

9 May 2018

Mr Charles Millstead
Chief Executive Officer
Queensland Competition Authority

Dear Mr Millstead

DBCT 2017 AU – 2018 Modification DAAU

On 15 September 2017, DBCTM submitted its Modification DAAU for the QCA's consideration (the **2017 Modification DAAU**). On 22 March 2018, the QCA made the draft decision to refuse to approve DBCTM's 2017 Modification DAAU (the **draft decision**). In its response to the draft decision, DBCTM included a revised DAAU amended in full compliance with the QCA's draft decision. However, in order to promote a more expeditious approval of the revised DAAU, on 4 May 2018 DBCTM withdrew the 2017 Modification DAAU, with the intent to submit a replacement DAAU soon afterward.

Accordingly, DBCTM now submits the 2018 Modification DAAU on a voluntary basis pursuant to section 142 of the QCA Act. DBCTM notes that this 2018 Modification DAAU is in full compliance with the draft decision.

In the following paragraphs, DBCTM addresses issues raised in the DBCT User Group's response on 27 April 2018 to the draft decision.

The role of the Operator and the OMC

The Users noted in their submission that, in relation to the proposed amendments to s.3.2 and s.3.3, "*DBCTM have not expressed any basis in written submissions on which this proposed amendment is considered to be particularly 'important' to them*"¹.

DBCTM refers the Users to its original letter to the QCA on this matter on 22 December 2016² which provides the background as to why DBCTM considers these amendments to be important. DBCTM did not explicitly reference this letter in the 2017 Modification DAAU, however in accordance with s.173(1)(c) of the QCA Act, the QCA "*may inform itself on any matter relevant to the investigation in any way it considers appropriate*". It is not unreasonable that this letter should inform the QCA's consideration of this issue. The letter is not confidential, and is published on the QCA website and is therefore available to Users. Under these circumstances, the Users' concern about a "*failure to provide natural justice*" is not warranted.

DBCTM agrees with the Users that the amendments "*do not alter the substantive application of those sections 3 in any way*"³. Accordingly, while the amendments are important to DBCTM, the User's "*deep discomfort*" and suggestions that QCA is "*favouring DBCTM*" are not warranted. DBCTM acknowledges that a user-owned operator is important to Users, and DBCTM has not sought to make any change to this position.

¹ [DBCT User Group response to the QCA draft decision](#) on the 2017 Modification DAAU 27 April 2018 : p5

² DBCT 2015 DAU post-final decision correspondence [DBCT 2015 DAU Final Decision Concerns - 22 Dec 2016](#)

³ [DBCT User Group submission on the Modification DAAU](#) 20 October 2017 : p2

Definition of Supply Chain Business (SCB)

The Users noted in relation to the proposed amendments to the definition of SCB "*if the definition becomes unduly narrow and the DAAU process is able to be avoided, there will be no way to amend the 2017 AU to resolve the problems which arise from subsequent vertical integration*"⁴. Competition regulation in Australia provides robust mechanisms to protect all stakeholders in any market from anti-competitive practices by participants in that market. Examples of such protections from the negative effects of any proposed vertical integration by DBCTM or its related entities includes:

- The DBCT 2017 AU itself, in particular s.9.1(a) which states "*DBCT Management and its Related Bodies Corporate will not own or operate a Supply Chain Business (other than a Trading SCB) in any market that is related to or uses the Terminal*".
- The QCA Act includes provisions for the QCA to intervene within its jurisdiction. For example, the QCA noted in its communication to DBCTM that "*... if DBCTM or its shareholders obtain an interest in a related market, the QCA could require DBCTM to prepare a DAAU (in accordance with the QCA Act) setting out DBCTM's obligations in relation to ring-fencing.*"⁵
- Outside the QCA's jurisdiction, the ACCC has provided a recent practical example with its decision⁶ in the matter of the proposed Brookfield acquisition of Asciano, which required a structural undertaking rather than a behavioural undertaking such as a DAAU.

DBCTM's proposed amendments simply restrict the definition of the SCB to the market in which it operates. If that market changes to actually include those facilities and services envisaged by the Users as "*reasonably likely*" to access or export coal from the terminal, then those facilities and services will automatically be included in the proposed definition.

Please contact me if you have any related queries.

Yours sincerely



Anthony Timbrell
Chief Executive Officer
DBCT Management

Attachments:

1. DBCT 2017 AU in compliance with the QCA draft decision – tracked changes from approved AU
2. DBCT 2017 AU in compliance with the QCA draft decision – clean version

⁴ [DBCT User Group response to the QCA draft decision](#) on the 2017 Modification DAAU 27 April 2018 : p6

⁵ DBCT 2015 DAU post-final decision correspondence QCA Response to DBCTM 2 Feb 2017 : p2

⁶ [ACCC decides not to accept Brookfield's proposed undertakings](#) 26 November 2015