



Submission to ACCC

Aston Resources and the Capacity Framework Arrangements at the Port of Newcastle

With reference to the letter of 15 December 2010 from Aston Resources Limited (**Aston Resources**) to the Commission.

Status of the Aston Resources request

Aston Resources has, in effect, requested:

- amendments to key elements of the CFA; and
- a "review" of the authorisation of the CFA.

NCIG submits that none of the issues raised by Aston Resources satisfy the requirements for the initiation by the ACCC of a "review" or revocation process. Furthermore, for the reasons outlined below, NCIG submits that, if the ACCC were to initiate a revocation process it would be likely to cause significant harm to the Hunter Valley Coal Industry by introducing significant additional uncertainty. Initiating a revocation process would jeopardise many of the benefits which the CFA, over the term of the current authorisation, is likely to deliver.

Implementation of CFA

The parties to the CFA commenced the implementation of the arrangements set out in the CFA in December 2009. The parties continue to implement the CFA with various elements reliant on those initial steps.

For example: NCIG has, in accordance with the CFA, proceeded with its expansion and allocated 12Mtpa to non-NCIG shippers, including signing irrevocable long-term contracts with these parties.

It is counterintuitive to review, essentially, the legitimacy of parts of an arrangement that participants have relied upon and that has a number of stages and processes that must be implemented in order to achieve its overall objectives and public benefits.

Revocation of the authorisation of the CFA

As the ACCC would be aware, the CFA is the culmination of negotiations which have involved industry participants, service providers, PWCS, the Port of Newcastle, the New South Wales Government and, in its review of the developments as they progressed, the Commission over 2008 and 2009. These negotiations were protracted and very complex. This was due in large part to the very different and competing views held by the participants, each of whom sought to ensure their interests and objectives were adequately reflected in the CFA.

The CFA is a finely balanced agreement which forms the basis upon which capacity is allocated and terminal development and expansions are determined at the Port of Newcastle to 2024. The Commission granted the authorisation of the CFA for this duration so that it reflected the term of the

take or pay agreements agreed (and their renegotiation) between the terminal operators and the shippers. This was essential in order to provide financiers with the certainty they required before they were prepared to commit the finance necessary to fund terminal development and expansion at the Port of Newcastle.

Initiating a revocation process in respect of the authorisation would involve public consultation with all stakeholders, including those involved in the original negotiations that led to the development and finalisation of the CFA. If this public consultation process includes a conference, the process could take up to 9 months.

To suggest the possibility of revocation of the authorisation of the CFA at such an early stage by initiating a revocation process will result in substantial uncertainty, particularly for financiers. This is likely to make securing funding for further developments and expansions at the Port of Newcastle over the period of the review more difficult and / or most costly to compensate for that uncertainty.

The CFA has been in place for just over a year. In NCIG's view it is too early to call into question the efficacy of the CFA as a whole.

19th January, 2011