

11th December 2007

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Attention: Mr Scott Gregson

Re: Newcastle Port Corporation - application for authorisation A91072 - A91070] –
interested party consultation

Further to ACCC's memo of 4th December 2007 advising of subject application, we provide the following comments :-

- Ashton has previously indicated its support for a Coal Chain capacity allocation system to reduce the off port vessel queue
- Of the two port allocation options currently before the ACCC, Ashton prefers the Newcastle Port Corporation's (NPC) application utilising the existing Medium Term Capacity Balancing System (CBS) protocols
- NPC's application provides a mechanism for allocation of Coal Chain capacity based on a system that has been in place for four years. It is a system that contains operating protocols that all producers are familiar with and a system that will provide more certainty and clarity
- However, our support of NPC's proposed utilisation of the CBS protocols is conditional on the use of 2008 'Binding Demand Nomination' tonnages provided to PWCS from all producers in 2005 and later revised in 2006. We note that the NPC application containing the CBS terms is somewhat ambiguous in respect to the use of the 2008 'Binding Demand Nomination' tonnages
- The existing CBS scheme has traditionally operated on the basis that individual producer's 'overuse' and 'underuse' allocation tonnages at year end carryover into the following year. We would expect this same arrangement to be considered as part of the proposed NPC CBS protocols. For sake of transparency, we would suggest an independent party be assigned to review the 'overuse' and 'underuse' of 2007 tonnages to be carried forward into 2008.

- We also have reservations in respect to the adoption of a CBS system for a 6 month interim period and then subsequently switching to a VQMS approach. Both systems have different methods in managing/reducing the immediate vessel queue and the consequent reduction in individual producer tonnage allocations. In order to avoid a continuation of the confusion and uncertainty (for both producers and their customers) in relation to individual producer 2008 tonnage allocations we believe that a single operating system for 2008 is required, not a mismatch of two systems.
- We would also take this opportunity to express our belief that, under a 2008 CBS System, rail service providers should not be obliged to haul coal for those companies that do not have established rail contracts in place

Yours sincerely



Tony Page
Marketing Manager
Felix Resources Limited
For and on behalf of
Ashton Coal Mines Limited