

Authorisation Application A91107-A91109

Supplementary Submission on QMS developments since application

The Applicant Users of the Dalrymple Bay Coal Terminal (DBCT) wish to provide supplementary material to the ACCC to assist primarily in its consideration of the interim authorisation of the Queue Management System (QMS). This submission addresses the following issues:

- latest developments regarding demand for coal;
- the benefits of providing an interim authorisation in light of declining demand for coal;
- the Users development of a long-term solution; and
- comments on submissions received by the ACCC.

Developments regarding demand

Demand for coking coal has dropped significantly since late October. As at 6 December 2008 there were 14 vessels in the queue at DBCT.

This drop in demand has been sudden and is consistent with the significant reductions in demand for steel based products that have been reported in response to the global financial crisis.

However, the broad view of the Applicant Users and forecasters alike is that global coal demand will recover from the emerging recession. The uncertainty concerns the period of time over which such a recovery will occur.

There are several factors which would contribute to early recovery, including:

- fiscal stimulus packages – the main use of steel in the world is construction and infrastructure – several of the stimulus packages appear to be accelerating infrastructure projects which will increase steel demand;
- lower commodity prices will lead to lower steel prices, which will in turn stimulate demand; and
- exaggeration of reduction in demand by coal buyers seeking price discounts. Buyers have strong incentives to overstate the impact of the downturn to strengthen their position for a significant price reduction in the upcoming negotiations.

Rationale for interim authorisation despite reduced demand

The Applicant Users are aware that the reduction in demand that has been experienced reduces (but does not eliminate) the likelihood of a lengthy queue forming at DBCT in the first 6 months of 2009.

Apart from the uncertainty surrounding the demand outlook in 2009, there remains considerable benefit in pursuing the authorisation application. The principal reason is that it brings with it the ACCC's scrutiny for a long-term solution to be developed.

Opportunity

The reduction in short-term demand provides an important opportunity to develop and begin to implement the long-term solution that addresses the deficiencies in current arrangements. This is because in a less constrained environment there will be a greater opportunity to focus senior management on the development and agreement of a long term solution as individual commercial drivers are less pronounced.

Momentum

Considerable momentum has been developed for the resolution of the long-term solution for the management of the supply chain. This momentum began with the O'Donnell review, and has since led to:

- the establishment of the Dalrymple Bay Coal Chain Board;
- the creation of the Office of the Central Coordinator for the Goonyella system;
- the establishment of a co-located cell with one representative of each service provider from 1 July 2008, and agreement in principle for a co-located team in a dedicated premises;
- master planning being initiated for coal chain as a whole (including Abbot Point once commenced), with the preferred consultants now having been selected to develop the necessary IT tools and gather the necessary inputs from service providers to determine system capacity (although processes to align the whole of coal chain planning with service provider based planning will be resolved as part of the long-term solution);
- co-operation of service providers and producers for aligning maintenance; and
- The Applicant Users agreeing to 10 principles to present to the lessee of the Dalrymple Bay Coal Terminal (Babcock and Brown Infrastructure) in conjunction with the re-assessment of its access undertaking.

There is no question as to the determination of the majority of the Applicant Users to agree on a long-term solution for the management of the coal supply chain. However, rejection of an interim authorisation will significantly increase the risk that certain Users will withdraw from the current process.

Accordingly, any failure to grant an interim authorisation increases the risk of the current opportunity to develop and implement a long-term solution with unanimous industry support being lost.

Status of development of the long-term solution

The Dalrymple Bay Coal Chain board has appointed a project manager to assist it in developing a long-term solution. A work program has been developed for this process with the following tasks identified:

- Objectives - agreement of the key objectives of the model for each of the participants in the supply chain;
- Supply chain issues to be resolved – the substance of the work program addresses the key supply chain issues to be addressed comprising:
 - defining the 'supply chain' – addressing the geographic scope of the supply chain, including the inclusion of the Northern Missing Link and Abbot Point, as well as other alternative ports;
 - defining supply chain capacity consistently across the chain – a crucial consideration to the success of the long-term solution involves resolving and unifying the assumptions to underpin the assessment of capacity across the supply chain. A related issue concerns how this capacity will be measured and translated into contractual entitlements as well as system operations and planning;
 - Master Planning – planning processes will need to be reformed, roles clarified and amendments made to investment approval processes contained in regulatory instruments (such as QR's and BBI's access undertakings);
 - contractual alignment – which will deal with:
 - what needs to be aligned (that is, what terms and conditions, what aspects of capacity entitlements require alignment and over what period); and
 - how this alignment will be achieved and over what timeframe;
 - Governance Structure - a governance structure will need to be put in place to support the model. It is anticipated that the existing Memorandum of Understanding for the Coal Chain Board will be used as a starting point;
 - pricing - ensuring principles are established to align pricing outcomes with the consumption of supply chain capacity;
- stakeholder management; and
- implementation - a detailed implementation plan will need to be prepared to further develop the detailed principles to underpin future contracts.

Anti-competitive harm and public benefit

The Applicant Users do not believe that the QMS will result in any material anti-competitive impacts.

In relation to the impact on Asciano, it should be recognised that the period for which authorisation is sought does not correspond with the proposed ramp up of Asciano's operations in Queensland. This is because it is understood that the timing of Asciano's entry into the Queensland market will be as follows:



- in the period to 30 June Asciano's operations will be limited to commissioning of rollingstock and associated equipment;
- between 30 June and 31 December, Asciano will be in "ramp up" phase of its operations; and
- full operation to commence from 1 January 2010.

Accordingly, the granting of an interim authorisation is not expected to have any adverse impacts on Asciano. Moreover, Asciano is represented on the Coal Chain Board and will therefore participate in the development of the long term solution.

In past determinations, the ACCC has identified lost exports arising from the QMS as a public detriment. It is unlikely that the QMS will have an adverse effect on export sales in the current climate.

Finally, in relation to demurrage, the Users reiterate the comments contained in our response dated 3 December 2008 (p2). It is incorrect to assess demurrage liability on the basis of the spot market when demurrage rates for mines are based on long-term contracts. Whilst contract rates will adjust with a lag, for many users they will remain in place for much of the QMS period. The Users will provide an updated estimate if it is helpful to the Commission – although there is considerable uncertainty as to the queuing outcomes expected for the first half of 2009.

Conclusion

In essence, there has been a substantial change in demand for coal since the authorisation application was lodged with the ACCC on 14 November 2008.

Nevertheless, the granting of an interim authorisation will help maintain the momentum that has developed for reform of the coal chain.

Consequently, there will be substantial public benefit and little or no public detriment if the Commission grants an interim authorisation.

Yours sincerely

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Encl

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