



AUSTRALIAN
PREMIUM COALS PTY LTD
ACN 077 598 932
ABN 65 077 598 932

13 May 2005

Mr Scott Gregson
General Manager, Adjudication
Australian Competition and Consumer Commission
470 North Borne Avenue
DIXON ACT 2602

Dear Mr Gregson

APPLICATION FOR AUTHORISATION BY DALRYMPLE BAY COAL TERMINAL PTY LTD

We refer to the Applications for Authorisation Nos A30239, A30240 and A30241 ('Applications') by Dalrymple Bay Coal Terminal Pty Ltd ('DBCT PL').

Introduction

Australian Premium Coals Pty Ltd ('APC') is the operator of the Coppabella and Moorvale mines, that ship coal through Dalrymple Bay Coal Terminal ('DBCT'). APC supports the need to achieve and maintain a vessel queue that minimises deadweight demurrage costs to all users but believes that the Queue Management System ('QMS') proposed by DBCT PL, as set out in the Amendment to the Terminal Regulations for DBCT, may not achieve the key objectives as set out in Attachment A of the Submission accompanying the Applications.

If the Australian Competition and Consumer Commission ('ACCC') is minded to grant the Applications, APC considers that changes should be made to both the QMS and the Amendment to the Terminal Regulations to ensure that the key objectives set out in Attachment A of the Submission accompanying the Applications are achieved.

APC will show how the proposed QMS fails to deliver on the key objectives set out in the Submission accompanying the Applications and will propose a number of solutions that may address these failures. APC has conveyed these proposed solutions to DBCT PL.

Apart from our discussions with relevant parties, including DBCT PL, after the interim authorization by the ACCC, APC were not involved in the development of the current QMS. At the date of submission, no one including DBCT PL has provided a response rejecting or accepting APC's concerns.

Fair, equitable and transparent allocation of System Capacity between users

Whilst overall the QMS provides a fair system of allocating port contract tonnage under clauses 5.1 – 5.3, we have a real concern with some aspects of clause 5.4 which have the potential to create a closed unregulated secondary market instead of what should be a transparent regulated system.

Under the PWCS Capacity Distribution System (CDS), available system capacity is distributed amongst producers on a pro-rata basis, in proportion to the Forecast Requirement of each producer or their take or pay commitment. However, because the individual users at DBCT have fixed take or pay



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contracts with Prime Infrastructure Limited (Prime), under the QMS, available system capacity is distributed amongst users on a pro-rata basis, in proportion to the contractual capacity of each user. Therefore the only way to create flexibility is to swap or purchase entitlement from other users.

For various historic reasons there is an imbalance between port contract tonnage and throughput for a number of users of DBCT, i.e. there have been users that have consistently under-performed and those that have over-performed their contracts. Accordingly, under the proposed QMS it can be expected that there will be a consistent need to redistribute entitlement between users. APC believes that the system proposed to achieve redistribution under clause 5.4 will be detrimental to the objectives of the QMS.

Whilst the determination of system capacity and tonnage entitlement will be completed six weeks prior to the commencement of each month, allowing sufficient time to plan and fix relevant shipping schedules with our customers, the swapping of entitlement is unlikely to take place until near the end of the entitlement period as users with excess contract capacity seek to optimise their chance of using their entitlement. The behaviour described above may result in two outcomes:

1. The vessel queue will actually increase because users will order additional vessels above their entitlement in the hope users can acquire additional entitlement from other users who under perform. This is what occurred at DBCT in March under the existing terminal regulations with a significant amount of allocation changing hands immediately prior to the mid March cut-off.
2. Berth capacity is lost as there is not enough time to order and schedule vessels to arrive prior to the end of the entitlement period to use the spare capacity. This is what occurred at PWCS on the 5th and 6th of May where at a 5 berth terminal there were only 2 ships at berth. Berth capacity was lost as spare entitlement was not offered for swap until it was too late to arrange shipments to utilise the spare capacity.

