



Australian  
Competition &  
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Commission

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Our Ref: A91147-A91149 & A91168-A91169  
Contact Officer: Jaime Martin  
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16 November 2009

Mr Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61, Governor Phillip Tower  
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*Via email: [dave.poddar@mallesons.com](mailto:dave.poddar@mallesons.com); [lcarver@gtlaw.com.au](mailto:lcarver@gtlaw.com.au);  
[Peter.armitage@blakedawson.com](mailto:Peter.armitage@blakedawson.com)*

Dear Mr Poddar

**PWCS, NCIG and NPC applications for authorisation [A91147–A91149 & A91168–A91169] — interested party submissions and information request**

As you are aware, on 28 October 2009 the ACCC wrote to interested parties seeking submissions in relation to its draft determination proposing to grant authorisation for the above mentioned applications. The ACCC requested that submissions be provided by 13 November 2009.

At this stage, the ACCC has not received any public submissions from interested parties. However, one interested party has requested additional time to make a submission and I expect to receive this submission by cob Tuesday, 17 November 2009. Subject to any request for exclusion from the public register, I will provide a copy of this and any other submissions as soon as possible following receipt.

All publicly available submissions will also be posted on the ACCC's website [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

## Information request

To assist its preparation of the final determination for this matter, the ACCC would appreciate receiving a written response in relation to the following issues:

1. As foreshadowed at paragraph 5.74 of the draft determination, the ACCC seeks an update from the Applicants about the progress of contractual alignment work, including details of any outstanding operational concerns. As part of your response, please include:
  - i) an update on the progress of the development of the Capacity Transfer System, including the revised completion date for this project
  - ii) the outcome of any further operational discussions between the terminal operators and the Australian Rail Track Corporation (ARTC) since the August meetings and
  - iii) further information about how NCIG will factor in the system assumptions and performance standards in entering into and managing nominations and contracts with producers.
2. As you are aware, clause 9(b) of the Capacity Framework Arrangements states that both PWCS and NCIG will:
  - require producers to have adequate entitlements to track and train haulage upon lodging an application under their contracts for the provision of coal handling services in respect of each vessel to be loaded and
  - refuse to supply coal handling services if a producer has inadequate track or train delivery entitlements in respect of the application for a vessel to be loaded.
  - i) ARTC has previously advised the ACCC that it is proposing to put in place long term track access agreements with coal producers, to commence on 1 January 2010. In the event that producers have not signed long term track access agreements with ARTC by that time, please explain how this would affect the operating protocols at the port and ultimately the achievement of contractual alignment in the Hunter Valley.
3. Please provide an update on the progress of the terminal operators' negotiation of long term ship or pay contracts with producers, including the anticipated completion date for signing contracts. If possible at this stage, please also provide an indication of the overall level of demand for contracted capacity at PWCS' terminals.
4. Based on a recent report (*Weekly performance report, 2 November to 8 November 2009*) published on the Hunter Valley Coal Chain Logistics Team's website, I understand that 48 coal vessels are expected to be in the queue by the end of November 2009. Please explain:
  - (i) the cause(s) for the forecast spike in the vessel queue and
  - (ii) what steps PWCS has taken, or intends to take, under the Capacity Framework Arrangements to manage the forecast increase in the vessel queue.

The ACCC would appreciate the Applicants' response to the above issues, and any other issues raised by interested parties or the draft determination more generally, by **Monday 23 November 2009**.

This letter has been placed on the ACCC's public register. If you wish to discuss any issues raised in this letter, please contact David Hatfield on (02) 6243 1266 or Jaime Martin on (03) 9290 1477.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'R Chadwick', with a long horizontal flourish extending to the right.

Dr Richard Chadwick  
General Manager  
Adjudication Branch