



6 December 2007

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clark Street
CANBERRA. ACT 2602

Dear Mr Gregson

**Newcastle Port Corporation - Applications for Authorisation A91072-
A91074 - Interested Party Consultation**

We refer to your letter dated 4 December 2007 in relation to the above matter.

Introduction

As requested, Port Waratah Coal Services Limited ("**PWCS**") responds to the Commission's request for comments on the interim authorisation application by Newcastle Port Corporation ("**NPC**") and in relation to the Commission's request for comments on a final authorisation.

NPC has sought the authorisation application and attendant modification of provisions of the PWCS Coal Handling Services Agreement ("**CHSA**") (Annexure 4F), without prior consultation with PWCS. As a result the application does not consider the practical ability of PWCS to implement the NPC Capacity Balancing System ("**NPC CBS**") as proposed in the NPC application. This has meant that no consideration has been given to practical issues relating to other aspects of the CHSA, such as demand nominations for loading capacity or the required process with customers to vary the CHSA to include a CBS for 2008, and the impact on the contracted rail volumes between producers and rail service providers in respect of which contracts PWCS is not a party.

Issues with the NPC application

The continuation of the CBS in 2008 was considered by the Producer Working Group earlier this year and rejected due to a lack of support from producers and

rail service providers. One of the reasons was that many producers believed it was important to consider whole of system capacity, not just port capacity.

If PWCS were to seek to implement the NPC CBS in 2008 it would require overwhelming support from producers as occurred in 2007 for the reintroduction of the CBS (which was expressly for 2007 only). PWCS would also seek the support of rail service providers, as the effective implementation of the CBS in 2008 may override rail contracts and those rail providers previously objected to the continuation of the CBS in 2008.

No such support has been obtained for the NPC CBS and an ACCC authorisation does not override commercial contracts, leaving these commercial and legal issues to be resolved.

Accordingly, the implementation of the NPC CBS is problematic for PWCS from a legal and commercial perspective.

From a practical perspective the amendments to Annexure 4F proposed by the NPC are also problematic. The amendments delete any transitional provisions to implement a new CBS which would be required given the time involved to work through the required process to vary PWCS' CHSA. The amendments also provide for industry support to continue the CBS beyond 2008 without any definition of this test and notwithstanding that authorisation is only sought until the end of 2008.

Moreover, there are no quarterly demand nominations for loading capacity for 2008 or annual demand nominations from 2009. PWCS expects substantial gaming of demand nominations, not only for 2009 but also on a quarterly basis for 2008. PWCS has previously received indicative forecasts of 144 mt for 2009 and new forecasts could be even higher, further exacerbating the capacity and demand imbalance. Any proposal to implement new quarterly allocations may not be as straight forward as selecting a previous quarter as an example and will require consultation with customers and amendments to PWCS' CHSA.

To put forward a new CBS in this manner proposed by NPC will also take away the positive steps put forward in the Vessel Queue Management System ("VQMS") to deal with issues over the longer term. PWCS believes that the Pacific National submission of 11 December 2007 concisely sets out much of the positive foundations of the VQMS. The extension of the CBS as proposed by NPC does not provide a basis to deal with the coal transport infrastructure capacity shortfalls in the coal chain that are anticipated until at least 2010.

PWCS also notes the confusion that the NPC application is causing to PWCS customers, confusion in relation to overseas customers now anticipating a Government imposed CBS and seeking to send vessels to join the vessel queue, as well as commercial uncertainty in relation to PWCS' own contracts by publishing an amended version of provisions in PWCS' CHSA. It has created unachievable expectations and confusion as to operations at the Terminal as well as the counterfactual on the assessment of the VQMS.

Conclusion

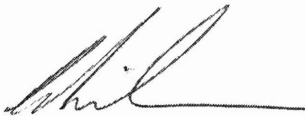
It is difficult for PWCS to implement the NPC CBS and amend its contracts in the manner NPC propose. Naturally this has significant implications for any public benefits of the application.

PWCS has expressed concerns with the NPC authorisation application in that it seeks to put forward PWCS to manage the NPC CBS without appreciating from a practical perspective the operational and legal issues that arise for PWCS, both in the short term and long term for such an application. On the current basis and situation it cannot be implemented by PWCS.

PWCS will raise with the State Government the NPC application and potential ways forward.

As a final matter, PWCS notes the same practical and legal issues that arise for the NPC CBS Application also apply for the Donaldson Authorisation Application for a capacity balancing system.

Yours sincerely



**GRAHAM DAVIDSON
GENERAL MANAGER**