

QCA declarations review Anglo American's submission in response to initial submissions

Anglo American Coal Australia

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1 Executive Summary

Anglo American Metallurgical Coal business (**Anglo American**) welcomes the opportunity to provide submissions to the Queensland Competition Authority (**QCA**) on the initial stakeholder submissions received in respect of the QCA's review of the declarations of the Dalrymple Bay Coal Terminal (**DBCT**)¹ and the rail infrastructure of Aurizon Network² (published by the QCA on 1 June 2018).

Anglo American has a longstanding commitment to the Queensland coal industry, and is a member of the Queensland Resources Council (**QRC**) and the Dalrymple Bay Coal Terminal User Group (**DBCT User Group**). Anglo American endorses and supports the submissions of the QRC and the DBCT User Group. This brief submission is intended to supplement those submissions. Consequently, this submission considers issues in relation to both the Central Queensland Coal Network (**CQCN**) and the Dalrymple Bay Coal Terminal (**DBCT**).

In summary, Anglo American considers that:

- (1) each of the declaration criteria is satisfied in respect of the coal handling services at DBCT;
- (2) each of the declaration criteria is satisfied in respect of the CQCN;
- (3) as a consequence of (1) and (2) above, each of those relevant services should be re-declared by the QCA for the period following 8 September 2020.

In this submission, Anglo American particularly notes the following:

- (4) The QCA should consider the entirety of the CQCN when assessing whether to declare a service, rather than considering whether each component system should be declared;
- (5) Even if the QCA ultimately prefers an approach in which each system is individually considered, the Moura Coal System (as defined in the *Queensland Competition Authority Act 1997* (Qld)) (**QCA Act**) satisfies each of the declaration criterion, including that it is a facility of state significance;
- (6) Contrary to the submissions made by Aurizon, the declarations of CQCN and DBCT do not deter investment, nor materially increase regulatory risk – in fact, declaration ensures that investors in the coal industry and investors in infrastructure have regulatory certainty when making investment decisions;
- (7) The appropriate market for consideration in relation to criterion (a) with respect to DBCT is the Hay Point catchment coal exploration tenements market (as defined in the DBCT User Group Submission). This market is distinct from other coal tenement markets – and it is Anglo American's experience as a long term participant in that market that the declaration of DBCT has a material impact on the competitive dynamics of that market.
- (8) Marginal substitution from DBCT to other coal handling facilities should not be taken to be indicative of a broader market than that the Hay Point catchment coal exploration tenements market. Rather, users who hold contracts with DBCT and other coal handling facilities are predominantly incentivised to contract away from DBCT for non-cost reasons (such as geographical distribution of mines with common ownership). This is consistent with Anglo American's experience of the relevant market as a long term market participant.

¹ Referred to in this submission as the **DBCTM Initial Submission**.

² Referred to in this submission as the **Aurizon Initial Submission**.

2 Anglo American's Queensland mining operations

Anglo American is the second largest Australian and third largest global seaborne export metallurgical coal producer operating in open cut and underground mining. Its current portfolio of metallurgical and thermal coal mining operations in Australia consists of Moranbah North, Grosvenor, Dawson, Grasstree and Capcoal mines. Current projects include brownfields growth options at each major mine complex and a potential future greenfields option at Moranbah South.

As Anglo American's Australian metallurgical coal portfolio is focused around the Queensland coal export market (and the associated tenements markets), managing infrastructure access and cost is a critical component of Anglo American's management of its mining operations.

Anglo American has significant, long term contracts for infrastructure capacity with both Aurizon Network and DBCT Management Pty Ltd (**DBCTM**) for the use of the services subject to the declaration review by the QCA.

3 Declaration of the CQC

As noted above, Anglo American is a member of the QRC and endorses the submission lodged by the QRC in relation to the re-declaration of the CQC.

In specific response to the submission made by Aurizon and published by the QCA on 1 June 2018, Anglo American notes the following points.

3.1 The QCA should consider the CQC as a whole

Anglo American agrees with the views expressed in the QRC submission in reply to the Aurizon Initial Submission, being that:

- (1) the QCA Act requires the QCA to consider the redeclaration of the existing declared service, and the application of the declaration criteria to the existing declared service;
- (2) the existing declared service is the CQC as a whole – being the sum of the Newlands system, the Blackwater system, the Moura system and the Goonyella system;
- (3) the QCA is not obligated by the QCA Act to consider whether each component of the declared services satisfies the declaration criteria, but rather to consider whether the service as a whole satisfies the declaration criteria and should be redeclared;
- (4) the correct test for the QCA to consider is whether the entire service meets the declaration criteria, and, if the answer is no, to consider whether any part of the service meets the criteria; and
- (5) the QCA should therefore consider the application of the declaration to the existing declared service, rather than the 8 services proposed by Aurizon in its initial submission.

