

COAL & ALLIED

18 December 2007

Managed by Rio Tinto Coal Australia

Mr Gary Webb
Chief Executive Officer
Newcastle Ports Corporation
PO Box 663
Newcastle NSW 2300

Dear Gary

I received a call from you yesterday, and have subsequently received the NSW Government's question via e-mail (attached).

As a stand alone proposal, C&A is not in favour of a "6 month CBS" along the lines proposed in your e-mail. This by itself does not appear to take the industry anywhere. While it leaves more time for discussion between industry participants, it seems that unless something fundamentally changes, it will not deliver a different outcome than the Producer Working Group delivered – which was no outcome.

C&A has concerns with using the 2008 nominations, for two reasons. Firstly, C&A believes the 2008 nominations were "gamed" – i.e. producers requested more than what they required just in case they were pro-rated down. Secondly, even in the absence of gaming behaviour, use of the 2008 nominations perpetuates a system whereby expanding producers receive priority over existing users, which can, and has, resulted in existing users having to hand coal chain capacity (which it is actually utilising) to new producers who are in the process of bringing on capacity. Existing users have to cut production, disappoint customers, reduce employment and disappoint shareholders.

C&A notes that NPC's original Application to the ACCC referred to the 2007 port nominations, while its revised nomination references the 2008 nominations. C&A made a submission to the ACCC supporting, in principle, the concept of using 2007 port nominations. The use of 2008 nominations versus 2007 nominations for a CBS has a significant detrimental impact on C&A.

However, notwithstanding the fact that C&A has concerns about the use of 2008 nominations, there is a significant risk of the vessel queue rising. C&A would be prepared to support a CBS for 2008 based on the 2008 nominations on conditions that:

- (1) CBS nominations are absolutely capped at 116 Mt until coal chain capacity above 116 Mt becomes available – i.e. at least until the NCIG port comes on stream in mid 2010.
- (2) The NSW Government commits to engaging in discussions on addressing the practical application of the common user clauses in the Kooragang lease to allow all coal producers to enter into fixed and firm long term port contracts which will allow all coal producers to pursue their growth agendas over the long term.

I trust that this satisfactorily addresses C&A's position on this matter. Please do not hesitate to call me or Matt Coulter, General Manager – Corporate Development if you have any queries.

Yours sincerely



Hubie van Dalsen
Managing Director

Copy: Scott Gregson
General Manager, Adjudication Branch
Australian Competition and Consumer Commission

From: Gary Webb [redacted]
Sent: Monday, 17 December 2007 3:49 PM
To: [redacted]

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Cc: scott.gregson@accc.gov.au
Subject: RE: Coal Chain Allocation for 2008

Dear Everyone

Thank you for your feedback today. Graham and I were not able to connect with four producers. As requested by some, below is the question posed by me:

I am calling on behalf of the NSW Government.

Do you support a CBS for the first 6 months of 2008? bearing in mind that it will involve:

- the existing 2008 demand nominations;
a call for the first quarterly or monthly demand nominations by 31 December 2007;
be subject to the ACCC granting the authorisation to the current NPC application;
- Producers will agree to waive any PWCS non compliance with the Coal Handling Services Agreement with the particular producer arising out of the implementation of this CBS; and
- PWCS agreeing to implement the CBS.

Since returning to the office, I have been informed that the ACCC are supportive of the ring around by PWCS and NPC and are interested in the producer's response.

The ACCC has requested that producers advise Scott Gregson of the ACCC directly (at the email address above) of their response to the NSW Government's question, in order to assist their decision making process on the current NPC application.

As discussed, given some of the timing issues, your prompt response is needed.

Regards

Gary Webb
CEO
Newcastle Port Corporation