



**Australian
Competition &
Consumer
Commission**

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our Ref: A91072-A91074 & A91075-A91077
Contact Officer: Shane Chisholm
Contact Phone: (02) 6243 1252

23 April 2008

Dear Sir/Madam

**Newcastle Port Corporation applications for authorisation A91072-A91074
Donaldson Coal Pty Limited applications for authorisation A91075-A91077
- final determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a determination in respect of the applications for authorisation lodged by the Newcastle Port Corporation (NPC) on 4 December 2007 and the applications for authorisation lodged by Donaldson Coal Pty Limited on 7 December 2007.

NPC and Donaldson sought authorisation of a Proposed System to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain in 2008. NPC and Donaldson have indicated that the Proposed System is, in all material respects, consistent with the Medium Term Capacity Balancing System (CBS) which expired on 31 December 2007.

A copy of the ACCC's determination is attached, including a summary of its reasons. For the reasons set out in its determination, the ACCC has decided to grant authorisation until 31 December 2008. The ACCC's assessment is set out in Chapter 6 of its determination.

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 14 May 2008. If no application to review is lodged by this date, the ACCC's determination will come into force on 15 May 2008.

An application for review of the ACCC's determination should be lodged directly with the Australian Competition Tribunal. The Australian Competition Tribunal is a separate body from the ACCC and is located within the Federal Court of Australia.

For further information about the process involved in reviewing decisions in the Australian Competition Tribunal please refer to the tribunal's website located at <http://www.competitiontribunal.gov.au/>.

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 Shane Chisholm on (02) 6243 1252.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Hatfield', written in a cursive style.

David Hatfield
Acting General Manager
Adjudication Branch

Newcastle Port Corporation – applications for authorisation A91072-A91074

Donaldson Coal Pty Limited – applications for authorisation A91075 – A91077

Determination – 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. Gloucester Coal Limited
8. Idemitsu Australia Resources Pty Limited
9. Integra Coal Operations Pty Ltd
10. Muswellbrook Coal Company Limited
11. Resource Pacific Limited
12. Peabody Pacific Pty Limited
13. White Mining Limited
14. Whitehaven Coal Mining Pty Ltd
15. Xstrata Coal Operations Pty Ltd
16. Newcastle Coal Infrastructure Group
17. Australian Rail Track Corporation
18. Hunter Valley Coal Chain Logistics Team
19. Department of Industry, Tourism and Resources
20. NSW Department of Planning
21. NSW Department of Primary Industry (Resources Division)
22. Maritime Union of Australia
23. United Mine Workers Federation
24. NSW Minerals Council
25. Maitland City Council
26. Werris Creek Coal Sales Pty Ltd
27. SCT Logistics
28. Port Waratah Coal Services Limited
29. Pacific National (NSW) Pty Limited
30. QR Limited
31. The Treasury
32. Genesee & Wyoming Australia Pty Ltd
33. Peabody Coal Trade Australia
34. Cargill Ocean Transportation (Singapore)
35. Ashton Coal Mines Limited