

29 June 2018

To Mr David Jones
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
By email: david.jones@accc.gov.au;
adjudication@accc.gov.au

Dear Mr Jones

Application for authorisation – rail haulage services providers – proposed collective negotiation of non-price terms and conditions of standard track access with TfNSW

We refer to the Application for authorisation lodged with the ACCC on 21 June 2018 by Genesee & Wyoming Australia, Linx Rail, Qube, Manildra Group, Pacific National, Southern Shorthaul Railroad, Sydney Rail Services, SCT Logistics and Aurizon (together, the **Applicants**).

The Applicants seek authorisation 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 and Country Regional Network under Standard Track Access Agreements (**STAAs**) with TfNSW. The Applicants also sought urgent interim authorisation, including on the basis that all the Applicants (except Linx Rail) have contracts with TfNSW (and/or TfNSW controlled entities) which were due to expire on 30 June 2018. At the time of lodging the application, TfNSW had not agreed to extend or rollover the existing contracts.

Following lodgement of the application, on or about 25 June 2018, TfNSW notified individual Applicants that it would extend the existing contracts for a period of 12 months. Accordingly, the Applicants do not require urgent interim authorisation, but still request interim authorisation (within the Commission's usual 28-day time frame) on the following basis.

The Applicants consider that interim authorisation is required to allow collective discussions and negotiations with TfNSW to commence as soon as possible. Although the existing arrangements will continue for 12 months, the Applicants believe that there are a number of principles and issues to be discussed and are therefore keen to commence negotiations as soon as possible. Further, Linx Rail does not have an existing contract with TfNSW and is seeking to negotiate with TfNSW to acquire services and start operations under its own STAA. Linx services are, and after 30 June 2018 will continue to be, operated by another rail operator under an existing STAA.

The Applicants expect that collective negotiations will achieve better risk allocation for the industry, train path certainty, and efficiencies that will improve the competitive position of rail vis a vis road, in line with government policy objectives, as detailed in the application.

In addition, the following matters remain relevant to the ACCC's decision in respect of whether to grant interim authorisation:

- The proposed conduct is likely to have minimal impact on competition given the voluntary nature of the arrangements and the limited scope of the conduct (as described in the application).
- The Applicants are unwilling to commence negotiations in the absence of an authorisation or interim authorisation, due to the uncertainty associated with the risk of potential breach of the CCA.
- It has been common industry practice for rail freight providers to negotiate the commercial terms of track access contracts with rail track owners, and similar authorisations of collective negotiations have been authorised by the Commission in recent years (e.g. Aurizon and SCT Logistics application which the Commission granted in 2015 (A91512) and Dudgeon Point Project Management's application which the Commission granted in 2011 (A91277)).

The Applicants acknowledge that this letter will be made public and placed on the Commission's authorisation register.

Please do not hesitate to contact me or Jessica Waters if you have any queries about the application.

Yours sincerely



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