

28 February 2018

Mr Linus Power MP  
Chair, Economics and Governance Committee  
Parliament House  
George Street  
Brisbane City QLD 4000

Dear Chair

### **Queensland Competition Authority Amendment Bill 2018**

Thank you for the opportunity to comment on the *Queensland Competition Authority Amendment Bill 2018 (the Bill)*.

This letter is provided on behalf of the Dalrymple Bay Coal Terminal User Group (**DBCT User Group**), consisting of the following users of the terminal: Anglo American, BHP Mitsui Coal, Fitzroy Australia Resources, Glencore, Stanmore Coal, Middlemount South, Peabody Energy and Rio Tinto.

The DBCT User Group supports:

- the stated objective of the Bill (as expressed in the Explanatory Notes) to ensure that the Queensland access regime 'addresses the economic problem of natural monopoly in markets for infrastructure services'; and
- the sentiment expressed in the Explanatory Notes that regulatory certainty is important.

However, the DBCT User Group recommends that the Bill be amended to include an extension to the declaration of the coal handling services at Dalrymple Bay Coal Terminal (**the Terminal**), which is due to expire on 8 September 2020, in order to properly meet that objective and achieve the aim of regulatory certainty.

### **Role of the QCA**

The DBCT User Group supports the regime under the *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**) and the role the QCA has in ensuring efficient and certain access is provided to both the coal handling services at Dalrymple Bay Coal Terminal (**the Terminal**) and the central Queensland coal rail network (operated by Aurizon Network).

The QCA's regulation of the services provided by these infrastructure facilities has driven investment (in coal projects, coal tenements and exploration, rail infrastructure, rail haulage, mining services and mining input markets), employment, economic growth, competition, and coal royalties for Queensland.

### **Importance of the Terminal**

In relation to the Terminal specifically, regulation is consistent with the government's intentions at the time of privatising the Terminal in 2001.

The DBCT User Group takes this opportunity to emphasise that the Terminal was acquired (both initially upon privatisation and by its current owners), and major investments in expanding the Terminal from 37.5 mtpa to 85 mtpa have subsequently been made, on the understanding that the Terminal would remain regulated. Allowing a regulated monopoly service such as the Terminal to potentially be deregulated in

that climate would create an unjustifiable windfall gain to the infrastructure owner at the cost of the State and users of the terminal.

The Terminal is Queensland's largest multi-user coal export terminal, is the only common user terminal for mines in the Goonyella Region and is natural monopoly infrastructure. For these reasons, the Terminal is essential to ensuring the reliability and continuity of coal supply from the Bowen Basin coal fields (Queensland's largest coal reserve) to global export markets, and to making substantial contributions towards gross State product. Certainty of efficient pricing, and standardised reasonable terms of access, have been critical to facilitating new entry into the Bowen Basin by new coal producers (and the resulting jobs, royalties and economic activity that investment generates).

In 2015-16 Queensland mines produced 242.2Mt of saleable coal, with 221.5Mt (valued at an estimated \$21.45 billion) being exported to more than 30 overseas destinations. Overall, the Queensland Resources Council (*QRC*) estimated that the coal industry's contribution to the State for the period was \$32.7 billion, including \$1.6 billion in royalties paid direct to government, \$14 billion in wages, goods and services purchased locally and community contributions, and \$17.1 billion of additional flow on benefits to the State.

### **Support for QRC submission and extension of declarations**

The DBCT User Group members are also members of the Queensland Resources Council (*QRC*) and support each of the comments made regarding the Bill by the QRC in its submission.

Specifically, the DBCT User Group considers it is of critical importance to the continuation of investment in the Goonyella coal supply chain that there is certainty about the ongoing reasonable terms of access to the Aurizon network and the Terminal, such that the Bill should be amended to include an extension to the existing declaration of both access to Aurizon's network and the coal handling services at the Terminal.

Whilst the DBCT User Group appreciates the intention to align the access provisions of the QCA Act with the recently amended National Access Regime established under Part IIIA of the *Competition and Consumer Act 2010* (Cth), these criteria are new and largely untested. If the judicial and Tribunal decisions in relation to Part IIIA are any guide, it is that there is a material risk that access criteria may be interpreted differently to how government or stakeholders thought they might operate.

The absence of a legislated extension to the declaration of the Terminal services and access to the Aurizon network therefore creates significant risk in requiring the QCA to carry out the proposed review process with little to no guidance, and has already caused investment uncertainty within the Queensland coal industry. It, in fact, destroys the regulatory certainty that currently exists, and thereby has a chilling effect on investment decisions.

### **Recommended solution**

Given the criticality of the Terminal and the central Queensland coal rail network to the State, and in consideration of the absence of sufficient precedent to guide the QCA in any declaration review process which considers the newly proposed criteria, the Bill should be amended to include an extension to the declaration of the Aurizon network and the Terminal.

The DBCT User Group considers that the extension should be indefinite, or in the alternative, for a minimum of 10 years to allow sufficient precedent and legal interpretation of the criteria to develop such that the QCA will be sufficiently informed to conduct an accurate declaration review process.

The DBCT User Group would welcome any opportunity to elaborate on this submission, including by way of giving evidence before the Committee. This submission is not confidential and the Committee is welcome to publish it on the parliamentary website.

If you have any questions about this submission, please do not hesitate to contact Mark Smith,  
Chairperson, DBCT User Group, on [REDACTED]

Yours sincerely



Mark Smith

Chairperson DBCT User Group