



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: A91241  
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13 July 2010

**Sent via email**

Dear Sir / Madam

**Application for authorisation A91241 lodged by various Wiggins Island Coal Export Terminal producers – invitation to make a submission**

The Australian Competition and Consumer Commission (the ACCC) received an application for authorisation from various Wiggins Island Coal Export Terminal producers on 7 July 2010.

The ACCC invites you to comment on the application.

The application was lodged by Anglo American Metallurgical Coal Pty Ltd, Aquila Resources Ltd, Bandanna Energy Ltd, Belvedere Coal Management Pty Ltd, Caledon Coal Pty Ltd, Capricorn Coal Pty Ltd, Cockatoo Coal Ltd, Jellinbah Resources Pty Ltd, Middlemount Coal Pty Ltd, Monto Coal 2 Pty Ltd, Northern Energy Corporation Ltd, Syntech Resources Pty Ltd, Wesfarmers Curragh Pty Ltd, West Rolleston Coal Pty Ltd, Xstrata Coal Queensland Pty Ltd and Yancoal Australia Pty Ltd (hereafter referred to as 'the Applicants').

The Applicants are seeking authorisation for proposed collective bargaining arrangements relating to below-rail infrastructure associated with the proposed Wiggins Island Coal Export Terminal (the 'Terminal') in the Port of Gladstone, Queensland.

In particular, the Applicants seek authorisation to engage in a collective bargaining arrangement with QR Network Ltd for the purpose of negotiating terms and conditions, including price, for access to the below-rail infrastructure comprising the Blackwater and Moura rail systems, including:

- all expansions to these systems
- access to any other rail infrastructure necessary to support the Terminal
- below-rail infrastructure to support the reallocation of capacity from Barney Point to the Terminal and RG Tanna Coal Terminal and
- all services relating to access for the purpose of transporting coal to the Terminal (referred to as the 'Identified Rail Infrastructure and Services'.)

The Applicants seek authorisation for a period of 20 years.

Should you wish to lodge a submission, please refer to the attached summary of the authorisation process which also outlines how to make a submission to the ACCC.

A copy of the application for authorisation and supporting submission is enclosed. They are also available from the public register on the ACCC's website [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister). The ACCC will update the public register as this matter progresses.

### **Interim authorisation**

The Applicants have also requested urgent interim authorisation in order to commence the proposed collective negotiation for access to the Identified Rail Infrastructure and Services as soon as possible.

In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. When an application for interim authorisation is received, the ACCC will usually consider a range of factors, including:

- harm to the applicant and other parties if interim is or is not granted
- possible benefit and detriment to the public
- the urgency of the matter and
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC notes the tight timeframe within which it has been asked to consider interim authorisation.

The ACCC endeavours to deal with requests for interim authorisation quickly. The ACCC therefore seeks your comments on the request for interim authorisation by **21 July 2010** – comments can be provided by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Alternatively, if you would like to provide comments orally, please contact Ms Jaime Martin on (03) 9290 1477 (or via email at [jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au)) to arrange a suitable time.

### **Request for submissions on the substantive application for authorisation**

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC would also appreciate your views on the situation that is likely to occur if the ACCC were not to grant authorisation to the proposed collective bargaining arrangements, as well as the period of authorisation proposed by the Applicants.

For further details on the public benefits and detriments the Applicants claim are likely to result from the arrangements, please refer to section 4 of the supporting submission to the application.

If you intend to provide a submission in relation to the Applicants substantive application for authorisation, please do so by **11 August 2010**.

As noted above, submissions in relation to interim authorisation should be provided to the ACCC by **21 July 2010**.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

### **Timetable**

The ACCC will progress its assessment of this application in a timely manner. An indicative timetable is set out below for your information.

<b>7 July 2010</b>	Lodgement of application and supporting submission, including request for interim authorisation.
<b>13 July 2010</b>	Public consultation process begins.
<b>21 July 2010</b>	Closing date for submissions from interested parties on interim authorisation.
<b>August 2010</b>	ACCC decision regarding interim authorisation.
<b>11 August 2010</b>	Closing date for submissions from interested parties on the substantive application for authorisation.
<b>August 2010</b>	Applicant responds to issues raised in the public consultation process.
<b>September/October 2010</b>	Draft determination issued by ACCC.
<b>October/November 2010</b>	Public consultation on draft determination, including any conference if called.
<b>November/December 2010</b>	Final determination issued by ACCC.

### **Ongoing consultation from the ACCC**

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. In doing so, please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the application.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Ms Jaime Martin on the contact details provided above or David Hatfield on (02) 6243 1266 (or via email at [david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)).

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch

**Application for authorisation A91241 – Wiggins Island Coal Export Terminal  
producers**

**List of interested parties – initial consultation**

**13 July 2010**

QR Network

Queensland Competition Authority

Australian Rail Track Corporation

Queensland Government Department of Employment, Economic Development and  
Innovation (Mines and Energy)

Queensland Government Department of Infrastructure and Planning

Queensland Government Department of Transport

Gladstone Port Corporation

Ports Corporation of Queensland

Infrastructure Australia

Australian Government Department of Resources, Energy and Tourism

Australian Government Department of Infrastructure, Transport, Regional  
Development and Local Government (National Building – Infrastructure Investment)

Queensland Resources Council

QR National

Pacific National

Gladstone Industry Leadership Group

Minerals Council of Australia