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Dear Mr Hall

Rio Tinto Coal Australia submission on draft Goonyella System Rules submitted by QR Network on 30 June 2011

We write in response to the invitation for comment from the Queensland Competition Authority (**Authority**) on the draft Goonyella System Rules (**System Rules**) submitted for the Authority's approval by QR Network on 30 June 2011.

Rio Tinto Coal Australia (**RTCA**) or its subsidiaries have 3 mines (namely Hail Creek, Blair Athol, and Clermont mines) located within the Goonyella System and ship coal for export from these mines via the Dalrymple Bay Coal Terminal.

RTCA does not have a direct contractual relationship with QR Network but procures rail haulage services from rail operators who in turn acquire access to the Goonyella system from QR Network. Conditions set out in the System Rules which affect the manner in which rail operators perform coal haulage services will have a direct impact on RTCA's business.

The Goonyella system is an increasingly complex multi-user environment. RTCA considers that the system would benefit from the appointment of an independent coordinator to perform the role of planning and managing the rail haulage and ship loading requirements of producers who ship via DBCT to ensure contractual alignment and the most effective utilisation of available coal chain system capacity. This will become more important as demand in the Goonyella system increases (with the expansion of the Hay Point Terminal and the commencement of operations in the Newlands system) and capacity becomes more constrained.

The draft System Rules propose a number of amendments to current practices utilised by stakeholders in the Goonyella system. RTCA's primary concern is that these changes require the adoption of practices that will be impossible to implement for the majority of producers who rail coal in the Goonyella system and who will be unduly penalised for their inability to comply. For the reasons set out below, we submit that the following key concerns should be addressed before the draft System Rules receive approval from the Authority:

1 the obligation on Access Holders to provide weekly "even railings" is not compatible with the cargo assembly mode of operation at DBCT;

2 the weekly schedule should be indicative only as it is not practical to lock in a rail schedule in effect 10 days in advance for DBCT;

3 if, as proposed, a 36 hour lead time is to be introduced to the 48 hour planning process currently utilised, only the first 24 hours of the 48 hours should be binding (where binding refers to the use of the schedule to assess TSE consumption);

4 the calculation of TSE consumption should reflect actual capacity lost (rather than mere deviations from the schedule developed in the 48 hour planning process) and should be fault based;

5 the mechanism for the resolution of contested paths should:

(a) give priority based on the "binding" schedule determined under the 48 hour planning process over the weekly schedule;

(b) otherwise follow the mechanism in Schedule G of the Access Undertaking; and

(c) provide an equitable and transparent mechanism including real-time access for service providers and producers for the allocation of train path capacity between DBCT and Hay Point;

6 it should be a condition of approval of the draft System Rules that QR Network be required to obtain the Authority's approval for the amendments that will be required to address the impact of operations in the Newlands System (ie cross system traffic); and

7 the ambiguous use of certain specific terms should be clarified so that there is certainty about which stakeholder will bear each obligation described in the System Rules.

Issue 1: Weekly "even railings" are not compatible with cargo assembly

The Goonyella system services 22 mines and two ports: Dalrymple Bay Coal Terminal (**DBCT**) and Hay Point. Hay Point is BHP Billiton Mitsubishi Alliance's dedicated coal export facility and it presently has a capacity of 44 million tonnes per annum. DBCT is a multi-user terminal which has the capacity to export 85 million tonnes per annum of coal and services 19 mines. DBCT has operated on a cargo assembly basis since 1998.

Producers who export via DBCT have limited stockpiling capacity at DBCT and instead rail coal to the port to meet shipping demands. Coal from multiple producers is often combined in a single shipment by buyers for export – it is estimated that over 80% of the DBCT vessels are co-shipped. This cargo assembly mode of operation means that the actions of one producer, rail operator or vessel will have an impact on all producers who utilise DBCT. Consequently, changes in schedule occur frequently and on short notice.

