



28 November 2008

Mr Darrell Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: darrell.channing@accc.gov.au

Dear Mr Channing

**Applications for authorisation A91107-A91109
Dalrymple Bay Coal Terminal (DBCT)**

Asciano welcomes the opportunity to comment on the application for authorisation of the Queue Management System (QMS).

The authorisation seeks to extend the current authorisation of the QMS system for six months while a Long Term Solution (LTS) is finalised. The applicants intend to submit a LTS implementation plan to the ACCC by 31 March 2009. The LTS will comprise a transition phase (Phase 1) before a final solution is put in place. The applicants will submit a separate authorisation for Phase 1.

The comments contained in this letter constitute Asciano's views on both the interim authorisation and authorisation of the QMS. Asciano will however be submitting further comments on the authorisation of Phase 1, as Asciano has significant concerns with the current, albeit incomplete, proposals for Phase 1.

In summary, Asciano:

- is not strongly opposed to the short term extension of the authorisation of the QMS;
- is concerned by the incorrect conclusion of the applicants on the impact of rationing systems on above rail competition; and
- urges the ACCC to critically test the public benefits and detriments of the forthcoming authorisation for Phase 1 given its potential to negatively impact above rail competition.

We provide the rationale for these views below.

Asciano's Entry into Queensland

Since the ACCC last authorised the QMS in February 2008, Asciano has signed rail haulage contracts with two producers in Queensland. These contracts were concluded after protracted negotiations. Asciano's entry strategy was to target customers who could demonstrate contracted track access and port capacity. The rail haulage agreements ensure that this track access and port capacity is converted into true system capacity. This is achieved through dedicating trains to the haulage task and committing peaking capacity to ensure that the peaks and troughs in task resulting from demand and coal chain capacity variability can be met.

[Confidential information removed].

Counterfactual

Asciano agrees with the applicant's view of the counterfactual. Without the QMS it is likely that the number of vessels in the queue will increase to an inefficient level. We also agree that a counterfactual that assumes that contracts for rail haulage services would be rapidly brought into line with terminal capacity is unrealistic. This is especially true when the period of the authorisation sought, namely six months, is taken into account.

Benefits

The applicants identify four key benefits of the QMS, namely:

- Fewer vessels in the queue;
- Throughput benefits from greater certainty;
- Environmental benefits; and
- Enhanced reputation of Australian coal exports.

Asciano accepts that there will be fewer vessels in the queue in the factual and this would result in reduced demurrage costs. However, based on Asciano's market knowledge the applicants overestimate the size of this benefit. The recent global financial crisis has had a significant impact on demurrage costs. We understand that demurrage has fallen from around US\$20,000 per day to US\$2,000 per day. These conditions would be expected to continue over the term of the proposed authorisation.

The applicants' claimed throughput benefit, based on "anecdotal evidence", is far from convincing. It is unclear why some of the certainty that is claimed to be a result of the QMS, eg the efficiency of the above rail spot market, would not be available in the counterfactual ie a turn of arrival system. In providing spot tonnes rail haulage, Asciano is indifferent as to whether the QMS is operational or not.

Asciano accepts that there would be some environmental benefits from a reduced vessel queue but it is unclear how significant these benefits would be.

Consistent with the ACCC's previous decision, Asciano does not believe that the enhanced reputation of Australian coal exports would be a material factor in favour of the QMS especially given that the QMS would only be in place for a maximum of six months. In addition, it has not been argued, nor is it accepted by Asciano, that the LTS is contingent on the authorisation of the QMS.

Detriments

Several potential detriments are discussed by the applicants. These are:

- Lessening of competition;
- Restriction on aggregate coal exports; and
- Impact on investment incentives and contract alignment.

As noted in our previous submission on the January 2008 authorisation¹, Asciano does not believe that the QMS, especially given it will be in place for a maximum of six months, would result in reduced output from the Goonyella system or reduced investment in the coal chain.

However, the applicants' dismissal of the detriment on rail haulage competition, based on Asciano's entry into the Queensland rail haulage market is misplaced. Rather the challenges faced in Asciano's entry into the Queensland coal rail haulage market illustrate the key importance of this detriment.

It is important to note that Asciano had not previously argued that the queuing system would prevent entry, only that it makes entry significantly more difficult.² There are two key reasons why entry is made more difficult. Firstly, rationing port capacity creates uncertainty around the level of actual versus contracted tonnes that a new entrant will haul. Secondly, in the early years of a contract actual tonnes hauled will be less than contracted tonnes (ie the long term haulage level). Thus entry will be more challenging as indivisible assets will have to be acquired that will not initially be fully utilised.

