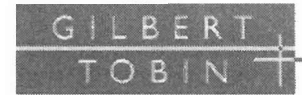


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LAWYERS

18 February 2008

By email

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Dear David

Response to public submissions made by interested parties on NPC's application for authorisation

We act for Newcastle Port Corporation (**NPC**).

We refer to NPC's application for authorisation pursuant to sections 88(1) and 88(7) of the Trade Practices Act dated 4 December 2007 (application numbers A91072-A91074).

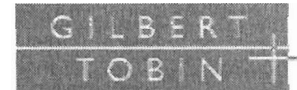
Please find attached NPC's brief submission in response to comments made by interested parties during the consultation process on NPC's application for authorisation.

Please do not hesitate to contact us if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read "Liza Carver".

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LAWYERS

Newcastle Port Corporation

Response to public submissions made by interested parties in relation to NPC's application for authorisation

18 February 2008

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1 Introduction

Newcastle Port Corporation (**NPC**) has made this submission in response to comments made by interested parties during the consultation process on NPC's application for authorisation dated 4 December 2007 (application numbers A91072-A91074).

On 20 December 2007, the Australian Competition and Consumer Commission (**Commission**) granted interim authorisation to NPC's application.¹

This submission addresses the following matters:

recent developments affecting NPC's application for authorisation; and

- some of the key issues raised by interested parties during the consultation process on NPC's application.

NPC has not sought to respond to every submission made by interested parties. In many instances, the issues identified by interested parties in their submissions have been superseded by recent events. NPC has not commented on issues where this is the case.

Recent events include:

NPC's request to amend certain provisions of the Proposed System on 17 December 2007 and 19 December 2007, which covered the following:

- the use of 2008 demand nominations, instead of 2007 nominations
- the lodgement of demand profiles by coal producers to enable the system administrator to determine quarterly loading nominations for 2008
- amendments requested by PWCS to address certain transition and implementation issues;
- the withdrawal of the competing VQMS application for authorisation lodged by PWCS, Pacific National and QR Limited; and
- the NSW Government's appointment of the Hon. Nick Greiner to assist the coal industry in developing a transitional medium term solution to address capacity constraints in the Hunter Valley coal chain.

NPC has commented on these developments to the extent that they may impact on NPC's application (or the Commission's decision making).

Terms that are capitalised and which are not defined in this submission have the meaning given to those terms in NPC's application for authorisation.

¹ Australian Competition and Consumer Commission, *ACCC letter to Gilbert + Tobin*, 20 December 2007.

- key participants had not consented to participate in the arrangement that was the subject of the request for authorisation by NPC.

As the Commission is aware, the Chief Executive Officers of NPC and PWCS engaged in extensive discussions with coal producers in December 2007 to ascertain the level of support for the Proposed System. From these discussions, it became apparent that the **majority** of coal producers supported the Proposed System as an interim measure.

Of the 19 coal producers that made public submissions on NPC's application for authorisation, 14 expressed broad support for the continuation of the CBS (at a minimum) as an interim measure until the industry achieves consensus on a longer term solution to the coal chain issues facing the Hunter Valley coal industry. Critically, the Proposed System has also received the support of PWCS, which has now proceeded to implement the Proposed System for 2008.³

4 Measures to develop a medium and long term industry solution

4.1 Solution to capacity constraints is being addressed outside the authorisation process

Some interested parties have expressed the view that:

a long term solution is required to address the capacity imbalances that exist in the Hunter Valley coal chain; and

- the CBS does not address the underlying constraints in the Hunter Valley coal chain and may undermine the development of a long-term solution.

In addition, in its decision granting interim authorisation of the Proposed System, the Commission has also expressed reservations about the negative impact that capacity balancing systems may have on long-term investment in the sector.⁴

"The ACCC has previously expressed the view that capacity allocation systems are transitional measures only, and that continued operation of the CBS on an extended basis may hinder the development of a long term solution to address the underlying issues behind constrained coal chain capacity in the Hunter Valley".

NPC agrees with interested parties that a long term solution is required to address the capacity constraints that exist in the Hunter Valley coal chain.

The importance of a long term solution, based on greater levels of infrastructure investment, is evident in light of the following factors:

- the existing mismatch between capacity in the Hunter Valley coal chain and the demand nominations submitted by coal producers for 2008;
- increasing levels of coal production in the Hunter Valley and the opening of new mines (which are located further away from export infrastructure relative to older mines and require greater amounts of rail capacity); and

³ PWCS, *Media Release: Hunter Coal interim export allocation plan; Consideration of independent arbitrator*, 20 December 2007.

⁴ Australian Competition and Consumer Commission, *ACCC letter to Gilbert + Tobin*, 20 December 2007, page 2.

- first, the world without any capacity allocation system in place; and
- second, the world without the CBS, but with the VQMS proposed by PWCS, Pacific National and QR Limited in authorisations A91068 – A91070 (**VQMS Application**).

The withdrawal of the VQMS Application on 22 January 2008 removes one of the counterfactual scenarios that were to be considered by the Commission in its evaluation of the Proposed System. Accordingly, it is only necessary for the Commission to consider the Proposed System by reference to a world without any capacity allocation system in place.

5.2 A world without a capacity balancing system

NPC is aware that some interested parties consider that the CBS does not have a positive impact on vessel queues at the Port of Newcastle. In other words, some interested parties consider that the benefits flowing from the CBS are limited compared to the world without any capacity balancing system in place.

NPC disagrees with this view. NPC considers that, absent authorisation of the Proposed System, excessive vessel queues would be likely to form at the Port of Newcastle, resulting in excessive demurrage charges being payable by coal producers.

Historically, the CBS has had a positive impact on vessel queues. Evidence to this effect was provided by NPC in the supporting submission to its application for authorisation. Such a view is also shared by several coal producers (as evidenced by their submissions to the Commission).

In NPC's view, recent data also supports the view that the overall level of vessel queues are lower under the CBS than in a world without the CBS in place. Data from the Hunter Valley Coal Chain Logistics Teams suggests that vessel queues for the first 3 months of 2008 will remain at reasonable levels relative to periods where the CBS was not in place.

Month	Forecast end of month vessel queue ⁶
January 2008	23 (actual)
February 2008	33 (based on coal producer forecast arrivals)
March 2008	31 (based on coal producer forecast arrivals)

NPC is aware that the Commission receives periodic updates from PWCS on the level of vessel queues at the Port of Newcastle and related information on the performance of the Hunter Valley coal chain. Accordingly, NPC does not intend to provide further information about vessel queues in this submission or as periodic updates (unless requested otherwise by the Commission).

⁶ Hunter Valley Coal Chain Logistics Team, *Coal Chain Performance*, 10 February 2008. See, <http://www.hvccclt.com.au/pages/throughput.php>