



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/304
Contact Officer: Jasmine Tan
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25 February 2009

Mr Andrew Rankin
Partner
Deacons
GPO Box 407
BRISBANE QLD 4001

Dear Mr Rankin

**Application for minor variation of CS Energy Limited &
Callide Power Management Pty Limited Authorisation A50027**

I refer to your letter dated 3 February 2009 enclosing an application by CS Energy Limited and Callide Power Management Pty Limited (the Applicants) for a minor variation to authorisation A50027.

Authorisation A50027 allows the Applicants to jointly negotiate a price review with Anglo Coal under existing coal supply agreements each Applicant has with Anglo Coal, until December 2011. The Applicants have applied for a minor variation to the authorisation in order to jointly undertake negotiations with Anglo Coal for the extension of their respective agreements. The proposed negotiations cover all terms and conditions subject to price review procedures.

Section 91A of the *Trade Practices Act 1974* requires the Australian Competition and Consumer Commission (ACCC) to be satisfied that the variation sought in the application is a minor variation. Section 87ZD(1) defines a minor variation as a single variation that does not involve a material change in the effect of the authorisation. The ACCC is not satisfied that the variation to A50027 sought by the Applicants is minor, as it would involve a material change in the effect of the authorisation, by extending authorisation to the joint negotiation of all terms and conditions of the agreements other than price. This would be materially different to what is currently authorised (i.e. joint negotiations in relation to a price review).

Should the Applicants wish to gain authorisation for the proposed conduct, you may consider lodging an application for revocation and substitution in accordance with s 91C. Section 91C contains a process for revocation of an existing authorisation and substitution of a

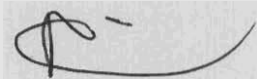
replacement authorisation in circumstances where the variation to the existing authorisation is not minor. This process involves public consultation, including inviting submissions from interested parties about the application for revocation and substitution. The ACCC assesses whether the benefit from the conduct proposed to be authorised under the substitute authorisation outweighs the likely detriment. The ACCC must then issue a draft determination and provide an opportunity for interested parties to make further submissions and to request a conference. The ACCC then issues a final determination.

The process for revoking an authorisation and substituting a new one involves additional steps in comparison to the minor variation process. This reflects that it enables an applicant to seek authorisation in circumstances where the proposed conduct involves a material change in the effect of the authorisation.

An application for revocation and substitution incurs a \$2 500 lodgement fee.

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 Jasmine Tan on (02) 6243 1363.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch

