



31 July 2009

Mr. David Hatfield and Ms Jaime Martin
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 3001

Dear Mr Hatfield and Ms Martin

Re: Port Waratah Coal Services Ltd, Newcastle Coal Infrastructure Group Pty Ltd and Newcastle Port Corporation applications for authorisation A91147 - A91149

Introduction

Xstrata Coal ("Xstrata") supports the authorisation application made by Port Waratah Coal Services Ltd ("PWCS"), Newcastle Coal Infrastructure Group Pty Ltd ("NCIG") and Newcastle Port Corporation ("NPC") for the New South Wales coal industry long term solution.

Xstrata has consistently submitted that providing coal producers with certainty of access to coal chain infrastructure is vital to underpinning the on-going efficient investment and operating decisions in relation to upstream and downstream elements of the supply chain. In this regard, Xstrata considers that certainty will largely be achieved through the long term solution and in particular the contractual alignment proposed by the conduct for which authorisation is being sought. It is then a question for individual coal producers to make their own commercial investment and operational decisions having regard to the framework that has been put in place.

Xstrata acknowledges the work and constructive approach by the ACCC in relation to the manner in which these applications have been considered.

In this brief submission, Xstrata also reiterates the importance of the ACCC's consideration of this matter in terms of contractual alignment and also the ARTC Hunter Valley Rail Access Undertaking, in order to ensure that bottlenecks do not arise as they have in other situations due to interface issues. If these issues were to occur in NSW, it would frustrate both the work undertaken so far by all concerned and the opportunity for increased development, employment growth and exports in NSW.

Reasons in support of current authorisation

Xstrata considers that the binding nomination and allocation process, together with the requirement to enter into long term ship-or-pay contracts with PWCS, will facilitate necessary planning and investment required for expansion of existing terminal and above and below rail capacity.

Xstrata is particularly supportive of the incorporation of principles that will facilitate alignment of producers' contracted volumes across all elements of the coal chain, based on an agreed set of system assumptions. Xstrata is of the view that it is critical for the terms and conditions of the respective contracts to be aligned and to work in symmetry with one another and, therefore,

welcomed the ACCC's express recognition, in its reasons for granting interim authorization on 22 July 2009, of the importance of aligned long term contracts and the certainty they provide for industry expansion.

Xstrata is not supportive of potential reactivation of common user provisions

While Xstrata is supportive of the suspension of the common user provisions, it is not supportive of the potential reactivation of these provisions under any circumstances. Xstrata's reasoning in this regard, is that the nature of these provisions serves to undermine contractual certainty for coal producers and the efforts towards achieving such certainty. Xstrata submits that it would be preferable to remove these provisions in their entirety as opposed to their suspension. The ACCC in past decisions has commented on the uncertainty created by these provisions and Xstrata sees no reason for a change in analysis.

Concerns regarding the interface with ARTC's Access Undertaking

As Xstrata indicated in its submission in support of the interim authorisation, dated 8 July 2009, Xstrata considers the interface with the Draft Hunter Valley Track Access Undertaking ("HVAU") and associated agreements, submitted by Australian Rail and Track Corporation ("ARTC"), as being a critical component of the long-term solution for which authorisation is being sought. Xstrata appreciates that ARTC has participated with industry over the last eighteen months to develop the framework for this long-term solution, however, finalizing the details, terms and conditions of the HVAU is critical to ensuring that effect can be given to any long term solution.

Xstrata has made a separate submission to the ACCC's Transport and General Prices Oversight Branch regarding the current DAU and the amendments that Xstrata considers necessary to ensure that the long-term solution, and reform agenda being pursued by the NSW coal industry as a whole, is not placed at risk.

Producers' access to coal chain capacity, and the efficiency and effectiveness of the expansion and operation of coal chain infrastructure is dependent on this interaction.

Conclusion

The coal industry as a whole, including producers and coal chain infrastructure providers, have made substantial progress over the last two years in developing a new commercial framework to govern access to, and efficient operation of, the coal chain. Xstrata is therefore supportive of the authorisation applications submitted - noting in particular our concerns as to the need for contractual alignment.

Our support remains subject to the satisfactory completion of the Capacity Framework Documents in a manner that is consistent with the intent of the long term solution, and we would appreciate the opportunity to make a further submission to the ACCC if necessary.

Please do not hesitate to contact me should you have any questions in relation to this submission.

Yours sincerely,



Stephen Bridger
Executive General Manager - Logistics
Xstrata Coal