



28 February 2011

The Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Attention:
Mr David Hatfield
Vg General Manager
Adjudication Branch

Mr Luke Griffin
Assistant Director
Adjudication Branch

BY EMAIL

Dear Sirs

**Port Waratah Coal Services Limited (PWCS), Newcastle Coal Infrastructure Group (NCIG) and Newcastle Port Corporation (NPC) authorisation
A91147 – A91149 & A91168 & A91169 – request for review by Aston Resources**

We refer to the request for submissions issued by the Commission by letter dated 10 February 2011.

Donaldson Coal Pty Limited (**Donaldson**) is a shareholder in NCIG, and utilises coal loading facilities at the Port of Newcastle provided by both PWCS and NCIG.

Donaldson is a party to, and was heavily involved in the negotiation of, the Capacity Framework Arrangements, devoting significant time and resources to their development.

The Authorisation

The background to the authorisation which Aston Resources wants reviewed is outlined in letters and submissions to the Commission from NPC, PWCS and NCIG in January 2011. These letters and submissions respond to a letter to the Commission from Aston Resources dated 15 December 2010.

Donaldson reiterates what those submissions say about the process and its complexity, and especially that the Capacity Framework Arrangements reflect a negotiated outcome with interlinked elements. Donaldson and others made significant compromises in certain areas in the context of the overall arrangements, and it would be inappropriate and out of context for individual elements of the compromise to be assessed in isolation.

Role of the ACCC

The Commission correctly identifies that in order to decide to review the authorisation it would need to form the view that:

- *the authorisation was based on false or misleading material, or*
- *a condition has not been complied with, or*

Donaldson Coal Pty Limited

- *there has been a material change in circumstances since the authorisation was granted*

Addressing each of those requirements in turn:

The authorisation was based on false or misleading material

Aston Resources makes no assertion, and there is no evidence, that the authorisation was based on any false or misleading information.

The Commission cannot make a decision on this basis unless such an assertion is made or such evidence arises, and interested persons are given an opportunity to respond to such assertions or evidence. At this stage, there is nothing to respond to on this point and no materials supporting a review of the authorisation on this basis.

A condition has not been complied with

Again, Aston Resources makes no assertion, and there is no evidence, that a condition in the authorisation has not been complied with.

Again, the Commission cannot make a decision on this basis unless such an assertion is made or such evidence arises, and interested persons are given an opportunity to respond to such assertions or evidence. At this stage, there is nothing to respond to on this point and no materials supporting a review of the authorisation on this basis.

There has been a material change in circumstances since the authorisation was granted

There has been no material change in circumstances since the authorisation was granted in regard new entrants or existing entrants who wish to expand their production, which would warrant a review of the authorisation.

There is no doubt that the system is capacity constrained and that new entrants will require expansion to fulfil their capacity requirements. The system has been designed with exactly that in mind.

It is worth noting that one material change since the authorisation was granted is that the certainty of the authorisation has triggered substantial expansions at NCIG and PWCS currently underway.

Request for submissions on operational aspect of the authorised arrangements

Donaldson will leave PWCS and NCIG to respond in detail to the operational aspects of the submissions being called for, but as far as Donaldson is concerned:

- The Capacity Framework Arrangements are operating as intended. Although Aston Resources claims that the terms of the arrangements should have been different so as to suit Aston Resources better, it does not contend that the arrangements are not operating as intended.
- The delivery of further capacity is taking the time that Donaldson expected it would. The building of the type of infrastructure in question does take significant time.
- It has no evidence of capacity hoarding.

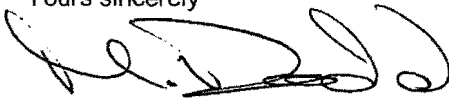
Donaldson would ask that the Commission consider that:

1. NCIG offered 12mtpa of capacity at the NCIG terminal to non NCIG Shippers, as required by the Capacity Framework Arrangements. Aston Resources did not nominate for any of this capacity.
2. "Facilitating new entry", using the words of Aston Resources, takes time. It was the nomination of Aston Resources and one other made in the 2010 PWCS Nomination and Allocation process which triggered the expansion of PWCS. Were those nominations made as part of the 2009

PWCS Nomination and Allocation process, then the expansion would have been triggered a year earlier.

3. Other producers have entered into long term commitments for capacity well in advance of their need for such capacity, at significant risk to them. They should not be penalised to allow others who did not plan so far in advance nor take any steps (including making financial commitments) so as to secure capacity.
4. The scaling back of activity claimed by Aston Resources would be matched or exceeded by other existing producers if their allocations were compressed to provide for Aston Resources' requests. We would contend that this was a worse outcome given it would involve cutting back on existing jobs and commitments rather than delaying planned but unproven jobs and commitments.
5. Any change to the Capacity Framework Arrangements, or even a formal review of them, would compromise the planned future expansions of PWCS & NCIG.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Dodd', with a stylized, cursive flourish at the end.

Mike Dodd
VP Infrastructure & Strategy
For and on behalf of
Donaldson Coal Pty Limited