QR Network acknowledges that the proposed System Rules are largely consistent with even railings contractual arrangements but submits that this is not materially incompatible with the concept of a cargo assembly mode of operation at DBCT. RTCA does not agree with this proposition.

Section 3.2.2 of the draft System Rules seeks to convert each "Access Holder's" Train Service Entitlement (**TSE**) to a nominal weekly entitlement for a specified number of trains. This is not consistent with:

- QR Network's standard access agreement, which provides for both monthly and nominal weekly allocation of access, but which states that the monthly allocation takes precedence over the nominal weekly allocation;
- DBCT's standard form access agreement, which provides for an annual allocation of tonnage to each producer and requires each producer to use its best endeavours to ship evenly each month during the year. In practice, railings to DBCT by each producer are not spread evenly over each week of the year but are variable and determined by the order of arrival of each vessel.

While a rail operator hauling for multiple producers is the "Access Holder", it may be possible for that Access Holder to balance the variable haulage requirements of those of its customers which ship via DBCT in a manner that is compatible with a nominal weekly TSE. This will not be possible for an Access Holder who is a rail operator for one or few customers or a producer shipping via DBCT who is an Access Holder in its own right (a possibility contemplated by 2010 QR Network draft Amending Access Undertaking (see the end user concepts)).

If maintained, the allocation of capacity using the nominal weekly TSE has the potential to unreasonably disadvantage users of DBCT (who have limited ability to stockpile coal at the port) over users of Hay Point, it also has the potential to disadvantage smaller rail haulage operators and restrict new entry.

Issue 2: Weekly schedule should be indicative not binding

Section 3.2.3 of the draft System Rules requires each rail operator to compile its weekly train orders and submit these to QR Network prior to midday on Wednesday for the following week (Monday to Sunday). Sections 3.2.7 and 3.2.8 then detail a process for development of a weekly train plan by QR Network and distribution and acceptance by Access Holders by 4pm each Thursday.

It is unclear from the draft System Rules whether it was intended that this weekly schedule be binding. The language in section 3 suggests that the weekly schedule is intended to be binding but section 4 provides for consumption of TSE to be calculated using the 48 hour planning process. This level of ambiguity in such an important document is not acceptable.

If a binding weekly schedule is intended[1], this is a change from the current system utilised for the DBCT coal chain, where:

- the operator of DBCT places indicative orders for trains with the rail operators for the following week (Monday to Sunday) in Tuesday afternoon;
- rail operators notify QR Network of their train path requirements leading to the production of an indicative schedule by Wednesday; and
- each day, the train schedule for the next 48 hour period (beginning midnight) becomes binding.

RTCA supports the preparation of an indicative seven day schedule only. The multi-user nature of DBCT and the practice of multi-user shipping (whereby cargos from multiple producers are combined by buyers) at DBCT mean that there will be unavoidable changes to a seven day schedule finalised three days in advance. This is due to a number of factors:

- the DBCT terminal regulations give priority to receipt of coal based on the order of vessel arrivals. A change in the order of arrival may necessitate a change in the order of scheduled trains, which under the draft System Rules would, in effect, be prepared 10 days in advance (finalised Thursday afternoon for the following Monday – Sunday); and
- in respect of any multi-producer cargo, if any component is not ready to be railed to DBCT for any reason, the whole cargo (and each of the trains ordered for each affected producer) will be cancelled and the next ship in the queue will be advanced, requiring re-scheduling of all trains ordered.

RTCA therefore submits that there must be flexibility in the train scheduling process to allow the operator of DBCT to call for a swap of train paths between producers to meet ships. For this reason, and subject to RTCA's comments on issue 3 below, RTCA submits that the schedule should not be locked in and should be capable of amendment until the 48 hour planning process described in section 4 is complete. This is consistent with TSE consumption being calculated taking into account deviations from the schedule agreed at the 48 hour planning process.

