



Aurizon Operations Limited & SCT Logistics— application for authorisation A91512 Interim authorisation decision 2 September 2015

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by Aurizon Operations Limited and SCT Logistics (the Applicants) on 12 August 2015.

Interim authorisation is granted to enable the Applicants to:

- collectively discuss and negotiate with Brookfield Rail (Brookfield) the terms and conditions of access agreements, including price, relating to the use of standard gauge railway infrastructure covered under Schedule 4 of the *Railways (Access) Code 2000* for the purpose of transportation of general non-bulk freight by rail which enters or exits the interstate rail freight network controlled by Australian Rail Track Corporation (ARTC)
- discuss amongst themselves matters relating to the above discussions and negotiation, and
- enter into and give effect to contracts, arrangements or understandings regarding the agreements with Brookfield Rail containing common terms and conditions, including price, which relate to the use of railway infrastructure covered under Schedule 4 of the *Railways (Access) Code 2000* for the purpose of transport of general non-bulk freight by rail which enters or exits the interstate rail freight network controlled by the ARTC

(the Conduct)

Interim authorisation does not extend to any discussions, negotiation or agreement of any matters relating to:

- the operation of the Applicants' above rail services, including pricing, customers, costs of operations, volume or capacity projections
- transport of any goods or bulk commodities other than general non-bulk freight.

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

The application for authorisation

The Applicants seek authorisation for five years to engage in the Conduct. Participation in the Conduct is voluntary for all parties and each Applicant will independently determine for themselves whether to accept the negotiated terms and conditions offered by Brookfield

following the negotiations. Each Applicant is also able to freely undertake independent negotiations with Brookfield on any matter.

Discussions and negotiations are to be in relation to the indicative terms and conditions, including price, for benchmark services and not relate to any variations from the common terms and conditions associated with an individual access seeker's differences in cost or risk.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. 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 where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

The Applicants requested interim authorisation on the basis that:

- there is likely to be minimal impact on competition given the voluntary nature of the arrangements
- the collective negotiation relates only to the indicative terms and conditions for the relevant services, which can be varied according to individual access seekers' differences in cost or risk
- sensitive information relating to the rail haulage market, such as downstream customers, customer pricing, volume projections, cost of service information or marketing strategies will not be shared between the Applicants
- the Applicants may be unable to negotiate collectively if interim authorisation is not granted, as Brookfield Rail has already commenced negotiation with access seekers
- interim authorisation will assist the Applicants in assessing the benefits and consequences of negotiating either inside or outside of the Railway Access Code.

Consultation

The ACCC sought submissions from nine interested parties potentially affected by this application, including Brookfield, other industry participants, freight customers, government and regulatory bodies and the operator of the adjoining rail network. Only one submission was received from Brookfield, which neither supported nor opposed the application but addressed some factual matters raised in the application.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- the Conduct is unlikely to result in a significant impact on competition in the markets for the acquisition of access to the relevant below rail infrastructure or for the supply

of freight transportation services between Perth and Kalgoorlie or beyond to Adelaide, Melbourne and/or Sydney

- the Applicants appear to have an urgent need to commence information sharing and joint negotiations given individual negotiations have already commenced
- there appears to be a low likelihood that harm will result to interested parties from granting interim authorisation
- the Conduct appears likely to result in some benefits in the form of transaction cost savings and more efficient outcomes from collective negotiations
- any detriment to competition resulting from the Conduct appears to be limited by:
 - the relative bargaining positions of the parties
 - the voluntary nature of the conduct
 - the limited scope of the matters to be discussed and/or negotiated
 - competition to the Applicants in the acquisition of access to the relevant infrastructure and the supply of freight services on the east-west corridor, and
 - the application has not been opposed by any interested party.

Reconsideration of interim authorisation

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