

# **DBCT USER GROUP**

## **SUBMISSION**

**in response to**

**DALRYMPLE BAY COAL TERMINAL**

**REVISED DRAFT**

**of**

**ACCESS UNDERTAKING**

**27 January 2006**

## **Introduction**

The DBCT User Group (the **User Group**) has previously made submissions to the Queensland Competition Authority in relation to the Draft Access Undertaking for the Dalrymple Bay Coal Terminal. The User Group now includes all current Users of the Terminal, and makes this short submission to the Authority in response to the latest draft Access Undertaking submitted to the Authority by BBI (DBCT) Management Pty Limited (**DBCT Management**).

The original members of the User Group are each parties to a dispute with DBCT Management, which dispute is the subject of an arbitration by the Authority. The dispute relates to the review of Terminal charges effective from 1 July 2004.

Since the publication of the Authority's Final Decision in April 2005 (the **Final Decision**), the original members of the User Group endeavoured to work with DBCT Management, in an effort to reach as much consensus as possible on mutually acceptable terms for an Access Undertaking for the Terminal. This was done so on the basis that:

- (a) an Access Undertaking on terms which are broadly accepted by a broad number of users, as well as by DBCT Management, can hopefully be reviewed by the Authority more expeditiously than a document which is strongly contested;
- (b) it is contemplated that the disputes which are currently being arbitrated will be able to be resolved by the substitution of a new access agreement with relevant users, having retrospective effect from 1 July 2004. It is considered to be in the interests of all stakeholders if that agreement aligns with what will become the Standard Access Agreement under the Access Undertaking; and
- (c) the Final Determination has been taken ('as read') as a starting point – in other words, the User Group and DBCT Management have sought to implement to Final Determination.

## **General Response to Draft Access Undertaking**

In this submission the User Group:

1. confirms the general support of the members of the User Group to the provisions of the revised draft Access Undertaking (including the Standard Access Agreement) as a package, given the position of the QCA in its Final Determination. (It should be noted, however, that there is not unanimous support within the User Group for every provision of that draft Access Undertaking, and it is expected that some individual Users will wish to make their own submission in respect of a small number of provisions); and
2. proposes some refinements to and clarifications of aspects of the Final Decision, which the Authority is requested to implement (both in the Access Undertaking and in respect of things relating to the Access Undertaking, for example calculations of the ARR).

The User Group's general support for the draft Access Undertaking is given in the context of a compelling need to move forward on a range of practical commercial and capacity issues at DBCT. It should not be taken as an indication that members of the User Group would support every element of the Final Decision or of the current Draft Access Undertaking in other circumstances or applications.

## **Refinements to and clarifications of Final Decision**

Since the Authority's Final Decision was published, a number of issues have been raised between the (original members of the) User Group, DBCT Management and the Authority. It is the understanding of (all current members of) the User Group that, as a result of these discussions, the Authority will be agreeable to implementing a number of refinements and clarifications to some aspects of its Final Decision.

It was the User Group's original intention that the basis of all these refinements would be incorporated in the terms of the Access Undertaking (for example, by setting out in the Access Undertaking detailed formulae and a full description of all other relevant factors to be adopted in the determination of the Annual Revenue Requirement). It is DBCT Management's preference not to do this at this stage. Accordingly, the broad consent of the User Group to the Draft Access Undertaking in its current form (subject to some specific issues on the part of some Users as indicated above) is given, subject to the Authority accepting refinements (a) to (f)) outlined below:

### **(a) No revenue smoothing**

Since it is envisaged that significant capital works will be undertaken during the term of the Access Undertaking, and that the timing of those works cannot be precisely predicted, the User Group requests that there be no smoothing of revenue over the period of this Undertaking, and that the Annual Revenue Requirement and Reference Tariff be reviewed in line with the amendment of the regulated cost base on each trigger date reflected in Schedule C of the draft Access Undertaking.

This concept is now reflected in the draft Access Undertaking (on the basis that Review Events will result in "stepped" increases in the regulated asset base, as expenditure by DBCT Management becomes relevant).

