



Submission to the Queensland Competition Authority

Goonyella System Rules

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## 1. Executive Summary

Anglo American Metallurgical Coal Pty Ltd (**Anglo American**) welcomes the opportunity to make submissions to the Queensland Competition Authority (**QCA**) in respect of the Goonyella System Rules submitted by QR Network Pty Ltd (**QR Network**).

In summary, Anglo American makes the following submissions:

- (a) Anglo American believes that it is difficult, if not impossible, to provide comments on the Goonyella System Rules without reference to the Goonyella System Operating Assumptions, as the two concepts are intricately linked;
- (b) the criteria that the QCA must apply in considering whether to approve the draft Goonyella System Rules, importantly, include that the Goonyella System Rules must be prepared having regard to the equitable operation across Access Holders and Access Seeker and their customers, and the terms of Access Agreements;
- (c) the draft Goonyella System Rules as submitted by QR Network contain insufficient detail for the QCA to determine whether the proposed method of scheduling train services have been prepared having regard to the equitable operation amongst Access Holders and their Customers;
- (d) Anglo American recommends that:
  - (i) The System Rules should not be considered to be finalised until the System Assumptions documentation is supplied by QR Network. AAMC suggests that a further round of comment from industry on the System Rules be sourced and considered by the QCA once the System Assumptions documentation is made available;
  - (ii) The unilateral power provided in sections 3.2.4(iii), 3.2.5(iii) and 3.2.6(ii), be removed and replaced with an alternate proposal by QR Network. At the very least QR Network should explain in the System Rules how QR Network will approach the requirement in Appendix 2 of Schedule G to ensure that no Access Holder is favoured over another and its approach to ensuring if one Access Holder is favoured on one occasion then it will not be favoured on the next occasion. One of the clear purposes of the System Rules is to provide guidance on what factors QR Network will take into account when exercising its discretion. The System Rules should identify the factors QR Network will take into account when the Network Management Principles do not provide a

clear answer as to a scheduling decision to be made when there is a contested train path;

- (iii) The QCA seek access to QR Network's internal scheduling models to assess whether the System Rules have been prepared on an equitable basis. Those internal scheduling models will be based upon a number of critical assumptions and the QCA must have an understanding of those assumptions before it is able to make an assessment as to whether the System Rules have been prepared on an equitable basis;
- (iv) The documentation should be clear that TSE obligations are monthly and the flexibility assumed in contracts around the weekly allocations should be stated;
- (v) QR Network to detail assumptions underlying contract track entitlements and TSE's for each cargo assembly, hybrid and stockpiling port and that these assumptions should be included in the System Assumptions and System Rules documentation;
- (vi) QR Network to provide a track capacity entitlement suited to cargo assembly, by providing access to sufficient TSE's to operate a flexible above and below rail operation. This could possibly be described by stating a certain percentage of flexibility on the annual tonnage entitlement for the Access Holder (e.g. Weekly TSE obligation =  $110\% \times \text{annual tonnage} / 365 \times 7$ , subject to the monthly tonnage not being exceeded); and
- (vii) Producers who are also individual Access Holders may elect to have their contract TSE orders aggregated by their Rail Operator with other TSE orders the Rail Operator manages as an Access Holder for the purposes of train scheduling and determining contracted TSE orders.

Words and phrases which are capitalised but not defined in this submission are a reference to the definition of that word or phrase as used in QR Network's Access Undertaking 2010 (UT3).

## **2. Criteria to be Applied by QCA**

In Anglo American's view the criteria that must be applied by the QCA in considering whether to approve the draft Goonyella System Rules are as follows:

- (a) whether the System Rules have regard to the equitable operation of the System Rules across Access Holders and Access Seekers and their Customers, and the terms of Access Agreements;
- (b) the System Rules must be consistent with UT3 and the general principals to be incorporated into Access Agreements in accordance with Schedule E of UT3;
- (c) the QCA must consider the System Rules are appropriate having regard to the matters listed in Section 138(2) of this *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**) which include:
  - (i) the legitimate business interests of the owner or operator of the service;
  - (ii) if the owner and operator of the service are different entities - the legitimate business interests of the operator of the service are protected;
  - (iii) the promotion of the economic and efficient operation, use of and investment in, significant infrastructure and the promotion of effective competition in upstream and downstream markets;
  - (iv) the public interest, including the public interest in having competition in markets (whether or not in Australia);
  - (v) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;
  - (vi) the effect of excluding existing assets for pricing purposes;
  - (vii) the pricing principles mentioned in section 168A of the QCA Act (which provide that the price of access should):
    - (A) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved;
    - (B) allow for multi-part pricing and price discrimination when it aids efficiency;
    - (C) not allow a related access provider to set terms and conditions of the access provider or a related body corporate of the access provider

