



Wiggins Island Coal Export Terminal producers – application for authorisation A91241

Interim authorisation decision

4 August 2010

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the application for authorisation lodged by the various Wiggins Island Coal Export Terminal producers on 7 July 2010.

In particular, the ACCC grants interim authorisation to the Applicants to enable them to commence collective negotiations with QR Network in relation to below-rail access to transport coal to the Terminal.

Interim authorisation is granted in relation to Stage 1 negotiations only and is conditional upon any access agreement entered into containing a condition precedent that final authorisation be granted by the ACCC.

The ACCC notes that interim authorisation does not extend to any information exchanges or negotiations regarding above-rail services.

Interim authorisation commences immediately and will remain in place until the date the ACCC's final determination comes into effect or is revoked.

THE APPLICATION

The Wiggins Island coal producers are:

- Anglo American Metallurgical Coal Pty
- Aquila Resources Limited
- Bandanna Energy Ltd
- Belvedere Coal Management Pty Ltd
- Caledon Coal Pty Ltd
- Capricorn Coal Pty Ltd

- Cockatoo Coal Ltd
- Jellinbah Resources Pty Ltd
- Middlemount Coal Pty Ltd
- Monto Coal 2 Pty Ltd
- Northern Energy Corporation Ltd
- Syntech Resources Ltd
- Wesfarmers Curragh Pty Ltd
- West Rolleston Coal Pty Ltd
- Xstrata Coal Queensland Pty and
- Yancoal Australia Pty Ltd (hereafter referred to as the Applicants).

The Applicants seek authorisation to collectively negotiate access to QR Network's below-rail infrastructure for the purpose of transporting coal to the proposed new Wiggins Island Coal Export Terminal (the Terminal) in the Port of Gladstone, Queensland.

Participation in the proposed collective bargaining arrangements by producers is voluntary and the Applicants do not seek authorisation for boycott activities.

The Terminal is proposed to be constructed in multiple stages over several years, as mines in the region are developed and the Terminal is expanded accordingly. Therefore, the Applicants submit that certain producers ('Stage 1 producers') will need to secure rail access at the first stage of the Terminal's development, while other producers will need to secure rail access at future stages when their mines come on stream.

At the time of lodging the application, the Applicants also requested interim authorisation to allow them to commence collective negotiations with QR Network as soon as possible.

Among other things, the Applicants consider that interim authorisation will facilitate:

- the Applicants ascertaining what below-rail capacity is required for the purpose of supporting Stage 1 of the Terminal project
- provide the producers with an early understanding of the overall common or shared costs for supply chain development based on the total capacity required by those Applicants that are Stage 1 producers and
- enable QR Network to accelerate the negotiation phase with the Applicants in relation to the Terminal project which, in turn, will allow QR Network to proceed to the design and feasibility stage of its project.¹

The Applicants seek authorisation for a period of 20 years.

¹ The Applicants submission to the ACCC in response to a request for further information, 27 July 2010, pages 3-4.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the Trade Practices Act 1974 (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances, it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

Upon receipt of this application, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. Public submissions in relation to the request for interim were received from Asciano and QR Network.

QR Network generally endorses the arrangements for which authorisation is sought.

While not seeking to oppose the application, Asciano outlined several concerns in relation to the proposed arrangements.

Further information in relation to the proposed arrangements, including public submissions received by the ACCC, may be obtained from the ACCC's website www.accc.gov.au, by following the 'Public Registers' and 'Authorisations' links.

REASONS FOR DECISION

The ACCC grants interim authorisation to the Applicants to enable them to commence collective negotiations with QR Network in relation to below-rail access to transport coal to the Terminal.

Interim authorisation is granted in relation to Stage 1 negotiations only and is conditional upon any access agreement entered into containing a condition precedent that final authorisation be granted by the ACCC.

Interim authorisation does not extend to any information exchanges or negotiations regarding above-rail services.

In making its decision to grant interim authorisation, the ACCC had regard to the following issues:

- granting interim authorisation will facilitate the timely resolution of coal producers securing rail capacity from QR Network for Stage 1 of the Wiggins Island Terminal project
- granting interim authorisation provides the producers with an early understanding of the overall common or shared costs for supply chain development based on the total below-rail capacity required for Stage 1 of the Wiggins Island development and
- denying interim authorisation could lead to delays in the development of the new Wiggins Island Terminal, and subsequent delayed coal export sales.

RECONSIDERATION OF INTERIM DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.