The following changes are necessary to reflect RTCA's position in the draft System Rules:

- Section 3.2 should be amended to acknowledge that the 7 day schedule finalised each Thursday is an indicative schedule only and does not become binding until the 48 hour planning process in section 4 is reached; and
- Section 5.1 should be amended to clarify that changes submitted prior to the 48 hour planning process is undertaken will be accommodated by QR Network unless it will negatively impact QR Network's ability to fulfil its contractual obligations to other Access Holders. At present, it appears that changes after the weekly schedule has been finalised are at QR Network's discretion (with certain factors to be considered) – this is a great disadvantage to DBCT users.

[1] RTCA have interpreted the draft in this way.

Issue 3: if a 36 hour lead time is to be introduced to the 48 hour planning process as proposed, only the first 24 of 48 hours should be binding

Consumption of TSE in the Goonyella system is currently determined in the following manner:

- By 5pm each day, the trains scheduled for the next 48 hours beginning midnight the same day are considered "locked in".
- TSE consumption calculations include deviations from the schedule for that 48 hour period: for example, if a train within this scheduled 48 hour period is cancelled in its entirety and a replacement train is scheduled, the Access Holder will have consumed two train Service Paths: one for the cancelled train and one for the new train scheduled.

The draft System Rules seek to amend the current process by locking in a scheduled 48 hour period with a 36 hour lead time. In effect, this means at 4pm each day, the next 3.5 days of schedule are "locked in" and deviations from the schedule will count toward TSE consumption.

RTCA considers that the introduction of the 36 hour lead time is reasonable if only the first scheduled 24 hours is locked in and the schedule for the second 24 hour period remains indicative. In effect, this means that at 4pm each day, the next 2.5 days of schedule are locked in. The proposal that only the first 24 hours, rather than 48 hours, be binding is consistent with the 48 hour planning process being performed daily, as described in section 4.1 of the draft System Rules.

Issue 4: the calculation of TSE consumption should reflect actual capacity lost and should be fault based

The draft System Rules contain minimal detail on the manner in which TSE consumption will be determined. Presently as drafted, any deviation from the schedule finalised under the 48 hour planning process in section 4 of the draft System Rules will be included in the calculation of TSE. In any method where consumption of allocated capacity is based on a schedule (rather than based on actual train movements), RTCA submits that the following additional concepts should be reflected in the draft System Rules:

- Train Paths ordered and cancelled for one producer but able to be reallocated to another producer without an adverse impact on capacity in the system should not count toward TSE consumption for the relevant Access Holder.
- A fault based system should be introduced so that a producer who causes a delay to, or reorganisation of train paths, wears any lost capacity. For example, if a producer whose coal is to be combined with the coal of two other producers for a shipment does not have sufficient coal available and this leads to the ship being bumped in the queue by the operator of DBCT, the cancellation of the relevant trains for the cargo and the re-organisation of all subsequent trains, the producer who did not have the coal available should bear the lost train services. The concepts of delay and cancellation accountability outlined in section 7.2 of the draft System Rules could be extended beyond a reporting tool and included in the calculation of TSE consumption. By contrast, the Hunter Valley coal chain has successfully implemented a similar fault based system and QR National and majority of Goonyella producers are participants in the system.
- Where QR Network is the cause of a cancellation or a delay leading to the cancellation of subsequent train paths, this should not be considered consumption of an Access Holder's TSE.

Issue 5: Order of priority for contested train paths is incorrect

RTCA has three concerns with the method of allocating priority where train paths are contested set out in section 3.2 of the draft System Rules.

(a) Priority should be given to schedule produced in the 48 hour planning process

Sections 3.2.3 and 3.2.4 of the draft System Rules indicate that QR Network will give priority when allocating capacity to trains scheduled in accordance with the nominal weekly TSE of the Access Holder.

Subject to its comments on issue 3 above, RTCA submits that first priority should be given to train paths "locked in" at the 48 hour planning process (rather than nominal weekly schedule as suggested). If during the weekly scheduling process, spare capacity has been allocated as additional or ad hoc capacity, there should still be the ability for that allocation to be revoked for allocation to an Access Holder with uncontracted TSE if amendments are made to the weekly schedule prior to the 48 hour planning process.

