



Our ref: AA1000517
Contact officer: Luke Griffin
Contact phone: 02 6243 1114

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111

16/06/2020

adjudication@acc.gov.au
www.acc.gov.au

By email

Dear Sir / Madam

Boral Cement Limited application for authorisation AA1000517—interested party consultation

The Australian Competition and Consumer Commission (the ACCC) has received an application for authorisation from Boral Cement Limited (**Boral Cement**). The ACCC invites you to comment on the application. Attached is a summary of the authorisation process including how to make a submission to the ACCC.

The application for authorisation

Boral Cement and Stanwell Corporation Limited have entered into an Offtake, Operation & Maintenance Agreement (**OOMA**) pursuant to which Boral Cement will have the exclusive right to take and purchase fly ash from Tarong Power Station (**Tarong PS**). Under a separate agreement, Boral Cement is designing and constructing a facility for this purpose (Design and Construct Contract, the **DCC**) and the exclusive rights under the OOMA are conditional on the practical completion of the facility.

Boral Cement submits that it plans to enter the market for the supply of fly ash, taking and supplying Tarong PS fly ash (which it submits is not currently available to the market). Boral Cement submits that there is currently no fly ash facility at Tarong PS that enables fly ash to be taken or sold. Fly ash from Tarong PS is currently treated as a waste product which is stored on site or at the adjacent Stanwell-owned Meandu Mine. Boral Cement submits the arrangement will increase the supply of fly ash within South East Queensland, enhancing competition in this market as well as downstream markets.

Boral Cement submits that it will be able to satisfy its own fly ash requirements through the OOMA. In addition, Boral Cement submits that it is strongly incentivised to maximise sales to third parties without discrimination, including because its own downstream requirements are below the minimum take or pay volumes contracted under the OOMA.

Boral Cement seeks authorisation to give effect to the OOMA for 10 years commencing from the Offtake Commencement Date (which is when all the conditions have been satisfied or waived and is likely to coincide with the practical completion date under the DCC). Boral Cement anticipates that the Offtake Commencement Date will be 15 March 2021.

A full copy of the application for authorisation is available on the ACCC's website www.acc.gov.au/AuthorisationsRegister.

Request for submissions

The ACCC invites you to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements. In particular the ACCC would appreciate information and your views on the following issues:

1. Is the 10 year term of authorisation sought by Boral Cement necessary to support the proposed investment? What impact is a 10 year term likely to have on the ability of other market participants' (both buyers and sellers) to obtain access to fly ash?
2. For each power station in Queensland including Tarong, Tarong North, Millmerran, Kogan Creek, Stanwell in Rockhampton, Callide A, B, and C, and Gladstone:
 - a. How much fly ash is currently produced per year?
 - b. What grades of fly ash are currently produced? What are the specifications of the fly ash produced for properties relevant to its use in concrete production eg particle size, chemical composition, colour.
 - c. What are the commercial applications for each grade of fly ash produced?
 - d. How much of the fly ash produced is suitable for use in concrete production, with or without additional processing such as milling?
 - e. What parties are supplied with fly ash, in what grades and quantities, and at what price?
 - f. What changes, if any, are anticipated to the above over the next 10 years?
3. Details of each supplier of fly ash to end users in Queensland and/or other east coast locations, what processing of fly ash they do, what type/grade of fly ash do they supply to end users, how much do they supply per year, and to which end users is the fly ash supplied.
4. Please explain any geographical challenges or realities in relation to the supply or acquisition of fly ash. For example, does the location of a prospective purchaser of fly ash limit the suppliers from whom they can acquire fly ash? Are there practical or economic limits on how far fly ash can be transported?
5. In the absence of the arrangements between Stanwell and Boral Cement, how is fly ash from Tarong PS likely to be managed in the future? Would it be sold? If so, how, by and to whom?
6. What are the uses for fly ash and is the expected demand for fly ash likely to change in the future.
7. Which suppliers supply concrete in Queensland and/or other east coast locations? Which current suppliers of concrete use fly ash in production? From whom do these concrete suppliers acquire fly ash, where is that fly ash produced, and how much fly ash do they acquire per year?
8. Is the total usage of fly ash acquired by the concrete suppliers in Queensland and/or other east coast locations expected to increase in the future, either through increased usage of fly ash in concrete or by increased production of concrete? If so, over what timeframe? Will this change if the arrangements between Stanwell and Boral Cement are implemented? Please outline any difficulties which may exist in acquiring concrete grade fly ash.
9. To what extent is it feasible to store fly ash once it is produced? Are there practical or economic limitation on how much fly ash can be stored, and/or the locations where it can be stored?

10. Any other issues you consider relevant to the ACCC's assessment of this matter.

If you intend to provide a submission in relation to Boral Cement's application for authorisation, please do so by **7 July 2020**. Submissions should be emailed to adjudication@acc.gov.au with the subject AA1000517 – Boral cement – submission'.

Submissions, including oral submissions, will be placed on the ACCC's public register subject to any request for exclusion (guidelines are attached).

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.
16 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.

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the application at the draft and final determination stages. If you are able to please provide a nominated contact email address for future correspondence.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the application.

This letter has been placed on the ACCC's public register. 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

Parties Consulted

Ash Development Association of Australia
Independent Flyash Brokers Pty Ltd
Adelaide Brighton Limited
Ailort Pty Ltd (T/A Cordwell's)
Barro Group
Cement Australia
Cement Australia Pty Ltd
Cordwells Concrete
ECOROC
Excel Concrete
Hanson Australia
Holcim Australia Pty Ltd
Hyrock NSW Pty Ltd
Independent Cement and Lime Pty Limited
National Precast Cement Association of Australia
Neilsen's Concrete Pty Ltd
Neumann Group
Nucon Concrete
Rocla Industries (Fletcher Building Group)
Sunmix Concrete Pty Ltd
Sunstate Cement Ltd
Transpacific Industries Pty Ltd
Vecor Australia Pty Ltd (SBA Lawyers)
Wagners Flyash Pty Ltd
CS Energy Limited
Ergon Energy
Intergen Australia Pty Ltd
Macquarie Generation
NRG Gladstone Operating Services
Queensland Department of Energy and Water Supply
Queensland Department of Environment & Science
Queensland Department of Main Roads
Queensland Department of State Development, Tourism and Innovation
Queensland Resources Council
Australian Conservation Foundation
Queensland Conservation Council