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Mr Brian Parmenter  
Chairman  
Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

Email: [ports.submissions@qca.org.au](mailto:ports.submissions@qca.org.au)

Dear Mr Parmenter

**Re: Dalrymple Bay Coal Terminal - Draft Access Undertaking**

I refer to the draft access undertaking submitted by BBI (DBCT) Management Pty Ltd ('BBI') to the Queensland Competition Authority ('the QCA') on 4 January 2006.

**Introduction**

Macarthur Coal (C&M Management) Pty Ltd ('MCCM') is the operator of the Coppabella and Moorvale Coal Mines and ships coal from those mines through Dalrymple Bay Coal Terminal ('DBCT'). MCCM has participated in the development of the submission made by the DBCT User Group on the draft access undertaking and supports the matters set out in that submission.

The purpose of this submission is to set out MCCM's position in relation to an issue about which the DBCT User Group could not reach agreement, the priority to be given to existing applications for access or increased access to DBCT.

**Priority of access applications**

Under clause 5.4 of the draft access undertaking submitted by BBI, applications for access to DBCT will have priority in accordance with the date on which the access application was made, with an earlier application having priority over a later application. We understand that this general principle is accepted by all users. It is noted that the principle of a chronological queuing mechanism has also been adopted by the Authority in its recent decisions relating to the QR 2005 Access Undertaking.

The aspect of the priority of access on which users are not agreed is the treatment of access applications made prior to the date of commencement of the access undertaking. The position adopted by BBI and supported by MCCM is that those access applications will also have priority in accordance with the date on which they were made, even though that date was prior to the commencement of the access undertaking.



BBI's position is consistent with the approach it has adopted for allocating capacity at DBCT since at least 2004 and is well known to users who have requested additional capacity. BBI has made it very clear to MCCM that this is the approach that it adopts for allocating capacity and MCCM has been disadvantaged by this approach in the past. [MCCM has also undertaken business planning on the basis that this approach would continue once the access undertaking was in place].

This approach is also fair for a multi-user port where capacity is offered to users at the same price. Subject to meeting any necessary credit requirements of BBI, tonnage at DBCT should be allocated in the order in which users and potential users have offered to acquire it from BBI. Any decision to prefer a user who makes an offer to acquire capacity at a later time is likely to be arbitrary and not based on any reasonable principles. The fairness of this approach applies whether offers to acquire capacity are made before or after any access undertaking commences. This reflects the fact that DBCT is an existing facility and business decisions of users and BBI have needed to be made regardless of whether an access undertaking is approved.

MCCM understands that at least one user does not support the priority given to access applications made before the commencement of the access undertaking. The reasons for this position have not been made clear to MCCM by that user, although MCCM understands that, as at the date of this submission, that user is unlikely to obtain any additional capacity at DBCT from the Stage 7X Expansion of DBCT.

If this position were adopted by the QCA, all binding offers for tonnage made to BBI prior to the date of the commencement of the access undertaking would effectively become void, disadvantaging those users who have already made the offers for capacity that have justified the decision by BBI to take preparatory steps for the Stage 7X Expansion.

The new access undertaking would need to adopt a new process for determining the priority of access applications made after its commencement. This is a concern to MCCM because that would also necessitate the refusal of the draft access undertaking by the QCA, which will further delay final resolution of a matter that has been uncertain for more than 2 and a half years.

MCCM has not been seen any other proposal for prioritising access applications other than that set out in the draft access undertaking. However, given the substance of the issue raised, if the process was changed to satisfy that concern then presumably one option available to the QCA would be a 'first in, first served' process based on offers received after the commencement of the access undertaking. This would mean that a company's ability to give its offer to BBI as soon as possible after 9am on the day on which the access undertaking commences would determine access to a commercially crucial asset. If all users put in offers at 9am, a method for allocating capacity proportionately among those who submitted offers at the same time would also need to be developed. This could result in no user obtaining the tonnage it has sought and needs to develop a new project or make a viable expansion to an existing project.

Another option would be to have a moratorium period after the commencement for all users and potential users to submit offers. Following that moratorium period, capacity would then be allocated proportionately to all users who put in offers based on the total number of tonnes for which offers were made and the total number of tonnes to be generated by the Stage 7X Expansion. This could also result in no user obtaining the tonnage it has sought and needs to develop a new project or make a viable expansion to an existing project.

As a consequence, the relatively arbitrary nature of tonnage allocation under these options may lead some users to adopt speculative behaviours by requesting excessive tonnage in the expectation that final allocations will be reduced on a proportionate basis. Such a process would result in a nominal demand for allocation that bears little relevance or credibility in relation to planned mine production.

Both of these options also have no regard to the policies adopted by BBI before the commencement of the access undertaking or the fact that the business of the port and the users does not suddenly commence on approval of the access undertaking. Those businesses, including the exploration, planning and development of new mining projects have been continuing throughout the access undertaking approval process.



**Conclusion**

MCCM believes that the approach adopted by BBI in the draft access undertaking for the allocation of new or spare capacity at DBCT is the only fair and reasonable approach that can be adopted. Any change to that approach to take away the priority that will otherwise be given to applications for tonnage that have been made prior to the approval of the access application fails to take account of the approach adopted by BBI to the allocation of capacity to date, will not be fair on those users who have made bona fide offers to support expansion of the terminal and will produce arbitrary and unreasonable consequences for the allocation of capacity at the port.

If you would like to discuss this submission, please feel free to contact Michael Gray on 3239 7673.

Yours faithfully

**MACARTHUR COAL (C&M Management) Pty Ltd**



**MICHAEL GRAY**

*Manager - Infrastructure*

