

Facsimile Communication

Date 18 October 2004 **Facsimile Number** (02) 6243 1211
To **The General Manager**
Adjudication
Australian Competition and Consumer Commission

From Mr. Tony Haggarty

No. Pages 4

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Please find the following correspondence:

On behalf of Mr. Tony Haggarty
Chairman, Newcastle Coal Infrastructure Group



18 October, 2004

Mr Tim Grimwade
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
470 Northbourne Ave
Dickson, ACT, 2602.

Dear Mr Grimwade

Applications for Authorisation A30236 – A30238

I am writing to you on behalf of the Newcastle Coal Infrastructure Group ("NCIG"). The members of NCIG are Excel Coal, Hunter Valley Energy Coal (owned by BHP Billiton), Centennial Coal, Donaldson Coal, AMCI Australia and White Mining. A briefing note on the formation and purpose of this group is attached.

Over the course of 2004, the members of NCIG have participated actively in the consultation process run by PWCS and Accenture in relation to a capacity distribution system, as we believe that a CDS can have an important bearing on longer term availability of capacity.

An over-riding concern of the NCIG is that a quota system must not act to constrain or discourage investment in capacity and growth in coal exports over the medium to long term. The best solution to vessel queuing issues in the Hunter Valley is to focus on increasing capacity across the coal chain so that capacity is ahead of demand.

As coal exporters, we believe that any short term quota system should be analysed in the context of a firm plan for providing adequate capacity as soon as possible. We are very concerned that such a plan has still not been presented to exporters, yet exporters are being asked to support a "short term" scheme over a three to five year period.

We also believe that a short term scheme must be designed to ensure that the coal chain capacity is fully utilised.

We have therefore been working with PWCS and Accenture to try to find an acceptable short-term approach. In order to support a short-term proposal we believe that the detail of the scheme is critical, and that this detail must be provided to exporters and agreed across the industry before an interim authorisation is granted. PWCS is planning to circulate a revised draft of the "Coal Handling and Services Agreement" shortly. Authorisation should not be granted until this document is agreed fully by producers.

We were also surprised at the time period for which the authorisation has been requested, being three to five years, as we had understood authorisation was being sought for CY05



Newcastle Coal

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only. The longer period now sought raises questions as to how long it may be before firm plans and commitments are made to provide new capacity to meet demand. We have discussed an approach with PWCS that would allow for the scheme to be rolled over into a new calendar year (within the Authorisation timeframe) subject to industry agreement, involving 75% of producers by volume and by number. We believe this is a fair approach as support for the proposal needs to be broad-based if it is truly to be an "industry" solution.

Regarding the proposed auction process, NCIG believes that an auction is a useful mechanism to add flexibility to the proposal, and we are broadly supportive of the auction proposal. However, as a practical matter it will be difficult to participate in an auction when the detail of the capacity allocation process has not been finalised such that producers' starting allocations are uncertain. This is a further reason to finalise a revised Coal Handling Services Agreement before any interim authorisation is granted.

I trust that these comments are helpful in your consideration of the application for authorisation and I would be pleased to discuss these issues with you further.

Regards

Tony Haggarty

Chairman

Newcastle Coal Infrastructure Group



Briefing Note

Formation of Newcastle Coal Infrastructure Group

The Newcastle Coal Infrastructure Group (NCIG) was formed by Memorandum of Understanding signed by foundation members BHP Billiton (through Hunter Valley Energy Coal), Centennial Coal, Donaldson Coal and Excel Coal on 30 August 2004. Mr Tony Haggarty, Managing Director of Excel Coal, has been appointed Chairman of the Group.

The aim of the group is to ensure adequate long-term capacity in the Hunter Valley coal export supply chain. The founding members of NCIG are significant coal producers who have sufficient coal reserves and projects to materially increase the coal they produce in response to this coal demand and anticipate increasing production by around 30 million tonnes during the next five to ten years. Like all Hunter coal producers, the group relies on shared rail and port facilities to export coal from Newcastle. These port facilities are managed by Port Waratah Coal Services Limited (PWCS).

In 2004 this coal supply chain has been unable to keep up with strong buyer demand. In response, a Capacity Distribution System was implemented by PWCS which allocates coal supply chain capacity between coal producers in a manner which caps the tonnage producers can export. This system has been authorised by the Australian Competition and Consumer Commission until 31 December 2004 as a short term solution only.

The members of NCIG have sufficient coal reserves to materially increase the amount of coal they produce, in response to strong market demand. The sole objective of NCIG is to ensure sufficient infrastructure capacity to significantly grow the volume of coal they export, through the development of additional coal terminal facilities at the Port, various rail investment proposals, and options to improve the efficient operation of the chain.

While recognising important common objectives, NCIG wishes to remain independent of PWCS and other potential infrastructure providers or operators. None of the NCIG founding members have a significant shareholding in PWCS.

In the months to come NCIG will:

- ♦ Identify and evaluate options to ensure adequate coal handling infrastructure
- ♦ Identify and evaluate rail investment and operating options
- ♦ Identify and evaluate alternatives for more efficient planning and usage of shared infrastructure
- ♦ Assess the competition and incentive effects of any proposed system of allocation of coal handling infrastructure
- ♦ Meet key participants and stakeholders in the Hunter coal supply chain to discuss current and future plans for expanding coal chain capacity

NCIG members will provide sufficient resources to undertake these activities. Other coal producers who do not have a conflict of interest in relation to the possible development of competing port infrastructure are not excluded from NCIG.

Further information:

Tony Haggarty
Chris Ford

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