



Our ref: AA1000517
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Kathryn Finlayson
Partner, Minter Ellison

By email: Kathryn.finlayson@minterellison.com

Dear Ms Finlayson

Boral Cement Limited application for authorisation AA1000517—interested party consultation & request for further information

The Australian Competition and Consumer Commission (the ACCC) has received an application for authorisation from Boral Cement Limited (**Boral Cement**). A full copy of the application for authorisation is available on the ACCC's website www.acc.gov.au/AuthorisationsRegister.

We are seeking information from Stanwell Corporation Limited (**Stanwell**) to assist the ACCC's assessment of the application for authorisation.

Request for information

The ACCC requests that Stanwell provide information to assist with the ACCC's assessment on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements. In particular, the ACCC requests that Stanwell provides information on the following issues:

1. What is Stanwell's commercial rationale or business plan in relation to the fly ash which is produced from the Tarong PS? Please explain in detail why fly ash from Tarong PS is not currently available in the market. Please provide documents which support the information provided in response to this question.
2. In relation to the tender process that resulted in the Design and Construct Contract (**DCC**) and Offtake Operation and Maintenance Agreement (**OOMA**) with Boral Cement, please advise:
 - a) Why did Stanwell run the tender for the management of fly ash at Tarong PS?
 - b) Why does Stanwell want a separate entity to construct and operate the fly ash facility?
 - c) What is Stanwell's commercial rationale for entering into the OOMA and DCC with Boral Cement?
 - d) Who responded to the tender? Did Stanwell receive a tender from any other party that was likely to be acceptable / meet its desired commercial and operational objectives?

- e) Please provide details of tender responses and assessment(s) of tender responses by Stanwell.
3. Recognising that fly ash is a by-product from the operation of Tarong PS to generate electricity, what is the production profile of fly ash at Tarong PS? Is fly ash consistently available on a daily basis? Does the quantity, kind, standard or quality of fly ash produced vary on a daily, weekly or other periodic basis? If so, provide details of the underlying factors for such variance. Does the construction of the new fly ash facility under the DCC impact the production profile of fly ash at Tarong PS?
 4. In the absence of the arrangements between Stanwell and Boral Cement, how would fly ash from Tarong PS be managed? If it was to be sold, to who, under what type of arrangement, and within what timeframe? Please provide documents which support the information provided by Stanwell in response to this question.
 5. What is the likely future cost of disposal if Stanwell were to continue to transport fly ash to the Meandu Mine void? Is it possible that Stanwell will be required to incur some of this expense if Boral Cement were to elect not to take the minimum quantities of fly ash (notwithstanding that Boral Cement would still be required to pay the contractual amount)? What expense does Stanwell expect to incur in managing fly ash that is not taken by Boral Cement during the term of the OOMA?
 6. For each power station owned by Stanwell (Tarong PS, Tarong North PS and Stanwell PS) please provide the ACCC with data and/or estimates of the following:
 - a) How much fly ash is produced per year?
 - b) What kind, standard or quality is this fly ash?
 - c) What quantity of fly ash is sold, and to whom?
 - d) Where fly ash is not sold, how is it managed by Stanwell? What are the barriers to selling fly ash for use in downstream markets?
 7. Please explain in detail any geographical challenges or realities in relation to the distribution of fly ash in Queensland and other east coast locations. For example, does the location of a prospective purchaser of fly ash in Queensland and other east coast locations limit the suppliers from whom they can acquire fly ash? Are there practical or economic limits on how far outside Queensland fly ash that is produced in Queensland can be delivered?
 8. Which current suppliers of concrete use fly ash in production? From whom do these concrete suppliers acquire fly ash, and how much fly ash do they acquire per year. Please outline any difficulties which may exist in acquiring concrete grade fly ash.

We request a response to the each of the questions above by **7 July 2020**. We also invite Stanwell to make a submission on the public benefits and effect on competition of the proposed arrangements, or any other issue which you consider is relevant for the ACCC's assessment of this matter.

Timetable

The ACCC will progress its assessment of the application in a timely manner. An indicative timetable is set out below for your information

3 June 2020	Lodgement of application and supporting submission.
17 June 2020	Public consultation process begins.
7 July 2020	Closing date for submissions from interested parties.
July 2020	Applicant responds to issues raised in the public consultation process.
August/September 2020	Draft determination.
September 2020	Public consultation on draft determination including any conference if called.
November 2020	Final determination.

This letter has been placed on the ACCC's public register. Your response (subject to any request for exclusion) will be placed on the ACCC's public register. Guidelines for excluding information from the public register are attached.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Luke Griffin on 02 6243 1114, Miriam Kolacz on 03 9658 6476 or adjudication@acc.gov.au.

Yours sincerely



Danielle Staltari
Director
Adjudication