BHP

Cross-Submission to the Queensland Competition Authority on the Declaration Review of the Dalrymple Bay Coal Terminal

Provided in response to submissions made by DBCTM dated 11 March 2019

PUBLIC VERSION – CONFIDENTIAL INFORMATION REDACTED

26 April 2019

PUBLIC VERSION

CONFIDENTIALITY: *Highly confidential and competitively sensitive information has been redacted.*

1. Introduction

1.1 BHP previously provided submissions to the Queensland Competition Authority (**QCA**) on the Declaration Review of the Dalrymple Bay Coal Terminal (**DBCT**) dated 16 July 2018 and 11 March 2019.

1.2 BHP confirms that the matters addressed in the previous submissions have not changed, and welcomes the fact that the QCA's findings in its declaration review of the DBCT are consistent with those submissions. The purpose of this submission is to address some specific matters arising from DBCTM's response dated 11 March 2019 to the QCA's draft determination.

2. Hay Point Coal Terminal (HPCT) and DBCT

2.1 BHP confirms its view that the coal handling services provided by HPCT to BHP Mitsubishi Alliance (**BMA**) and the BHP Billiton Mitsui Coal Pty Limited joint venture (**BMC**) will not be substituted for coal handling services provided by DBCT, except in marginal and limited circumstances, because BHP is committed to fully utilising the HPCT for BMA and BMC mines.

2.2 This is because:

(a) BMA is committed to operating the HPCT as part of a flexible and efficient supply chain from mine to port, for example, BMA is able to use stockpile capacity at HPCT to manage variability in railings without impacting on shiploading, thereby reducing demurrage costs and increasing the efficiency of shiploading;

(b) maximising capacity utilisation at the HPCT delivers BMA the lowest per-unit operating costs at the HPCT;

(c) BMA is able to utilise dedicated stockpiles at HPCT to blend product coals from its multiple mines, to uplift quality and ensure consistent quality of coals sold to customers, which delivers significant value benefits;

(d) BMA can maximise the flexibility with which it can respond to any disruption by weather, rail system maintenance or other operational constraints, for example by increasing stockpiling at HPCT in advance of such events which enables sale and shipping of product coals to continue during the upstream disruption; and

(e) there is no incentive or intention to start operating the HPCT as a common user facility – doing so would be likely to introduce significant complexity and inefficiencies to the operation of HPCT, while also diminishing if not eliminating many of the benefits noted above.

2.3 There are circumstances in which BMA will seek to acquire capacity at DBCT. These are as follows:

(a) to manage capacity limitations at HPCT (including, for example, when maintenance is being carried out at HPCT);

(b) to make up lost sale tonnages following system disruptions (eg due to extreme weather events) where HPCT is fully utilised, by acquiring temporary transfers of capacity at DBCT from other users;

(c) to meet customer's requirements to blend with other Goonyella System producers' coal; and

(d) to manage inventory positions at mine operations.

2.4 The current arrangements in relation to DBCT are as follows:

(a) BMC has contracted [redacted] BMC has contracted capacity at DBCT because of the capacity limitations at HPCT. [redacted]

(b) BMA has not historically held any contracted capacity at DBCT, but [redacted] holds temporary assignments of capacity from other users from time to time, to address circumstances noted in 2.3 above; and

2.5 In relation to participation in the DBCT access queue, it is noted that:

(a) in the absence of capacity at HPCT, DBCT is preferable to access at other coal terminals (Abbot Point / RGT / WICET), which is sufficiently more costly even assuming it is available;

(b) being in the queue provides a "free option" to access capacity in the event future requirements align with capacity that may become available:

(i) it provides priority to contract capacity in the event of a mine project increasing production resulting in a requirement for the capacity – but without requiring capacity to be contracted on a take-or-pay basis if at the time the capacity becomes available the relevant mine projects are not ready to proceed (or have not delivered increases in production);

(ii) given there is no cost to an access application, it is economically rational to be in the queue to preserve that priority, to create an option at the time of capacity becoming available.