The Aurizon Initial Submission does little to substantiate its view that the QCA must be satisfied that the 8 proposed services satisfy the declaration criteria before the QCA can redeclare the service. Anglo American submits that this approach is inconsistent with the QCA Act, and that any component services should only be considered if the QCA is satisfied that the entirety of the service does not satisfy the declaration criteria.

For completeness, Anglo American also considers that some of the assertions made in respect of the proposed 8 services are unsubstantiated and do not reflect the market realities that exist with respect to the CQCEN. For example, Aurizon claims that access regulation has impaired Aurizon's ability to effectively negotiate long term access arrangements in relation to the proposed greenfield railway from either the Surat or Galilee coal basins.³ The basis of this assertion appears to be that the proponents of the project have elected not to engage with Aurizon and have instead elected to develop their own rail infrastructure. There is no evidence in Aurizon's submissions or in the public domain to support this assertion. Anglo American notes that there is nothing that would disallow access seekers from seeking declaration of new rail infrastructure assets in Queensland under the QCA Act if they were built outside of the existing Aurizon network.

3.2 Does the Moura System satisfy the declaration criteria?

As noted above, Anglo American considers that the correct construction of the QCA Act requires that the QCA consider the application of the declaration criteria to the entire service (being the CQCEN) when considering whether the service should be re-declared. It would only be appropriate to consider whether the Moura system satisfies the declaration criteria as a standalone service if the QCA found that the CQCEN as a whole did not satisfy the declaration criteria. This stands in contrast to Aurizon's submissions that the QCA must consider whether each component of the CQCEN satisfies the declaration criteria in order for the QCA to redeclare the service.

Anglo American firmly believes that the CQCEN satisfies all of the declaration criteria for the reasons set out in the QRC's initial submission. However, in the event that the QCA considers whether the Moura system satisfies the declaration criteria as a stand alone service, Anglo American submits that the Moura system should be declared as it satisfies each of the declaration criteria.

Anglo American owns and operates one of two operating mines⁴ on the Moura system (being the Dawson mine). As such, Anglo American is well-positioned to provide detailed submissions to the QCA on the Moura system.

Aurizon's initial submission claimed that Moura did not satisfy criterion (c) by virtue of the Moura system not being of state significance. Anglo American rejects this claim for the following reasons:

- (1) There is nothing in the QCA Act which prescribes that state significance is to be measured by reference to the number of kilometres that a network covers. It is unreasonable to claim a significant piece of essential infrastructure is not of state significance merely because it is shorter than other pieces of essential infrastructure.
- (2) State significance should not be measured by reference to other assets of state significance. State significance should be measured by considering the value or significance of a system to Queensland – it should not be a comparative exercise. There are monopoly rail networks which can support more capacity than the CQCEN (such as the Pilbara railway networks). However, it is clear that the CQCEN is significant even if it is not the largest comparable service within Australia.
- (3) Aurizon estimates that the total crown royalties paid from those mines operating in the Moura system range between \$91 million and \$135 million per annum.⁵ For reasons that are unclear to Anglo American, Aurizon asserts that this number is not

³ Aurizon Initial Submission, p 40.

⁴ Anglo American notes that the Baralaba North Mine is scheduled to recommenced operations in 2018 (see <http://www.baralabacoal.com.au/projects/baralaba-north-mine/>). This mine will also use the Moura system and expand the number of producing mines utilising the system.

⁵ Aurizon Initial Submission, p 44.

significant enough as a royalty to make the Moura system of state significance – despite the fact that those mines would close if the Moura system did not exist and the Queensland government would therefore lose the entirety of this royalty stream. Anglo American submits that this is a significant contribution to Queensland revenues and the impact of these royalties should not be minimised or dismissed merely because they are comparatively smaller than systems with a greater number of mines paying royalties. Further, and more importantly, Anglo American submits that Aurizon’s analysis completely ignores the broader economic contribution that the Moura system independently makes to the broader Queensland economy. The Dawson mine was the original mine within the Moura system – and Anglo American therefore has a deep appreciation of the value that this mine and the Moura system bring to the local community. The Moura system has underpinned employment in the area since the early 1960s when the Dawson mine (then known as the Moura mine) was first developed. The closure of the mines dependent on the Moura system would be far greater than a cessation of royalty streams: there are important regional communities that depend on the mines on the Moura system for employment opportunities. The economies of these communities would be significantly harmed if the Moura system shut (and therefore the dependent mines were required to shut) – and it is troubling to Anglo American that Aurizon’s submission would appear to dismiss these communities as significant to Queensland.

