



Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Attention: Mr John Hall

Brisbane Corporate Office
Marketing

Mike Allen
Infrastructure & Business Manager

Direct Fax +61 (0)7 3834 1366
Direct Line +61 (0)7 3834 1261
e-mail mike.allen@anglocoal.com.au

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Dear Mr Hall,

Dalrymple Bay Coal Terminal (DBCT) 2006 Draft Access Undertaking

I refer to your letter dated 3 March 2006 in response to Anglo Coal's submission dated 31 January 2006.

Thank you for the opportunity to make further submissions in respect of the main issues of concern to Anglo, namely the formation of the queue for additional capacity and the sharing of the revenue in respect of the calculation of the annual revenue requirement.

Establishment and management of the queue at commencement date

In your response dated 3 March 2006, you stated a number of reasons for concluding to recommend to the Authority not to reject the Draft Access Undertaking (DAU) on the grounds that the DAU provides for recognition of pre-existing queuing arrangements. As stated in our previous submission, the basis on which the pre-existing queue was established has never been made clear by BBI or at the very least has been vague and uncertain.

Various correspondence from Prime dated 11 June 2004 (**Appendix 1**) refers to an allocation process based a "first to commit" method. There is no definition nor explanation from Prime as to what this terminology means and how Access Seekers might demonstrate a commitment basis.

This was followed by further correspondence from Prime dated 2 July 2004 (**Appendix 2**) seeking comprehensive information of the type that would expected from an infrastructure service provider and in fact is in line with part 5 of the DAU. At that time there was no

Anglo Coal Australia Pty Limited

201 Charlotte Street Brisbane 4000 Australia GPO Box 1410 Brisbane 4001 Australia
Tel +61 (0)7 3834 1333 Fax +61 (0)7 3834 1390 www.anglocoal.com.au

ABN 93 076 059 679

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A member of the Anglo American plc group

reference from Prime as to the basis for allocating the additional capacity contemplated beyond the 60 Mtpa provided under stage 1. Moreover prime did not state in this correspondence that responses would be compiled as the basis for establishing a queue for this capacity. It would seem that this would have been an appropriate time to have stated that fact if indeed that was Prime's intention as to how to allocate the capacity.

A further request was received from Prime dated 19 April 2005 (**Appendix 3**), which states that "Our records indicate that Anglo Coal has not made any binding request for increased annual capacity above its existing contractual Annual Limit of 13 Mtpa (current until 30 June 2023), about which we now seek your confirmation". Anglo had in fact replied on 30 July 2004 (**Appendix 4**) indicating its requirements for additional capacity.

The Prime letter goes on to state "in order to allocate future scarce capacity at DBCT on a fair and equitable basis, we are writing to all users seeking their confirmation of pre-advised capacity requirements". This statement does not define what a fair and equitable basis is. Given Anglo's response dated 30 July 2004 the statement that Anglo has not made any binding request seems contradictory.

There are a mix of terms being applied by Prime – first to commit, indications, binding indications, binding offers, pre-advised capacity requirements- in the various items of correspondence received from Prime during the period 2004 to 2005 and it is unclear as to which of these is classified by Prime as the basis for establishing the queue. Anyone of these could be applied by Prime to form the queue, and it was incumbent on Prime to have made clear how the individual User's response might be used if indeed it were to be taken later as the basis for establishing the queue. Prime's failure to do so demonstrates that at the time of these requests Prime itself did not have a clearly defined process for allocating additional capacity.

Once the final DAU was released and the provisions for establishing the queue were known, Anglo submitted an official request in compliance with the form prescribed under Part 5 of the DAU. This application was submitted at 9.15am on 21 April 2005 (**Appendix 5**) and Anglo was advised that this was the first application received.

Prime's letter dated 19 April 2005 refers to a proposed method for allocating capacity namely on the basis of the order of receipt of binding indications. However once again what constitutes a binding indication is not made clear but this statement also confirms our contention that at that point in time, Prime had not settled on a method for allocating scarce capacity.

Prime allocated tonnage under the expansion to Anglo and advised the tonnage by letter dated 21 July 2005 (**Appendix 6**). This tonnage was subsequently increased under the provisions of the Terms sheet, which was offered to Anglo in February 2006. Subsequent discussions with BBI have confirmed to Anglo that there is a reasonable prospect for further distributions of tonnage following BBI's credit worthiness check of all Access Seekers provisionally allocated tonnage.

In its submission dated 31 January 2006, Anglo proposed for consideration a method of pro rata allocation of capacity based on applications made once the final DAU was approved by the Authority. This method as noted during our discussions requires further detail in order to ensure all parties are not disadvantaged. Indeed a similar credit worthiness check would be required to be undertaken by BBI should tonnage be allocated on this basis, similar to the process that BBI is currently undertaking. It would appear to be

inefficient to delay that process which is designed to establish bona fide Access Seekers. There is potential for further allocation from this process. However at this time it is not possible to determine under which arrangement Anglo would receive further allocation. Accordingly while Anglo believes that the basis for allocating tonnage was not transparent to Users, the delay that would arise as a result of reallocating tonnage on a pro rata basis once the DAU was approved would only lead to further delays in the commissioning of new capacity at the terminal. The application of the pro rata method may lead to a loss of capacity for all Users, and consequently Anglo is prepared to allow the current method of allocating tonnage by BBI but reserves 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 Coal has made significant commitments to the expansion of the Lake Lindsay mine and production will commence in July 2006.

Anglo does not wish to make any further submission on the revenue split issue.

Yours faithfully,



M.K. Allen
Infrastructure & Business Manager
Anglo Coal Australia Pty Ltd