



**Australian
Competition &
Consumer
Commission**

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7 February 2013

Matthew Bull
Herbert Smith Freehills
Level 38, 345 Queen Street
Brisbane QLD 4000

By Email: matthew.bull@freehills.com

Dear Mr Bull,

Re: Applications for authorisation A91350-A91351 - interested party submissions

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for authorisation lodged by Endocoal Ltd and other Queensland coal producers on 7 December 2012.

The ACCC has also granted the applicants interim authorisation. Interim authorisation protects the arrangements for which authorisation is sought from legal action under the relevant provisions of the *Competition and Consumer Act 2010* while the ACCC considers and evaluates the merits of the application.

Draft determination

A copy of the ACCC's draft determination and summary of its reasons is attached.

For the reasons set out in its draft determination, the ACCC proposes to grant authorisation for 15 years.

Interim Authorisation

Given the ACCC's assessment of the proposed conduct, the ACCC has also granted interim authorisation under section 91(2) of the Act to enable the applicants to commence collective negotiations with Adani and Aurizon Network (previously QR Network) for the terms and conditions of access to the Port Infrastructure and Below Rail Infrastructure respectively.

Interim authorisation only extends to any agreement entered into which contains a condition precedent, such that it will not come into force unless and until final authorisation is granted by the ACCC.

Next steps

Once the ACCC issues a draft determination, the Applicant or any interested party may make a written submission.

If you wish to make a submission in response to the ACCC's draft determination, please lodge your submission by **22 February 2013**. Alternatively, you can request that the ACCC convene a 'pre-decision conference'.

A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination you must notify the ACCC in writing by 21 February 2013.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

Timetable

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

7 December 2012	Lodgement of applications, including request for interim authorisation, and supporting submissions.
7 February 2013	Draft determination released and interim authorisation granted by ACCC.
21 February 2013	Submissions on draft determination deadline.
April 2013	Final determination.

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 Michael Drake on (03) 9658 6517.

Yours sincerely



David Hatfield
Director
Adjudication Branch