



12 September 2018

BY EMAIL ONLY: Mick.Kenna@adcommission.gov.au

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Dear Mr Kenna,

BHP Response to Comsteel Submission dated 14 August 2018 – ADC investigation 466 (Investigation)

We refer to:

- Comsteel's letter to the Commission dated 14 August 2018 (published as document 036) entitled 'Re: Investigation No.466 – Certain Railway Wheels exported from France and the People's Republic of China – BHP Billiton submission dated 25 July 2018' (the **Comsteel Submission**);
- The Commission's Verification Report in relation to its meeting with Comsteel dated 13 August 2018 (published as document 035) (the **ADC Note for File**); and
- Comsteel's submissions in response to the Government of China dated 4 September 2018 (published as document 048) (**Comsteel's GOC Response**).

BHP has reviewed the Comsteel Submission and the ADC Note for File and confirms and reiterates the information provided to the Commission in this Investigation.

BHP does not intend to respond to all the specific assertions made in the Comsteel Submission and outlined in the ADC Note for File but wishes to emphasise the matters which follow.

Comsteel Suspension and Ongoing Wheel Quality Issues

In section II of the Comsteel Submission, Comsteel claims that it was not suspended from supplying goods to BHP in approximately 1996. BHP considers this assertion to be incorrect for the reasons previously communicated to the Commission in this Investigation.

BHP has not been given the opportunity to comment on the 'Confidential Attachment 1' in the Comsteel Submission which Comsteel relies upon as a record of supply to BHP for each year of that decade. In this regard BHP notes that:

- (a) the claimed description of the attachment being 'records of supply for each year in the decade' does not establish that Comsteel was not suspended for a period during that decade;
- (b) if Comsteel or the Commission wishes to rely upon the assertion that Comsteel was not suspended, procedural fairness requires that BHP be provided access to Comsteel's Confidential Attachment 1 and provided an opportunity to respond.

Cause of wheel failures

Comsteel's Submission (in particular at section IV) takes issue with BHP's assessment of Comsteel's wheel failures. BHP reiterates the accuracy of the material it has submitted the Commission in this

Investigation. BHP reiterates that it is in the position to assess, including with the assistance of third party experts who have provided substantiating reports, and has assessed that:

- (a) the root cause of the wheel failures complained of are non-metallic inclusions; and
- (b) that the wheels supplied by Valdunes and Masteel have not experienced failures or wear to the same extent as the Comsteel wheels (which is in fact the case).

BHP also observes that Rio Tinto Limited (**RTL**) by its submissions in this Investigation, has identified similar experiences with respect to Comsteel wheels. At page 9 of the RTL submission dated 5 September (published as document 47), RTL also states that:

- (a) no wheel shattering events have occurred in relation to Masteel wheels of a similar life service; and
- (b) 'non-metallic inclusions' in Comsteel's wheels contributed to the rim shattering events experienced with respect to Comsteel supplied wheels.

Comsteel Contract Extension in 2018

In the ADC File Note, the Commission has stated that "*Comsteel noted that BHP had, between February and May 2018, negotiated the terms of a new contract for the supply of wheels without any mention of wheel quality concerns*". In section VII of the Comsteel Submission it is asserted that "*Comsteel was again invited to tender by BHP to supply wheels*".

Both statements are inaccurate.

BHP did not negotiate a new contract with Comsteel during this period but simply confirmed the pricing that would apply to the products within the existing contract with Comsteel (the **Contract**) pursuant to the exercise by BHP of one 12 month extension option, available to BHP under the Contract.

Importantly, the Contract also provides for the supply of axles and locomotive wheels in addition to the supply of ore car wheels. [REDACTED] [describes confidential contractual items]. The extension of the Contract does not indicate that BHP intends to continue to purchase Comsteel supplied iron ore railway wheels, [REDACTED] [describes confidential business decisions].

Comsteel's GOC Response

On page two of these submissions, Comsteel claims that "the Commission's PAD is well supported in the two recently announced Federal Court decisions".¹ It is said that these decisions "affirmed the Commissioner's particular market situation finding involving raw material hot rolled coil used in the production of hollow structural sections exported from China".

BHP's view is that these cases do not 'affirm' the approach taken previously by the Commissioner in relation to determination of a 'particular market situation' in China. As neither court was asked to review the validity of the Commissioner's finding in this respect, the decisions do not consider the validity of the Commissioner's approach.

Yours sincerely,

BHP

¹ The Federal Court decisions being referred to are *Steelforce Trading Pty Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science* [2018] FCAFC 20 and *Changshu Longte Grinding Ball Co., Ltd v Parliamentary Secretary to the Minister for Industry, Innovation and Science (No 2)* [2018].