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21 September 2009

By Email - Richard.chadwick@acc.gov.au;

Dr Richard Chadwick
General Manager, Adjudication
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Copy - jaimie.martin@acc.gov.au; david.hatfield@acc.gov.au

Your reference: C2009/1251-02

Dear Dr Chadwick

Integra Coal Operations Pty Limited

1. We refer to your letter of 15 September 2009, inviting submissions on the proposed Capacity Framework Arrangements dated 14 September 2009.
2. This letter is a public file submission.
3. Overall Integra supports the introduction of the proposed Capacity Allocation Framework.
4. Integra is concerned that two late amendments have been incorporated into the amended Framework that did not appear in the original application and without adequate explanation or opportunity for discussion or industry agreement, namely:
 - if an excessive vessel queue arises or is forecast to arise, PWCS's ability to make downward adjustments to the Load Point Allocations of that group of shippers who use the "turn of arrival" system, whilst preserving other shippers' Allocations (see new clause 9(e), p.40) (**Vessel Sequencing System**); and
 - from 2012, the reduction from 5Mtpa to 3Mtpa of the threshold below which small producers may use their Allocation within a quarter, instead of a month (see Part C, Dictionary, definition of **Allocation Period**, p.42) (**Small Producer Threshold**).
5. Integra submits that these late changes, which depart from the Implementation Memorandum and which have not had adequate consultation, may cause serious detriments to small producers and to the overall efficiency of the scheme and are not required to give effect to the long term solution for capacity expansions for the export of coal from the Port of Newcastle.
6. Their introduction at this late stage is not justified and the ACCC is requested to issue an interim and final authorisation which expressly "carves out" these late changes from the approved scheme. They may be considered at a later stage.
7. Integra and other producers have raised these concerns directly with PWCS in recent correspondence and not received any response.

Proposed Vessel Sequencing System

8. PWCS has proposed that under new clause 9(e), if "*an excessive vessel queue arises or is forecast to arise...arising from the random nature of vessels arriving...under the turn of arrival system*" PWCS may make "*one or more downward adjustments on a pro rata basis*" to the Load Point Allocations of a Producer utilising the turn of arrival system.
9. To date all producers have used the turn of arrival system, but it appears PWCS is developing a Contracted Sequencing System which would not be subject to the risk of reduced Allocation under this clause. This concept is only at a preliminary stage and it is not clear how it would operate in practice.
10. Any Contracted Sequencing System would need to be shown to be fair and equitable to small producers who are at greater risk of difficulty in making forward vessel bookings, because of the risk of capacity fluctuations from the smaller scale of their output, and as such, place a greater reliance on the turn of arrival system. This issue can only really be addressed with certainty once the details of the Contracted Sequencing system have been agreed.
11. Producers have put these concerns to PWCS and requested a meeting to learn more about the rationale for and potential operation of the Vessel Sequencing System and to decide on a joint way forward. However, PWCS has not yet clarified the position.
12. Integra submits that the consequence of the change is to expose those producers, who are unable or unwilling to take up the yet to be defined Contracted Sequencing System, to the risks of Allocation reductions, with no appeal rights and no alternatives to ship their coal. These risks are likely to be greatest for the smaller producers as **larger producers with consistent and larger production have less production risk in meeting a vessel nominated in advance.**
13. This is a major change and one that departs from the agreed Implementation Memorandum. It should only be considered if it has broad agreement from large and small producers. That agreement has not yet been given.
14. As proposed, the clause lacks transparency and appears to give PWCS a broad discretion to reduce a turn of arrival shipper's Load Point Allocation. This could be used to drive a large hole through the carefully devised and complex provisions of proposed Capacity Allocation Framework. The Framework has been designed to increase certainty for producers.
15. Until an acceptable understanding has been reached, Integra submits that clause 9(e) should be either deleted in its entirety from any ACCC approval, or the clause amended and replaced with the following:

"(i) If at any time an excessive vessel queue arises or is forecast to arise which PWCS reasonably determines is due to unutilised PWCS Capacity arising from the random nature of vessel arrivals, PWCS may make one or more downward adjustments on a pro rata basis to the Load Point Allocations of [all] Producers and any other relevant customers in a manner that reasonably reflects the lost capacity of the Terminals.

(ii) In deciding the amount of any downward adjustment to the Load Point Allocations of the Producers and any other customer, PWCS may have regard to the System Assumptions and any recommendations made by HVCCC."
16. Integra submits that PWCS should develop the Contracted Sequencing System first and gain industry agreement before seeking approval to impose the Vessel Sequencing System unilaterally on producers.

New definition of small Producer - Allocation Period

17. Under the new definition of Allocation Period, the definition of a small producer will be reduced from 5Mtpa to 3Mtpa as from 1 January 2012 onwards.
18. There will be a substantial public detriment if this late change to the Allocation system is permitted. This will require small producers such as Integra, (producing between 3Mtpa and

5Mtpa from 1 January 2012), to use their Load Point Allocation within a one month period rather than a quarter or suffer penalties (clause 2A(k)). This will raise significant logistical issues for small producers because of their small volumes and their exposure to risks of production interruption such as long-wall movements.

19. This change also threatens the competitiveness of smaller producers in the long term because this tighter requirement (to use allocation within a one month period or lose it and face penalties) raises a significant barrier to expansion for new entrants and expanding small producers.
20. The outcome of the PWCS change may be to simply favour the larger producers over the smaller in the longer term, which will be against system equity and efficiency.
21. This change could also result in a reduction in the total volume of coal being shipped through the coal chain because of the smaller producers' difficulties meeting the one month allocation usage requirement.
22. It is not clear to Intrega why the threshold has been reduced to 3Mtpa, given the 5Mtpa has been generally accepted by industry to date. The rationale has not been explained by PWCS despite at least 8 shippers alerting PWCS of their concerns and offering to meet to discuss the issue. Instead, the amended Capacity Allocation Framework has been submitted to the ACCC without industry consultation on this issue.
23. This is also a major change to the agreed Implementation Memorandum.
24. Intrega requests that a new threshold should not be set until there is a greater understanding of the impact on this on the coal chain and proposes that the definition of "Allocation Period" in Part C be amended as follows:

Allocation Period means where the Producer has aggregate Load Point Allocations in the relevant year:

(a) greater than 5Mtpa, a month; or

(b) less than or equal to 5Mtpa, a quarter.

Further information

25. Please contact me if you wish to discuss the foregoing.

Yours sincerely



Michael Mapp
General Manager
Integra Coal Operations Pty Limited