



Australian
Competition &
Consumer
Commission

Our Ref: C2005/583-03
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24 June 2005

Mr Dave Poddar
Partner
Mallesons Stephen Jaques
Level 60 Governor Philip Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Mr Poddar

Re: Applications for authorisation (A30239 – A30241) lodged by Dalrymple Bay Coal Terminal Pty Limited – clarification of Terminal Regulations

I refer to your letter of 1 June 2005 concerning the above mentioned applications for authorisation. In particular, I note that Dalrymple Bay Coal Terminal Pty Limited (DBCTPL) will be reviewing the operation of the queue management system (QMS) with coal producers in July, with a view to possibly amending the Terminal Regulations.

In the meantime, there are several issues upon which we seek additional information in order to assist our assessment of the authorisation application. I note that some of these issues, particularly in relation to the operation of the QMS, might sensibly be answered following the completion of the industry review in July.

Operation of the QMS

1. Page 5 of the supporting submission to the application states that 'the QMS will not operate at any time that demand does not exceed System Capacity for a sustained period.'

Please explain:

- a) whether demand is required to exceed system capacity by a certain volume
- b) the definition of 'sustained period' and
- c) when and how often system capacity will be reviewed to determine whether the QMS should operate.



2. Please provide a more detailed explanation of the Independent Expert's process for declaring System Capacity, including the level of industry consultation. In addition, please confirm the current declared system capacity.
3. Clause 4.2 of the current Terminal Regulations provides that where the queue is significantly larger than a working queue, and it is not likely to be reduced, DBCTPL will request the Independent Expert to determine a Queue Reduction System Capacity.

Please provide further detail in relation to the operation of this clause, particularly whether the queue has to exceed the working queue by a specific quantity for a specified time.

4. Page 4 of the supporting submission to the application provides that 'producers who under-use allocation *may* be subject to physical compensation and take or obligations under User Agreements.'

Please clarify the operation of the physical and financial compensation mechanisms under the Terminal Regulations, including when they would be applied.

5. Page 27 of the supporting submission to the application states that a dispute resolution process is proposed to be created for persons dissatisfied with decisions of DBCTPL in respect of the QMS.

Please explain:

- a) whether a dispute resolution process has been developed and
 - b) the procedures involved, including the type of decisions that may be reviewed by an independent administrator.
6. Pages 26 and 27 of the supporting submission to the application outline how DBCTPL will manage coal loading allocations to enable new producers to ship coal through the terminal.

Are these sections of the supporting submission consistent with the recent amendment to the Terminal Regulations, which deleted the sentence concerning the definition of Monthly Contract Tonnage for new entrants?

7. Clause 8 of the Terminal Regulations provides that DBCTPL is required to send Prime Infrastructure and coal producers a weekly System Management Report.

If possible, we would also appreciate receiving this weekly report.

The queue

8. We understand that the level of the queue at Dalrymple Bay Coal Terminal fell substantially prior to the formal introduction of the QMS.

Please provide:

- a) confirmation of the number of ships in the queue when the QMS was introduced
- b) your views on what caused the reduction in the queue to that point and
- c) the changes in the level of the queue since the QMS has been introduced.

Assessment of public benefit and detriment

9. To assist the ACCC's evaluation of the QMS, please provide additional information on the following public detriment and benefit issues:

- a) DBCTPL submits (on page 32 of its supporting submission) that the QMS is designed to ensure that the terminal operates at full system capacity, which will mean that there should not be any overall reduction in exports as a result of the QMS.

Please respond to concerns raised that system capacity will not be maximised under the QMS, including claims that:

- monthly allocations (as opposed to quarterly allocations) limit the flexibility for producers to schedule vessels in time to utilise any spare capacity
 - this lack of flexibility may lead to smaller ships being scheduled and increase the need for multi-parcelling at the terminal
 - there are insufficient incentives under the QMS to encourage producers to swap their un-used allocation in a timely manner
 - the pro-rating of contracted capacity will mean mines reduce their production schedules accordingly and will then be unable to rapidly increase production in the event that another mine experiences production difficulties. This would lead initially to a reduction in the queue and potentially to forgone exports. The experience at Port Waratah in May and early June of this year is cited as an example of this risk.
- b) At the time of lodgement, DBCTPL submitted that the vessel queue had been steadily trending up in the last 5 months. It claimed that if that trend continued, demurrage costs could be as high as A\$550 million for 2005. Please comment on the likelihood of that trend continuing in 2005 absent the QMS and the resultant demurrage costs.
 - c) The ACCC understands that it is relatively common for producers to cap daily demurrage costs under sales contracts with overseas buyers. As such, overseas buyers would share the risk of demurrage. Please provide your view on the extent of

such caps and the impact they have on the level of demurrage savings resulting from the QMS.

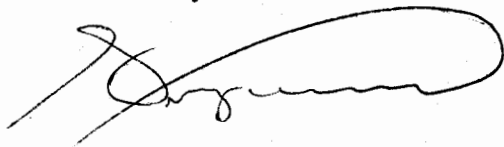
Other

10. Following the recent Infrastructure Taskforce report, we understand there have been proposals put to the coal industry and government concerning the potential establishment of a centralised coal chain logistics planning organisation in Queensland. We would be interested in your comments on these proposals and any potential impacts on the current application for authorisation.

Finally, please find a copy of an additional submission received by the ACCC from Sumitomo Metal Industries Ltd, in addition to those submissions most recently provided to you on 17 May 2005.

If you have any questions in relation to the issues raised in this letter please contact David Hatfield (02 6243 1266) or Jaime Norton (03 9290 1885).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a large, sweeping loop at the end.

Scott Gregson
A/g General Manager
Adjudication



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May 24, 2005

Mr. Scott Gregson
The General Manager
Adjudication Branch
Australian Competition & Consumer Commission

RE: Applications for Authorisation Nos A30239, A30240 and A30241
(Applications) by Dalrymple Bay Coal Terminal Pty Ltd (DBCT PL).

Dear Mr. Gregson,

I am writing to you on behalf of Sumitomo Metal Industries Ltd., the third largest steelmaking company in Japan and purchasing two million tones of coal out of DBCT, to seek your assistance and support for making the Queue Management System (QMS) more efficient and workable one.

SMI recognize the need for the QMS to manage the vessel queue at DBCT, however the related monthly entitlement is causing disruption and difficulty with SMI's shipping schedule. If the monthly entitlement proposed in the QMS continues to cause difficulty in scheduling vessels it has the potential to cause loss of reputation between SMI and Australian Coal suppliers. In this case SMI may be forced to obtain coal from other supply sources. Therefore, we consider that entitlement should be allocated quarterly basis rather than monthly.

While we understand that the ACCC is now checking whether the QMS is a workable system or not, we sincerely hope that our opinion will be taken into account.

Yours faithfully

Yasuhiko Tamakoshi
General Manager