

David Hatfield
Director, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Emailed: adjudication@acc.gov.au

30 June 2014

A91410 & A91411 – Rio Tinto Coal Australia Pty Ltd & Ors

Dear Mr Hatfield,

Aurizon notes the ACCC's Draft Decision (**Draft Decision**) to authorise the joint-scheduling arrangement (**the Arrangement**) proposed by Pacific National Pty Ltd, Rio Tinto Coal Australia Pty Ltd and Peabody Energy Australia Pty Ltd (**the Applicants**).

As noted in its letter on 10 March 2014 (**March Letter**), Aurizon does not oppose the application for authorisation, subject to a number of key conditions being met.


The Applicants have since provided the Commission with extensive new written submissions. Based on those documents, Aurizon is now satisfied that the Arrangement will not lessen competition in a rail haulage market.

Aurizon would particularly note:

- The acknowledgement by the Applicants, and the acceptance by the ACCC, that the DCCC must operate within existing contractual and regulatory frameworks. Aurizon would particularly note the Applicants' commitment that:

"[T]he DCCC arrangements are not intended as some form of de facto regulatory intervention and it is important that users are not forced to participate. The DCCC also does not override the scheduling or other operational freedom of any non-Members".

- The commitments made by the Applicants in relation to the sharing of commercial information both between Members and with the Scheduling Coordinator. Aurizon would particularly highlight:
 - the Applicants' commitment that Pacific National will ring-fence information it receives in its capacity as Scheduling Coordinator from any other commercial activity it undertakes;
 - the commitment that Pacific National will not receive nor share information on the haulage arrangements entered into by Members; and,

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- that information on customers, marketing, price or the acquisition of haulage services will not be shared between the Members or with the Scheduling Coordinator.
 - The commitment by the Applicants that the DCCC Charter does not, and is not intended to, restrict member producers from acquiring haulage services from non-member rail operators. Aurizon appreciates the Applicants' view on how Clause 6.3 should be interpreted. It would be desirable for the clause to be amended to make the Applicants intent clear and put the commercial freedom of Members beyond doubt.

For instance, notwithstanding the Applicants' interpretation, it seems possible for a Member to be *"in conflict with their obligations under this Charter"*, (cl 6.3) if that Member, by reason of commercial arrangements with a non-member operator, failed to *"cooperate in good faith [and] use all reasonable endeavours ... to achieve the [DCCC] Objectives"* (cl 6.1(a)), including the Objective to *"maximise [the] throughput of the Members"* or *"facilitate ... the coordinated use ... of [supply-chain assets]"* (cl 4.2(a) and (b)).

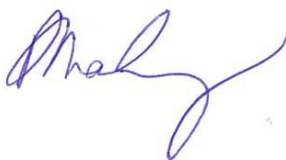
- The acknowledgment by the Applicants that any attempt by one or more Members to use the DCCC to discuss and agree standardised commercial terms for haulage services would risk a serious contravention of the CCA.
- The explanation given by the Applicants as to the circumstances in which they would be required to revisit the scope of the Commission's authorisation.

Aurizon endorses the comments of the ACCC in relation to the role of Pacific National. Aurizon notes the ACCC's encouragement to the Members that they reconsider (after the initial 12 month period) the suitability of appointing Pacific National as the Scheduling Coordinator. Aurizon would reiterate that it cannot envisage circumstances where it would be prepared to join or participate in the Arrangement where its main competitor had responsibility for scheduling train services.

Aurizon expects that any party participating in the Arrangement will continue to meet its contractual obligations, including as regards the ordering and scheduling of train services.

Should you have any queries in relation to this submission please do not hesitate to contact Samuel McSkimming on [REDACTED]

Yours sincerely



Prue Mackenzie
VP Marketing