



## **RG Tanna Coal Export Terminal Producers application for authorisation A91405**

### **Interim authorisation decision**

**6 February 2014**

#### **Decision**

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by Anglo American Australia Limited, BHP Billiton Mitsubishi Alliance, Cockatoo Coal Limited, Glencore Coal Investments Australia Pty Limited, Idemitsu Australia Resources Pty Ltd, Jellinbah Resources Pty Ltd, Rio Tinto Coal Australia Pty Ltd, Sojitz Coal Mining Pty Ltd, Wesfarmers Resources Ltd and Yancoal Australia Ltd (the Applicants) on 10 January 2014.

Interim authorisation is granted to enable the Applicants to commence collective negotiations with Gladstone Ports Corporation Limited (GPC) in relation to the terms and conditions of the coal handling agreement and the port services agreement. Interim authorisation does not extend to the making of, or giving effect to, any agreements.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

#### **The application for authorisation**

The applicants sought authorisation to:

- collectively discuss and negotiate with GPC the terms and conditions, including price, of coal handling agreements and port services agreements which relate to the RG Tanna and Barney Point coal export terminals, the shipping channels and associated infrastructure at the Port of Gladstone and any facilities owned by GPC which are necessary for GPC to operate and manage the Port of Gladstone
- enter into and give effect to contracts, arrangements or understandings regarding the agreements with GPC.

#### **The authorisation process**

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

## **Interim authorisation**

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The applicants requested interim authorisation on the basis that GPC has commenced the negotiation process.

## **Consultation**

Upon receipt of the application for authorisation, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC received a public submission from GPC supporting the granting of interim authorisation.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/authorisations](http://www.accc.gov.au/authorisations).

## **Reasons for decision**

In granting interim authorisation, the ACCC considers that there is benefit in allowing the parties to begin to jointly negotiate to ensure there are no unnecessary delays in putting in place appropriate arrangements in respect of the terminals and the channel infrastructure, particularly given that new users of the port would like to commence shipping soon. The ACCC considers it unlikely that any detriment will arise from the granting of interim authorisation as the arrangements are voluntary and the scope of the collective negotiations is being confined to the RG Tanna and Barney Point coal export terminals and the channel infrastructure. Further, interim authorisation extends only to negotiations and not to the making of, or giving effect to, any agreement. The ACCC notes that GPC is supportive of the current proposed joint negotiations.

## **Reconsideration of interim authorisation**

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.