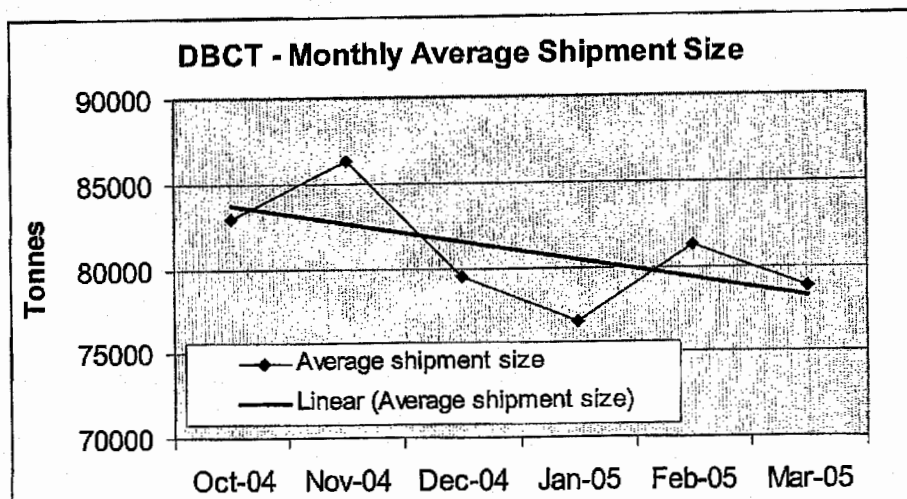
Maximising utilisation of System Capacity

The purpose of the QMS as stated in DBCT PL's submission to the ACCC is to address the imbalance between the demand for coal loading services at the Terminal and the capacity of the Goonyella coal chain, including the Terminal (together "System Capacity"), to meet this demand.

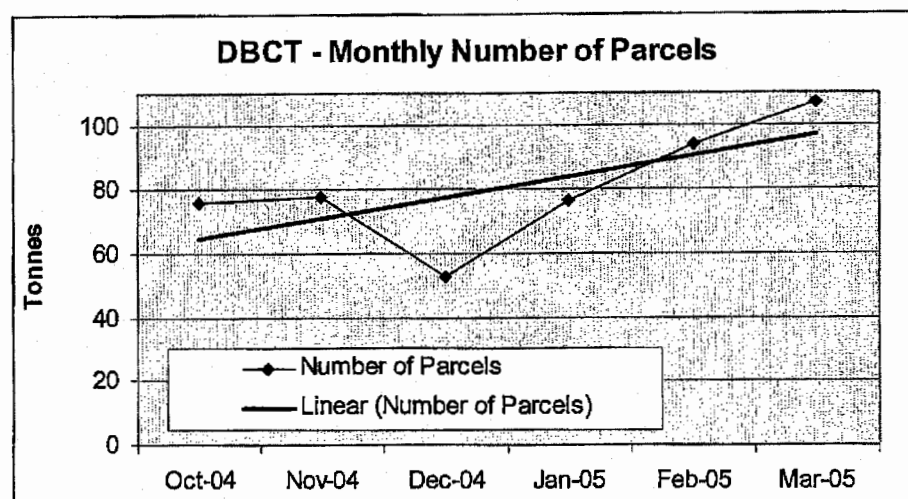
While we fully support the objective to maximise 'System Capacity' by looking at the whole coal chain (terminal included), we feel the QMS has the potential to cause System Capacity loss in a number of ways:

Having entitlement distributed on month to month basis limits the flexibility producers can give customers in terms of shipping tonnages and shipping arrivals. This lack of flexibility may force customers to schedule smaller ships and increase the need for multi-parcelling.

Customers may be forced into this behaviour because the tonnage that customers can obtain from each user will be limited and may not be sufficient to fill a large cape size vessel in a particular month. Therefore, a larger number of smaller vessels are required. The tonnage limitation on a month to month basis may also increase the number of coal types needed to fill each vessel. Since the introduction of the current allocation system introduced in October 2004 the average vessel size has been decreasing and the number of parcels has been increasing as shown below.



