



BY EMAIL

31 March 2009

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

### **Newcastle Ports – Implementation Memorandum**

Dear Sir

Newcastle Coal Infrastructure Group Pty Ltd (**NCIG**) has been strongly supportive of the process to develop the Implementation Memorandum (**IM**). We have had a significant team working on this effectively full time. The IM has come along way, especially considering the complexity of the issues it deals with.

NCIG and its shareholders agree with the bulk of the content of the IM. There are still a limited number of commercial issues requiring negotiation and final agreement. In particular:

- Relief from anti-hoarding provisions in respect of NCIG Stage 1 capacity, because of the significant private investment made by NCIG for a terminal dedicated to NCIG expansion projects and the existing ability to sub-lease capacity. The need for relief from anti-hoarding across all terminals for capacity transfers;
- The need to agree the principles of the IM in a single binding Tripartite Capacity Framework Agreement;
- Potential exclusion of NCIG Producers from access to T4 due to timing of nominations and priority rules;
- The right to develop the T4 terminal should clearly pass to others in the event PWCS is prevented from developing it in the medium term. PWCS should begin the development approval process for T4 almost immediately to secure T4 for industry;
- The development of T4 should also not interfere with development and operation of the NCIG terminal; and
- The definition of NCIG Producers and application of the IM should not operate as an impediment to corporate merger and acquisition activities.

---

**ABN 35 111 228 221**

**Registered Office**  
Level 7  
167 Macquarie Street  
Sydney NSW 2000

**Mailing Address**  
Locked Bag 6003  
Hunter Region Mail Centre  
NSW 2310

We understand that the latest version (draft 6) of the IM may have been forwarded to the ACCC by Port Waratah Coal Services Ltd or Newcastle Port Corporation.

For NCIG to sign the IM requires 100 per cent support of its shareholders. Over the next week, we will be working to finalise the remaining issues in urgent discussions with the New South Wales government.

There are large, long term and far reaching impacts on all companies resulting from the IM. The companies will be signing long term ship or pay contracts for port, rail and above rail which will amount to very major commitments for each of the shareholders.

We look forward to finalising these issues in a very short timeframe, and remain absolutely committed to doing so.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Galligan'.

Tony Galligan  
Chairman