



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: C2009/1251
Contact Officer: Jaime Martin
Contact Phone: (03) 9290 1477

15 September 2009

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

*Via email: dave.poddar@mallesons.com; lcarver@gtlaw.com.au;
peter.armitage@blakedawson.com*

Dear Mr Poddar

PWCS, NCIG and NPC applications for authorisation (A91147 – A91149 and A91168-A91169) — amendments to the proposed conduct and information request

I refer to your letter to the Australian Competition and Consumer Commission (ACCC) of 14 September 2009 which seeks to amend the proposed conduct for which authorisation is sought. A copy of your letter and the amended Capacity Framework Arrangements will be placed on the public register for this matter.

The ACCC has today written to interested parties to invite submissions in relation to the amended Capacity Framework Arrangements. Please find enclosed, for your information, a copy of the letter sent to interested parties.

The ACCC will proceed to consider the applications for authorisation based on submissions already received and any further submissions received in relation to the amended Capacity Framework Arrangements.

A revised indicative timetable for the ACCC's assessment of this matter is set out below for your information.

14 September 2009	Amendments to the applications for authorisation lodged with the ACCC.
21 September 2009	Closing date for interested party submissions in relation to the amended applications for authorisation.
25 September 2009	Applicants to respond to submissions received from interested parties.
October 2009	Draft determination.
October/November 2009	Public consultation on draft determination, including holding a conference if requested.
December 2009	Final determination.

Request for information

To facilitate the ACCC's consideration of this matter, I would appreciate receiving a written response to the following issues:

The amended Capacity Framework Arrangements

1. Your covering letter of 14 September 2009 states that many of the changes to the Capacity Framework Arrangements since the applications were lodged with the ACCC involve a variation to the mechanics of the conduct and are intended to address certain practical issues.
 - a. Please provide further information about why the amendments were introduced and what issues the amendments seek to address, including in relation to:
 - the new dual nomination process at clause 2A(l) of Part B of the Capacity Framework Arrangements
 - the new clause 2C(b)(ii) of Part B in relation to various NPC approvals processes concerning NCIG's construction of Stage 2 of its terminal
 - the process for reviewing the terminal operators expansion progress at clause 6(e) of Part B
 - the new clause 7A of Part B dealing with assignments of capacity
 - the new clause 9(e) of Part B regarding PWCS' management of the vessel queue
 - the new clause 11 of Part B concerning common charges at PWCS terminals
 - the new clause 12 of Part B in relation to information sharing.

- b. I note that the amended Capacity Framework Arrangements now propose that a Capacity Transfer System Working Group will be formed and a Capacity Transfer System Administrator will be appointed.
 - i) Please outline the composition of the Capacity Transfer System Working Group.
 - ii) The original supporting submission to the applications for authorisation stated that the documentation relating to the capacity transfer system will be finalised by 30 November 2009 for implementation from 1 January 2010. Please provide an update on the where this process is up to, including a description of the ongoing work that is still to be completed and whether the original timeframes still apply.

Contractual alignment

2. In its submission of 27 August 2009, PWCS submits that it has held constructive discussions with the Australian Rail Track Corporation (ARTC) in relation to the development and implementation of System Assumptions, the PWCS Operating Protocols, PWCS' proposed vessel sequencing system, PWCS' proposed contracting arrangements and the proposed Capacity Transfer System –all of which are critical to the operational implementation of contractual alignment across the Hunter Valley coal chain.

Given that contractual alignment is a critical component of an effective long term solution for the Hunter Valley coal chain, please provide a detailed explanation of:

- a. the outcome of the above mentioned contractual alignment discussions, including the areas of potential concern and how they are proposed to be addressed and
 - b. any outstanding contractual alignment issues and further work proposed to be undertaken by ARTC and the terminal operators in order to address these issues.
3. Please clarify how the proposed Capacity Framework Arrangements ensure that contractual alignment will be achieved, including how the proposed arrangements ensure that the terminal operators' contracts with producers will reflect the capacity of the coal chain as a whole.

The timetable for ongoing work

4. Please outline the remaining work to be completed in order to fully implement the Capacity Framework Arrangements by 1 January 2010.

Other issues

5. The applications seek authorisation to engage in the proposed conduct set out in the Capacity Framework Arrangements. However, I note that within the Capacity Framework Arrangements there are cross references to other documents. For example:
- In clause 9(a) of the Capacity Framework Arrangements, authorisation is sought for a range of conduct which is carried out in accordance with the Contractual Alignment Principles provided at Attachment 2 to the supporting submission to the application.
 - In clause 8(i) of the Capacity Framework Arrangements, authorisation is sought to make, vary or give effect to an industry levy in accordance with the Levy Protocols. It appears that the Levy Protocols will be at Schedule A to the Capacity Framework Arrangements. However, the Levy Protocols were not attached to the amended Capacity Framework Arrangements submitted to the ACCC on 14 September 2009.

Please confirm whether authorisation is also being sought for conduct described in the above mentioned additional documents, including whether the ACCC can expect to receive a public copy of Schedule A (the 'Levy Protocols') to the Capacity Framework Arrangements

It would be appreciated if you could arrange for the ACCC to receive a response to the above mentioned issues by **21 September 2009**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact David Hatfield on (02) 6243 1266 (david.hatfield@accc.gov.au) or Jaime Martin on (03) 9290 1477 (jaimemartin@accc.gov.au).

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch