

23 December 2010

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

FILE No:
DOC:
MARS/PRISM:

cc: Mr David Hatfield

Dear Dr Chadwick

Authorisation No.: A91147-A91149 and A91168-A91169 (Authorisation)

NPC is writing to you in response to the letter addressed to Mr Anthony Wing of the Australian Competition and Consumer Commission (the **Commission**) from Mr Todd Hannigan, Chief Executive Officer of Aston Resources, dated 15 December 2010.

The Commission provided a copy of that letter to NPC and invited NPC as an applicant to the Authorisation to respond to the letter. NPC notes that this letter has now been placed on the Commission's Public Register.

Newcastle Port Corporation (**NPC**) continues to strongly support the Capacity Framework Arrangements that were authorised by the Commission in December 2009 and is committed to its continued implementation.

As you know, the framework was the result of a long history of discussions between industry and the NSW Government that resulted in an agreed set of arrangements to manage the development and allocation of coal export capacity at the Port of Newcastle. The framework was subject to a public consultation process before the Authorisation was granted. As part of this process interested parties were given the opportunity to make submissions to the Commission about the framework and it is regrettable that Aston Resources did not take this opportunity to raise its concerns.

The central issue for the Commission's consideration, as NPC understands it, is whether there has been a material change in circumstances that has arisen since the Commission gave its authorisation of the Capacity Framework Arrangements in December 2009. NPC contends that there has not been such a change in circumstances.

A secondary issue is whether the applicants, based on the matters raised by Mr Hannigan, will be seeking any amendments to the underlying arrangements and therefore a variation to the Authorisation. NPC considers that none of the matters raised at this time warrant amendments to the underlying arrangements and therefore NPC will not at this time be seeking a variation of the Authorisation.



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Public Benefits

In considering whether there has been a material change in circumstances consideration should be given to the public benefits identified in the Authorisation determination and the progress in achieving those benefits.

Paragraph 5.166 of the Determination states that:

For the reasons outlined in this chapter, the ACCC considers the proposed Capacity Arrangements are likely to result in significant public benefits, including:

- *the terminal operators and (new and existing) producers being able to make more accurate and timely investment decisions;*
- *facilitating the alignment of contractual obligations and incentives across the Hunter Valley coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment;*
- *demurrage savings to Australian coal producers;*
- *reducing the environmental and safety risks associated with vessel queues waiting offshore; and*
- *maintaining or improving the international reputation of the Hunter Valley coal industry.*

It is worth noting that Mr Hannigan's letter asserts that:

"Facilitation of new entry and certainty of outcome for new producers were the key public benefits underpinning the ACCC's authorisation of 9 December 2009."^[page1 para3]

Whilst new producers are an important part of the framework, Mr Hannigan's characterisation of the key benefits is not supported by the Commission's determination.

In the first year of a 15 year authorisation significant progress has been achieved in delivering these public benefits.

Terminal Expansions

The Commission identified that a public benefit of the framework was that the terminal operators would be able to make more accurate and timely investment decisions.

Since the authorisation of the Capacity Framework Arrangements there has been unprecedented expansion of coal export terminal capacity in the Port of Newcastle.

In late 2009 PWCS completed its \$458m 3 Exp Expansion to bring its terminal capacity to 113 mtpa.

As a result of 2009 Nomination and Allocation process PWCS was compelled under the framework to trigger its \$670m Master Plan Completion expansion to bring its terminal capacity to 133 mtpa.

In addition the result of 2009 Nomination and Allocation process also triggered PWCS's Project 145 expansion to bring its terminal capacity close to its development approval limit of 145 mtpa.

In April 2010 NCIG commissioned its Stage 1 30 mtpa terminal.

In August 2010 NCIG financially closed on its Stage 2AA expansion which included contractual commitments under the framework to non NCIG Shareholders of 12 mtpa. Stage 2AA will bring NCIG's terminal capacity to 53 mtpa.

NCIG is currently working towards triggering its Stage 2F expansion sometime in 2011.

