

NSW Energy Coal

Ref No: SS20110204.DOC

ACCC Ref: A91147 - A91149 & A91168 & A91169

25th February 2011

Mr David Hatfield
A/g General Manager, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Hatfield

BHP BILLITON SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Thank you for your letter of 10 February 2011 inviting submissions in response to the matters raised by Aston Resources Limited on 15 December 2010 regarding the Capacity Framework Arrangements at the Port of Newcastle.

BHP Billiton's response is made by the following wholly-owned subsidiaries (collectively) of BHP Billiton Plc:

1. Mt Arthur Coal Pty Limited (MAC) – operator and developer of the Mt Arthur Coal open cut mine;
2. Coal Mines Australia Pty Limited (CMA) – holder of the Carroona Exploration License;
3. Hunter Valley Energy Coal Pty Limited (HVEC) – parent company of MAC and CMA, holder of relevant minerals leases for the MAC operations and investor in the NCIG which is the developer and operator of the third export terminal at the Port of Newcastle.

Capacity Framework Arrangements

BHP Billiton submits that a review of the Capacity Framework Arrangements (CFA) by the Australian Competition and Consumer Commission (ACCC) is not required at this stage.

In particular, it is BHP Billiton's view that:

- a) The CFA are operating as agreed to manage the development and allocation of export terminal capacity at the Port of Newcastle.
- b) NCIG is conducting its expansion of the port in accordance with the CFA. In September 2010 NCIG reached financial close on its Stage 2AA expansion (from nominal 30 million tonnes per annum to 53 million tonnes per annum), which included signing irrevocable long-term contracts for 12 million tonnes per annum with non-NCIG shippers.
- c) We are not aware of capacity hoarding at the Port of Newcastle.



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- d) Unwinding the long term ship or pay agreements entered into by BHP Billiton under the CFA, and changing the nomination and allocation process under the CFA for future capacity would create uncertainty and disrupt BHP Billiton's capital investment program and thermal coal business while alternative arrangements are renegotiated. This could potentially impact economic benefits and future employment opportunities at BHP Billiton's NSW thermal coal operations.

Thank you again for the opportunity to make a submission to the ACCC regarding the CFA arrangements. BHP Billiton would be pleased to provide any additional information as required.

Yours sincerely

A handwritten signature in black ink, appearing to read "Scott Sullivan", with a horizontal line extending to the right.

Scott Sullivan
Asset President – NSW Energy Coal