- (4) Anglo American notes Aurizon’s Initial Submission claims that “the value of total coal exports represents approximately 35% of the total exports for the state, with Moura contributing only approximately 1% of the total value of exports”.⁶ As noted above, the concept of state significance is not intended to be comparative. However, Anglo American further notes that this means that the total value of exports from the Moura line is greater than the total value of exports for aluminium, cotton, aluminium ores and concentrate and zinc – all of which are considered to be major exports of Queensland in the 2016/17 financial year.⁷
- (5) Anglo American notes that each of Aurizon’s submissions regarding the export value and royalty amounts attributable to the Moura system ignore the reopening of the Baralaba North Mine in 2018, and other proposal to develop projects on the Moura system (including the Baralaba South Project). This means that, while Anglo American considers that these metrics are not conclusive in determining state significance, the Moura system is likely to increase its contribution to Queensland exports and royalty payments over the course of any future declaration.
- (6) Aurizon submits that the QCA would need to consider the likely substitution effects of coal exports from other mines in Blackwater and Goonyella to export through the Gladstone coal terminals when considering the state significance of the Moura system.⁸ Anglo American notes that there is existing surplus capacity at both RG Tanna and WICET – which means that there is no likely substitution and removing the Moura system mines would result in a net loss of supply to the Gladstone coal terminals.
- (7) Aurizon also submits that the QCA needs to consider the labour mobility and employment impacts of increased or expanded production from alternate mining operations in other coal systems when considering the impact on Queensland of the Moura system closing.⁹ Anglo American considers it dismissive of the communities built along the Moura system to claim that labour mobility would resolve the significant economic impact of closing the mines that depend on the Moura system, and further notes that Aurizon provides no basis on which it

⁶ Aurizon Initial Submission , p 6.

⁷ See <https://dfat.gov.au/trade/resources/Documents/qld.pdf>.

⁸ Aurizon Initial Submission , p 44.

⁹ Aurizon Initial Submission , p 44.

considers increased or expanded production from alternate mining operations would be likely to occur and absorb the impact of the closure of the Moura system.

In conclusion, Anglo American firmly believes that the Moura system, as part of the CQCEN, satisfies all of the declaration criteria. Anglo American also strongly believes that the Moura system is of state significance as an independent system and rejects Aurizon's submissions to the contrary in the strongest possible terms.

3.3 Declaration of CQCEN does not deter investment nor materially increase regulatory risk

Anglo American notes that submission made by Aurizon in its initial submission that '*the nature of regulation in the CQCEN has resulted in long and unnecessary delays in processes for the approval of access undertakings and the exercise of regulatory oversight on matters that should be operational rather than regulated activities*'.¹⁰ Aurizon also submitted that the nature of the existing regulatory framework acts as a disincentive for investment in long-term rail infrastructure.¹¹ Anglo American makes the following points in response:

- (1) Anglo American has been involved in each regulatory process related to the declaration of the CQCEN since Aurizon acquired the assets in 2010 and was involved in the regulatory processes in which preceded Aurizon's acquisition of the assets from the Queensland Government.
- (2) Anglo American is of the view that a large number of the delays in processes can be attributed to the conduct of Aurizon and the manner in which Aurizon elects to engage in regulatory frameworks. This view is supported by the fact that other regulatory processes run by the QCA for declared services in Queensland have not experienced the same extent of delay or difficulty as those in which Aurizon participates.
- (3) The regulatory framework itself should not disincentivise infrastructure investors from investing in long term rail infrastructure in Queensland – indeed, the nature of the QCA process is to guarantee the return that Aurizon, as infrastructure owner, will receive on its assets which ensures that there is regulatory certainty and certainty of return on investment for any potential investors.
- (4) To the contrary, removing the declaration of CQCEN would, however, disincentivise investment in coal projects and mines in Queensland – as it would create significant uncertainty over the infrastructure costs associated with such projects (with infrastructure costs being a significant factor when considering whether to invest in a project or develop a new project within the tenements market).

Merely because the regulated entity considers the regulatory framework to be onerous does not mean that the public interest is not promoted by that service being declared. The issues that a regulated entity may have in respect of the regulatory framework can be addressed, but the declaration review of the service is not the appropriate forum for those concerns to be considered by the QCA.

4 DBCT

4.1 Appropriate market for criterion (a)

Anglo American endorses and supports the submission of the DBCT User Group in response to the DBCTM Initial Submission.