(except to the extent the cost of providing access to other operators is higher); and

(D) provide incentives to reduce costs or otherwise improve productivity; and

(i) any other issues the authority considers relevant;

(d) the QCA must be satisfied that the QCA has complied with clause 5.2(d) of UT3 which requires the QCA to publish the System Rules, invite submissions and consider any submissions it receives within the specified timeframe.

### **3. The inability to provide feedback on System Rules in isolation**

Whether there is sufficient capacity and the use of that capacity is appropriate requires consideration of both the System Operation Assumptions and System Rules together. Track capacity translates to coal throughput ability by the two aspects working in a co joined manner. The first document should deal with what assumptions make up the capacity for a system and how that capacity is assumed to be used. The second document should deal with the actual rules of use of that capacity.

It seems illogical and impractical from a supply chain perspective for QR Network to ask the QCA and industry to comment or consider the Goonyella System Rules documentation without supplying the Goonyella System Assumptions at the same time. Having the 2 documents (System Rules and System Assumptions) allows full comprehension of whether the track infrastructure is sufficient (or aligned) for the port operations.

*Recommendation – The System Rules should not be considered to be finalised until the System Assumptions documentation is supplied by QR Network. AAMC suggests that a further round of comment from industry on the System Rules be sourced and considered by the QCA once the System Assumptions documentation is made available.*

### **4. Ability to provide preferential treatment**

As outlined above, the first criterion of which the QCA must be satisfied in considering whether the System Rules should be approved is whether the System Rules have been prepared having regard to the equitable operation of the System Rules across Access Holders and Access Seekers and their Customers and the terms of Access Agreements.

The System Rules as submitted by QR Network are fairly general in their terms and do not provide sufficient information for coal producers to determine whether the System Rules

have been prepared having regard to the equitable operation between Access Holders, Access Seekers, Customers and the Access Agreements.

QR Network will have detailed scheduling models which will apply the System Rules and the QCA should seek access to the scheduling models and, importantly, the assumption which had been made in the development of the scheduling model.

QR Network proposes to hold unilateral decision making ability (sections 3.2.4(iii), 3.2.5 (iii) and 3.2.6(ii)). This unilateral power is of concern as there is no true decision making transparency at the time. Additionally, there is no guarantee that this ability can not be used to benefit parties not equitably entitled to the train paths (and ultimately to benefit the parent company QR National). For example:

- (a) Additional above rail services able to be operated by QR National Coal;
- (b) QR National Coal customers who may potentially purchase priority above rail rights putting them first in line for services above other customers; and
- (c) Operation by QR National of an integrated (track, train and port) option for coal producers, if any of the QR National group of companies (including QR Network) takes port capacity at Dudgeon Point, Abbot Point Coal Terminal T4-T7 or other ports.

*Recommendation 1 – The unilateral power provided in sections 3.2.4(iii), 3.2.5(iii) and 3.2.6(ii), be removed and replaced with an alternate proposal by QR Network.*

*Alternative Recommendation - At the very least QR Network should explain in the System Rules how QR Network will approach the requirement in Appendix 2 of Schedule G to ensure that no Access Holder is favoured over another and its approach to ensuring if one Access Holder is favoured on one occasion then it will not be favoured on the next occasion. One of the clear purposes of the System Rules is to provide guidance on what factors QR Network will take into account when exercising its discretion. The System Rules should identify the factors QR Network will take into account when the Network Management Principles do not provide a clear answer as to a scheduling decision to be made when there is a contested train path.*

*Recommendation 2 - the QCA seek access to QR Network's internal scheduling models to assess whether the System Rules have been prepared on an equitable basis. Those internal scheduling models will be based upon a number of critical assumptions and the QCA must have an understanding of those assumptions before it is able to make an assessment as to whether the System Rules have been prepared on an equitable basis.*

## 5. QR Network TSE obligation ambiguous

The proposed System Rules documentation is suggesting that TSEs and therefore the QR Network contract obligation is allocated in even weekly calculations (+/- planned maintenance activity). It is suggested that variations from contractual entitlement (assumed to be the nominal weekly TSE entitlement) will potentially place the Access Holder at risk of throughput achievement.

