



**Australian
Competition &
Consumer
Commission**

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Our Ref: 47125 & 47130
Contact Officer: Pamela Cue
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5 October 2011

Dear Sir / Madam

Applications for authorisation A91277 and A91278 lodged by various Dudgeon Point Coal Export Terminal Producers - interested party consultation

The Australian Competition and Consumer Commission (the ACCC) has received two applications for authorisation and an application for interim authorisation from Carabella Resources Limited, Macarthur Coal Limited, Middlemount Coal Pty Limited, New Hope Corporation Limited and Peabody Energy Australia Ltd (hereafter, the Applicants) to collectively negotiate with Dudgeon Point Project Management Pty Ltd (DPPM) A91277 and QR Network Pty Ltd (QR Network) A91278.

Broadly, the applications relate to collective bargaining arrangements regarding the proposed Dudgeon Point Coal Export Terminal at the Port of Hay Point in Queensland (the Terminal).

The purpose of this letter is to invite you to comment on the applications for authorisation and the application for interim authorisation. Attached for your information is a summary of the authorisation process, including how to make a submission to the ACCC.

Applications for authorisation

Authorisation provides legal protection for conduct that might otherwise raise concerns under the competition provisions of the *Competition and Consumer Act 2010*. Broadly, the ACCC may grant an authorisation when it is satisfied that the public benefit from the conduct outweighs any public detriment.

Authorisation A91277

Authorisation A91277 relates to a proposed collective bargaining arrangement between the Applicants and DPPM for access to port infrastructure associated with the Terminal including:

- all expansions to the Terminal
- access to any other DPPM infrastructure necessary to support the Terminal

- all services relating to such access for the purpose of transporting the Applicants' coal from the Terminal.

Authorisation A91278

Authorisation A91278 relates to a proposed collective bargaining arrangement between the Applicants and QR Network for access to below rail infrastructure associated with the Terminal.

In particular, the Applicants seek authorisation to collectively negotiate with QR Network on the terms and conditions, including price, for access to the below-rail infrastructure comprising the Goonyella and Blackwater coal rail systems, including:

- all expansions to these systems
- access to any other QR Network rail infrastructure necessary to support the Terminal
- all services relating to such access for the purpose of transporting the Applicants' coal to the Terminal.

Authorisations A91277 and A91278 are sought for a period of 15 years. A full copy of the applications for authorisation are available on the ACCC's website www.accc.gov.au/AuthorisationsRegister.

Application for interim authorisation

The Applicants have also requested interim authorisation to allow them to engage in the conduct proposed under authorisation A91277 prior to the ACCC issuing a final determination in the matter.

The ACCC endeavours to deal with requests for interim authorisation quickly. 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. Should an applicant request interim authorisation, 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
- whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC requests your comments on the application for interim authorisation by **14 October 2011**.

Request for submissions

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. In particular, the ACCC would 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.

If you intend to provide a submission in relation to the Applicants' application for authorisation, please do so by **3 November 2011**. As noted above, submissions in relation to interim authorisation should be provided by **14 October 2011**.

Written submissions can be sent via email to adjudication@acc.gov.au or by post to GPO Box 3131, Canberra ACT 2601. Alternatively, if you would like to provide comments orally, please contact Pamela Cue on 02 6243 1066 to organise a suitable time.

Please note that all 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 the application in a timely manner. An indicative timetable is set out below for your information.

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| 28 September 2011 | Lodgement of application and supporting submission. |
| 5 October 2011 | Public consultation process begins. |
| 14 October 2011 | Closing date for submissions from interested parties on application for interim authorisation. |
| 3 November 2011 | Closing date for submissions from interested parties on substantive application. |
| November 2011 | Applicant responds to issues raised in the public consultation process. ACCC decision regarding interim authorisation |
| December 2011 | Draft determination. |
| December 2011 / January 2012 | Public consultation on draft determination including any conference if called. |
| February / March 2012 | Final determination. |

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. If you are able to 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 do not hesitate to contact Pamela Cue on 02 6243 1066.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sue Philp', written in a cursive style.

Sue Philp
A/g General Manager
Adjudication Branch

Initial consultation IP list

1. Adani
2. AMCI Australia Pty Ltd
3. Anglo American
4. Asciano
5. Australian Rail Track Corporation
6. BHP Billiton
7. Bruce Martin - Consultant
8. Dalrymple Bay Coal Terminal Pty Ltd
9. Department of Employment, Economic Development and Innovation (QLD)
10. Department of Infrastructure (Cth)
11. Department of Resources, Energy and Tourism (Cth)
12. Department of Transport and Main Roads (Qld)
13. Dudgeon Point Project Management Pty Ltd
14. Goonyella Coal Chain Central Co-ordinator
15. Hancock Coal Pty Ltd
16. Hay Point Coal Terminal
17. MacMines AustAsia
18. Minerals Council of Australia
19. North Queensland Bulk Ports
20. Ports Corporation of Queensland
21. QR National
22. QR Network
23. Queensland Competition Authority
24. Queensland Resources Council
25. Rio Tinto
26. Vale
27. Waratah Coal
28. Xstrata Coal