



**Australian
Competition &
Consumer
Commission**

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18 March 2009

Dave Poddar
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Via email: dave.poddar@mallesons.com

Dear Mr Poddar

**Applications for authorisation A91110-A91112 lodged by PWCS and NCIG
– March progress report**

Thank you for providing a copy of the third monthly progress report on the development of a long term solution to the Hunter Valley coal chain capacity issues, in accordance with the Australian Competition and Consumer Commission's (ACCC) interim authorisation decision of 17 December 2008.

A copy of the March progress report will be placed on the public register for this matter.

I would like to take this opportunity to reiterate the ACCC's draft determination of 26 February 2009. As you are aware, the ACCC proposes to grant authorisation to the 'PWCS Tonnage Allocation Stage 1' on condition that the parties:

- finalise an Implementation Memorandum which sets out an agreed framework and details how the long term solution will be implemented on a timely basis and
- provide a copy of the finalised Implementation Memorandum to the ACCC by 31 March 2009.

Further, the draft determination states that the Implementation Memorandum must be sufficiently detailed that it enables parties to enter long term contracts to give effect to the long term solution and in doing so, underpin efficient investment.

I would also draw your attention to the ACCC's view (as stated in the draft determination) that to be effective, any long term solution must extend beyond terminal capacity allocation. It should also ensure that all coal chain contracts, including above and below rail, are properly aligned and reflect whole of coal chain capacity, rather than just the stand alone capacity of individual components of the coal chain.

If the ACCC does not receive an Implementation Memorandum as detailed above by the 31 March deadline, it will need to reconsider whether sufficient progress has been made by the industry, and whether interim authorisation continues to be in the public interest.

A copy of this letter has been placed on the ACCC's public register. If you have any questions please contact David Hatfield on (02) 6243 1266 (david.hatfield@acc.gov.au) or Jaime Martin on (03) 9290 1477 (jaimemartin@acc.gov.au).

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'R' followed by a horizontal line extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch