

19 November, 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 to express our concerns regarding the above submission.

Over the recent few months White Mining has been in discussion with Accenture/PWCS, as part of the Newcastle Coal Infrastructure Group (NCIG) as well as independently, on the formation of a workable Coal Handling Services Agreement (CHSA).

We are aware that the NCIG group has submitted a letter to the ACCC and are fully supportive of its contents. However, as a small/medium sized producer exporting through Newcastle Port we find that there are certain elements of the CHSA that are onerous and could cause significant hardship, should the proposed CHSA become the operating instrument. We request that you please read these objections as additional to those raised by the NCIG.

The specific items of concern are outlined as follows:

1) Tonnage Penalty for Unused Allocation

**Annexure 4F- Part B – Schedule 6 – items 4 & 7
Annexure 4E Clause 3.7**

We do not agree with the conditions associated with failure to perform the minimum tonnage for any given quarter. Whilst there already exists a TOP charge, the additional penalty requiring the producer to forgo an equivalent amount of tonnage from his next quarter's allocation could prove to be disastrous for a small to medium sized producer (eg; 500kt per quarter), particularly where a situation may exist that a cape size vessel (100kt) has slipped out of the defined allocation period due to circumstances beyond the control of the producer. Under the current CHSA this producer would have lost 100kt in the quarter and subsequently penalized a further 100kt in the following quarter.

With the introduction of the "conditional allocation", we believe that the exchanges and transfer market would be significantly reduced and potentially non-existent, due to the ability of other producers to exercise their positive options under the scheme without having to accept a transfer/exchange. We therefore believe that the small/medium size producer(s) will be disadvantaged and find that they have no market to transfer into, and hence unable to avoid this penalty, whilst the total throughput may not necessarily be affected.

We do not believe that causing potentially unnecessary financial hardship (beyond TOP commitments) to producer(s) is in the spirit nor is the motive for introducing any CDS.

Reference allowing the board “absolute discretion” to vary the relevant sum that a restricted producer pays as a financial compensation amount should require industry support.

Since the document is set up to ensure that maximum coal throughput is maintained, there is currently no carry over allocation provisions. With the introduction of an additional 5% “conditional allocation” the ability for producers to transfer or exchange allocation(s) is severely diminished. This could leave smaller/medium sized producers with considerable problems in relation to meeting evenly distributed minimum performance requirements whilst the port capacity theoretically can be fully utilized through the exercise of the “conditional allocation”.

We believe that the scheme should have a mechanism where a producer’s underperformance can be “married/balanced” against another producer’s over performance.

The 2004 CDS allowed this natural balancing to occur, all producers were required to go to the Transfer & Exchange market if they wished to increase/decrease their allocation. Under the proposed scheme this is not the case since a producer has other options available to them to gain access to additional allocation.

2) No – Guarantee to Load – Annexure 4F – Part B – Item 3

The take-or-pay system does not provide any guarantees by PWCS to ensure that a producers’ volume is loaded on board a vessel, whilst requiring the producer to make a number of guarantees with regards their performance to utilize the port. We believe that in order to have a balanced situation that the least PWCS is able to do is guarantee loading therefore we would request that this item is deleted. PWCS should be held accountable for any actions that result in under or non performance.

3) Demand Reduction Auction Costs – Annexure 4F – Part A – Item 6.1

There has been a limited support base for the demand reduction auction, with the majority of producers choosing not to participate.

Should the auction be held then the costs associated with the demand reduction auction should be separated from those of the general CDS creation/implementation and these costs and should be borne by the parties participating in the auction rather than pass on the cost to the entire industry via the coal handling services charge ie; “User Pays” basis principle.

We would be pleased to discuss the above issues raised at your convenience.

Yours Faithfully
Brian J Flannery
Managing Director