



28 April 2006

Mr John Hall
Chief Executive
Queensland Competition Authority
Level 19, 12 Creek Street
BRISBANE QLD 4000

Dear Mr Hall,

RE: Dalrymple Bay Coal Terminal (DBCT) - Allocation of Expansion Capacity

We refer to the e-mail from the Queensland Competition Authority (QCA) dated 18th April 2006, seeking comments on the issues and proposals raised in the Anglo Coal and Peabody supplementary submissions in respect of the establishment and management of the queue for scarce capacity at the Commencement Date of the 2006 Draft Access Undertaking.

Executive Summary

The Anglo and Peabody "supplementary" submissions do not, with respect, raise any issues which have not already been raised before or dealt with in our letter of 8th February 2006.

As previously observed, DBCT Management has no vested interest in how scarce capacity is ultimately allocated. However, we reject the suggestion in the supplementary submissions that the approach we have taken is either retrospective or has not given all Users a fair and reasonable opportunity to participate in allocations of expansion capacity. The fact is, that the approach taken by DBCT Management is based upon the historical approach to the allocation of capacity at DBCT (that is, on a "first to commit basis") and our intention to continue with this methodology was communicated to all Users as far back as June 2004 in a letter to them (see Attachment 1). Therefore the approach to capacity allocation is not something which is being applied retrospectively. Specifically:

- all Users received the same communications in relation to DBCT Management's intentions;
- all Users had the same opportunity to act or not act (or to query if they had any uncertainty) as they saw fit; and
- all Users have been treated fairly and equally by DBCT Management in considering whether or not any "application" (in substance, not form) for scarce capacity was a bona fide offer to enter an unconditional contract for a term which justified expansion, or was merely an inquiry or foreshadowed expectation of future requirements which was nevertheless subject to certain conditions or approvals being obtained.

We note that neither supplementary submission alleges any disproportionate treatment, rather both essentially complain of a lack of "formal" announcement of the "rules/protocol" for the allocation of priority for expansion capacity.

However, expansion is an evolutionary process ultimately triggered by an appropriate level of real demand, underwritten by binding offers to take up expansion capacity. With respect to capacity at DBCT and its potential expansion, all Users received the same communications throughout and various Users chose to communicate their willingness to unconditionally contract for additional capacity which might be built (thus providing the necessary revenue certainty required to advance the decision making process) while others did not. The accumulation of that real demand eventually resulted in the decision to expand. In our view, it is fair and reasonable that those Users who were first willing to contract, and whose willingness to contract was responsible for the decision to expand, be given priority.

In summary, regardless of the formality with which DBCT Management signalled its intentions, the fact remains that capacity has always been allocated on a "first to commit" basis and our intention to continue with this methodology was communicated to all Users as far back as June 2004 in a letter to them. Some chose to act, others did not. We believe it fair and reasonable that those who chose to act and effectively triggered the expansion rank ahead of Users who now claim to have expended money based upon so-called "legitimate expectations" but without having acted (as their competitors did) to secure further capacity at DBCT.

Anglo Submission

Anglo's main concern appears to be, that in their view, the basis on which the queue was established was never made clear by DBCT Management or at least has been vague and uncertain. In DBCT Management's view, the basis on which the queue was established was clear. This point was addressed in our letter to the QCA dated 8th February 2006, and is again addressed above.

Anglo make specific reference to a letter from DBCT Management to all Users dated 2nd July 2004, which sought comprehensive information in order to help plan for any required expansion. Anglo note that there was no reference to the basis of allocating additional capacity in that letter.

However, BBI had previously advised all Users of our intention to allocate capacity on a 'first to commit' basis less than a month earlier in our letter of June 2004.

Anglo also refer to DBCT Management's letter dated 19th April 2005, which notes that DBCT Management's records do not show Anglo to have made any binding request for capacity. Anglo submit that this letter is contradictory, given their letter of 30th July 2004, which they state [REDACTED]

[REDACTED] In our view, the Anglo letter dated 30th July 2004, was not a binding offer for expansion tonnes as:

- [REDACTED] which would not trigger an expansion either under the protocol proposed under the Draft Access Undertaking (which would require a contract of at least 10 years duration) or under the Port Services Agreement (which required a contract of at least 5 years duration); and
- the request was **conditional** on approval of the Anglo American Board and relevant government authorities' approvals.

We would also note that the Anglo request of 30th July 2004, is completely different from their later request dated 21st April 2005 (see Attachment 2 – [REDACTED])

We note that Anglo now appears to be prepared to accept the current method of allocating tonnage, acknowledging that the reallocation of capacity tonnes on a pro-rata basis would only lead to delays in the commissioning of new capacity at the terminal and that the application of the pro-rata method may lead to a loss of capacity for all Users.

However, Anglo purports to reserve its position *"in the event that this does not deliver a fair outcome to all access seekers who have made significant commitments to developing new mines"*. Anglo does not detail how a "fair outcome" would be measured (that is, whether this would be by reference to all Access Seekers or simply to the outcome for Anglo itself).

