

Partner Simon Muys
Contact Charles Coorey
T +61 2 9263 4019
ccoorey@gtlaw.com.au
Our ref SJM:CPC:1018765



L A W Y E R S

5 August 2014

By email

Mr David Hatfield
Director, Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601
E: David.Hatfield@acc.gov.au

Copy:

Ms Hannah Ransom
Senior Project Officer, Adjudication Branch
E: Hannah.Ransom@acc.gov.au

Dear Mr Hatfield

A91410 & A91411 - Rio Tinto Coal Australia Pty Ltd & Ors – further response to draft determination and stakeholder issues

We refer to the Australian Competition and Consumer Commission's (**ACCC**) draft determination and welcome the ACCC's proposal to grant authorisation.

The purpose of this letter is to respond to two outstanding issues that have been raised by stakeholders in response to the ACCC's draft determination, being:

- a question about the operation of the membership eligibility requirement in clause (d) of Schedule 3; and
- an inquiry by Aurizon Network in relation to the development by the DCCC of key performance indicators (**KPIs**).

Eligibility Criteria – 100% contracted rail requirement

The Charter currently includes a requirement that new Members confirm that their Nominated Coal Throughput (being the total tonnage which is subject to coordination by the DCCC) must include 100% of its contracted entitlements with any rail operators that were also part of the DCCC.

The purpose of this requirement is twofold:

- It would not be practical for the DCCC Joint Scheduling Group to try to plan for and coordinate only *part* of the rail requirements of a Member at a load point. This would require constant and complex interactions to determine which paths (and how many) each day or week were DCCC paths before coordination activities could be undertaken.

Melbourne

101 Collins Street Melbourne VIC 3000
Australia
GPO Box 90 Melbourne VIC 3001
T +61 3 8656 3300 F +61 3 8656 3400
www.gtlaw.com.au

- In addition, the 100% requirement is one means of reducing the prospect of “gaming” of the DCCC arrangements by any Member, where it sought only to have a small peaking component of its overall requirements coordinated through the DCCC.

However, the Members have further considered the requirement – taking into account feedback from stakeholders to the ACCC through the authorisation process – and consider that an amendment would enable the above benefits without the requirement operating to unduly prevent new Members from joining. For example, the Applicants recognise that it may be that some potential new Members wish to initially contribute tonnage from only one (or a limited number) of load points.

The Applicants are keen to encourage participation in the DCCC, given the greater benefits expanded coordination brings to the whole coal chain. The Applicants also recognise that there are sufficient other protections in the Charter from misuse or gaming.

The Members have therefore developed the following amended clause (d) which limits the operation of this eligibility criteria to individual load points.

- (d) *If the Producer Member is a haulage customer of a Rail Operator Member or Members, the Producer Member’s Nominated Coal Throughput must include 100% of its haulage capacity entitlements ~~contracted entitlements~~ with that Rail Operator Member or Members in respect of haulage from any load point from which the Producer Member has Nominated Coal Throughput;*

This amendment has been agreed by the Members, and the Management Committee will formally adopt the amendment at its monthly meeting, scheduled for next week.

Development of key performance indicators (KPIs)

Aurizon Network in a further submission to the ACCC indicated that it is continuing to work with the DCCC on KPIs for the operation of the DCCC.

The Applicants note that this work is continuing and the DCCC is engaging with both Aurizon Network and DBCT Pty Ltd to ensure that there is sufficient data available to the DCCC to enable it to measure and track ‘end to end’ coal chain performance.

Ultimately, the Members are of the view that the ultimate test of the operation of the DCCC and all other initiatives in the DBCT Coal Chain can only be assessed based on:

- success in improving and accelerating the progress of vessels through the DBCT queue; and
- relatedly, the total throughput achieved at DBCT.

In relation to the second point, DBCT Pty Ltd announced that in June 2014 it had achieved a new record for monthly in-loading tonnage of 6,412,776 tonnes (78.0 Mtpa) and the terminal exported a record 6,680,087 tonnes (81.2 Mtpa). The Applicants acknowledge that these records reflect a number of positive improvements across the coal chain, and not the introduction of the DCCC in isolation, but they are pleasing and demonstrate that the work being undertaken by various stakeholders is having a positive impact on the efficiency and operation of the system.

The DCCC will continue to work constructively with Members and Stakeholders to refine KPIs for the DBCT Coal Chain and means for assessing its unique contribution to these outcomes.

Please do not hesitate to contact us if you have any questions in relation to the matters set out in this further supplementary response.

Yours sincerely

Gilbert + Tobin

Simon Muys

Partner

T +61 3 8656 3312

smuys@gtlaw.com.au

Charles Coorey

Senior Lawyer

T +61 2 9263 4019

ccoorey@gtlaw.com.au