30 August 2013

Mr Malcolm Roberts
Chairman
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Dear Mr Roberts

2013 Standard user Funding Agreement Draft Amending Access Undertaking (2013 SUFA DAAU)

Thank you for the opportunity to provide submissions to the 2013 SUFA DAAU. BHP Billiton Mitsubishi Alliance **(BMA)** and BHP Billiton Mitsui Coal **(BMC)** strongly supports the development of a workable and bankable suite of SUFA documents.

We note Aurizon Network **(AN)** progressed finalisation of the 2013 SUFA DAAU in close consultation with customer representatives and the Queensland Resources Council (**QRC**). The 2013 DAAU does resolve a number of key threshold concerns held by industry. However, we are firmly of the view that the 2013 DAAU needs to be further developed, and in many respects simplified, to ensure a viable allocation of risk combined with a sufficiently robust investment structure. At present, the 2013 SUFA DAAU does not deliver these outcomes for industry.

Over recent months, BMA and BMC, along with other QRC members, have worked collaboratively with the QRC in the development of detailed its submission to the Authority. We confirm our full support for the QRC submission and recommend you:

1. not approve the 2013 SUFA DAAU; and

2. amend the 2013 SUFA DAAU consistent with the QRC's marked up suite of documents.

Market Environment

In the last twelve months, the Queensland coal industry has experienced a very difficult global trading environment due to a combination of the high Australian dollar and lower metallurgical and thermal coal prices. On the back of this global operating environment we have reformed our coal operations in a bid to maintain our competitive position in the global coal market. This reform process has identified that the increase in our operational cost base has not been isolated to our mining activities. In terms of our logistics costs, there has been a significant escalation in rail infrastructure costs over the last four years. This has contributed to the declining competitiveness of our coal in the global coal market.

The issues raised by the 2013 SUFA DAAU are directly relevant to the future competitiveness of our coal business in the global coal market. Of critical importance is the reticence of AN to invest new capital in its rail business at the regulated rate of return. In demanding above regulatory returns for the expansion of its regulated business, AN is directly impacting on our business by increasing both the cost of rail infrastructure upgrades and the ongoing cost of transporting coal from mine to port.

It is essential for the Authority to establish an alternative competitive investment pathway whereby industry can fund, manage and control the risks associated with the relevant rail investment projects to underpin its coal mine expansions. At a minimum, the SUFA Framework must:

- promote an effective competitive alternative to AN's current monopoly status in the provision of multi-user rail infrastructure in Queensland;
- result in economically efficient investment decisions being made in the Queensland rail infrastructure market; and
- facilitate competition in all related markets (e.g. financing, engineering design, construction, haulage and coal exploration markets).

Commercial Framework

The QRC submission provides greater detail on the issues which prevent the 2013 SUFA being an effective competitive constraint on AN's ability to misuse its monopoly position in the Central Queensland coal network. The major concern is the sheer complexity of the suite of documents which include eight separate agreements comprising over 750 pages of contract documentation. The documents as submitted by AN are unwieldy and complicated. The documents will not be easily understood by new entrants to the market or by third party financiers.

We believe the QRC amendments represent the minimum acceptable standard requirements for a workable SUFA transaction. Even with such amendments, SUFA will only be workable if companies fund the initial investment during the construction stage, engage in detailed briefings of the banking and investment community, and underwrite the investment through long term take or pay infrastructure contracts. In all SUFA investments, industry will bear 100% of the investment risk but will be offering the financial markets an investment opportunity to obtain stable long term return at the regulated cost of capital. Given the largely one-sided nature of the transaction documents, it is imperative the Authority maximise SUFA workability by incorporating all remaining issues identified in the QRC submission.

In terms of the taxation impacts of the SUFA transaction, BHP Billiton Group Tax fully endorses the drafting amendments outlined by the QRC in the Greenwood and Freehills submission. Specifically, BHP Billiton Group Tax advise that the 2013 DAAU currently exposes investors in a SUFA project to an unacceptable tax risk, which can only be removed by making amendments to the 2013 SUFA DAAU consistent with the QRC submission.

Fundamental to our support for the SUFA package (as amended by the QRC submission) is the regulatory protections which exist in the 2010 Access Undertaking, including AN's obligation to fund capital up to a $300M threshold and QCA oversight on any access conditions required by AN to invest in a capital project. We are firmly of the position that the SUFA transaction is not acceptable for capital projects under $300M. For example, over the last twelve months we have had dealings with AN with respect to customer specific capital investments under $50M where AN has required an automatic 30% mark up on top of AN's commercial terms to manage the tax impacts associated with the projects. In respect to one of the projects, the final costs provided by AN have doubled between pre-feasibility and feasibility stages of the project. This has further increased the impact of the 30% mark up. The cost and regulatory impacts on such projects are prohibitive and exponentially increase the regulatory and cost burden facing our business[1]. Whilst it is too early to know whether these additional imposts will preclude our investments proceeding, it is a salutary reminder of the industry's unsustainable cost base with no offsetting productive benefit.

If you have any queries or require more information, please contact Tanya Boyle on telephone 3329 2348 or mobile 0459812257.

Yours sincerely

[redacted]

Neil Buckley

[1] Under both projects, we have met with AN's tax experts to query whether SUFA could be used for the projects to remove the need for the 30% mark up. AN's tax expert's response is that SUFA is not an appropriate vehicle for small investments and there is no viable alternative suitable to the business.