



Our ref: AA1000658

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20 December 2023

Pat Cooper
CEO
Hunter Valley Coal Chain Coordinator

Via email: [REDACTED]; [REDACTED]

Dear Mr Cooper

**Re: Application for authorisation (AA1000658) from Hunter Valley Coal Chain Coordinator –
ACCC request for information**

I refer to the above mentioned application for authorisation lodged by the Hunter Valley Coal Chain Coordinator (**HVCCC**) with the Australian Competition and Consumer Commission (**ACCC**) on 19 December 2023.

We seek further information to assist the ACCC's consideration of the proposed arrangements for which authorisation is sought – please refer to Attachment A. We would be grateful to receive the HVCCC's response to the issues raised as soon as possible and no later than **22 January 2024**.

As foreshadowed, the ACCC considers it appropriate to wait to commence its public consultation process with interested parties until the requested information is received from the HVCCC and is publicly available. The ACCC will notify the HVCCC when its consultation process commences.

A copy of this letter and the HVCCC's application will be available from the ACCC's [Authorisations public register](#).

If you have any questions please contact Jaime Martin on (03) 9290 1477 (jaimc.martin@accc.gov.au) or David Hatfield on (02) 6246 1266 (david.hatfield@accc.gov.au).

Yours sincerely

Bruce Mikkelsen
A/g General Manager
Competition Exemptions

Hunter Valley Coal Chain Coordinator – application for authorisation A1000658

ACCC request for information – 20 December 2023

Please refer to the defined terms at the end of Attachment A.

The Proposed Conduct

1. The Proposed Conduct for which authorisation is sought is described in Attachment 1 to the application. At item 2 of Attachment 1, HVCCC seeks authorisation for:

(2) Any concerted practice or any contract, arrangement or understanding between Members or Related Entities that they will act in a particular way on the basis of a recommendation by, or advice from, HVCCC, or any conduct which involves a Member or a Related Entity making an independent decision based on, or giving effect to, a recommendation by, or advice from, HVCCC in delivery of HVCCC Objects.

- a) The description at item 2 (above) appears to describe potentially broad and open-ended conduct. The ACCC is often reluctant to authorise conduct that is broader than it needs to be. Please be more precise about what type of conduct HVCCC is seeking authorisation for at item 2 of Attachment 1 to the application. Please provide examples of the type of conduct, contracts, arrangements or understandings HVCCC envisages will require the protection of any authorisation granted.

Background and contextual information

2. Section 2.1 of the application outlines the current Members of the HVCCC. Please provide a copy of the Members Agreement.
3. Section 2.1 of the application provides brief information about the incorporation of the HVCCC in 2009. Please provide further information about the broader history of the Hunter Valley coal chain and the issues that lead to the development of the arrangements the subject of the Current Authorisation. In your response, please include an explanation of how the HVCCC's current role and activities came about under the Current Authorisation and where they are captured in the authorised Capacity Framework Arrangements.
4. To the extent HVCCC is able to do so, please provide an overview of what will happen to the other aspects of the arrangements under the Current Authorisation upon its expiry in December 2024.

The HVCCC's activities

5. Please provide a copy of the HVCCC's Constitution, including its Objects set out at Schedule 1 to the Constitution.
6. Section 2.4 of the application outlines the HVCCC's long-range and daily planning activities which involve coordination with, and making recommendations to, Service Providers in the Hunter Valley coal chain. The ACCC seeks to better understand what occurs at operational planning meetings and how the HVCCC conducts its 'live run' function. Please provide further information about how these activities work in practice, including examples of:
 - a) How the weekly planning meetings with HVCCC Members are conducted, and what kind of information is exchanged in these forums and how.

