



Australian
Competition &
Consumer
Commission

Our Ref: C2005/583-04
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19 October 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 4 October 2005. In particular, DBCTPL sought to vary the interim authorisation previously granted by the Australian Competition and Consumer Commission (ACCC) on 29 April 2005 (and most recently varied on 10 August 2005).

The ACCC has considered DBCTPL's request to amend the interim authorisation.

DBCTPL seeks to amend the *Dalrymple Bay Coal Terminal, Queue Management System Amendments to Terminal Regulations*, approved by Babcock and Brown Infrastructure on 29 August 2005 (Terminal Regulations). These amendments have arisen out of the review of the operation of the queue management system (QMS) by DBCTPL and producers in September 2005.

In summary, DBCTPL advises the following three operational amendments to the Terminal Regulations are proposed.

Queue adjustment

Clause 4.2 currently allows the Independent Expert to apportion entitlement based on a tonnage less than the actual predicted coal chain capacity, in order to reduce an excessive vessel queue to a working queue (as occurred when the QMS was introduced in June).

The proposed amendment will also allow the Independent Expert to distribute entitlement based on a tonnage higher than the actual predicted coal chain capacity, in order to increase the working queue if it is otherwise predicted to fall below an optimum level.



14 day notice period to swap entitlement

Clause 5.4 of the Terminal Regulations currently requires producers to provide at least 14 days notice of a swap of coal loading entitlement.

The proposed amendment will now allow less than 14 days notice to be given. The date for loading may be re-scheduled if the swap adversely affects other producers (but not to a date later than 14 days from the notice of a swap).

Establishment of a forum to facilitate early swapping of entitlement

Under clause 5.4(c) of the Terminal Regulations, it is proposed that DBCTPL will provide a forum (for example, an internet portal) to facilitate exchange of information to encourage producers to swap entitlement as early as practicable.

The ACCC is advised the draft amended Terminal Regulations 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 an anti-competitive effect. 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.

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. This interim authorisation does not extend to any subsequent variations made to the Terminal Regulations.

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.

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



Scott Gregson
General Manager
Adjudication