

EXECUTIVE OFFICE



Australian
Competition &
Consumer
Commission

Our Ref: A91110-A91112
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1 April 2009

Mr 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 Port Waratah Coal Services and Newcastle Coal Infrastructure Group (the Applicants) — interim authorisation

I refer to your letter of 31 March 2009 from Port Waratah Coal Services (PWCS) and Newcastle Port Corporation (NPC) concerning the Implementation Memorandum.

Your letter provided a copy of an Implementation Memorandum which has been executed by both PWCS and NPC and which appears to set out a sufficiently detailed framework and processes as to how the long term solution will be implemented on a timely basis. However, the Newcastle Coal Infrastructure Group (NCIG) has advised that it has not signed the Implementation Memorandum at this time.

As you are aware, the ACCC's interim authorisation of the PWCS Tonnage Allocation Stage 1 is conditional upon the ACCC being satisfied that work to finalise the long term solution continues.

Provision by 31 March 2009 of an agreed Implementation Memorandum which is sufficiently detailed to enable parties to enter long term contracts to give effect to the long term solution was clearly stated by the ACCC to be a key indicator of progress.

The Commission considered this matter at its meeting this morning. While the ACCC has been advised by NCIG that it is committed to finalising its remaining issues over the next week with the New South Wales Government, the fact remains that the parties failed to reach agreement on the Implementation Memorandum by the 31 March 2009 deadline.

For these reasons, the ACCC intends to revoke interim authorisation of the PWCS Tonnage Allocation Stage 1 on Monday 6 April 2009, unless it receives a copy of an agreed Implementation Memorandum, as detailed above, by **4pm on Monday 6 April 2009**.

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

Graeme Samuel
Chairman