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Our ref: SGC02:0458799

4 December 2008

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission

Attention: Clare McGinness
By email clare.mcginness@accc.gov.au

Dear Dr Chadwick

Authorisation Application A91107–A91109

Thank you for your email dated 1 December 2008 enclosing copies of the Submissions lodged by Rio Tinto Coal Australia Pty Limited, Xstrata Coal Pty Limited and Asciano Limited. We set out below our response to these Submissions.

We note that all three Submissions support the application for interim authorisation.

General Support

The Submissions all state that an interim form of capacity rationing is required to mitigate against the risk of excessive vessel queuing (see Rio Submission page 1; Xstrata Submission page 3; and Asciano Submission page 2).

Rio and Xstrata express their belief that there is a commitment amongst the users to develop a Long Term Solution (LTS) based on the Coal Chain Principles in Annexure C of the supporting Submission lodged with the ACCC on 14 November 2008 and support the continued operation of the Queue Management System (QMS) in order to allow the Applicants sufficient time to finalise details of the Transitional Allocation Mechanism (TAM) (see Rio Submission page 1; and Xstrata Submission page 3).

We note that Asciano agrees with the Applicants' relevant counter-factual, and furthermore, that a counter-factual that assumes that (without a QMS) contracts for rail haulage services would be rapidly brought into line with terminal capacity is unrealistic (Asciano Submission page 2).

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We also note that Asciano does not believe that the QMS would result in reduced output from the Goonyella Supply Chain or reduced investment in the Supply Chain (Asciano Submission P3).

We note that 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 to the Applicants' Submission lodged with the ACCC on 14 November 2008 and that these are 'an excellent start in developing the LTS and provide the basis for a sound Supply Chain-wide capacity management process' (Asciano Submission page 4).

Response to Asciano

Asciano makes a number of comments and contentions with which the Applicants disagree. We set out below our responses that are directly relevant to the interim authorisation.

Asciano Comment (Asciano Submission P2)

Asciano assert that applicants overestimated the size of the benefits from reduced demurrage.

Response

Demurrage estimates were correct at the time the calculations were performed for the application. Asciano appears to refer to spot rates whereas the demurrage estimates were based on contract rates to the applicant users. Whilst contract rates will adjust with a lag, for many users they will remain in place for much of the QMS period.

Concerns regarding Impact on Above Rail Competition

In respect of Asciano's concerns that the operation of a QMS will inhibit competition in above rail services, we note the following:

The underlying assumption of the Asciano submission is that in the absence of a QMS it would be able to fulfil its contract tonnages. This assumes that Asciano's customers would be prepared to incur more demurrage than the other coal producers using the Dalrymple Bay Coal Terminal.

- The QMS will only operate for a defined period of 3 to 6 months, terminating before Asciano's planned ramp-up
- Opportunities for spot-market sales by Asciano will exist under the operation of the QMS between Jan and June 2009

The producers intend to work with all service providers, including Asciano, in the design and development of the TAM and LTS, ensuring that Asciano will have input to the design of any future system

Conclusion

Insofar as Asciano's Submission also deals with matters that are relevant to the application for a final authorisation we reserve the right to make further responses in relation to them.

The producers would also like to re-iterate the following points in relation to the need for interim authorisation:

1. The QMS is required to provide an orderly management of vessel arrivals for an interim and defined period only, providing a substantial public benefit in limiting the risk of demurrage, and not imposing detriment on any coal chain participant.
2. It is supported by all coal exporters via DBCT for the period defined in the application.
3. Failure to authorise the application risks both the creation of a substantial vessel queue at DBCT, plus risks removing the pressure of a self-imposed timetable by the producers to transition to a more sustainable and commercially sound long-term solution aimed at removing the need for future rationing systems once and for-all.

The granting of an interim authorisation will help to maintain the market status quo and will not permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim stage if final authorisation is later denied.

Yours sincerely

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