Mine Expansions

The Commission identified that a public benefit of the framework was that new and existing producers would be able to make more accurate and timely investment decisions.

Since the Authorisation there has been significant investment by producers in expanding existing operations, in many cases bringing capacity up to optimal production levels after a long history of constrained production and developing new mine projects.

On 21 December 2010 the Hunter Valley Coal Chain Co-ordinator announced the achievement of the first 100mtpa calendar year in the Hunter Valley Coal Chain, the result of expanding production matched with expansion of coal chain capacity.

Coal Chain Expansion

The Commission identified that a public benefit of facilitating the alignment of contractual obligations and incentives across the Hunter Valley coal chain, thereby creating an environment more conducive to optimal operation of the coal chain and efficient investment.

There has been significant effort by all in the Hunter Valley Coal Chain since the authorisation to seek to ensure there is sufficient coal chain capacity to meet the expansion of terminal capacity.

There is a lot more work to be done as the whole coal chain faces a very significant expansion profile over the next 4 years.

At the time of the Authorisation there was an expectation that the Australian Rail Rack Corporation (ARTC) Hunter Valley Access Undertaking (HVAU) would be completed and in place in the near term. Unfortunately 12 months down the track the access undertaking is still not in place. It is difficult to gauge the extent to which this has impaired the industry capacity to drive effective and efficient contractual alignment.

Notwithstanding the delay in implementing the HVAU ARTC has continued its \$906m investment program in track expansion throughout 2009 and 2010.

2010 has seen very significant investment by all rail haulage operators in expanding their fleets. The certainty provided by producers having long term export contracts has provided the necessary certainty for the rail haulage providers to undertake this expansion.

Pacific National (PN) has brought 4 new train sets into the network in 2010. Each train set consisting of 3 locomotives and 90 wagons.

QR national has brought 6 new train sets into the network in 2010 at a total cost of \$290m, each train set consisting of 2 locomotives and 74 tonne wagons.

Xstrata in a joint venture with UK rail haulage operator Freightliner has established a joint venture called X rail to haul part of Xstrata's coal exports. XRail will in 2010-11 bring an additional 3 trains to the network, each consisting of 3 locomotives and 90 wagons.

In addition to above and below rail expansion the producers through the co-ordination of HVCCC are undertaking expansions of load point capacity to ensure load points are capable of supporting the coal chain through this significant expansion.

Development of Terminal 4

Mr Hannigan's letter deals with the proposed Terminal 4 development. The results of the 2010 PWCS Nomination and Allocation process is that Terminal 4 has been triggered in accordance with the framework.

NPC supports the timely and expeditious delivery of the Terminal 4 and is pleased that the terminal has been triggered by the 2010 PWCS Nomination and Allocation process.

By way of background, on 31 August 2009, as part of the Capacity Framework Arrangements, NPC and PWCS executed an Agreement for Lease (AFL) for the development of Terminal 4 on Kooragang Island.

That AFL sets out PWCS obligations to develop Terminal 4. PWCS has a number of interim reporting steps it must meet. PWCS has met each of those steps to date.

NPC is not aware of any matters, that will affect PWCS's capacity to deliver Terminal 4 in a timely manner and in accordance with its obligations under the AFL and the Capacity Framework Arrangements.

The development of Terminal 4 involves State and Federal Environmental approval processes. NPC understands PWCS is engaging with the relevant agencies on these matters.

On 17 December 2010, the Federal Minister for Infrastructure and Transport the Hon Anthony Albanese announced that Terminal 4 had received Major Project Facilitation Status. This means that the Federal Government recognises the national significance of the Terminal 4 project and provides a mechanism for PWCS to engage with the Federal Government on Commonwealth issues affecting the timely delivery of the development.

If you would like any further information, or if you would to take up the offer of a more detailed briefing, please contact Mr Michael Dowzer, General Manager Strategy, Efficiency and Governance, Newcastle Port Corporation, on (02) 4985 8215 or at michael.d@newportcorp.co.au.

Yours sincerely,



Gary Webb

CHIEF EXECUTIVE OFFICER