Source: DBCT SOMM Performance Data



Source: DBCT SOMM Performance Data

As publicized by Prime, a reduction in ship size and an increase in multi-parcelling both have the impact of reducing system capacity. DBCT PL has also recognised that multi-parcelling reduces system capacity by including clause 11 into the Queue Management Procedures, which states that: "Users must use reasonable endeavours to cause purchasers of Coal to minimise multiple loading of parcels of Coal on Vessels, where multiple loading would materially reduce System Capacity."

Although multi-parcelling can be controlled somewhat by requesting customers to reduce the number of coal types loaded onto each vessel, unfortunately, for most customers multi-parcelling of coals from DBCT is a strategic part of their business and is one of the factors that gives DBCT a distinct advantage over other coal terminals. In effect, DBCT is like a one stop shop where customers can obtain all their coal requirements from the one port, so instead of holding large stockpile inventories of various types of coal at their operations, they load various coal types onto each ship which then becomes a floating stockpile with all their coal requirements for their operations. It is therefore unlikely that customer behaviour will change significantly.

Another concern with month to month entitlement is in the fact that it takes approximately 4 to 6 weeks to schedule a vessel, so under a situation where at the last minute a user cannot use all their entitlement, the proposed month to month system would not allow sufficient time to schedule or re-schedule vessels and therefore increases the risk of loss of system capacity.

Whilst overall the QMS provides a fair allocation of port contract tonnage, it does not take into account rail contract tonnage which is also an essential part of 'system capacity'. A situation where a user has obtained additional port allocation that is higher than their rail contract and that user cannot obtain additional rail capacity would result in the situation where system capacity is lost.

To address the concerns that have been highlighted above, the QMS should be modified to facilitate:

- entitlement to be awarded or at least reconciled on a quarterly basis;
- address the behaviours in the coal chain that effect system capacity; and
- allocation of entitlement should be determined on the basis of a users rail and port contractual capacity.

In addition, if the Queue Management Procedures are shown to cause a loss in system capacity, we would like the QMS removed or suspended until it has been revised to address the circumstances surrounding the cause of the loss of system capacity.

Restoring the terminal reputation

Unless the QMS provides a system that encourages consistency in planning and sufficient notice for users and customers to adjust shipping schedules, the reputation of the terminal will be diminished. APC's customers have indicated they would be satisfied with a system that provided:

- Structured implementation of system capacity changes to avoid uncertainty and disruption of deliveries;
- Optimum usage of terminal capacity to ensure no capacity losses; and
- Management of the vessel queue that also allows consistent planning.

Conclusion

APC supports the need to achieve and maintain a vessel queue that minimises deadweight demurrage costs to all users but believes that the QMS in its current form may not achieve the key objectives of the QMS. If the ACCC is minded to grant the Applications, APC considers that the issues outlined above should be addressed to ensure that the key objectives of the QMS are achieved.

Consultation

APC would appreciate the opportunity to meet with the ACCC to discuss its submissions. Would you please contact the undersigned to arrange a convenient time and location for the consultation. My contact details are:

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Yours sincerely

AUSTRALIAN PREMIUM COALS



Gary Lee
Vice President - Marketing

APPENDIX 1

Proposed alternative structure for clause 5.4

- Users should be required to nominate whether they wish to sell, swap or buy entitlement 4-6 weeks prior to commencement of each month. APC believes it will be optimum to bring the tonnage nomination from the independent expert back to 8 weeks and the nomination of swapped tonnage 6 weeks prior to commencement of each month.
- The tonnage to be sold or swapped should be pooled and DBCT P/L or the independent expert should then distribute the tonnage on a pro-rata basis versus contract to those users seeking additional entitlement.
- It is APC's view that sales of entitlement should be made at the prevailing Terminal Infrastructure Charge.
- There should be proper motivation for users to nominate the tonnage for swap at the defined time. One way is to penalise any user that does not nominate unwanted tonnage by reducing their entitlement in the subsequent month by the same tonnage they did not use during the relevant month. This process would, of course, be subject to normal force majeure. i.e. the entitlement penalty would not apply if the user can show that it suffered a loss of production or shipments due to an occurrence that was beyond its control. Such event, however, would only be applied to the month in which the force majeure event occurred.