Peabody submission

Peabody states in its submission that;

"at no time was Peabody Pacific provided with the rules/protocols which DBCT Management intended to applyto the extent that any such rules/protocol were provided....they were not provided in a timely or proper manner and after all expanded capacity was allocated to Users, or would be within a short period of time...."

This appears to be similar to Anglo's concern that, in their view, the basis on which the queue was established was never made clear by DBCT Management or at least has been vague and uncertain.

As noted above:

- all Users received the same communications in relation to DBCT Management's intentions to continue with a 'first to commit' approach to capacity allocation as clearly set out in our letter to all Users of June 2004;
- all Users had the same opportunity to act or not act (or to query if they had any uncertainty) as they saw fit – some Users did, others did not; and
- no other party (other than perhaps Anglo) appears to share these concerns despite all having received the same letters from DBCT Management.

Peabody also claims to have requested expansion capacity within a "reasonable time" of DBCT Management indicating its intention to allocate capacity on a first to commit basis (paragraph 19 of their Supplementary Submission). At paragraph 34, it acknowledges that DBCT Management first conveyed its plans of a possible expansion in a letter dated 2nd July 2004. In fact, that letter should be read together with the letter which DBCT Management sent to Users in June 2004, which clearly documents our intention to allocate capacity on a first to commit basis.

Peabody claim to have been expending sums of money in the "legitimate expectation" that it would receive an equitable allocation of the expanded capacity, despite it not replying to DBCT Management's letter to all Users dated 2nd July 2004, which concluded *"in the absence of a response, we will assume for expansion planning and internal approval purposes that you have no additional requirements for capacity at DBCT above your current User Agreement entitlements"* and despite it not making any request for additional capacity (either binding or conditional) until June 2005.

[REDACTED]

In relation to the meeting between representatives of DBCT Management and Peabody on 15th September 2005, DBCT Management denies giving anyone the impression that the "rules/protocol" for the priority of access to allocation of expansion capacity were not finalised. [REDACTED]

[REDACTED] The only discussion suggesting that the allocation was not finalised was not in relation to the approach being taken, but rather in relation to the possibility that some of the applications for capacity which were ahead of Peabody in the queue may not, for example, pass creditworthiness requirements, so it was possible that Peabody might advance up the queue when final allocations were made.

In light of Anglo's apparent conditional acceptance of the current allocation methodology, Peabody is now the sole User which is urging the QCA to alter the "first to commit" method of capacity allocation. [REDACTED]

If you should have any further questions or require any further information with respect to any of the above, please do not hesitate to contact me.

Yours sincerely

BBI (DBCT) MANAGEMENT PTY LIMITED



Jeff Pollock

CHIEF OPERATING OFFICER

Attach:



11 June 2004

Mr Mike Allen
Anglo Coal Australia Pty Ltd
GPO Box 1410
BRISBANE QLD 4001

cc: Neville Sneddon

Dear Mike

Re: Capacity Availability at DBCT

Over the last month or so and certainly since we commenced the final round of individual Master Plan 2004 consultations, it has become apparent that many DBCT access seekers are desirous of obtaining additional capacity entitlements at DBCT. We understand this desire is to support further development of existing mines or, in some cases, the establishment or accelerated ramp-up of new projects.

Prime Infrastructure has previously and consistently indicated to all access seekers that in order to accommodate further substantive capacity demand, terminal expansion through the expenditure of significant capital is required and that we are not in a position currently to commit such capital to such expansions unless we have a sufficient level of revenue certainty for 2004/05 and beyond, upon which to validate the business case(s) and related capital expenditure.

We are presently in advanced negotiations with a number of access seekers for access to the limited amount of additional capacity likely to become available under the "Short Gain" approach identified in the recent Master plan presentations, on a basis which provides us with both price certainty and a long term contractual commitment.

As the access provider of a declared service under the *Queensland Competition Authority Act 1997*, we have a legal obligation to all access seekers to negotiate in good faith. We also have certain contractual obligations under the DBCT Port Services Agreement (of which you are aware) to adhere to a principle of not discriminating between the interests of individual access seekers.

We take these legal obligations very seriously and for this reason we are committed to the guiding principles of openness, transparency and fairness in our dealings with all access seekers. The purpose of this identical letter to all current users and currently identified access seekers is to communicate the current status in an open and transparent way.

This letter will not be relevant to some of you but to those to whom it is relevant we would, in conclusion, simply indicate that our intention is to allocate scarce capacity on a "first to commit" basis.

Yours sincerely


Chris Chapman
Managing Director

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21 April 2005

Brisbane Corporate Office/Department

Eric Ford
Chief Executive Officer

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e-mail eric.ford@anglocoal.com.au

Dear Chris,

RE: DBCT – Requests for Additional Contract Capacity

We refer to your letter dated 19 April seeking:

1. our confirmation that Anglo Coal has not sought additional capacity above the Annual Limit of 13 Mtpa as per our existing User Agreement; and
2. our suggestion as to how Prime may allocate uncommitted capacity in the event that the additional capacity requested by current and future Users cannot be fully accommodated.