Negotiations with Asciano's Queensland customers were challenging and lengthy, with it taking over two years before a contract was signed. The difficulty in finding a mutually acceptable commercial outcome is unsurprising when the key features facing Asciano are recognised:

- The need to acquire new rolling stock for the narrow gauge operations in Queensland;
- Capacity uncertainty for producers resulting from port based allocation systems;
- Track access uncertainty due to the rationing of producers at one port (DBCT) and not the other (Hay Point) for above rail operators utilising a common rail network; and
- Price competition with a very large, vertically integrated incumbent rail operator.

While only one of a number of factors, the existence of any allocation system significantly increases uncertainty. Under our customer contracts the downside impacts of a rationing of capacity is shared between Asciano and its customers. Rationing impacts not only on entry but also on expansion, ie it creates a barrier to expansion. As such the application of a capacity management system markedly decreases the potential for meaningful above rail competition in the Goonyella Coal Chain.

In addition a potential detriment of the QMS authorisation not canvassed by the applicants is the impact on the incentives to introduce a viable long term solution. This was identified by the ACCC as one of the detriments in its last authorisation of the QMS.³ Although still relevant, Asciano is less concerned about this detriment given that the authorisation will have a maximum length of six months and will terminate after three months if the applicants have not submitted to the ACCC their implementation plan for the LTS by that time. The progress made towards a long term solution, evidenced through Appendix C and D to the application (Supply Chain Principles and Factors Likely

¹ Letter T Scott Gregson dated 25th January 2008.

² P2 Letter to Scott Gregson 25th January 2008.

³ ACCC, 29/2/08, Determination: Application for revocation of authorisations A30239-A30241 and substitution by A91060-A91062, p 26.

to Underpin the Definition of System Capacity)), gives comfort that the LTS may be achievable in the near term.

Further Comments

Annexure A and Annexure B suggest that an invitation has been extended Asciano to be a participant to the Coal Chain Board via a Memorandum of Understanding. Asciano was unable to join the Board until it had executed customer contracts. However, once the customer contracts were executed Asciano joined the Board and has attended the last 3 monthly Board & Working Group meetings.

Although not strictly relevant to the current authorisation application, Asciano feels it is important to put on record our significant concern with Phase 1 of the Long Term solution.

As noted above, we have created a rail haulage outcome for our customers in the DBCT system which ensures that the full quantity of contracted port and rail capacity is delivered. That is, we are providing dedicated rollingstock including peaking capacity. Phase 1 has the potential to ration our customers' port capacity entitlement, despite them being able to demonstrate they have coal chain capacity to match their full port contracted capacity amount. This rationing will impact negatively on both Asciano and its customers.

DBCT has declared that by end of March 2009, its 85mt expansion project will be completed which matches the 85mt port capacity contracted to producers. In addition QRNetwork has indicated that there are sufficient paths in the Goonyella network to supply 85mt. However, DBCT has stated that 85mt can be delivered only if a cargo assembly model is used because of limited stockpile space. Cargo assembly requires more train sets due to longer cycle and queuing times when compared to the more stable even railings approach.

QRNational has indicated that its models have been completed on the basis of "even railings" not cargo assembly and therefore it has insufficient rolling stock to deliver to its contracts. This should be alleviated through the acquisition of more equipment scheduled for delivery through 2010 and 2011.

The implementation of Phase 1 will impact on all producers whether or not they have the coal chain capacity (including above rail capacity) to meet their contracted tonnes. This creates uncertainty and cost for the above rail operators and distorts incentives, undermining the incentive to have contractual alignment throughout the system.

Asciano will provide further background and evidence on these concerns in our response to the forthcoming authorisation application for Phase 1.

Despite concerns around Phase 1, Asciano is very encouraged by The Supply Chain Principles in Annexure C and the Factors Likely to Underpin the Definition of System Capacity in Annexure D. These are an excellent start in developing the LTS and provide the basis for a sound supply chain wide capacity management process.

Conclusions

It is Asciano's view that significant public net benefits have not been adequately demonstrated by the applicants. However, given the short term of the authorisation sought, allied with the demonstrated progress towards a long term solution, Asciano is not strongly opposed to the short term extension of the QMS authorisation. However, in their analysis the applicants misrepresent the important impacts a rationing system has on rail haulage competition. Going forward, it will be critical that the ACCC appropriately tests the benefits of the forthcoming authorisation application for Phase 1 given the potential for it to significantly undermine above rail competition.

We trust you find these comments useful and would be happy to provide further detail or explanation of our position.

Kind Regards

A handwritten signature in black ink that reads "Tim Kuypers". The signature is written in a cursive style with a long, sweeping underline.

Dr Tim Kuypers
Group General Manager
Access & Regulation