p 2.

²² Submission from Centennial Coal, 8 December 2008, p 2.

In response, the Applicants submit that Centennial Coal's concerns appear to be 'based on a technical interpretation of one aspect of the Greiner Review principles' that differs from the interpretation adopted by other industry participants. The Applicants argue that the allocation methodology under the proposed Stage 1 Allocation system is broadly supported by Hunter Valley coal producers.²³

Stressing the importance of strict adherence to the proposed timetable under the application, Xstrata Coal considers that as long as any approval of the Stage 1 Allocation system is for a defined and limited period of time, it believes there will be no public detriment.²⁴

More generally, Xstrata Coal considers the critical issue that needs to be resolved as part of any long term solution is the misalignment between the capacity of the coal chain as a whole, and the volume of contracts entered into across the separate elements of train, track and port. It believes that to the extent that coal exporters hold contracts to transport coal that either do not specify a tonnage obligation or are, in aggregate, in excess of the underlying capacity of the coal chain, there will always be a risk of:

- excessive off-shore vessel queues forming with resultant demurrage costs being incurred
- significant lost export earnings
- loss of potential earnings for NSW in the form of taxes and royalties and
- a risk that future investment in coal mine development will be diverted elsewhere.²⁵

With respect to the issues raised by Centennial Coal, the ACCC notes that the capacity allocation methodology has previously been developed and agreed through the Greiner Process and with the NSW Government. In these circumstances, the ACCC does not consider it appropriate to reopen this issue as part of its assessment of the request for interim authorisation.

The ACCC considers that the continued operation of a short term capacity balancing system, in the absence of a long term solution, is adversely impacting investment decisions in the Hunter Valley and imposing additional costs on certain service providers. In this context, the ACCC notes that the 12 December 2008 framework should allow the issuing of long term contracts which will, in turn, provide sufficient certainty to underpin investment along the entire coal chain to meet additional demand.

Conclusion

In assessing the request for interim authorisation, the ACCC has had regard to the following issues:

- The recent NSW Government proposed terminal access framework, coupled with the agreement of all producers, is a significant step towards the development of a long term solution, but more needs to be done.

²³ Submission from the Applicants, 11 December 2008, p 4.

²⁴ Submission from Xstrata Coal, 5 December 2008, p 1.

²⁵ Ibid, p 2.

- Without interim authorisation, a larger vessel queue is likely to form at the Port of Newcastle, with consequential increased demurrage costs, environmental risks and potential reputational harm.
- Ongoing delays in addressing the underlying issues causing excessive queuing are imposing costs on participants in the Hunter Valley coal chain. Further, incentives to efficiently invest in capacity expansions across the coal chain are distorted, with consequential losses from significant volumes of foregone exports – at a value that is likely to far exceed potential demurrage savings.

The current request for interim authorisation essentially seeks to extend the operation of a capacity balancing system at the Port of Newcastle for at least six months while the relevant parties attempt to develop and agree on a long term solution.

The ACCC maintains its concern that any delays in the finalisation of a long term solution are likely to result in substantial detriments. Given the significant recent progress towards a long term solution through the NSW Government's proposed framework and the support this has received from all Hunter Valley coal producers, the ACCC considers the end of June 2009 to be too long a timeframe. The ACCC considers 31 March 2009 to be a more appropriate period.

The ACCC considers that to be effective, any long term solution must extend beyond terminal capacity allocation to ensure all coal chain contracts, including above and below rail, are properly aligned and reflect whole of coal chain system capacity, rather than just stand-alone capacity of individual components of the chain.

To this end, the ACCC strongly encourages all of the relevant parties including, producers, above and below rail providers, terminal operators and government, to continue to work together to finalise the details of a long term solution as soon as possible.

The ACCC has decided to grant interim authorisation for the PWCS Tonnage Allocation Stage 1 until 31 March 2009. Given ongoing concerns at the cost of any unnecessary delays in the development of a long term solution, the ACCC requires monthly reports from the applicants by the 16th of January, 13th of February and 13th of March 2009 detailing progress. Should at any time the ACCC be concerned that there has been insufficient progress towards finalisation of a long term solution, it can revoke this interim authorisation.

The ACCC's decision in relation to interim authorisation at this time should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.