



**Australian
Competition &
Consumer
Commission**

Our Ref: C2008/1889
Contact Officer: David Hatfield
Contact Phone: (02) 6243 1266

GPO Box 3131
Canberra ACT 2601
23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

13 January 2009

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Via email: dave.poddar@mallesons.com

Dear Mr Poddar

PWCS and NCIG applications for authorisation A91110-A91112 – interested party submissions and timing issues

This letter raises certain administrative issues in relation to the above mentioned application for authorisation.

Submissions

As you are aware, the original closing date for submissions in relation to the substantive applications for authorisation was Friday, 19 December 2008. In this regard, I confirm that the ACCC did not receive any additional submissions from interested parties that have not already been provided to you.

Timing concerns

As foreshadowed in the ACCC's initial letter to interested parties on 20 November 2008, the ACCC would like to provide interested parties with further details of an indicative timetable for its assessment of the substantive applications for authorisation, including an appropriate consultation period in relation to the finalised long term solution. To date, the ACCC has not been in a position to do so, due to concerns surrounding the timeframes proposed in the applications for authorisation.

As you would be aware, section 90(10A) of the *Trade Practices Act 1974* sets out a 6 month timeframe for the ACCC to conclude its assessment of applications for authorisation.

The applications for authorisation from PWCS and NCIG were lodged on 19 November 2008. This means the 6 month statutory timeframe by which the ACCC is required to make a final determination is 19 May 2009.

The applications currently envisage a Memorandum of Understanding and associated Terms Sheet setting out the likely terms of any Long Term Terminal Access Protocols being submitted to the ACCC by 31 March 2009. The Long Term Terminal Access Protocols would then be submitted by 30 June 2009.

To not receive the substantive arrangements for which authorisation is sought until 6 weeks after a final determination is required to be made raises significant issues for the authorisation process.

As you are aware, the ACCC considers the terminal access framework announced by the NSW Government on 12 December 2008 to be a significant step towards the development of a long term solution to the ongoing capacity issues in the Hunter Valley Coal Chain and would appear to significantly reduce the time period required to finalise the long term solution from that set out in the applications for authorisation. This is reflected in the ACCC's decision to grant interim authorisation until 31 March 2009.

However, even if the parties provide long term terminal access protocols by 31 March 2009, it is difficult to see how the ACCC would be able to undertake appropriate public consultation and issue a draft and final determination before 19 May 2009.

The ACCC seeks the views of the Applicants in response to the above mentioned concerns as soon as possible, but no later than 19 January 2009.

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 me on (02) 6243 1132 or David Hatfield on (02) 6243 1266.

Yours sincerely

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

Dr Richard Chadwick
General Manager
Adjudication Branch