



The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

To the Commissioners

Application for authorisation A91241 lodged by various Wiggins Island Coal Export Terminal producers

QR Network welcomes the opportunity to comment on the Australian Competition and Consumer Commission (ACCC)'s draft determination in relation to the subject application on 1 October 2010.

As indicated previously in our letter of 29 July 2010, QR Network has no objections to the collective bargaining arrangement set out in the Application and generally endorses the justification for the Authorisation set out in the Application. We therefore also support the draft determination.

QR Network notes that whilst the proposed authorisation approves collective bargaining for below rail access in relation to the Wiggins Island Coal export Terminal (WICET) developments it does not require QR Network to bargain collectively. QR Network may elect to engage in bilateral bargaining in certain circumstances and the proposed authorisation does not preclude QR Network from doing so.

The duration of the proposed authorisation is until 31 December 2023. QR Network believes that this proposed duration is too long and should be restricted to the period of negotiation of access-related and funding-related terms relevant to each WICET development stage. QR Network's rationale for this view is that the contracts, arrangements and understandings between QR Network and relevant Applicants result in each such Applicant and QR Network entering into both an Access Agreement governed by QR Network's Access Undertaking and, as necessary, a separate funding agreement. QR Network will not 'negotiate' with Applicants that are not parties to the relevant WICET development stage.

QR Network believes that there should be no requirement to negotiate collectively with Applicants subsequent to closure of the agreements. Many of the matters proposed to be dealt with following execution of agreements such as supply chain coordination do not require collective discussions and are managed through the rail access regime.

The proposed authorisation extends only to the Applicants, namely the 16 coal mining companies that applied for it. QR Network considers the authorisation should provide a streamlined mechanism for the subsequent inclusion of any other coal mining company that subsequently becomes a proposed user of WICET. QR Network understands that there are some mining companies which have lodged Expressions of Interest for participation in the second stage of the WICET development and are not Applicants. In these circumstances QR Network may be required to negotiate collectively with the Applicants but bilaterally with the non-Applicant. This would be inconsistent with the objective of the Authorisation which is to reduce transaction costs and the potential for dispute by reducing the number of negotiating parties.

Coal companies have lodged Expressions of Interest for participation in the second stage of the WICET development based on tonnages originating from beyond the Blackwater and Moura Systems. Consideration should be given to amending the definition of Identified Rail Infrastructure and Services by replacing the following part of that definition:

'...below rail infrastructure comprising the Blackwater and Moura systems including: all expansions to these systems...'

with

"...below rail infrastructure comprising the Goonyella, Blackwater and Moura systems including: all expansions to these systems, all extensions to these systems including the proposed new railway connecting the Surat Basin to the Moura system ..."

The reason for the variation is that it is feasible that additional rail infrastructure enhancements could be required for train services that originate in either the Goonyella system or the Surat Basin and terminate at the WICET terminal.

QR Network confirms that no part of this response is confidential and accordingly that it may be placed by the ACCC on its public register.

If you wish to discuss any part of this response, please contact Dean Gannaway, QR Network's Director Regulation and Policy, at dean.gannaway@qrnational.com.au or on (07) 3235 2055.

Yours sincerely



Michael Carter
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