



11 December 2007

Brisbane Corporate Office/Department

Mr Scott Gregson
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Dear Mr Gregson

Newcastle Port Corporation – applications for authorisation A91072-A91074 – interested party consultation

We refer to your letter of 4 December 2007 and the applications for authorisation A91072-A91074 received by the Australian Competition and Consumer Commission (ACCC) from Newcastle Port Corporation.

Background

1. Anglo received notice (by letter dated 19 November 2007) of applications lodged by Port Waratah Coal Services Limited (Port Waratah), Pacific National (New South Wales) Pty Ltd (Pacific National) and QR Limited (QR) (the PWCS Applications).
2. Both Newcastle Port Corporation and Port Waratah, Pacific National and QR are seeking an authorisation of arrangements designed to address 'the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain for 2008'.
3. The applications for authorisation lodged by Newcastle Port Corporation effectively seek authorisation of the current Medium Term Capacity Balancing System (CBS) which is due to expire on 31 December 2007; the authorisation of the 'Proposed System' is sought from 1 January 2008 to 31 December 2008.
4. Port Waratah, Pacific National and QR are seeking authorisation for a new Vessel Queue Management System (VQMS) which essentially proposes a 'lesser of port or rail' methodology.

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5. Both Newcastle Port Corporation and Port Waratah, Pacific National and QR have lodged interim and substantive applications for authorisation.
6. In response to Newcastle Port Corporation's application for an interim authorisation Anglo makes the following submission.

Submission

7. Anglo, in principle, supports the Newcastle Port Corporation application for interim authorisation of the Proposed system on the following basis.
8. The Proposed System is consistent with the CBS that is currently in place. Users, including Anglo, have been operating mines, planning production and entering into coal supply contracts based on what users understood was their port capacity allocation and their ability to ship coal under the CBS.
9. The CBS has resulted in an improvement in vessel queues since its implementation, though there still remains significant constraint in the Newcastle Port/Hunter Valley coal chain capacity. Nevertheless Anglo considers that the CBS should continue to be implemented to seek to achieve the improvement in vessel queues which, to some degree, has been achieved under the CBS in 2007.
10. Anglo considers that it is imperative that there be a system to moderate the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley Coal Chain. Nevertheless Anglo does not support what appears to be a very significant change from the current CBS system as proposed by Port Waratah, Pacific National and QR under the VQMS.
11. The VQMS essentially proposes 'a lesser of port or rail' methodology; this would mean that port capacity allocations will be limited to those users with valid rail contracts.
12. Anglo considers that such a significant change to the system for allocation of port capacity at the Port of Newcastle must be very carefully considered by all stakeholders, including the users, before implementation; this is particularly the case when the impact on users is not at all clear. The full impact of this proposal needs to be examined fully before it is implemented.
13. The application for an interim authorisation (and ultimately a authorisation for a period of 12 months from 1 January 2008) by Newcastle Port Corporation would, if a determination was made by the ACCC to grant such an authorisation, effectively permit the continuation of the current CBS.
14. This would have two significant advantages. Firstly there would remain a system, beyond 31 December 2007, to deal with the 'imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain'; secondly users, could seek to discharge current coal supply contracts, in the context of a system, the effect of which was essentially known to users when those obligations were entered into. This is particularly relevant as many coal sales contracts apply until 31 March 2008 and to change the basis of entitlement at the port could inadvertently place these contracts in breach through lack of performance.

15. Anglo considers that the VQMS proposed by Port Waratah, Pacific National and QR, with its quite radical change to a 'lesser of port or rail' methodology would introduce significant uncertainty for users; this is particularly the case when it may, if authorised on an interim basis, commence operation early in 2008.
16. In summary Anglo supports the status quo on the basis that it, effectively, provides for continuation of the CBS beyond 31 December 2007 and provides the opportunity for the CBS to continue to seek to achieve the improvements in vessel queues which have occurred in 2007.

Yours faithfully



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