



Applications for authorisation lodged by Port Waratah Coal Services Limited (PWCS), Newcastle Coal Infrastructure Group Pty Limited (NCIG) and Newcastle Port Corporation (NPC) [A91168-A91169]

Interim authorisation decision

The Australian Competition and Consumer Commission (the ACCC) has decided to grant conditional interim authorisation in respect of applications for authorisation under section 88(1A) of the *Trade Practices Act 1974* (the Act) lodged by PWCS, NCIG and NPC (the Applicants) on 24 July 2009.

The Applicants have sought authorisation to make a contract, arrangement of understanding, or give effect to a provision of a contract, arrangement or understanding which involves the proposed conduct set out in the 'Capacity Framework Arrangements' (set out in the Applicants' supporting submission to applications for authorisation A91147-A91149, dated 29 June 2009).

Interim authorisation

Pursuant to section 91(2)(d) of the Act, interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the Act while the ACCC considers and evaluates the merits of the application. The decision on interim authorisation in no way binds the ACCC in its consideration of the merits of the substantive applications.

Reasons for decision

The ACCC previously granted conditional interim authorisation to the Applicants on 22 July 2009 for the same conduct. The practical effect of this decision is to provide protection for this conduct in respect of the new cartel provisions under the Act.

For the reasons set out in its decision of 22 July 2009 in relation to the Applicants' previous request for interim authorisation, the ACCC has decided to grant conditional interim authorisation to the current applications.

Grant of interim authorisation

The ACCC grants interim authorisation to the Applicants to:

- make the contracts or arrangements described in Parts A and B of the proposed Capacity Framework Arrangements, except for Section 11 of Part B
- give effect to provisions of the contracts or arrangements described in Parts A and B of the proposed Capacity Framework Arrangements, except for Section 11 of Part B.

Interim authorisation is subject to a condition that the Applicants execute their respective Capacity Framework Documents by 31 August 2009. The ACCC will revoke interim authorisation if any of the Applicants fail to execute their respective Capacity Framework Documents by 31 August 2009.

Interim authorisation commences immediately, and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke the interim authorisation.

Reconsideration of 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.

29 July 2009