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Inquiry Manager
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Competition Commission
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BHP BILLITON SUBMISSION IN RELATION TO THE COMPETITION COMMISSION'S PROVISIONAL DECISION ON REMEDIES: STATUTORY AUDIT SERVICES MARKET INVESTIGATION

Dear Sirs,

I am pleased to enclose a submission from BHP Billiton in relation to the Competition Commission's Provisional Decision on Remedies in the Statutory Audit Services Market Investigation.

We welcome the opportunity to participate in this Competition Commission consultation, following our submission in March 2013 on the Commission's provisional findings and notice of possible remedies. As we indicated in our earlier submission, BHP Billiton has a Dual Listed Company (DLC) structure, combining a UK company (BHP Billiton Plc) with an Australian company (BHP Billiton Limited). In addition we are listed on the New York Stock Exchange and registered with the Securities and Exchange Commission in the United States. We are therefore subject to the regulatory regimes of the UK, Australia, and the United States, and are able to comment on the Competition Commission's proposals from this perspective.

This response comments on provisional remedies (a), (b) (second aspect), (d), (e) and (f). We do not comment on remedies (b) (first aspect), (c) and (g) as they are directed to the Financial Reporting Council (FRC).

Provisional remedies (b) (second aspect), (d), (f)

We are generally supportive of these remedies.

We note, however, the reference in remedy (f) to only Audit Committees being permitted to negotiate and agree audit fees and scope of audit work. In practice, given the non-executive nature of Audit Committees we believe it is important to allow management to continue to be involved in negotiating audit fees and scope of audit work, provided management does this within parameters set by the Audit Committee.

Provisional remedy (e)

In relation to remedy (e), we believe the Commission should be guided by the responses from shareholders. It should not be assumed that shareholders are automatically in favour of additional items on which to vote. Some shareholders may, for example, believe they already have sufficient means to convey their views on the adequacy of disclosures in the Audit Committee report section of the Annual Report – for example, through direct engagement with the Board Chairman, the Audit Committee Chairman or company management; and / or through voting on the re-election of Directors who serve on the Audit Committee.

Provisional remedy (a)

We do not support remedy (a).

As we said in our March 2013 submission, BHP Billiton fully agrees with the emphasis the Commission has placed on the need for auditors to be independent and objective in serving the needs of shareholders. However, it appears that many of the audit-related problems the Commission has identified are embedded in *corporate governance failings* at a comparatively small number of companies – rather than in failings linked to the longevity of the auditor-company relationship across the whole market. We do not therefore see any evidence to support a five-yearly tender requirement for the audit engagement.

We do not believe the Commission has placed sufficient weight on the role played by Audit Committees in those (large majority of) companies where there is no evidence of audit-related problems.

Without repeating everything we said in our earlier submission, we would reiterate the role of BHP Billiton's Risk and Audit Committee in evaluating and reviewing the performance, independence, integrity and objectivity of the auditor. This process of evaluation and review ensures that that there is no misalignment in the process, that it is not too focused on management, and that shareholders are being properly served. In particular, the auditor is accountable to the Risk and Audit Committee, the members of which (in our capacity as Directors) have as a core role the responsibility to represent shareholders. Therefore we believe that the governance framework and process appropriately encourages the auditor to represent shareholders' interests.

We believe the UK Corporate Governance Code's new requirement (on a comply or explain basis) to tender the external audit contract at least every 10 years should be given an opportunity to effect the change desired, before the Competition Commission or other bodies look to more inflexible remedies such as mandatory tendering every five years.

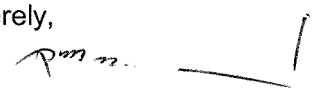
There are two aspects of provisional remedy (a) with which we disagree.

First, we do not agree with a mandatory tender requirement. We are unable to find any evidence in the Commission's reports as to why the Commission believes the 'comply or explain' mechanism is inadequate. We believe that 'comply or explain' is effective. The history of the UK Corporate Governance Code demonstrates that the 'comply or explain' regime is a powerful agent of change that appropriately promotes good governance outcomes while balancing the circumstances of particular companies.

Secondly, we do not agree with the proposed five-year term. We note the Commission's 22 July 2013 document concedes that "the appropriate interval between tender processes" is "a matter of judgement". Given that the FRC has only recently implemented a 10-yearly interval through the Code, we cannot see the justification for changing to a different period without the benefit of observing how the FRC's measure performs in practice.

I trust you find this submission to be helpful in your deliberations. If you have any questions, please do not hesitate to contact me.

Yours sincerely,



Lindsay Maxsted
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