(iii) whether the option is ultimately exercised (if capacity becomes available) will be a product of progress of the relevant mining project and capacity that is or will become available at HPCT, and if none, at DBCT; and

(c) [redacted]

2.6 BMA is able to utilise BMC's capacity at DBCT, and does so for the reasons set out in paragraphs 2.2 and 2.3 above. However, this is not a substitution of capacity between HPCT and DBCT.

2.7 Significantly, neither BMA nor BMC would *replace* (ie not use) capacity at HPCT with contracted capacity at DBCT. Arrangements to have access to capacity at DBCT are used to complement to capacity at HPCT to account for the circumstances described above, and not as a substitute for HPCT.

2.8 The relevant matters for the QCA to consider are the economic incentives that underpin the use of HPCT and DBCT. The fact that coal services at DBCT may conceptually, as a purely factual matter, be "able to be substituted" for the services provided at HPCT [DBCTM response to QCA Draft Recommendation, p.18, 21] does not establish evidence of whether it is a substitute for the purposes of the declaration analysis. As the QCA observed in its findings, the fact that BMA and BMC use DBCT is not evidence of "switching" between the coal handling services provided by the DBCT and HPCT. BMA's and BMC's demand should not be imputed to DBCT, as BMA and BMC are committed to fully utilising HPCT.

2.9 Further, the fact that DBCT is opportunistically used by BMA and BMC, in addition to the HPCT, does not mean that the inverse automatically applies. It is possible for one firm to impose a strong competitive constraint on the other, without the latter imposing a strong competitive constraint on the first. This is the point made in BHP's first submission.

2.10 BHP agrees with the QCA's conclusion that it would not expect BMA or BMC to switch from HPCT to DBCT in response to price or cost incentives because of the factors set out above [Draft Recommendation, p.C25-26].

3. **Adani Abbot Point Coal Terminal and RG Tanna Coal Terminal**

3.1 BHP uses the DBCT, Adani Abbot Point Coal Terminal (**AAPT**) and RG Tanna Coal Terminal (**RGTCT**) in addition to HPCT on the basis that they are complements not substitutes.

3.2 BHP has used capacity at AAPT when it faced capacity constraints at HPBCT and DBCT.

3.3 Similarly, BHP has used RGTCT when the Goonyella system was closed for ongoing repair work.

3.4 Consistently with the submission above, the relevant matters for the QCA to consider are the economic incentives that underpin the use of AAPT and RGTCT. The fact that coal services at these other terminals are used on the limited basis described above does not answer that question for the purposes of the declaration analysis.

4. **GAPE**

4.1 DBCTM submits that BHP's support of the development of the Goonyella to AAPT expansion (**GAPE**) is evidence that BHP considers AAPT as a viable substitute terminal to DBCT [DBCTM response to QCA Draft Recommendation, p.17].

4.2 BHP wishes to clarify that it supported the development of the GAPE, but ultimately supported the Aurizon (then Queensland Rail) proposal to construct the Goonyella to Abbot Point "missing link" and associated infrastructure, because at the time HPCT was fully utilised and DBCT was fully contracted.

5. **Including BMA and BMC demand for the purposes of criterion (b): meeting foreseeable demand at least cost**

5.1 DBCTM argues that the QCA has grossly underestimated total forecast demand by not including all demand from BMA, and demand from BMC that is not contracted and, as a result, the QCA's artificially narrow market definition incorrectly dismisses evidence of substitution between terminals actually occurring in the market in which the DBCT service is supplied [DBCTM response to QCA Draft Recommendation, p.11, 14].

5.2 However, this argument is semantic and does not take account of the actual evidence set out in this, and BHP's previous, submissions.

6. **Conclusion**

6.1 The coal handling services provided by HPCT to BMA and BMC will not be substituted for DBCT, except in marginal and limited circumstances.