



**Australian  
Competition &  
Consumer  
Commission**

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7 February 2013

***Sent via email***

Dear Sir/Madam

### **Applications for authorisation [A91350-A91351] - draft determination and interim authorisation**

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

The ACCC has also granted 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.

Please see the ACCC's publication [Authorisation process - the basics](#) for a summary of the authorisation process, including how to make a submission to the ACCC.

In particular, Endocoal Ltd, Whitehaven Coal Ltd, Yancoal Australia Ltd and QC Resource Investments Pty Ltd seek authorisation to:

- collectively discuss and negotiate terms and conditions with Adani Mining Pty Ltd (Adani) for access to each and any of the terminals to be developed at Dudgeon Point by Adani (the Terminal), any expansions to the Terminal and any other infrastructure at or around Dudgeon Point necessary to support the Terminal
- enter into and give effect to contracts, arrangements or understandings with Adani and
- discuss related matters amongst themselves.

In addition, a similar group of coal producers (namely, Endocoal Ltd, Linc Energy Ltd, Whitehaven Coal Ltd, Yancoal Australia Ltd and QC Resource Investments Pty Ltd) seek authorisation to:

- collectively discuss and negotiate terms and conditions with QR Network Pty Ltd for access to the Newlands, Goonyella and Blackwater coal rail systems (to the extent that these systems are used to service each and any of the terminals to be developed at Dudgeon Point by Adani), all expansions to these systems and access to any other QR Network rail infrastructure necessary to support the Terminal (Below Rail Infrastructure)

- enter into and give effect to contracts, arrangements or understandings with QR Network and
- discuss related matters amongst themselves.

A full copy of the applications for authorisation are available on the ACCC's website <[www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)>.

### **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

## IP List Endocoal Ltd & Ors - Authorisations - A91350 & A91351

<b>Stakeholders</b>
Adani Mining Pty Ltd
QR Network
AMCI Australia Pty Ltd
Anglo American
Asciano
Australian Rail Track Corporation
BHPBilliton
Blackwood Corporation
Coll Randall & Associates (representing Allegance Coal)
Dalrymple Bay Coal Terminal Pty Ltd
Department of Employment, Economic Development and Innovation (QLD)
Department of Infrastructure
Department of Natural Resources and Mines (QLD)
Department of Resources, Energy and Tourism
Department of State Development, Infrastructure and Planning (QLD)
Department of Transport and Main Roads (Qld)
Hancock Coal Pty Ltd

MacMines AustAsia
Metrocoal Limited
Minerals Council of Australia
North Queensland Bulk Ports
Ports Corporation of Queensland
QR National
Queensland Competition Authority
Queensland Resources Council
Queensland Treasury Office (Economic and Structural Policy)
Rio Tinto
Surat Basin Rail Pty Ltd
Stanmore Coal
Waratah Coal
Wesfarmers Curragh Pty Ltd
Xstrata Coal