



Cockatoo Coal Limited and Stanmore Coal Limited – application for authorisation A91311

Interim authorisation decision

20 June 2012

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the application for authorisation lodged by Cockatoo Coal Limited and Stanmore Coal Limited (the Applicants) on 23 May 2012.

In particular, the ACCC grants interim authorisation to the Applicants to enable them to commence collective negotiations with Surat Basin Rail for access to the proposed railway and associated services necessary to support the transportation of coal to the Wiggins Island Coal Export Terminal for export.

Interim authorisation only extends to any agreement entered into which contains a condition precedent, such that the agreement will not come into force unless and until final authorisation is granted by the ACCC.

Interim authorisation commences immediately and will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

THE APPLICATION

The Applicants seek authorisation to collectively negotiate terms and conditions of access, including price, to the Surat Basin Rail joint venture's below rail infrastructure for the purpose of transporting coal to the Wiggins Island Coal Export Terminal (the Wiggins Island Terminal) in the Port of Gladstone, Queensland.

The relevant below rail infrastructure covered by the application comprises:

- Surat Basin Rail's proposed rail line connecting the Western Rail System approximately 7km from Wandoan with the Moura Rail System near Banana, including all expansions and extensions to this system (the 'Surat Basin Rail Line') and

- any other below rail infrastructure connected directly or indirectly to the Surat Basin Rail Line (excluding the Moura Rail Line and the Miles to Wandoan Rail Line)
- as well as all services relating to such access.

The Surat Basin Rail Line will be a new track connecting coal mines in the Surat Basin region to the Moura Rail System and ultimately, the Wiggins Island Terminal. Historically, coal has not been mined in the Surat Basin because of a lack of access to rail and a suitable port for export.

The Applicants were both selected as producers included in Stage 2 of the expansion of the Wiggins Island Terminal.

Participation in the proposed collective bargaining arrangements by producers is voluntary and the Applicants do not seek authorisation for boycott activities.

At the time of lodging the application, the Applicants also requested interim authorisation to allow them to commence collective negotiations with Surat Basin Rail as soon as possible.

Among other things, the Applicants seek interim authorisation on the basis that:

- it will enable more meaningful negotiations with Surat Basin Rail to commence on a collective basis as soon as possible
- the parties are currently in the process of negotiating Capacity Commitment Deeds for the Wiggins Island Terminal
- it will assist Surat Basin Rail (and the Applicants) to substantially reduce the transaction costs associated with initial complex negotiations
- it will allow for an early assessment of the likely costs of the Applicants' securing access to the Surat Basin Rail Line and
- it will provide increased commercial certainty in relation to the overall estimated demand for access to the Surat Basin Rail Line required for the transportation of coal to the Wiggins Island Terminal, which will enable Surat Basin Rail to identify at an early stage the extent of infrastructure investment required.

The Applicants seek authorisation for a period of 20 years.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Competition and Consumer Act 2010* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

CONSULTATION

Upon receipt of this application, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation. The ACCC did not receive any public submissions in relation to the request for interim authorisation.

Further information in relation to the proposed arrangements, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au, by following the 'Public Registers' and 'Authorisations' links.

REASONS FOR DECISION

In making its decision to grant interim authorisation, the ACCC had regard to the following issues:

- granting interim authorisation will facilitate the timely resolution of coal producers securing rail capacity from Surat Basin Rail for Stage 2 of the Wiggins Island Terminal project
- there is likely to be minimal impact on competition given the voluntary nature of the arrangements, the relatively limited composition of the bargaining group and the scope of collective negotiations (and information exchanges) being confined to the Surat Basin Rail Line
- denying interim authorisation could lead to unnecessary delays in the development of the new Wiggins Island Terminal, and subsequent delayed coal export sales and
- Surat Basin Rail did not raise any objections with the ACCC.

RECONSIDERATION OF INTERIM AUTHORISATION

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.