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

Dear Mr Gregson

Applications for Authorisation A30236 – A30238

Further to our discussion on 7th February 2005, NCIG would like to reiterate the key issues raised in relation to the medium-term capacity distribution scheme (“CDS”). NCIG has two key concerns which are:

1. the CDS must not act to constrain investment in coal chain capacity and growth in coal exports; and
2. the CDS must operate in a way that ensures that as much of the available coal chain capacity is utilised in any given period.

These issues are discussed further below.

1. Implications for Capacity Investment

The best solution to vessel queuing in the Hunter Valley is to focus on increasing capacity across the coal chain so that capacity is ahead of demand. NCIG believes that a quota scheme takes attention away from the core problem, being lack of capacity, as it removes any signal that there is a need for increased capacity (previously, vessel queues provided a very clear signal). The system also acts to manage the market down giving the false impression that demand is in balance.

If investment in coal chain capacity is not forthcoming, the costs to the NSW and national economies will be very substantial. NCIG believes that the market for coal from the Hunter Valley is at least 120 Mtpa, which is close to 35 Mtpa above the current level of exports. Failure to capture this growth will, on our estimates, come at a cost of over \$2 billion in coal mining investment in NSW, and between 2,000 to 5,000 jobs. This level of investment is far too significant to put at risk and dwarfs any leakage incurred through demurrage.

We have previously argued that the CDS should only apply for a period of 12 months. However, if the quota scheme is to apply for three years, NCIG submits that there should be an explicit set of annual investment benchmarks for coal chain capacity expansion.

In the ACCC’s draft determination, a schedule of capacity initiatives from PWCS has been included in Attachment C which is intended to expand capacity to in excess of 100 Mtpa. However, we are not aware of any firm commitment to meeting this capacity target nor of any firm initiatives to lift capacity to the 120 Mtpa which shippers require. Given the size of the

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potential economic loss should capacity not be expanded, we submit that firm coal chain capacity benchmarks should be established and included as a condition to the Authorisation. It should be a requirement that such benchmarks be met on an annual basis. The conditions should include:

- capacity of at least 90 Mtpa by end CY 2005;
- capacity of at least 100 Mtpa by end CY 2006; and
- a committed and detailed plan and implementation timetable to expand capacity to over 120 Mtpa by end 2007. This plan should be submitted by the end of CY 2005.

2. Utilisation of Coal Chain Capacity

NCIG submits that the CDS must ensure that coal chain capacity is fully utilised during the course of any given year. The current scheme includes a "conditional" capacity allocation of 5%. We fully support an over-allocation of capacity to increase utilisation. At present it appears that there is a considerable underutilisation (see weekly update from Accenture) of between 1 Mtpa and 2 Mtpa. Underutilisation by 1 Mt in a quarter would involve a cost of some A\$65M in revenue and there is a very real risk of this being a permanent loss in economic value. Pro-rated over a year, the economic loss would far outweigh any cost associated with demurrage.

Presently the 5% conditional allocation is only available after all other firm allocation has been used. This raises the practical problem that companies are unable to arrange their shipping schedules that far in advance, and as a result are unable to utilise the 5%. NCIG believes that the scheme would be improved by making the conditional allocation available at the beginning of any given quarter. We also believe that the 5% is too low and should be raised to 10% to avoid any loss of coal chain utilisation.

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

Regards



Tony Haggarty
Chairman
Newcastle Coal Infrastructure Group