



Wednesday, 20 October 2010

David Hatfield
Acting General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra
ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Hatfield

Submission on the ACCC Draft Determination on the Application for an Authorisation A91241 lodged by various Wiggins Island Coal Export Terminal Producers

Asciano welcomes the ACCC's Draft Determination on the application for authorisation lodged by Wiggins Island coal producers. In particular Asciano welcomes the ACCC's position that the proposed authorisation does not extend to:

- any information exchanges or collective negotiations in relation to above rail services; and
- negotiations regarding below rail infrastructure that does not support the transportation of coal to the Wiggins Island Coal Export Terminal

Asciano is seeking that the ACCC's Final Determination expands on several points as outlined below.

Ongoing Monitoring of Authorisation Conditions

Asciano welcomes the confirmation that the proposed conduct for which authorisation is sought does not include collective negotiations in relation to above rail services. However, Asciano believes that the Final Determination should contain further information regarding the monitoring regime that will be in place to ensure collective negotiations relating to below rail issues do not transition into negotiations on above rail issues.

Asciano's concern is to ensure negotiations are limited to below rail issues. To achieve this the monitoring regime needs to be given sufficient visibility and power to ensure any incentives of any party to breach this condition are offset by both the likelihood of detection and the consequences of this authorisation breach.

Change of Ownership Notification

Asciano notes that an authorisation condition is that the Applicants provide written notice of any change in ownership of the Identified Rail Infrastructure and Services during the term of the authorisation.



Asciano seek that in the event of the ACCC receiving such a notice that they consult with interested parties in order to establish whether the change in ownership raises any concerns.

If you wish to discuss these issues please contact me on (02) 8484 8043.

Yours sincerely,

Dr Tim Kuypers
General Manager Safety, Access and Regulation