### **(b) WACC**

The User Group accepts the basis on which WACC is proposed to be determined in various scenarios, outlined in clause 12.6 of the draft Access Undertaking. (These scenarios are slightly more detailed and refined than in the Final Decision, although are considered to reflect the Decision's intent.)

### **(c) Unders and Overs**

It has been proposed that Access Holders pay TIC and Handling Charges in equal monthly instalments, irrespective of the volume of coal shipped each month. This will provide predicability of income to DBCT Management. It effectively brings forward any 'take-or-pay' payment which would otherwise be made at the end of the year. It principally benefits DBCT Management, although it will provide some timing benefits to an Access Holder which consistently over-ships (because it may not be required to account for the over-shipments until the end of the financial year). With the adoption of this model, it is suggested that interest on 'unders and overs' need not be provided for – hence it is not mentioned in the latest draft Access Undertaking. Interest is payable, however, on overdue payment by any relevant party.

### **(d) Credit risk**

The User Group has agreed that the credit risk in relation to a defaulting User should cease being borne by DBCT Management on the originally scheduled expiry date of a terminated Access Agreement or Existing User Agreement, if that date occurs before the end of the

term of the Access Undertaking. The User Group has also agreed in this regard to the concept of 'default' resulting in termination of a User Agreement being confined to non-payment, insolvency or circumstances where non-payment or insolvency are imminent but the Agreement is purportedly terminated on different grounds. This is reflected in the draft Access Undertaking.

**(e) TIC, take-or-pay and end of year adjustments**

The formulae in the draft Access Undertaking in respect of TIC, take-or-pay, over-shipment and under-shipment vary from those originally submitted by the User Group and from the terms of the Final Decision. After considerable discussion, the User Group and DBCT Management consider that (on balance) the terms of Schedule C (and Schedule 2 of the Standard Access Agreement) reflect a fair and relatively simple pricing structure which is close to that originally suggested by the User Group and by the Authority, but easier to understand and administer.

**(f) Refinement of the calculation of Annual Revenue Requirement**

Given the broad parameters which the Authority has adopted for calculating the Annual Revenue Requirement, the User Group believes the indicative Annual Revenue Requirement nominated in the Final Decision overstates what that amount should be in respect of the current regulated asset base. This has already been discussed with the Authority.

DBCT Management has stated that it disagrees that the ARR was overstated in the Final Decision.

To avoid further delay and acrimony, DBCT Management and all but two of the Users are agreeable to a negotiated outcome (in respect of the current asset base only, and for the term of this Access Undertaking only), by reducing the indicative ARR (by approximately \$1.66 million in 2004/05 and similar amounts in each subsequent year of the Access Period). This is reflected (in part) in the figure in Schedule C Part A clause 4. This "compromise" would not apply in respect of expansion works, nor after the first Access Undertaking. The Authority is requested to take into account the effect of the timing of payments in determining the ARR in those contexts.

The remaining two Users do not agree to this "compromise" and consider that the ARR should be adjusted by the full amount they consider to be applicable. It is understood, however, that they do not intend to contest this issue, if the Authority accepts the "split".

**DBCT Holdings should be a joint party**

DBCT Holdings Pty Ltd is the owner of the Terminal. DBCT Management is an "operator" of the Terminal for the purposes of the QCA Act. It is important to the members of the User Group (consistently with what the Queensland Government represented to them would be the case in 2001, when the co-operation of Users to the long term lease of the Terminal was sought and given), that DBCT Holdings Pty Ltd is a party to, and bound by, the Access Undertaking, together with DBCT Management and DBCT Trustee. The User Group requests that DBCT Holdings be a joint party to the Access Undertaking.

## **Further consultation**

The User Group is happy to discuss any of the above further with the Authority, if requested.

A handwritten signature in black ink that reads "Mark Eames". The signature is written in a cursive style with a large initial 'M'.

**Mark Eames**

Chairman

DBCT User Group

27 January 2006