Subsequent to the receipt of your letter, the QCA has released its final decision on the DBCT Access Undertaking and has provided its comments on the appropriate amendments necessary to amend Prime's draft access undertaking, including matters relating to obtaining and allocating Access.

Additional Access requirements

Anglo Coal has had previous discussions with Prime indicating its desire to seek further capacity at DBCT. Whilst some Users have sought to document this process (and now seek to label these as "binding offers" capable of acceptance) it is unfair to retrospectively suggest that a queue was formed upon this basis. Given the uncertainty prevailing over the past 2 years relating to quantum and timing of terminal expansions and the relevant commercial terms, Anglo Coal have instead sought to maintain an ongoing dialogue with Prime on these matters rather than focus on establishing evidentiary materials pursuant to Prime's obligations under the Port Services Agreement.

The QCA has outlined a framework for the negotiation of access rights under Part B of its final Decision, released yesterday. As a basis of allocating scarce additional capacity this provides a more equitable outcome because all potential access seekers have had equal opportunity to assess their position in line with the requirements of a complete standard access agreement. Whilst it is accepted that two new users contracted with Prime prior to the Final Decision, existing Users were unlikely to commit to a binding agreement ahead

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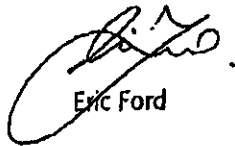
A member of the Anglo American plc group

of the completion of the QCA Access Undertaking process and, in any event, your letter states that Prime was unable to accept the commercial terms on offer at that time.

The process of application for and allocation of capacity has now been specifically addressed following a consultation process by the QCA with all stakeholders. Under these circumstances this seems an appropriate methodology to apply and positions in the queue should now be available based upon applications received after 3:00pm 20 April, 2005.

Consequently, pursuant to Clause 5.2 of the Standard Access Agreement proposed by the QCA, Anglo coal hereby submits its Application as per Attachment A to this letter

Yours sincerely,



Eric Ford

Attachment A - Information required as part of an Access Application

- (a) Access Seekers Name: Anglo Coal Australia Pty Ltd
- (b) Stockpiling Requirements: Sufficient stockpile capacity on a "Cargo Assembly" basis to allow for the shipment of [REDACTED] in accordance with an approximately even delivery pattern.
- (c) Blending Requirements: For each final shipment product provision for blending of 2 separate discrete coal qualities onto a single product on the outloading stream
- (d) Number of Products: [REDACTED]
- (e) Required term of Access: [REDACTED]
- (f) Date of commencement of delivery of Coal: [REDACTED]
- (g) Description of coal type: [REDACTED]
- (h) Net tonnes / annum
- FY 2008 [REDACTED]
 - FY 2009 [REDACTED]
 - FY 2010 onwards [REDACTED]
- (i) Origin of Coal : Lake Lindsay mine
- (j) Rail Capacity : [REDACTED]
Negotiations are underway at present with rail service providers and offers are being evaluated.
- (k) From [REDACTED]
- (l) Gross tonnes per wagon - [REDACTED]
- (m) Forecasts of shipment and parcel sizes out to 2023 is simply not possible. This level of detail will depend upon many factors including annual customer tonnage, the state of the shipping market and will vary according to customer mix and vessel availability at a given point in time, customer receipt capability and customer shipping patterns. However, given the targeted market for Lake Lindsay coal, it is anticipated that annual shipments would be made in [REDACTED] vessels with potential for [REDACTED] of these to be multi parcel shipments. These figures are

indicative only and do not constitute any definite commitment on the part of Anglo as to the actual number of vessels or parcels. It is provided as information only.

- (n) Anglo Coal is an existing User of the DBCT facilities and has clearly demonstrated its creditworthiness.
- (o) Trial shipments are likely to be made through the existing Anglo port capacity.

PEABODY ENERGY AUSTRALIA COAL

15 June 2005

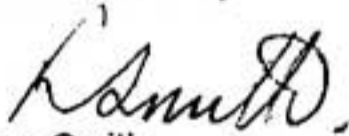
Mr Greg Smith
General Manager Operations
Prime Infrastructure Management Limited
Level 25 Waterfront Place
1 Eagle Street
BRIBANE QLD 4000

Dear Greg

Re: DBCT – Extension of Contracts

Thank you for Chris' informative letter on Extension of Users Contracts beyond their current completion dates. We note his comments that there are several requests by current and future shippers to participate in additional capacity which will be made available by your expansion plans. He is indeed correct that to this point Peabody Energy Australia Coal has not made any binding request for increased annual capacity.

Yours Sincerely



Ray Smith
Manager, Sales Contracts and Shipping