



A Bua Tinto Group Company

5 December 2008

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

Attention: Ms. Jaime Martin

Dear Ms Martin

Port Waratah Coal Services Limited and Newcastle Coal Infrastructure Group applications for authorisation A91110 – A91112 – interested party consultation

Thank you for the opportunity to comment on the Applications for Authorisation (A91110 – A91112) submitted by Port Waratah Coal Services Limited (PWCS) and Newcastle Coal Infrastructure Group Limited (NCIG).

Coal & Allied Industries Limited (C&A) supports the above applications for authorisation with regard to implementing the PWCS Tonnage Allocation Stage 1 and developing the Long Term Access Protocols providing for access to and expansion of terminal capacity at the Port of Newcastle on an ongoing basis.

C&A supports the necessity and urgency of PWCS Tonnage Allocation Stage 1

As the ACCC is aware, the current CBS expires on 31 December 2008. C&A believes that an interim capacity allocation system is required to manage immediate operational issues while a long term industry agreement is fully developed.

More specifically, C&A requires certainty on port access from 1 January 2009 to plan its production, employment levels and sales with confidence.

C&A agrees with the Terminal Operators' view that absent an interim capacity balancing system, a substantial vessel queue will re-form off the port of Newcastle, and concurs with the estimate of demurrage in the Terminal Operators' submission.

C&A therefore supports the authorisation of the PWCS Tonnage Allocation Stage 1 in accordance with the applications.

C&A supports the proposed timeline and process for Long Term Terminal Access Protocols

Reaching a long term industry agreement on port access for the Hunter Valley Coal Chain is of significant importance to C&A.

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C&A has been a significant user of the Port of Newcastle for many years, and we expect that our production volume capability will continue to grow in the Hunter Valley region. C&A therefore requires long term security of access to export infrastructure, both port and rail, to underpin expansions and unlock the potential value of the company's resource base in the Hunter Valley region.

As set out in the submission made by the Terminal Operators in support of the applications, the Producers have, in connection with the Greiner Review process initiated in early 2008, been actively involved in discussions with a view to identifying a long term solution to the Hunter Valley Coal Chain infrastructure issues. At the instigation of Mr Greiner, the Producers initially developed a proposal for access to the PWCS and NCIG terminals (the "Producers' Agreement") which formed the basis of Mr Greiner's report to the New South Wales government in July. Intensive discussions have continued between the Producers since that time, led by the "Producer Steering Committee", in seeking to address issues raised by the Government in relation to the proposal submitted by Mr Greiner and also to reach broad consensus between the Producers on the details of a long term solution which would be authorised by the ACCC. C&A has chaired the Producer Steering Committee, and has played a key role in framing proposals which are designed to meet the competing concerns and, in many cases, the divergent positions of the various stakeholders.

In C&A's view, the discussions to date have resulted in only limited progress in developing the key principles for a broadly supported long term solution. This is disappointing, particularly given the very significant time and resources which have been devoted to the exercise and the goodwill exhibited by a number of parties in seeking to reach an acceptable compromise position. Whilst C&A voiced its support for the Producers' Agreement of 27 June, it appears that a number of coal producers do not now support it, or, at least only support some elements of it, and hence it also appears that there will need to be renewed negotiations around key issues.

Notwithstanding the slow progress to date, C&A considers it important that discussions and negotiations continue, with the active engagement of the Producers and the Government and in the constructive environment which an interim capacity allocation system will foster, so that every chance is given for an acceptable long term solution to be agreed (for the benefit of not only C&A, but the industry as a whole). If negotiations had to occur in an environment where there was no authorised interim arrangement then, in C&A's view, this is less likely to result in a speedy resolution of outstanding issues as the parties may be distracted by the financial and other implications of queues reforming rather than focussing on the implementation of a long term solution.

C&A also considers it vital that any long term solution must address rail access, so as to ensure full co-ordination and alignment of access and capacity entitlements across the Coal Chain.

Against this backdrop, C&A supports the proposed timeline and process for the development of Long Term Terminal Access Protocols which is provided for in the applications. C&A will, in turn, endeavour to work closely with the Hunter Valley coal industry to develop the MOU and subsequent Long Term Terminal Access Protocols as outlined in the applications.

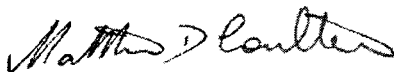
C&A's view on "compression" impact

C&A has noticed a divergence of views between PWCS and NCIG on the issue of "whether or not contract compression inhibits investment" in clause 2.4 of the submission. C&A would like to clarify its view on the issue of any port allocation methodology which involves the possibility open-ended "compression" of capacity entitlements, as follows:

- C&A supports the PWCS' view regarding the common user clause and the "compression" impact caused by the clause. i.e.
 - *Whilst "compression" may facilitate entry in an immediate sense, it lessens certainty in relation to new Producers' future volumes (when compared to non-compressible contracts); and*
 - *When compared to non-compressible contracts, "compression" is likely to reduce the level of investment certainty for service providers and affect their ability to allocate resources and investment efficiently at the relevant terminal or within the relevant network. PWCS also considers that "compression" may limit the ability of Producers and rail providers to meet their respective contractual obligations to each other under long term contracts, result in the mis-allocation of investment, limit the ability of rail providers to recover investment in new expansion works, and therefore create a substantial disincentive for such an investment in the first place.*
- C&A does not support entering into long-term port access contracts with an open-ended "compression" clause, as it introduces a substantial additional risk to C&A's investment decision. In particular, if C&A's share of port capacity can be continually diluted because of capacity "compression" to make way for new entrants, C&A's investments in mine expansion, below rail take-or-pay contract positions, and above rail take-or-pay contract positions, etc. will be less attractive. If C&A has a reduced incentive to invest and enter into long term contractual agreements with rail service providers, then rail service providers will in turn be less able to invest in future capacity expansions. C&A has not invested in certain projects to expand mine capacity primarily because there is insufficient certainty around access to infrastructure.
- There may be times that port contracts may need to be temporarily compressed if, at those points in time, contracted volumes cannot be immediately satisfied. Mechanisms must exist within contracts to take these situations into account, without it being necessary to agree new arrangements which may require ACCC authorisation.

Please contact me on 07 3361 4228 if you have any queries.

Yours sincerely



Matt Coulter
General Manager – Corporate Development