

15 April 2011

David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear David,

Re: Pozzolanac Enterprises Pty Ltd application for authorisation A91261 – draft determination

Thank you for the copy of ACCC's draft determination. We wish to make the following submission.

- 1) We agree with the conclusion that the ACCC should not grant authorisation for the proposed arrangement.
- 2) Nucrush has not exercised its option (Clause 1.24).
- 3) With regard to the Pozzolanac submissions (Clause 3.2 and 3.3) Nucrush believes that all purchasers of Flyash products from Pozzolanac should be allowed access to collect Flyash at the power station.

Pozzolanac has traditionally offered the sale of Flyash on a delivered basis only. This has imposed a commercial disadvantage on a number of operators who have their own truck fleet.

The limitation on delivery at the power station both imposes inefficiencies on purchasers and provides Pozzolanacs with market information in regards to geographic locations where concrete grade Flyash is being used. This information can also be interpreted to work out geographic locations that have high volumes of concrete sales and may provide Pozzolanac and its parent companies with an unfair competitive advantage.

- 4) In Clause 4.43 the reference should be to Tarong not Tarong North.
- 5) Nucrush does not agree with the Pozzolanac submission reference to in Clause 4.73. The proposed framework has serious defects.
- 6) Nucrush does not agree with the Pozzolanac suggestion in Clause 4.110.
- 7) Nucrush confirms its view that the Agreement is likely to impose barriers on third party access to flyash at Tarong power station.

Yours faithfully,

Michael Cooper
General Manager