



Our ref: AA1000517
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Louise Klamka
Special Counsel, Gilbert & Tobin
By email: [REDACTED]

Dear Ms Klamka

Boral Cement Limited application for authorisation AA1000517—interested party consultation

As discussed in our phone call on 23 September 2020, the purpose of this letter is to seek Boral Cement Limited's (**Boral Cement**) response to a submission received by the Australian Competition and Consumer Commission (the **ACCC**) about Boral Cement's application for authorisation that has been excluded from the ACCC's public register.

The party who provided the submission has agreed to the ACCC providing Boral with the below anonymised summary of the points raised in this submission.

Summary of interested party submission excluded from the public register

The interested party submits that Boral is a vertically integrated industry participant with contractual ties to other industry participants and the arrangements the subject of the application for authorisation will increase the risk of tacit coordination between Boral and other industry participants and/or reduce their incentives to compete.

In particular, the interested party submits that:

- Boral will gain control over a large volume of cheap flyash at Tarong PS. Boral's economic incentive is not to become a cheap source of fly ash to third parties because this would both:
 - Undermine its existing joint venture relationships. Cheap flyash would negatively affect these joint venture operations.
 - Provide a cheap source of flyash to Boral's competitors in downstream concrete markets.
- Boral's economic incentive is to control a key source of fly ash in a way that minimises price competition for the supply of fly ash, preserving its various commercial relationships, and ensures it can maximise the downstream price for concrete, being Boral's more profitable and primary market.
- There is also the potential that Boral could pay the Stanwell 'take or pay', but only remove the amount of fly ash that it requires – effectively paying Stanwell to exclude its competitors from access to the fly ash. Boral's agreement with Stanwell, which requires it to supply to third parties without discrimination, would not assist if Boral is not actually on-supplying fly ash to third parties.

Next steps

We request that Boral Cement provide a response to the points raised in this submission by **Friday 9 October 2020**.

A copy of this letter and your response (subject to any request for exclusion from the public register of any material contained in your response) will be placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Miriam Kolacz 03 9658 6476.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G Jones', with a long horizontal flourish extending to the right.

Gavin Jones
Director
Adjudication