



Our ref: AA1000425
Contact officer: Jacob Campbell
Contact phone: 02 6243 1109

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111

fax: (02) 6243 1199

adjudication@acc.gov.au

www.accc.gov.au

22/06/2018

By email

Dear Sir/Madam

NSW Track Access Collective Bargaining – interested party consultation

The Australian Competition and Consumer Commission (the ACCC) is currently conducting a consultation process on an application for authorisation AA1000425 received from Genesee & Wyoming Australia, Manildra Group, Pacific National, Qube, SCT Logistics, Southern Shorthaul Railroad, Sydney Rail Services, Linx Rail Pty Ltd, and Aurizon (together, **the Applicants**), on 21 June 2018.

The purpose of this letter is to invite you, as a potentially interested party, to comment on the application. Please see the ACCC's publication [Guidelines for Authorisation of conduct \(non-merger\)](#) for a summary of the authorisation process and how to make a submission to the ACCC.

Background

The Applicants are rail haulage services providers in Sydney and regional New South Wales. The Applicants wish to collectively negotiate with Transport for NSW (TfNSW) the non-price terms and conditions on which they acquire below rail access to parts of TfNSW's Sydney rail network under Standard Track Access Agreements (STAAs) with TfNSW.

Interim authorisation

The Applicants are seeking interim authorisation as their existing arrangements are due to expire on 30 June 2018. The Applicants advise that TfNSW is requiring rail operators to enter into the new STAAs by 1 July 2018. Interim authorisation is being sought as soon as possible to allow the Applicants to collectively negotiate the non-price terms and conditions of the new STAAs.

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 authorisation is or is not granted
- possible benefit and detriment to the public
- the urgency of the matter and

- whether the market would be able to return to substantially its pre-interim authorisation state if the ACCC later denies authorisation.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any public detriment, from the proposed arrangements. In particular, the ACCC would appreciate your views on the Applicants collectively negotiating the non-price terms and conditions for access to the relevant rail networks.

If you intend to provide a submission in relation to the applicants' request for interim authorisation, please do so by **2 July 2018**. Due to the urgent nature of the request for interim authorisation, the ACCC has restricted the length of the public consultation period in relation to interim authorisation. As a result, the ACCC invites preliminary submissions from interested parties highlighting key points. Submissions in relation to the substantive application for authorisation are requested by **13 July 2018**.

Submissions should be emailed to adjudication@acc.gov.au with the subject "AA1000425– NSW Track Access Collective Bargaining– submission".

Alternatively, if you would like to provide comments orally, please contact Jacob Campbell on 02 6243 1109 or via email jacob.campbell@acc.gov.au to organise a suitable time.

Submissions, including oral 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 progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information.

Indicative date	Stage in assessment process
21 June 2018	Lodgement of application and supporting submission, including request for interim authorisation
25 June 2018	Public consultation process begins
2 July 2018	Closing date for submissions on interim authorisation
13 July 2018	Closing date for submissions on substantive authorisation
July 2018	Decision regarding interim authorisation
July 2018	Applicant responds to issues raised in the public consultation process
August 2018	Draft determination
September 2018	Public consultation on draft determination including any conference if called
October 2018	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 Jacob Campbell on 02 6243 1109 or via email - adjudication@acc.gov.au.

Yours sincerely



David Hatfield
 Director
 Adjudication

List of Interested Parties Consulted

3801 Limited

Australasian Railway Association

Australian Retailers Association

Food and Beverage Importers Association

Freight and Trade Alliance

Great Southern Rail

iPart

John Holland Rail

Lachlan Valley Railway Society

Laing O'Rourke

Minerals Council of Australia

Rail Track Association Australia

Railcorp

Rhomberg Rail

Speno Rail

The Rail Motor Society

Transport for NSW

Transport Heritage