

Australian Competition and Consumer
Commission
Adjudication Branch
General Manager
Attn: Dr Richard Chadwick
adjudication@accc.gov.au

4 November 2011
Matter 81893166
By email

Dear Richard

Dudgeon Point Coal Export Terminal Producers (QR Network Pty Ltd) - Authorisation A91278 – minor amendment

Our clients lodged authorisation application number A91278 with the ACCC on 28 September 2011. This application is currently under consideration.

The applicants are a consortium of coal producers in central Queensland seeking authorisation to collectively negotiate with QR Network Pty Ltd (**QR Network**) for access to below rail infrastructure to service new coal terminals at Dudgeon Point.

1 Minor amendment to application

The applicants wish to amend their application to include Rio Tinto Coal Australia Pty Ltd (**RTCA**) as an applicant (the **Proposed Amendment**).

The applicants note that their application is intended to facilitate them to seek access to any of the new coal terminals at Dudgeon Point.

RTCA proposes to seek access to a separate terminal to the current applicants.

RTCA consents to being included as an applicant and will separately provide a letter to the ACCC confirming this.

2 RTCA¹

RTCA is a wholly owned subsidiary of Rio Tinto Limited, an Australian listed entity in the Rio Tinto Group. RTCA manages the group of companies and joint ventures comprising Rio Tinto's Australian coal business, including its Queensland coal assets.

The Queensland coal assets comprise thermal and coking coal assets in central Queensland – Blair Athol (71%), Clermont (50.1%), Hail Creek (82%) and Kestrel (80%). RTCA is also currently investigating production in relation to a number of other Bowen Basin coal assets.

RTCA's letter to the ACCC will provide additional information in relation to its Queensland coal assets.

3 No material change to application

The Proposed Amendment will not result in a material change to the authorisation application.

¹ Rio Tinto fact sheet – Energy.

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3.1 Proposed Amendment contemplated by application

As noted above, the authorisation application is linked to any of the terminals to be developed at Dudgeon Point to which the applicants might seek access (**Terminal**). The scope of this definition is sufficiently broad to include separate terminals for which access is sought by different applicants or groups of applicants.

Pursuant to section 88(10) of the *Competition and Consumer Act 2010 (Cth)* (**CCA**) the applicants also requested that any authorisation granted by the ACCC be expressed to apply to future producers and users of the Terminal who will similarly need to negotiate with QR Network for below rail access.

The Proposed Amendment is consistent with the original application in this regard. Including RTCA as an applicant at this stage will simply provide the ACCC with greater transparency of the group that, if authorised, would be engaging with QR Network in collective negotiations.

3.2 Nature and scope of conduct unaffected

The nature of the conduct for which authorisation is sought will remain the same. The Proposed Amendment will not affect the way the applicants engage with QR Network.

RTCA would enter into separate access agreements with QR Network and would not be bound to accept the collectively negotiated terms and conditions. The Proposed Amendment will not affect the timing of the collective negotiations or the period for which authorisation is sought.

RTCA's Queensland coal assets use the same QR Network rail systems as the applicants' coal assets. If successful in its bid to secure capacity at Dudgeon Point, RTCA would need to engage with QR Network in relation to expansion of the same below rail systems as the applicants.

3.3 Counterfactual unaffected

The Proposed Amendment will not affect analysis of the counterfactual. In the event that authorisation is not granted, it is likely that RTCA would engage with QR Network individually.

3.4 No change to balance of public benefits and detriments

The public benefits outlined in the authorisation application are supported by the Proposed Amendment. There are substantial commonalities in the interests of RTCA and the applicants. These include commonalities in mine locations, the QR Network coal rail systems used to transport coal, and the negotiations required to seek additional capacity at the proposed Terminal.

Alignment of interests means that RTCA's involvement in the collective bargaining group will support the public benefits outlined in the application. This may, in fact, lead to an overall increase in the public benefits associated with reduced transaction costs, improved business efficiency and more timely development of mines and the Terminal.

The Proposed Amendment will not alter potential detriments or the ways in which these would be minimised. The authorised conduct would remain voluntary for all applicants (including RTCA) and there would be no collective boycott activity. RTCA would implement information sharing protocols to the extent required. Any authorisation granted would apply to future producers and users of the Terminal who would similarly need to negotiate below rail access.

We trust that the ACCC will be satisfied that the Proposed Amendment is a minor change that is consistent with the original application and should not result in a delay in the ACCC decision-making process.

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We would be pleased to provide any further information you may require.

Yours sincerely



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