



Mining and Energy Division

Newcastle Port Corporation Application For
Authorisation [A91072-A91074]

SUBMISSION

Construction Forestry Mining and Energy Union
(Mining and Energy Division)

Northern District Branch

December 2007

On 4 December 2007, the Newcastle Port Corporation made an application under Section 88 (1) and 88 (7) of the Trade Practices Act 1974 to the Australian Competition and Consumer Commission (the ACCC) to seek authorisation for a new medium term Capacity Balancing System (CBS). This application seeks authorisation for a medium term CBS to address the imbalance between coal production and coal services at the Port of Newcastle.

In the main, the new medium term CBS proposed by the Applicant is in similar effect to the current CBS that is in operation at the Port of Newcastle which is to expire on 31 December 2007.

The ACCC concurrently with considering the applications made by the Newcastle Port Corporation is considering applications for authorisation by PWCS, PN and QR over a different system known as the VQMS (Vessel Queue Management System) to address the imbalance between the demand for coal haulage and coal loading services at the Port of Newcastle.

The ACCC will be aware that the Union opposes the VQMS. The ACCC is also aware that the Union opposed the authorisation for the CBS that is currently in operation that is to expire on 31 December 2007.

The Union notes that the CBS when authorised, had the support of all producers in the Northern District coalfields and it was believed by them at that time to be the fairest system for the allocation of coal through the Port. The Union, for good reason, opposed the CBS but was the only organisation that did so.

The Union continues to oppose the CBS in the form proposed and we do so on the basis that we opposed it on the previous occasion it was authorised. We do however note that the CBS proposed by Newcastle Port Corporation would be a system that would provide lesser public detriment than the VQMS proposed by PWCS, PN and QR.

The Union further notes, which is relevant to the consideration to the ACCC, that the capacity through the Port in 2007 was 85 million tonne while the proposed capacity for the Port in 2008 is 95 million tonne. As a consequence producers should be able to be allocated at first instance the same tonnage as their 2007 allocation with an equal and fair distribution of the 10 million additional tonne of capacity proposed for 2008.

The CBS in the form it currently operates and the form proposed by the Newcastle Port Corporation does have negative impacts in that it resulted in sub optimum reductions in vessel queues off Newcastle, it did not provide commercial incentive for coal producers to improve efficiencies at their loading points, did not encourage the industry to invest in the manner it should in infrastructure and rail capacity and was subject to manipulation by producers trying to increase their Port allocation by inflating their production capacity.

The CBS also did not encourage the industry participants to take steps to rectify the vessel queuing difficulties caused by the "turn of arrival" access to the Port. We do note that in today's Newcastle Herald, it appears PWCS is now considering amendments to the "turn of arrival" system to a system that in part operates on the basis of a timetable or schedule for access to the Port to load coal.

There was no doubt that the "turn of arrival" position adopted by the industry was a principal and substantive factor contributing to vessel queues. Any CBS or any other system authorised by the ACCC must have as part of its foundation a system by which producers and their clients can schedule a time for their vessels to be loaded at the Port.

The CBS can result in all producers taking an equal reduction in allocation at the Port. As some operations are more marginal in nature than others, any across the board reduction would result or could result in loss of employment at a specific mine or a profitable mine becoming unprofitable, while other mines could have their allocation reduced to a greater extent and still remain highly profitable.

Some mines operate on high levels of contract and casual labour and are able to alter their production without the loss of permanent employment.

To this end, any CBS must have a mechanism by which there can be an independent and fair review so that a particular mine's circumstance can be taken into consideration and allocations to the Port amended accordingly so that mines with special needs would take a lesser reduction.