(b) Contested path mechanism should align with the Access Undertaking

Section 3.2.4 of the draft System Rules indicates that where contested paths exist, the issue will be resolved and capacity allocated in accordance with Appendix 2, Schedule G of the Access Undertaking. Appendix 2, Schedule G of the Access Undertaking describes a process for resolving Contested Train Paths and gives first preference to "Train Services" (being the operation of a train on rail infrastructure between a specified origin and destination) or Unloading Facilities (ie. ports) identified in the System Rules as having priority, if any.

Rather than specify any Train Services or Unloading Facilities which are to receive priority in the event of conflict, the draft System Rules describe a cascading process for allocation of capacity which contains elements of, but is different to, the relevant provisions in the Access Undertaking. For example, Appendix 2, Schedule G makes third in the order of priority Access Holders for whom QR Network is the most behind by "contract year to date", whereas the draft System Rules first give priority to Access Holders for whom QR Network is the most behind by "contract month to date", followed by those Access Holders for whom QR Network is the most behind by "contract year to date". The deviations from the methodology set out in the Access Undertaking create ambiguity as to the process to be applied.

RTCA submits that it was not intended that QR Network re-write the Contested Path resolution process using the draft System Rules. QR Network is only free to nominate certain Train Services or Unloading Facilities to receive first priority, after which the process set out in the Access Undertaking is to apply. RTCA considers that a reference to the application of the procedure described in Appendix 2, Schedule G of the Access Undertaking is sufficient.

(c) Allocation of train paths between DBCT and Hay Point should be proportionate

The Goonyella system encompasses two different coal chains: DBCT and Hay Point. The draft System Rules do not articulate how available System Paths will be allocated between the two chains.

RTCA submits that:

- generally, available train paths should be allocated to each of DBCT and Hay Point in accordance with the proportion of coal contracted through each terminal; and
- a transparent mechanism for dealing with the allocation of lost capacity where delays occur involving common infrastructure should be in place.

Issue 6: Cross system interaction

QR Network states in the introduction to the draft System Rules that it will look to extend the Goonyella System Rules to include the interaction with other coal chains (including the northern and southern Bowen Basins). Under section 1.1 of the System Rules as presently drafted, QR Network will consult with stakeholders prior to submitting amendments to the System Rules but would not be required to undergo a formal review by the Authority.

RTCA submits that the commencement of operations in the Newlands system in particular, which will share multiple loading points and sections of rail infrastructure with the Goonyella system, will have considerable impact on the operation of the Goonyella system. In particular, the treatment of delays at load points shared by both systems and the resultant impact on capacity in each system will need to be addressed.

RTCA submits that the Goonyella System Rules should be amended prior to commencement of operations in the Newlands system and the amendments should be subject to a review and approval process by the Authority, with the opportunity for stakeholders to provide comment. We request that the Authority make this a condition of approval of the current draft System Rules.

Issue 7: Resolution of ambiguity in the drafting

As a general comment, RTCA notes that certain sections of the draft System Rules contain a level of ambiguity which is not acceptable in a document which will have a significant impact on the allocation of capacity within the Goonyella system. In particular, RTCA asks that QR Network carefully revisit the use of the terms “Rail Operator”, “Access Holder”, “Supply Chain Stakeholder”, “producer” and “operator” within the draft System Rules to confirm that obligations are placed on the correct stakeholder in all circumstances.

As noted in the onset of this submission, RTCA believes that the system would benefit from the appointment of a coordinator to perform the role of planning and managing the rail haulage and ship loading requirements of producers who ship via DBCT. Whilst discussions of such a model may be outside the scope of the System Rules document, we welcome the opportunity to meet with you and your team in person to elaborate how such a model can assist in improving contractual alignment and effective utilisation of coal chain system capacity.

If you require any further information on this submission, please contact Xiao-Fan Zhuang on 07 3029 1822.

Yours sincerely,

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