



Wednesday, 21 July 2010

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

By email: adjudication@accc.gov.au

Dear Mr Chadwick

Submission to Application for an Authorisation A91241 lodged by various Wiggins Island Coal Export Terminal Producers

This submission is in response to the ACCC correspondence of 13 July 2010 inviting comment on the application for authorisation from various Wiggins Island Coal Export terminal producers.

This submission is public

Background

Asciano, via Pacific National, is one of Australia's major coal rail haulage operators, and commenced transporting coal in Queensland in 2009 where Pacific National is the main competitor to QR's above rail business. Pacific National currently transports coal on the Blackwater system, which will serve the proposed Wiggins Island coal export terminal.

Asciano understands that the applicants are seeking an authorisation for collective bargaining arrangements with QR Network Ltd relating to below-rail infrastructure associated with the proposed Wiggins Island coal export terminal, and in particular they are seeking an urgent interim authorisation in order to commence the proposed collective negotiation for access.

Asciano Concerns

Asciano has several concerns with the current application. These include:

Effective Separation of QR: There is a need for any applicant negotiations with QR Network to be limited to QR Network related issues only.

Asciano has concerns about the current ownership and operating structure of QR which centre on the vertically integrated nature of QR, whereby QR is the owner and operator of the monopoly below-rail assets and is also the major user of these assets as the largest above-rail service provider.

Asciano's position on the shortcomings of the current Queensland rail industry structure and the current and proposed regulatory framework and processes as they apply to the

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Queensland rail industry have been outlined publicly in numerous submissions¹. The position put forward in these submissions may be summarised as the need for:

- o effective separation of the above-rail and below-rail businesses, including separation at board level in order to ensure that below-rail business decisions regarding investment and access are not influenced by considerations benefitting related above rail businesses to the detriment of third party access seekers or users; and
- o prohibition of preferential or discriminatory treatment, including cross subsidies and cost shifting.

Asciano's concern is that the negotiations between the applicants and QR Network may also address non-QR Network related issues, particularly above rail operations. .

Nature of the Below Rail Infrastructure Expansions to be Discussed: The current application allows the applicant negotiations to address all expansions to the Moura and Blackwater systems. Asciano believes that this allowance is too broad and that the negotiations should be limited to expansions which are demonstrably linked to rail capacity needed to service Wiggins Island terminal.

Length of the Authorisation: An authorisation for twenty years is being sought. Asciano believes that this authorisation period may be too long given that the proposed Wiggins Island coal export terminal is expected to be completed in 2014. Asciano believes that a period of five to ten years is sufficient.

Potential Identity of Track Owner: There is currently a proposal by the Queensland Coal Industry Rail Group (QCIRG) to purchase sections of QR Network from the Queensland Government. Some of the applicants are members of the QCIRG.

In the event the QCIRG are successful in purchasing sections of QR Network this raises broader competition issues whereby the applicants (a body of coal producers) are authorised to negotiate with QCIRG (a body of coal producers). Under this scenario Asciano has concerns that there will not be effective separation of all components of the coal supply chain, which may in turn result in:

- o discriminatory behaviour; and

¹ A more detailed discussion of Asciano's position on the shortcomings of the current industry structure and regulatory structure and processes can be found in numerous Asciano public submissions including the following recent submissions:

1. Asciano (2010) Submission to the Queensland Competition Authority: QR Network 2009 Draft Access Undertaking: Response to the Draft Decision February 2010
2. Asciano (2010) Submission to the Queensland Competition Authority Response to the QR Network Draft 2010 Access Undertaking May 2010
3. Pacific National (2010) Application Under part IIIA of the Trade Practices Act 1974 for a Declaration Recommendation for the Services provided by Queensland Rail's Queensland Coal Network
4. Pacific National (2010) Submission to the National Competition Council Queensland Rail Network – Certification and Declaration Applications July 2010
5. Asciano (2010) Submission to Queensland Treasury Proposed Amendments to the Queensland Competition Authority Act 1997 and Transport Infrastructure Act 1994 July 2010

It should be recognised that these submissions were provided to the relevant bodies within the specific context of the issue or process that was the focus of the regulatory process.

- below-rail business decisions regarding investment and access being driven by considerations benefitting related coal producers to the detriment of third party coal producers and independent operators, such as Asciano

Asciano's concerns will be set out in more detail in a submission to the process relating to the substantive application for authorisation.

Feel free to contact me to 02 8484 8056 to discuss this submission.



Stuart Ronan
Manager Access and Regulation