

1 July 2019

Professor Flavio Menezes  
Chair  
Queensland Competition Authority

**2019 Draft Access Undertaking for DBCT coal handling service**

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Dear Professor Menezes

In response to the QCA's Initial Undertaking Notice (**IUN**), please find attached DBCT Management's (**DBCTM**) 2019 draft access undertaking (**2019 DAU**) for the coal handling service currently declared under s250(1)(c) of the *Queensland Competition Authority Act 1997*, together with its submission in respect of the 2019 DAU.

DBCTM remains firmly of the view that the DBCT service does not satisfy the access criteria and therefore should not be declared after the current declaration expires. Notwithstanding this, the QCA's Draft Recommendation in the declaration review identified for the first time that the competition issue which the declaration of the DBCT service would address is the potential for asymmetric terms of access between existing users and new users in the absence of declaration, and the impact those asymmetric terms may have on competition in the tenements market(s). Significantly, the QCA's Draft Recommendation acknowledges that existing users are fully protected by existing user agreements and therefore no further regulation is required for such users.

While DBCTM disputes the QCA's view on the competition issue in its Draft Recommendation, the IUN process provides an opportunity to put in place an access undertaking that is *fit-for-purpose* and *proportionate* to the identified competition problem. In such circumstances, it would be inappropriate for the QCA to continue with the status quo form of heavy-handed regulation by default. Due to the narrow competition issue which declaration is seeking to address, a materially lighter-handed, and more contemporary form of regulation is justified.

There is no requirement in the QCA Act for an access undertaking to specify access charges. A heavy-handed price setting approach, whereby prices in the access undertaking are set by the QCA on an ex ante basis, is not appropriate to address the narrow competition problem identified by the QCA and the DBCT User Group in the declaration review. Nor is such an approach appropriate where DBCT offers, and Access Holders utilise, a range of value-adding services above the standard coal handling service which have varying detrimental impacts on terminal efficiency. Continuing with the current heavy-handed approach to price setting increases the risk of regulatory error interfering with investment incentives at a time when significant investment in the existing terminal, and in terminal expansions, is required.

The 2019 DAU includes similar provisions to previous access undertakings but does not include a prescriptive approach for determining the TIC. Rather, the 2019 DAU allows access prices to be agreed by commercial negotiation with recourse to QCA arbitration where agreement cannot be reached. Providing for an opportunity for prices to be agreed will ensure that the access undertaking is a fit-for-purpose and proportionate regulatory response to the competition problem at hand. This will allow existing users' Access Agreements to operate as intended, and place new users on the same footing as existing users (having regard to the negotiate/arbitrate price review mechanism in existing users' Access Agreements). Further, the 2019 DAU contains non-price terms of access which facilitate access to the DBCT service, including access queuing provisions which ensure there is a fair and transparent process for gaining access to capacity at DBCT.

The negotiate/arbitrate process proposed in the 2019 DAU does not remove regulatory oversight of access prices and other terms and conditions. It is consistent with the primacy given to commercial negotiations in the access regime provisions in the QCA Act, the Competition Principles Agreement and the Competition and Infrastructure Reform Agreement, and statements by the Productivity Commission in its review of the National Access Regime and recent enquiry into the regulation of airports.

DBCTM looks forward to your consideration of the 2019 DAU, and is available to answer any queries that arise as the QCA assesses the 2019 DAU having regard to the statutory criteria for the approval of access undertakings.

Yours sincerely



Anthony Timbrell  
Chief Executive Officer  
**DBCT Management**

Attachment 1: DBCTM submission on the DBCT 2019 AU