



23rd February 2011

Mr David Hatfield
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Australian Competition & Consumer Commission
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Dear Mr Hatfield,

**Authorisation No: A91147-A91149 and A91168-A91169 ('Authorisation')
Submission**

We refer to your letter of 10 February 2011 inviting submissions to assist the Australian Competition & Consumer Commission ('ACCC') to decide whether to review the Authorisation.

Bloomfield Collieries Pty Limited ('**Bloomfield**') supports the current Capacity Framework Arrangements and holds the view that a review of the Authorisation by the ACCC is not required at this time.

Bloomfield took an active role in the negotiations and processes for the development of the Capacity Framework Arrangements. Our involvement included participating in the various producer working groups that assisted in the development of the principles of the Capacity Framework Arrangements. Further, Bloomfield, as a Port Waratah Coal Services Ltd ('**PWCS**') shareholder, has appointed one of its own directors to the Board of PWCS. Based on this experience, we make the following submissions:

1. Bloomfield is not aware of any false or misleading material being included by the Applicants in the various applications made to the ACCC which led to the granting of the Authorisation.
2. PWCS' handling of Bloomfield's nominations for capacity in 2009 and 2010 was in accordance with the Capacity Framework Arrangements. We are not aware of any of the Applicants failing to comply with the Capacity Framework Arrangements. We also note the aggregate producer demand levels have triggered:
 - (a) an expansion project at PWCS Kooragang Terminal to increase capacity to 133 Mtpa;
 - (b) a second expansion project at PWCS Kooragang Terminal to take it to its operating consent limit of 145 Mtpa; and
 - (c) the construction of Terminal 4.

All of these expansion projects are being carried out simultaneously. Consequently, Bloomfield is comfortable that the Capacity Framework Arrangements are operating as intended and have enabled significant growth to occur in coal handling facilities at the Port of Newcastle.

3. Bloomfield is not aware of any undue delay in the delivery of capacity at the PWCS terminals. Bloomfield is a producer representative on the Terminal 4 Board sub-committee (as described in the Capacity Framework Arrangements). Through this involvement, we are satisfied that PWCS is pursuing the development of Terminal 4 in a timely manner. Preparations for Terminal 4 are on track for a development application to be lodged by 30 November 2011 and the recent granting of Major Project Facilitation status by the Federal Government should assist with the various approvals processes.
4. We are not aware of any material change in circumstances since the Authorisation was granted.
5. We are not aware of any evidence of capacity hoarding. We note that other producers' ship or pay charges are not disclosed as the information is confidential. However, it should be borne in mind that ship or pay charges for unused allocation can arise for a variety of reasons including changes in a mine's production profile, loss of coal sales or a failure by the producer to meet its performance standards under the long term ship or pay agreement.

There is a robust system for the transfer of allocation between producers administered by the Hunter Valley Coal Chain Co-ordinator Ltd. We are aware that various producers also have private arrangements for the transfer of allocation in certain circumstances.

6. Bloomfield has relied on the certainty of the Capacity Framework Arrangements in entering into its commitments with its customers, ARTC, rail haulage provider and PWCS. These arrangements are typically long term and irrevocable. Any changes to the Capacity Framework Arrangements could have serious ramifications for producers as a whole as financial and operational decisions have been made in the expectation of the Capacity Framework Arrangements continuing as they currently are over the longer term. In our view, it will create considerable uncertainty and industry unrest if the Capacity Framework Arrangements are reviewed less than two years into their implementation.
7. We have read the response provided to the ACCC by PWCS on 23 December 2010. We agree with those statements made by PWCS that are within our knowledge and fully support their conclusion.

Please let us know if we can provide further information to assist you in making your decision.

Yours sincerely



John Richards

Managing Director
Bloomfield Collieries Pty Limited