It is Anglo American's understanding that TSEs are monthly obligations and scheduling allocations are to allow for some level of variation in orders week by week in order to meet the monthly contract entitlement, with maintenance and other minor system impacts occurring. That is, there is an inherent level of variation which must exist within the provision of QR Network track capacity which has not been stated in the System Rules document. If that inherent level of variation around weekly orders is not included in capacity assumptions and rules, then it will be clear that the level of track capacity and any rules for consumption are insufficient and impractical.

*Recommendation – The documentation should be clear that TSE obligations are monthly and the flexibility assumed in contracts around the weekly allocations should be stated.*

## 6. Translating cargo assembly requirements into contracted track entitlements and TSE's

The description of TSE obligations provided by QR Network does not provide sufficient track capacity alone to support the contract throughput. It is also not clear what other possible assumptions sit behind the TSE's to ensure a sufficient number of paths are provided to meet contract.

QR Network suggests that there is additional track flexibility available above contract levels and that this allows the Cargo Assembly mode to be accommodated in an even railings paradigm. However this assumption is not correct as:

- (a) The Below Rail Paths described by QR Network can not be considered as all usable paths, therefore the level of flexibility suggested by the document is incorrect. For example the document would lead the reader to suggest that there are ~ 50% additional paths available for flexibility. This just represents total paths, usable (System Paths) and not usable;
- (b) The System Rules as written provide no guarantee to any particular producer or Access Holder as to being able to access any of the above contract or ad hoc flexibility if it does exist in the scheduling window; and



- (c) The draw down proposed by QR Network assumes dead flat weekly railings with contract TSE's calculated as = 100% utilisation of contract path allocations (i.e. assumes every contract path is consumed in meeting contract tonnage and no contract paths are lost in the weekly or daily train plans).

A framework for describing track capacity is required as a basis for all contracted capacity entitlements and the rules around ultimate capacity consumption. The even railings and demand framework can, in some circumstances, be considered appropriate as a basis for description, subject to sufficient comprehension of the calculations behind the capacity and translating that basis to actual operational use for the different domestic and export coal terminals.

However, QR Network has historically failed to translate the even railings (i.e. even and constant train demand) capacity description into a contracted track entitlement which is practical for use within the cargo assembly paradigm used at DBCT. It is also arguable whether the even railings capacity description sufficiently encompasses port stockpiling mode track entitlement requirements.

Cargo assembly ports require both train and track flexibility to accommodate the variation in production and port operating mode. This translates to a requirement for a track capacity entitlement which can not be expressed as 100% utilisation of TSE's which appear based upon a simple annual tonnes divided by reference train, divided by days in the year, multiplied by days in the week calculation. This is particularly a problem as the calculation infers a "dead flat" consumption of track capacity, while at the same time allowing QR Network to significantly change its obligation by altering the calculation for planned maintenance (i.e. allows itself to accommodate variation in the weekly TSE obligation, but not others).

### *Recommendations*

- (a) *QR Network to detail assumptions underlying contract track entitlements and TSE's for each cargo assembly, hybrid and stockpiling port and that these assumptions should be included in the System Assumptions and System Rules documentation.*
- (b) *QR Network to provide a track capacity entitlement suited to cargo assembly, by providing access to sufficient TSE's to operate a flexible above and below rail operation. This could possibly be described by stating a certain percentage of flexibility on the annual tonnage entitlement for the Access Holder (e.g. Weekly TSE obligation =  $110\% \times \text{annual tonnage} / 365 \times 7$ , subject to the monthly tonnage not being exceeded).*

## **7. Ability to aggregate contracted TSE orders**

Where a coal producer elects to become an Access Holder in its own right, the producer will lose the benefit that Rail Operators have by pooling their TSE orders for all of their customers for a particular port, even though that producer may be a current customer of the Rail Operator.

Cargo assembly requires a level of flexibility in the daily and weekly allocation of TSE's, which is partly afforded by the aggregation of all contracted TSE's of the Rail Operator as an Access Holder.

*Recommendation – Producers who are also individual Access Holders may elect to have their contract TSE orders aggregated by their Rail Operator with other TSE orders the Rail Operator manages as an Access Holder for the purposes of train scheduling and determining contracted TSE orders.*