



Monday, 21 January 2013

David Hatfield
Director
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Australian Competition and Consumer Commission
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Dear Mr Hatfield

Submission to Application for an Authorisation 91351 lodged by Endocoal Ltd and other Queensland coal producers

Introduction and Background

Asciano appreciates the opportunity to make this submission to the Australian Competition and Consumer Commission (ACCC) on the application by various coal producers (Applicants) for authorisation to collectively bargain with Aurizon Network¹ in relation to below rail infrastructure associated with coal terminals to be developed at Dudgeon Point by Adani (the Terminal).

The submission does not contain confidential information and is a public document.

Asciano, through its business, Pacific National, is one of Australia's major coal rail haulage operators, and hauls coal in Queensland on the regulated Aurizon Network which is owned by Aurizon. Aurizon also operates an above rail coal haulage business which is Pacific National's main competitor in the Queensland coal rail haulage market.

Asciano Position

Asciano understands that the applicants are seeking an authorisation to collectively negotiate with Aurizon Network on the terms and conditions, including price, for access to Aurizon Network's below rail infrastructure comprising the Newlands, Goonyella and Blackwater coal systems including all expansions to these systems and access to other Aurizon Network rail infrastructure necessary to support the Terminal.

Asciano supports the application for authorisation in principle. Asciano recognises that there are public benefits which could arise from the development of the Terminal and associated rail infrastructure. However, Asciano has some concerns in relation to the proposed arrangements that need to be addressed in any authorisation granted in order to ensure that the public benefits outlined by the Applicants are realised.

¹QR Network has recently changed its name to Aurizon Network. This submission uses the term "Aurizon Network" although Asciano notes the application uses the term "QR Network".

Benefits

The benefits of allowing collective negotiation by the Applicants are not disputed by Asciano. Collective negotiation could potentially facilitate the financing and construction of the rail infrastructure required for the Terminal and associated infrastructure, and the public benefits created by the construction and ongoing operation of this infrastructure are foreseeable. These benefits, as identified by the Applicants, may include improved business efficiency (Applicants Submission Form B page 4).

Asciano submits that efficiency benefits will only be realised if there is strong competition in the above rail coal transport market. This competition can only be guaranteed by effective separation of Aurizon Network from the Aurizon above rail business during any negotiations.

Concerns

Asciano supports the application but has several concerns with the authorisation that should be addressed.

The Applicants' submission (Applicants Submission Form B page 4) stated that minimal public detriment was likely to result from the authorisation. While Asciano generally agrees with this position, Asciano believes that there are potential concerns which should be addressed in the authorisation. These potential concerns centre on the relationship between Aurizon Network and the Aurizon above rail business, and in particular, on the need for the authorisation to require that any Applicant negotiations with Aurizon Network to be limited to Aurizon Network rail network related issues only and not cross over into any issues related to above rail haulage.

Asciano recognises that the Applicants have indicated that (Applicants Submission Form B page 4) negotiations related to above rail infrastructure and services are excluded from the Application, nevertheless Asciano has concerns that the current vertically integrated nature of Aurizon whereby Aurizon is both the owner of Aurizon Network assets and the major user of these assets makes such exclusions problematic. Asciano's concern is that Aurizon has the ability to leverage its market power in the infrastructure market to secure contracts in the above rail market thereby undermining competition in the above rail market.

Given the vertical integration of Aurizon, competition and efficiency in above rail services will be negatively impacted by either any involvement of any Aurizon above rail entity in any negotiation process contemplated by the authorisation or by Aurizon Network discussing or negotiating above rail matters with the Applicants.

Therefore, Asciano seeks that any authorisation continues to be limited to collective bargaining on infrastructure Aurizon Network owns and operates (or will own and operate when constructed) and not be extended to:

- any information exchanges or collective negotiations in relation to any above rail services with either Aurizon Network or any other Aurizon entity;
- negotiations regarding below rail infrastructure that does not support the transportation of coal to the Terminal (including negotiations relating to infrastructure owned by other Aurizon entities, and in particular Aurizon entities with an above rail business, for example, rail sidings or storage facilities).

In addition to the concerns outlined above Asciano also has concerns that the negotiations



contemplated by the application be undertaken in such a way that the outcomes of these negotiations have no detrimental impact on existing access users and the capacity that these existing users have contracted for. In particular any capacity expansion resulting from the negotiations should be priced in a cost reflective manner and not be subsidised by other users.

Overall, Asciano supports the application but remains concerned that the authorisation continues to exclude any negotiations related to above rail infrastructure and services.

Feel free to contact me to 02 8484 8056 to discuss this submission.

A handwritten signature in black ink, appearing to read "Stuart Ronan". The signature is fluid and cursive, written on a light-colored background.

Stuart Ronan
Manager Access and Regulation