

Proposed Users of the Wiggins Island Coal Terminal

Application for Authorisation -
A91241 - lodged by various
Wiggins Island Coal Terminal
users

Response to submission by
Asciano dated August 2010

Dated 25 August 2010

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Application for Authorisation - A912241 lodged by various Wiggins Island Coal Terminal users

Response to submission by Asciano dated August 2010

We refer to the public submission dated August 2010 by Asciano in relation to the substantive merits of the application for final authorisation by the Applicants.

The Applicants welcome Asciano's in-principle support for the authorisation and Asciano's acknowledgement of the public benefits which are likely to arise from the grant of final authorisation.

The Applicants also acknowledge the concerns raised by Asciano in its submission and note that these concerns were expressed in Asciano's submission dated 21 July 2010, in relation to the Applicants request for interim authorisation. Therefore, to a large extent, the Applicants' responses below to the concerns raised by Asciano, reiterate and refer to the Applicants' response dated 27 July 2010.

1 *Effective separation of QR - Asciano's concern that the negotiations between the Applicants and QR Network may also address non-QR Network related issues, particularly above rail operations*

Asciano has expressed a concern that if final authorisation is granted to allow the Applicants to negotiate collectively with QR Network in relation to below-rail access, those negotiations might include or may address issues relating to above-rail access.

The Applicants refer to the response dated 27 July 2010 confirming that the particular conduct, for which they are seeking authorisation to negotiate collectively with QR Network, relates to proposed collective negotiations in respect of access to identified *below-rail* infrastructure necessary to support the Wiggins Island Terminal ("**Terminal**"), and necessary services associated with such *below-rail* access, as outlined in **Annexure 4** to the Supporting Submission.

As advised previously, the Applicants are not seeking authorisation to collectively negotiate access to *above-rail* services. Therefore, any final authorisation will only permit and enable the Applicants to negotiate collectively in relation to *below-rail* access as described in the authorisation application.

2 *Asciano's concern about the Identity and Nature of the Identified Below Rail Infrastructure*

Asciano has expressed concerns that the definition of the Identified Rail Infrastructure is too broad and should be linked to below-rail capacity needed to support the Terminal.

The Applicants refer Asciano to the Applicants' submission dated 27 July 2010 in response to this concern. As indicated in the authorisation application and in the above response, the authorisation application has identified particular below-rail infrastructure systems which will likely need to be expanded or enhanced in order to support the Terminal project and the resultant increase in demand for below-rail capacity. Therefore, the Applicants intend for the collective negotiations to relate to below-rail infrastructure which is necessary to support the Terminal.

Accordingly, the identification of expansions to the Blackwater and Moura systems, in order to support the transportation of coal to the Terminal, is not considered by the Applicants to be too broad but is in fact intended to cover below-rail infrastructure that is linked to the Terminal project.

For these reasons, the Applicants do not agree that the definition of the Identified Rail Infrastructure is too broad but rather that the authorisation seeks to capture below-rail infrastructure necessary to support the Terminal.

3 *Asciano's views regarding the duration of an authorisation period for 20 years*

The Applicants provided a detailed response in relation to this point in the Applicants' submission dated 27 July 2010 and, for completeness, Asciano is referred to section 3 of that submission.

Asciano acknowledges in its submission that the authorisation must be of sufficient duration to allow for staged development of the Terminal and to allow long term contracts to underpin the capital development of the Terminal and infrastructure. While Asciano suggests that 20 years may be too long, it acknowledges that it may be prudent for the authorisation to be aligned with the long term rail access agreements and that these agreements may endure for more than 10 years. Accordingly, Asciano concludes that any authorisation should therefore not exceed 20 years.

As such, and in light of the fact that significant public benefits are likely to arise from allowing collective negotiations to occur, together with no negative impact on competition, it is reasonable and practical for the authorisation to be granted for a 20 year period.

4 *Asciano's concern regarding the identity of the potential future owner of the below-rail infrastructure*

4.1 *Potential acquisition of QR Network's below-rail assets by Queensland Coal Industry Rail Group ("QCIRG")*

Asciano has previously expressed concerns that in the event that Queensland Coal Industry Rail Group ("QCIRG") is successful in its bid to acquire parts of QR Network, there would not be an effective separation of all of the components of the coal supply chain. This issue was addressed in the Applicants' submission dated 27 July 2010.

The Applicants welcome Asciano's current submission that "*A structure similar to the current QCIRG structure with only the below-rail network*

being purchased, and the involvement of an independent manager and operator of the below-rail network should not create any concerns.”

4.2 Potential acquisition of QR Network’s below-rail assets by any other QR Group entity

The Applicants note that Asciano appears to submit that if, as part of the sale of QR Network’s assets, the below-rail assets are acquired by another QR Group entity that may have above-rail operations, the Applicants should not be authorised to negotiate collectively with such an entity.

In light of the proposed sale of the below-rail assets, the Applicants specifically sought authorisation to negotiate with *any* future owner of the relevant below-rail assets. As the subject matter of the authorisation constitutes collective bargaining in relation to securing below-rail access, it is irrelevant if the future owner has above-rail operations in addition to acquiring the relevant below-rail assets, as the authorisation will be limited to collective negotiations in respect of below-rail access. The Applicants will, therefore, be limited in negotiations with any future owner to discussions relating to below-rail access necessary to support the Terminal.

The Applicants would be pleased to discuss the contents of this response further if it would be of assistance.

25 August 2010