



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/1251-02
Contact Officer: Jaime Martin
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29 July 2009

Via email

Dear Sir / Madam

**Applications for authorisation [A91168-A91169] lodged by PWCS, NCIG and NPC
- interim authorisation decision**

On 24 July 2009 the Australian Competition and Consumer Commission (the ACCC) received further applications for authorisation from Port Waratah Coal Services, Newcastle Coal Infrastructure Group and the Newcastle Port Corporation (the Applicants) in relation to a contract, arrangement or understanding which may contain a cartel provision.

The applications have been lodged with the ACCC as a result of the amendments introduced by the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*, which commenced on 24 July 2009.

The conduct for which authorisation is being sought under the new applications A91168 - A91169 is the same conduct the Applicants' originally sought authorisation for on 29 June 2009 – namely, the proposed Capacity Framework Arrangements (authorisation applications A91147-A91149).

A copy of the new 'cartel applications' A91168-A91169 is available from the ACCC's website (www.accc.gov.au/AuthorisationsRegister).

As you are aware, the ACCC granted conditional interim authorisation to applications A91147 - A91149 on 22 July 2009, allowing the Applicants to commence the phased-in implementation of the Capacity Framework Arrangements. Interim authorisation was granted subject to a condition that the Applicants execute their respective Capacity Framework Documents by 31 August 2009.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Trade Practices Act 1974* while the ACCC considers and evaluates the merits of the application.

Consistent with its earlier interim authorisation decision, the ACCC has decided to also grant conditional interim authorisation in respect of the applications for authorisation lodged by the Applicants on 24 July 2009. The practical effect of this decision is to provide protection for this conduct in respect of the new cartel provisions of the Trade Practices Act. A copy of the ACCC's decision is attached.

Next steps

The ACCC will now consider these applications for authorisation A91168 – A91169 and applications A91147-A91149 jointly. The next step is for the ACCC to issue a draft determination.

This draft determination will take account of any submissions from the Applicants and interested parties previously provided to the ACCC in respect of the original applications A91147 – A91149.

As noted in the attached decision, the ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the ACCC.

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 David Hatfield on (02) 6243 1266 (david.hatfield@accc.gov.au) or Jaime Martin on (03) 9290 1477 (jaimemartin@accc.gov.au).

Yours sincerely



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