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David Hatfield
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

8 July 2009

Dear Mr Hatfield

Port Waratah Coal Services Limited (PWCS), Newcastle Coal Infrastructure Group (NCIG) and Newcastle Port Corporation (NPC) applications for authorisation A91147 – A91149 – interested party consultation

Coal & Allied Industries Limited (**C&A**) welcomes the opportunity to comment on the Applications for Authorisation submitted by PWCS, NCIG and NPC on 29 June 2009. C&A intends to provide a submission with regards to the substantive application by 24 July 2009. In the meantime, C&A wishes to confirm its support for the applicants' request for interim authorisation.

C&A supports the proposed transitional arrangements and the urgency of interim authorisation

As the ACCC is aware, the current ACCC authorisation expired on 30 June 2009. This authorisation was effective in mobilising the industry and the NSW Government to develop a thorough long term solution for Hunter Valley coal chain capacity issues. C&A is encouraged by the significant progress made by the industry and the NSW Government over the past months toward finalising the details of a long term solution.

As discussed in the application for authorisation, although the industry and the NSW Government have made considerable progress toward finalising the details of the arrangements, there is a large suite of documents required in order to give effect to the long term solution.

C&A supports the position of the applicants in relation to the benefits of a timely authorisation. C&A believes it is important that PWCS is able to make 2009 Base Tonnage Offers to producers and conduct its nomination and allocation process for 2010 and onwards as soon as possible so that:

- producers can obtain certainty about the volume of coal they will be able to export;
- our customers can obtain certainty about the volume of coal they will be able to purchase;
- both producers and service providers can better facilitate business planning processes in order to align investments in mines and infrastructure in a timely manner;

C&A also supports the position that the “phase-in” approach is a necessary step towards the implementation of the long term solution. C&A recognises that infrastructure capacity shortfalls will continue to exist in the Hunter Valley coal chain until the construction of rail and port infrastructure expansions are completed, and enough rolling stock is acquired. Therefore the coal chain still requires a “self-correcting” mechanism (i.e. that contemplated in the phased approach) to ensure demand for and supply of coal chain capacity remains aligned in the intervening period.

C&A believes the “phase-in” approach is fundamentally different from the previous Capacity Balancing System (CBS) since it forms part of the Long Term Capacity Framework. This framework will provide producers and service providers with the necessary commercial provisions required to underpin long term investments in the expansion of capacity. In addition, C&A recognises that the NSW Government has played an influential role in guiding the industry to develop the Long Term Capacity Framework. In particular, the intended amendments of the terminal lease agreements are key enablers for the ports to commit to expansion investments backed by long term take-or-pay contracts. As such we believe the proposed “phase-in” approach is not a simple repeat of the previous CBS.

In the absence of interim authorisation, C&A believes that a substantial queue of vessels will develop off the port of Newcastle. As at the date of this letter, one week after the expiry of the previous authorisation, there is a queue of around 49 vessels off the Port of Newcastle. This is expected to increase in the absence of interim authorisation being granted. C&A is concerned that such a situation may lead the industry to shift focus to managing short term operational issues rather than continuing the development of the documentation required for the implementation of the long term solution.

C&A is also aware that large vessel queues at the Port of Newcastle will result in significantly higher demurrage fees, as indicated in the application for authorisation. C&A believes that interim authorisation would provide a substantial benefit to Hunter Valley producers and Australia in reducing the magnitude of these costs. Considering the good rate of progress by the industry toward a long term solution, C&A does not believe there to be any detriment to the provision of interim authorisation.

Progress toward a long term solution is now in its final stage

Whereas the previous application for authorisation by PWCS and NCIG was based on an agreement of principles, current industry efforts are focussed on the finalisation of the detailed suite of long-term documents to give effect to the agreed principles.

In recent months the industry and the NSW Government have deployed substantial resources to developing these documents. C&A believes there is substantial evidence that the industry and the NSW Government have progressed from the negotiation of major principles toward the implementation of a long term solution, in particular:

- Drafts of PWCS long term contracts and terminal access protocols were circulated within the industry on June 3. These contracts are now being finalised and consultation sessions with the necessary stakeholders have been planned.
- The Contractual Alignment Group chaired by Matt Coulter of C&A, has undertaken significant progress toward ensuring the alignment of coal chain contracts between each service provider.

- The industry is in the process of establishing the Hunter Valley Coal Chain Coordinator ('HVCCC') that will ensure efficient operation of the coal chain as a whole. The interim authorisation will provide sufficient time for this corporate body to be finalised.
- C&A understands that the terminal operators have made significant progress with the NPC in discussions regarding lease arrangements. Work has also commenced on drafting levy protocols and the capacity framework agreement.

C&A is confident that the work required by the industry for implementation of the proposed conduct, if it maintains its current high intensity, will be successfully completed by the August 31 date. If, in any case, arrangements are not finalised by this date, C&A understands that PWCS and NPC have been discussing alternative bilateral arrangements that can be used as a backup solution going forward.

C&A believes that the coal industry in the Hunter Valley needs to retain certainty and stability of port arrangements throughout this process in order to continue at its current momentum. For this reason, an interim authorisation until 31 December 2009 is needed. During this period all parties need to focus on the task of finalising the relevant documentation without the additional distractions and uncertainties that would result from a failure to obtain interim authorisation.

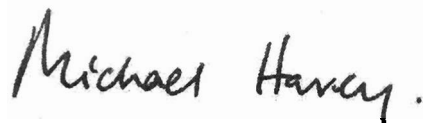
C&A largely supports the long term arrangements proposed by PWCS, NCIG and NPC

C&A believes that the long term arrangements contained in the application for authorisation will provide producers, service providers and customers with the certainty required for the optimisation of and investment in the Hunter Valley coal chain. Although C&A maintains some concerns regarding the proposed mechanisms for implementing a long term solution (for example, the reintroduction of the 'common user clause' in the instance that PWCS breaches a lease condition), C&A is confident that the industry will successfully address these issues by 31 August 2009, as proposed by the applicants.

C&A plans to provide the ACCC with a more detailed submission concerning the substantive application for authorisation by 24 July 2009.

Please contact Matt Coulter on 07 3029 1819 or Sam Xiao-Fan Zhuang on 07 3029 1822 if you have any queries.

Yours sincerely



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