- b) Please list all the current members of the Live Run Integration Team (including which entities they work for) and outline whether the composition of this team changes from time to time.
- c) Please specify how the HVCCC facilitates information exchanges between Service Providers under its Live Run role – please use examples where possible.
- d) Please provide examples of specific recommendations made by the HVCCC under its Live Run role to maximise movement of coal through disrupted or constrained parts of the coal chain to minimise congestion.
- e) Please explain how Live Run cancellation processes work in practice – please include examples of where these processes have been implemented in the past.
- f) Can you please detail any examples of coal producers or Service Providers not following a recommendation from the HVCCC (under its Live Run function), and the circumstances in which this occurred. How often, if at all, has this occurred since 2009?

Information sharing

- 7. Section 2.5 provides an overview of the Information Sharing Protocols that HVCCC has implemented regarding the treatment of competitively sensitive information that it receives from producers, above and below rail operators, and terminal operators. Among other things, these protocols provide that the HVCCC ‘will not disclose confidential information shared by a Producer Member to any other Producer Member without the disclosing Producer Member’s prior written consent’. Can you please outline whether information has been shared by the HVCCC under these terms, and under what circumstances HVCCC would envisage sharing such information with Producer Members.
- 8. At section 5.4 of the application, HVCCC submits that the Information Sharing Protocols ensure that competing producers, rail operators and port terminal operators do not obtain access to confidential or competitively sensitive information of other participants, ‘except in specific, limited circumstances, and only with prior notice.’ Please explain what these circumstances are, and/or provide examples.
- 9. Please outline how the Information Sharing Protocols work in practice, and importantly, what kind of information is shared between HVCCC Members and in what circumstances. Please provide practical examples of how information flows between Members and the HVCCC.
- 10. Please explain if there are any limits on the type of information that can be shared between HVCCC Members under the Proposed Conduct – for example, coal customer price and volume information.
- 11. Please explain if the Proposed Conduct allows information to be shared in a ‘HVCCC forum’, as opposed to information provided directly to the HVCCC.

Likely public benefits

- 12. Section 4 of the application contains HVCCC’s submissions about the likely public benefits from the Proposed Conduct. The HVCCC also submits (at Attachment 5 to the application) that since it commenced operations in 2009, coal chain losses have reduced from 10.1% to 6.7%.
 - a) Given the HVCCC has been engaging in the conduct since 2009, please provide detailed examples of how public benefits from coal chain coordination have been realised under the Current Authorisation, including quantification where possible.

- b) To the extent there have been independent studies or reports prepared about the impact of the HVCCC's activities on the operation of the Hunter Valley coal chain, please provide these.

Market/industry information

- 13. Attachment 5 to the application summarises key information about the operation of the Hunter Valley coal chain, including export volumes and the composition of the key industry participants. It also notes the types of coal exported from the Port of Newcastle. Please provide further background information about the operation of the Hunter Valley coal chain, including further detail about:
 - a) Export capacity of the terminals and recent export volumes through each of the terminals at the Port of Newcastle.
 - b) Current contracting processes at the NCIG and PWCS terminals, above rail providers and track owners, and how this might change upon the expiry of the Current Authorisation at the end of 2024.
 - c) Proportion of thermal coal and coking coal exports from the Hunter Valley.
 - d) Any domestic supply arrangements for Hunter Valley coal, including the total volume of coal supplied domestically, and the nature of the HVCCC's role in respect of those domestic supply arrangements.

Proposed duration of authorisation

- 14. Please provide reasons to support HVCCC's request for authorisation for 10 years, until 31 December 2034.

Defined terms

Proposed Conduct – as described in Attachment 1 to the application for authorisation.

Current Authorisation – ACCC authorisation of the Capacity Framework Arrangements (A91147-A91149 and A91168-A91169) which expires on 31 December 2024.

Service Provider - means Australian Rail Track Corporation Limited, each above rail operator that provides haulage services in respect of coal exported from the Port of Newcastle, Port Waratah, NCIG, Port Authority of New South Wales and Port of Newcastle Operations Pty Limited as trustee for the Port of Newcastle Unit Trust.

Member – as listed at Attachment 4 to the application: coal producers, below rail track provider, above rail haulage providers, port terminals, and Newcastle Port.