

ACCC Meeting with Pacific National – Key Points

27 November 2008

ACCC:	David Hatfield, Jaime Martin, Jasmine Tan
Pacific National:	David Irwin (Divisional General Manager – Coal) Susan Fairbairn (General Counsel) Paul Bugler (Access & Regulation)
Location:	Pacific National Office - Level 6, 15 Blue Street, North Sydney
Time:	3:00pm - 4:30pm
Purpose:	Opportunity for Pacific National to provide general comments about Port Waratah Coal Services and Newcastle Coal Infrastructure Group applications for authorisation A91110 – A91112.

The Australian Competition and Consumer Commission (ACCC) requested the meeting with Pacific National (PN) to seek its preliminary views in relation to the above mentioned application for authorisation concerning the Hunter Valley coal chain.

- PN does not support the application because it considers authorisation is likely to reduce the probability of a long term solution being reached in the near future. PN considers the proposed arrangements are likely to take the pressure off the relevant parties to reach an agreement about a long term solution.
PN noted that it is currently preparing submissions in relation to both the Dalrymple Bay and Hunter Valley applications for authorisation.
- Consistent with its previous submissions to the ACCC and the Greiner process, PN submitted that the following principles must be enshrined in any long term solution:
 - (i) allocation must be mine-specific or location-specific (not producer specific as is currently the case)
 - (ii) any party who impacts (positively or negatively) on capacity should accrue the benefits or consequences of that impact.
- PN considered that if authorisation were not granted, the various service providers would quickly find alternative ways to operate the coal chain efficiently. PN noted that some service providers have had preliminary discussions in this regard. PN expects that in this circumstance the Newcastle Port Corporation is likely to quickly implement a regulated queue management process which is under development. This means an increased risk of environmental accidents is also unlikely as the size of the vessel queue will be actively managed / regulated. .
PN submitted that denying authorisation is unlikely to result in foregone investment because expansion of the terminal facilities in Newcastle is already well underway and market conditions have changed since the last two CBS authorisation decisions.

- PN considered the applications under consideration represent a step back from the June Producer Agreement developed during the Greiner Review of the Hunter Valley coal chain. PN noted that the application provides no agreement on what will be done, but only a commitment to doing “something”. PN submitted because of the current favourable market conditions, most producers are and have been focussed on the short term rather than the long term. PN considered there was a real possibility that the proposed short term solution would continue for 9-12 months if authorised.
- Contrary to the supporting submission to the application, PN is of the view that granting interim authorisation will be a disincentive for the industry to reach an agreed long term solution. PN submitted that not granting authorisation will most likely bring the relevant decision-makers (CEOs) together to accelerate finalisation of a long term solution.
- PN submitted that commercial uncertainty in the market means that PN (and possibly QR) are hesitant to invest in more trains. PN submitted that system throughput is likely to fall short of expected port capacity of 145 million tonnes of coal by 2011, as rail track providers are unlikely to establish adequate rail infrastructure in this time. Further, the provision of an additional 8-12 trains in this period would be challenging.

In hindsight, PN considers the various capacity balancing systems (CBS) at the Port of Newcastle have had a detrimental effect on the industry. PN submitted that the bulk of the impact of the CBS falls on the rail providers and they are forced to compromise their contracts due to the allocation of port capacity in absence of any reference to rail contracts and deliverable track capacity. PN suggested that it should not be assumed that the rail providers will continue to comply with a queue management system if it were authorised.

- PN submitted that, if a long term solution had been in place two or three years ago, all coal producers and service providers would have better contractual alignment and greater certainty, which would mean there would currently be more system infrastructure (including trains) in operation and system capacity would be significantly higher.