¹⁰ Aurizon Initial Submission , p 4.

¹¹ Aurizon Initial Submission , p 4.

Anglo American submits that the appropriate market for consideration in relation to criterion (a) with respect to DBCT is the Hay Point catchment coal exploration tenements market (as defined in the DBCT User Group initial submission).

As a long term market participant in this market, and long term user of DBCT, Anglo American strongly considers that this market is materially distinct from other coal tenements markets. Anglo American, along with other coal producers in the Hay Point Catchment, optimises efficiencies in its coal supply chain by managing its committed infrastructure capacity as a portfolio wherever possible. This allows for flexibility within the Anglo American portfolio, and enables production to be managed across the portfolio in a way that maximises that value that Anglo American extracts from its long term take or pay contract for infrastructure. Because of this portfolio approach, Anglo American is economically incentivised to acquire tenements (if it were considering doing so) within the same catchment area. If Anglo American were to acquire new tenements, those tenements would be valued on a discounted cash flow basis in which infrastructure costs would be a significant part of those estimated cash flows. This has the result that tenements in one coal chain are not substitutes for tenements in another coal chain – as the efficiencies of managing infrastructure within a portfolio would be lost where the infrastructure access and costs cannot be easily spread across mines within the catchment.

Anglo American considers that the declaration of DBCT results in a material increase in competition in the Hay Point catchment coal exploration tenements market, as a dependent market to the market in which the service is provided. This view is consistent with Anglo American's experience of the relevant markets (both dependent and primary) as a long term user of the service at DBCT and operator of tenements within the relevant catchment.

4.2 Use of alternative ports

Anglo American notes that there is marginal use by Hay Point catchment mines of alternate coal export facilities (including Abbot Point and RG Tanna). Anglo American notes that marginal use of non-Hay Point coal handling facilities should not be taken to be indicative of a broader market than a Hay Point catchment coal handling services market.

This is because, in Anglo American's experience, mines sitting within the Hay Point catchment which hold contracts with DBCT and other coal handling facilities are predominantly incentivised to contract with alternative coal handling facilities (i.e. coal terminals other than DBCT) for non-cost reasons. For example, it is Anglo American's experience that users may consider:

- (1) whether alternative terminals offer the ability to blend coal products from mines that sit outside of the Hay Point catchment, such that it is not a cost decision but instead a decision about product mix;
- (2) whether alternative terminals offer opportunities for coshipping that would not otherwise be available at the principal terminal (i.e. DBCT) and it makes commercial sense for producers to take up those coshipping opportunities even if moving product to an alternative terminal would otherwise be uneconomic;
- (3) whether moving product to an alternative terminal would allow a user to defray take or pay expenses incurred under a contract at that alternate terminal for a mine that sits outside of the Hay Point catchment. This is a particularly relevant consideration where that take or pay obligation is greater than the economic cost of moving product away from DBCT such that it becomes an economic decision to do so without the terminals actually being substitutes for each other in a market sense; and
- (4) contracting with a range of terminals as part of a broader risk mitigation strategy, such as to protect against disruption caused by system shut downs or natural disasters such as cyclones that affect a particular terminal. Again, this does not

mean that the terminal services are substitutable – but that sometimes producers take uneconomic decisions to contract in separate markets as a risk mitigation strategy within their primary market.

Each of the above points are consistent with Anglo American's experience of the relevant market as a long term market participant and how Anglo American has managed its portfolio of mines and associated infrastructure from time to time.

Where Anglo American has moved coal from mines that sit within the Hay Point catchment to RG Tanna, that has been to take advantage of coal blending and coshipping opportunities at the RG Tanna terminal that are not otherwise available at DBCT. Where Anglo American has made this decision as part of its sales strategy, it has only done so because of uplift in value achieved by being able to use blending coshipping opportunities (and would not have done so in the absence of those opportunities). Anglo American also notes that the amount of product diverted from DBCT by Anglo American for this purposes is proportionally small – and the vast majority of coal produced by Anglo American mines in the Hay Point catchment is railed to DBCT.

5 Conclusion

In conclusion, Anglo American welcomes the opportunity to provide submissions in response the initial submissions published by the QCA. Anglo American strongly considers that each of DBCT and the CQCN should be redeclared following the QCA's consideration of the application of the declaration criterion to each of the services for:

- (1) the reasons set out in the QRC submissions;
- (2) the reasons set out in the DBCT User Group submissions; and
- (3) the reasons set out in this submission.

If you have any queries or issues relating to this submission, please contact Ken Moore on (07) 3834 1878.