

Friday, 4 March 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight Branch
ACCC
GPO Box 520
Melbourne VIC 3001

Dear Anthony

Asciano Response to Australian Bulk Alliance (ABA) Proposed Port Terminal Services Access Undertaking

This submission is in response to the Australian Bulk Alliance Pty Ltd (ABA) proposed access undertaking application relating to the provision of access to its export bulk wheat port facilities at Melbourne Port Terminal. This application was lodged with the Australian Competition and Consumer Commission (ACCC) on 23 December 2010.

Asciano, via Pacific National, is one of Australia's major rail haulage operators. Asciano transports both containerised and bulk traffic throughout Australia. In particular, in the eastern states Asciano is a major transporter of grain.

This submission is public.

General Comments on the Proposed Access Undertaking

Asciano supports the general approach underpinning the proposed access undertaking including requirements for non-discriminatory access and the inclusion of an indicative access agreement.

However Asciano believes there are several aspects of the approach are not ideal, including the "publish, negotiate, arbitrate" approach to pricing. Under this approach, only the access provider has detailed knowledge of their costs, which places access seekers at a disadvantage when negotiating access prices. Asciano acknowledges that this approach to pricing is generally consistent with the Competition and Consumer Act; however Asciano believes that increased regulatory scrutiny of access pricing, including the provision of increased cost information, is desirable. The provision of this information places access seekers on a more even basis with access providers when negotiating access prices.

Comments on Specific Provisions of the Proposed Access Undertaking

Asciano comments on specific issues are outlined below:

Term

Section 4 of the proposed Access Undertaking indicates that the undertaking is intended to have a term of 1 year. Asciano believes that such a term may be too short. A longer term will provide additional certainty and allow for longer term access agreements.

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ABA note in their submission supporting the proposed Access Undertaking that access regulation is costly

Asciano believes an Access Undertaking of at least two years would provide additional certainty to both ABA and access holders and reduce the cost of regulation to both ABA and access holders as any Access Undertaking re-submission would be at a longer interval.

Loading protocols and dispute resolution

Section 10.3 of the proposed Access Undertaking allows ABA to vary the Loading Protocols and section 8.1 b) of the proposed Access Undertaking prevents an applicant seeking resolution of a dispute under the dispute resolution mechanism in relation to the Loading Protocols applying at the time.

Asciano believes this approach is conceptually inconsistent. If the Loading Protocols can be varied by ABA then a binding dispute resolution mechanism should apply to such variations to protect access seekers and access holders. Asciano acknowledges that section 10.3 a) ii) of the proposed Access Undertaking provides for a non-binding dispute resolution mechanism but such an approach is not sufficient.

Asciano supports the increased flexibility inherent in section 10.3 of the proposed Access Undertaking but believes that ABA's ability to utilise this flexibility must be tempered by a degree of countervailing power available in a binding dispute resolution mechanism.

Feel free to contact me on 02 8484 8056 if you wish to discuss this submission.



Stuart Ronan
Manager, Access and Regulation

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