

9 July 2014

By email: adjudication@accc.gov.au

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

Dear Mr Hatfield

Draft Decision – A91410 and A91411 – Aurizon Network Submission

Aurizon Network refers to the ACCC's draft determination dated 19 June 2014 to authorise Rio Tinto Coal Australia Pty Ltd, Peabody Energy Australia Pty Ltd and Pacific National Pty Ltd (**Applicants**) to coordinate operational arrangements for the transportation of coal through Dalrymple Bay Coal Terminal (**Proposal**) (**Draft Determination**).

As noted in Aurizon Network's submission dated 13 March 2014 (**March Submission**), Aurizon Network welcomes all initiatives designed to improve efficiency in coal chain operations and a more even draw-down of supply chain demand.

Request for pre-decision conference

Aurizon Network appreciates the opportunity to engage in a pre-decision conference with the ACCC and hereby notifies of its request to participate. Please advise some suitable times so that we can co-ordinate with relevant personnel.

As part of any pre-decision conference, Aurizon Network would welcome the opportunity to review all examples, and any associated documentation, that the Applicants have provided to the ACCC (see reference at page 2 paragraph 5 of the Draft Determination) in relation to the efficiency savings which the Applicants claim to have been achieved during the trial period.

Response to Draft Determination

In addition to reiterating the issues raised in its March Submission, Aurizon Network highlights below some key matters for the ACCC to further consider prior to making its final determination.

Train ordering as opposed to train scheduling

Section 6 of the Draft Determination provides that, *'The Applicants advise that the DCCC arrangements have been developed within existing contractual and regulatory arrangements, and do not involve the scheduling of train paths but only optimised ordering of members' trains, and that the final decision about rail scheduling will continue to be made by Aurizon Network and DBCT Pty Ltd.'*

Aurizon Network is of the view that this is a key observation of the Proposal. Aurizon Network would appreciate the opportunity at any pre-decision conference to elaborate further on how Aurizon Network currently performs its role as the ultimate rail scheduler as observed in the Proposal. In particular, Aurizon Network would like to assure the ACCC that it will continue to perform this task in a non-discriminatory fashion and in accordance with the existing regulatory and contractual framework.

Benefits of the Proposal

Aurizon Network notes at section 56 of the Draft Determination, the ACCC's view that the Proposal is likely to result in a degree of increased throughput. Aurizon Network reiterates its belief, which is echoed at section 50 of the Draft Determination, that the Applicants have materially overstated the public benefits claimed in its submission to the ACCC.

Having said that, Aurizon Network shares the view that improved coal availability information at load points, coordinated with Port and Vessel planning may lead to reduced variation in rail planning and scheduling. Aurizon Network is however concerned that such stated benefits are measured with as much precision as possible for the benefit of all participants in the coal chain.

Public detriment and the independence of the Scheduling Co-ordinator

Aurizon Network is supportive of those measures that will address any risk of a lack of, or perceived lack of, independence of the Scheduling Co-ordinator and thereby reducing the potential for public detriment. Aurizon Network agrees with the ACCC's view, at section 63 of the Draft Determination, that the Proposal contains a number of attributes that would mitigate against such a risk.

However, Aurizon Network's view is that the Proposal would be substantially enhanced, for current and prospective members, if the DCCC provided an undertaking to the ACCC to adhere to ringfencing requirements that could be included in the Charter Agreement. Further, and as is the case with Aurizon Network, those ringfencing requirements should be made available to the public and compliance subject to audit.

Development of key performance indicators for the Proposal

As part of consultation with the Applicants during the interim approval period Aurizon Network, together with DBCTM, jointly prepared and supplied to the Applicants a list of proposed key performance indicators (**KPI's**). Aurizon Network is of the view that the KPI's would serve maximum benefit to members, and prospective members of the DCCC, if they, along with the DCCC's achievement or otherwise, were made publicly available. The purpose of the KPI's is to provide a means for members, prospective members and the public to measure the benefits resulting from the DCCC as opposed to existing and non-related improvement activities.

These KPI's included analysis in the follow key categories for each of the Applicants;

- Demurrage exposure
- Vessel movement (forward/backward) in the queue
- Parcel build / residency time
- Gap between DBCT Weekly Requests / DCCC Final Allocation / Actual Unloaded

Aurizon Network has recently been advised that the DCCC intends to establish such KPI's, and will continue to consult with the Applicants on their development. Aurizon Network will provide the ACCC with any update as to progress at the pre-decision conference.

Please do not hesitate to contact our John Stock on (07) 3019 7337 or at john.stock@aurizon.com.au if you would like to discuss any aspect of this letter. Otherwise we look forward to notification from the ACCC as to suitable dates for the pre-decision conference.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Smart', written in a cursive style.

Simon Smart
Vice President Commercial Development
Aurizon Network