



Thursday, 3 November 2011

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra
ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Chadwick

Submission to Application for an Authorisation A91278 lodged by various Dudgeon Point Coal Export Terminal Producers

Introduction and Background

Asciano appreciates the opportunity to make this submission to the Australian Competition and Consumer Commission (**ACCC**) on the application by various coal producers (**Applicants**) for authorisation to collectively bargain with QR Network in relation to below rail infrastructure associated with the proposed Dudgeon Point Coal Export terminal (**DPCT**).

The submission does not contain confidential information and is provided as a public document.

Asciano, through its business, Pacific National, is one of Australia's major coal rail haulage operators, and hauls coal in Queensland on the regulated QR Network which is owned by QR National. QR National also operates an above rail coal haulage business which is Pacific National's main competitor in the Queensland rail haulage market.

Asciano Position

Asciano understands that the applicants are seeking the authorisation to collectively discuss and negotiate with QR Network on the terms and conditions, including price, for access to QR Network Pty Limited's below rail infrastructure comprising the Goonyella and Blackwater coal systems including:

- all expansions to these systems;
- access to other QR Network rail infrastructure necessary to support DPCT; and
- all services relating to such access for the purpose of transferring the Applicants' coal to DPCT.

Asciano gives in principle support to the application for authorisation. Asciano recognises that there are public benefits which could arise from the development of the DPCT and associated rail infrastructure and the more efficient operation and expanded operation of the coal supply chain in central Queensland. However, Asciano has some concerns in relation to the proposed arrangements that need to be addressed in any authorisation granted in order to ensure that the public benefits outlined by the Applicants are realised.

Benefits

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The benefits of allowing collective negotiation by the Applicants are not disputed by Asciano. Collective negotiation could potentially facilitate the financing and construction of the rail infrastructure required for the DPCT expansion and associated infrastructure, and the public benefits created by the construction and ongoing operation of this infrastructure are foreseeable. These benefits, as identified by the Applicants, may include improved business efficiency (Applicants Submission Form B pages 4 -5).

However, Asciano submits that these efficiency benefits will only be realised if there is strong competition in the above rail coal transport market. This competition can only be guaranteed by effective separation of QR Network from the QR National above rail business.

Concerns

Asciano supports the application but has several concerns with the authorisation that should be addressed.

The Applicants' submission (Applicants Submission Form B page 5) stated that minimal public detriment was likely to result from the authorisation. While Asciano generally agrees with this position, Asciano believes that there are potential concerns which should be addressed. These potential concerns centre on the relationship between QR Network and the QR National above rail business, and in particular, on the need for the authorisation to require that any Applicant negotiations with QR Network to be limited to QR Network rail network related issues only.

Asciano has concerns about the current ownership and operating structure of QR National, namely, the vertically integrated nature of QR National whereby QR National is the owner and operator of the monopoly below-rail QR Network assets and is also the major user of these assets as the largest above-rail service provider. This is problematic as it provides QR with the ability to leverage its market power in infrastructure to secure above rail contracts thereby undermining competition in the above rail market.

Asciano's position on the shortcomings of the current Queensland rail industry structure and the regulatory framework and processes as they apply to the Queensland rail industry have been outlined publicly in numerous submissions¹ which Asciano reiterates in this submission. The position put forward in these submissions may be summarised as the need for:

¹ A more detailed discussion of Asciano's position on the shortcomings of the QR National structure and related regulatory structure and processes can be found in numerous Asciano public submissions including the following submissions.

1. Asciano (2010) Submission to the Queensland Competition Authority: QR Network 2009 Draft Access Undertaking: Response to the Draft Decision February 2010
2. Asciano (2010) Submission to the Queensland Competition Authority Response to the QR Network Draft 2010 Access Undertaking May 2010
3. Pacific National (2010) Application Under part IIIA of the Trade Practices Act 1974 for a Declaration Recommendation for the Services provided by Queensland Rail's Queensland Coal Network
4. Pacific National (2010) Submission to the National Competition Council Queensland Rail Network – Certification and Declaration Applications July 2010
5. Asciano (2010) Submission to Queensland Treasury Proposed Amendments to the Queensland Competition Authority Act 1997 and Transport Infrastructure Act 1994 July 2010

It should be recognised that these submissions were provided to the relevant bodies within the specific context of the issue or process that was the focus of the regulatory process.



- o effective separation of the above-rail and below-rail businesses in order to ensure that below-rail business decisions regarding investment and access are not influenced by considerations benefitting related above rail businesses to the detriment of third party access seekers or users; and
- o prohibition of preferential or discriminatory treatment, including cross subsidies and cost shifting.

Given the vertical integration within QR National, competition and efficiency in above rail services will be negatively impacted by the involvement of any QR National above rail entities in the collective negotiation process or by QR Network discussing or negotiating above rail matters with the Applicants.

This negative impact would be addressed, and the public benefits outlined by the Applicants would be delivered, if the Applicants' collective negotiation with QR Network is explicitly limited to QR Network below rail issues and infrastructure.

Therefore, Asciano seeks that any authorisation be limited to collective bargaining on infrastructure QR Network owns and operates (or will own and operate when constructed) and not extend to:

- any information exchanges or collective negotiations in relation to above rail services with either QR Network or any other QR National entity;
- negotiations regarding below rail infrastructure that does not support the transportation of coal to the DPCT (including negotiations relating to infrastructure owned by other QR National entities, and in particular QR entities with an above rail business, for example, rail sidings or storage facilities).

To this end Asciano also supports the development of a monitoring regime to ensure collective negotiations relating to below rail issues do not transition into negotiations on above rail issues. 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.

Feel free to contact me to 02 8484 8056 to discuss this submission.



Stuart Ronan
Manager Access and Regulation