



Australian
Competition &
Consumer
Commission

Our Ref: A91241
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22 July 2010

Dave Poddar
Partner
Mallesons Stephen Jaques
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

Via email: dave.poddar@mallesons.com; kim.dekock@mallesons.com

Dear Mr Poddar

Application for authorisation A91241 lodged by various Wiggins Island Coal Export Terminal producers – interested party submissions and request for further information

I refer to the above application for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 7 July 2010.

As you are aware, on 13 July 2010 the ACCC wrote to interested parties seeking submissions in relation to the application. The ACCC requested submissions in relation to the request for interim authorisation by **Wednesday, 21 July 2010**.

At this stage, the ACCC has received one public submission from Asciano. A copy of Asciano's submission is attached. All publicly available submissions will also be available on the ACCC's website www.accc.gov.au/AuthorisationsRegister.

Should the Applicants wish to comment on any of the issues raised by Asciano, please do so by **Tuesday, 27 July 2010**.

Information request

To assist the ACCC's consideration of the request for interim authorisation, I would appreciate receiving further information in relation to the following issues:

1. Please outline the proposed next steps in the collective negotiation process under any interim authorisation, including proposed timeframes and any interaction with QR Network's ongoing Request for Proposals (RFP) process and its 2010 Draft Access Undertaking currently before the Queensland Competition Authority.
2. Please outline the construction schedule for the Wiggins Island Coal Export Terminal (Terminal), including when coal is expected to be first loaded.

3. At page 8 of the supporting submission, the Applicants submit that:

...on the basis of the joint interests in the Terminal development, and to ensure that the project is able to proceed, it is submitted that it is necessary and appropriate for the Applicants to be able to jointly discuss the terms of the RFP, and to jointly negotiate with QR Network in relation to rail access to the Terminal.

Please outline why the Applicants consider the proposed conduct is *necessary* in order to *ensure* that the Terminal project will proceed. In your response, please outline what is likely to occur in relation to the construction of the Terminal in the absence of interim authorisation.

4. Section 3.14 of the supporting submission outlines the proposed collective negotiation process. Can you please explain:

a) how often this process is expected to be conducted during the requested 20 year period of authorisation and

b) the composition of the 'representative sub-committee'.

5. The Applicants also submit that there will be no discussion of 'commercially sensitive information relevant to each of the Applicants' during the proposed collective negotiation process. Please outline the kind of issues which will not be discussed during the proposed negotiation process.

6. In support of the interim authorisation request, the Applicants submit that:

If interim authorisation is granted and should the ACCC subsequently deny final authorisation, any proposed condition precedent (that a final authorisation be granted) in any executed access agreements will not be fulfilled and those agreements will therefore not have any relevance going forward. Therefore, it is unlikely that any harm will result from the grant of interim authorisation.

Please describe the nature of access agreements that the Applicants are seeking to execute under any interim authorisation. Please also outline expected timeframes for executing any such agreements.

Finally, there is an administrative issue that I would like to raise with you concerning the conduct for which authorisation is sought. As you are aware, application for authorisation A91241 was lodged on Form B and seeks authorisation to:

- make and give effect to a contract, arrangement or understanding, a provision of which would, or might be, a cartel provision within the meaning of Division 1 of Part IV of the *Trade Practices Act 1974* (the Act) (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the Act
- to make and give effect to a contract, arrangement or understanding which would or might have the effect of substantially lessening competition within the meaning of section 45 of the Act.

However, page 3 of the covering letter to the application and sections 3.2 and 3.9 of the supporting submission describe the proposed collective bargaining arrangements as also involving exclusionary provisions/conduct. Please clarify this apparent inconsistency between the application Form B and the supporting submission to the application.

I would appreciate receiving a response to these issues by **Tuesday, 27 July 2010**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please contact Jaime Martin on (03) 9290 1477 (or via email at jaime.martin@acc.gov.au) or me on (02) 6243 1266 (or via email at david.hatfield@acc.gov.au).

Yours sincerely



David Hatfield
Director
Adjudication Branch