



Australian
Competition &
Consumer
Commission

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Our Ref: C2005/583-03
Contact Officer: Jaime Norton
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10 August 2005

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

Dear Mr Poddar

**Re: Applications for Authorisation (A30239-A30241) lodged by
Dalrymple Bay Coal Terminal Pty Limited (DBCTPL)**

I refer to the submission received from Dalrymple Bay Coal Terminal Pty Ltd (DBCTPL) on 2 August 2005 and your letter of 5 August 2005.

Request to vary interim authorisation

The Australian Competition and Consumer Commission (ACCC) has considered DBCTPL's request to amend the interim authorisation previously granted by the ACCC on 29 April 2005 (and varied on 25 May 2005).

DBCTPL seeks to amend the *Dalrymple Bay Coal Terminal, Queue Management System Amendments to Terminal Regulations*, approved by Prime Infrastructure (now Babcock and Brown Infrastructure) on 27 May 2005 (Terminal Regulations). These amendments have arisen out of a review of the operation of the Queue Management System (QMS) by DBCTPL and producers in July 2005.

In summary, DBCTPL advises the following operational amendments to the Terminal Regulations have been made:

Entitlement of users on multi-parcel vessels where not all users have entitlement at the time the vessel arrives— In the case of a multi-parcel vessel, users who have entitlement for the month in which the actual time of arrival (ATA) occurs, will not forfeit that entitlement for that month merely because other users' loading on the same vessel do not have entitlement for that month. Loading will, however, roll over into the next month.



Five day rule — Clause 5.3(a)(i)(A) of the Terminal Regulations allows a user to ask that entitlement which it is allocated in respect of a month be attributed to a vessel which arrives in the first five days of the next month. There was some uncertainty as to whether every user loading on a multi-parcel vessel would be required to give such a notice for the five day rule to be effectively invoked. Industry participants agreed that this was not the intention, and the drafting has been clarified.

Master's discretionary tonnage — The original provisions of clause 5.3 of the Terminal Regulations require entitlement to be apportioned to each user (up to the time of loading) on the assumption that the master of each vessel will exercise his discretion to load an additional 10 per cent. The additional 10 per cent is not loaded in many cases, and applying the assumption meant in practice that later vessels in a month could not be sure whether or not they would receive entitlement, right up to the point of completion of loading of all previous vessels of the user.

DBCTPL advises that made planning difficult, so there is now a more practical rule, being that allocation of entitlement is made provisionally on the assumption of the exercise of the master's discretion, but this assumption is refined once a stowage plan is provided (with a final refinement once loading actually takes place).

Split consumption of entitlement at month end — Where a vessel is ready to load at month-end but only has remaining unused entitlement for part of the relevant cargo, that entitlement may be allocated to that cargo, with the balance of the required entitlement being allocated from the following month.

90 000 tonne rolling entitlement — The 90 000 tonne 'discretionary buffer' (which commenced on 1 July 2005) to give users flexibility in 'topping and tailing' entitlement, will now be on a rolling basis, rather than the 'slate being wiped clean' at the end of each financial year. As well, the drafting has been amended to clarify the concept of a 'bank' in respect of 'discretionary buffer' (where debits and credits are carried forward).

The ACCC is advised the draft amended Terminal Regulations have been approved by the DBCTPL Board but are subject to approval by Babcock and Brown Infrastructure.

On the basis of the information before it, the ACCC considers these changes to be minor and unlikely to have a significant competition effect. As a result, the ACCC has decided to vary the interim authorisation so as to apply to the Terminal Regulations, as amended.

The ACCC awaits a copy of the amended Terminal Regulations as approved by Babcock and Brown Infrastructure. The amended Terminal Regulations will be made available from the ACCC's website at <http://www.accc.gov.au> (by following the Public Registers and Authorisations links). This interim authorisation does not extend to any subsequent variations made to the Terminal Regulations.

As you are aware, interim authorisation allows the applicant to engage in the conduct prior to the ACCC considering the substantive merits of the application.

You should also be aware that the ACCC's decision in relation to interim authorisation can be reviewed at any time and should not be taken as an indication that the ACCC would make a similar decision in its final determination.

Request to delay the draft determination

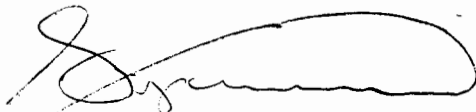
The ACCC acknowledges DBCTPL's request to further delay issuing a draft determination in this matter, so as to allow the industry to conduct an extended review of the operation of the QMS. DBCTPL submits that all producers consider this is a sensible and practical approach to ensuring the optimal efficiency of operations at the Dalrymple Bay Coal Terminal.

I understand this review process involves data collection over a six week period (which commenced on 1 July 2005) and then an assessment by DBCTPL and producers to determine if further amendments to the QMS and therefore the Terminal Regulations are warranted. Having regard to this time frame, the ACCC expects DBCTPL to submit the final version of the Terminal Regulations to it by no later than **30 September 2005**, together with further submissions on the operation of the QMS and the benefits and detriments likely to result from it, based on additional information flowing from the review.

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

A copy of this letter will be placed on the public register.

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