Queensland Competition Authority

Final Decision

DBCT Management Differential Pricing Draft Amending Access Undertaking

August 2015

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EXECUTIVE SUMMARY

Background

The Dalrymple Bay Coal Terminal (DBCT) is a common-user coal export terminal servicing mines in the Goonyella system of the Bowen Basin coal fields. It is owned by the Queensland Government, but leased to DBCT Management for 50 years, with an option for a further 49 years.

The services provided at DBCT are declared for third-party access under Part 5 of the *Queensland Competition Authority Act 1997* (the QCA Act). The regulatory framework for DBCT is governed by DBCT Management's 2010 access undertaking, which was approved by us and took effect from 1 January 2011.

The 2010 undertaking is due to expire on 30 June 2016. On 23 June 2015, we issued an initial undertaking notice requiring DBCT Management to submit a draft replacement access undertaking to us by 21 September 2015.

DBCT has expanded several times since its establishment in 1983. Over time, expansions have become progressively more costly on a per tonne basis. This has meant that, while previous expansions have been uniformly priced, the issue of whether future expansions should be priced on a differential basis has become of increasing interest to stakeholders.

Draft amending access undertaking (DAAU)

As part of the approval process for the 2010 access undertaking, DBCT Management agreed with users to lodge a DAAU to provide for differential pricing of future expansions.

On 3 February 2015, DBCT Management submitted a DAAU to us proposing to amend its 2010 access undertaking. In summary, the DAAU provides that:

- with regard to an expansion, the QCA will determine whether differential pricing should apply (i.e. different reference tariffs for different components of capacity)
- if the QCA determines differential pricing should apply, the QCA will also determine the reference tariff to apply for each component, including how the annual revenue requirement (ARR), revenue cap and reference tariff will be calculated for different terminal components.

Section 143(2) of the QCA Act provides that we may only approve a DAAU if we consider it appropriate to do so, having regard to the criteria set out in section 138(2) of the Act. We have to consider all of the criteria in section 138(2) in making our decision, balancing the criteria as we see appropriate, in light of the nature of the particular DAAU and relevant circumstances. This includes having regard to the statutory pricing principles set out in section 168A.

QCA draft decision

In May 2015, we released our draft decision on the DAAU. The draft decision proposed to refuse to approve the DAAU and indicated how we considered DBCT Management should amend the DAAU to have it approved.

Specifically, our draft decision proposed that:

- DBCT Management's 2010 access undertaking should be amended to provide for consideration of differential pricing for future expansions of DBCT
- while not dictating differential pricing in all cases, the access undertaking should be amended to allow for pricing of future expansions to be based on a general principle of 'averaging down/incremental up'

in relevant circumstances—that is, expansion costs would normally be uniformly priced where average costs are decreasing; differential pricing would normally apply to new capacity when the expansion results in an average cost of capacity that is materially higher than the existing average cost of capacity

- whether differential pricing is appropriate in certain circumstances should be guided by a list of factors that would be specified and which we would then have regard to in making any decision in relation to pricing of future expansions
- the DAAU should include a mechanism to enable the QCA to provide its view in relation to any expansion pricing proposal at a point relatively early in the investment process in order to support proponents in securing funding—one potential means of doing this would be through the QCA making a binding ruling under section 150F of the QCA Act
- principles for allocation of other (non-expansion) terminal costs should be included in the access undertaking, and a cost allocation manual developed and submitted by DBCT Management to us for approval at the time of the first differential expansion pricing proposal
- DBCT Management should review its 2010 access undertaking to identify any consequential amendments likely to be required to support the potential introduction of differential pricing for future expansions.

The draft decision took into account our April 2013 discussion paper on capacity expansion and access pricing for rail and ports, and our January 2015 draft decision (policy and pricing) on Aurizon Network's 2014 draft access undertaking (DAU).

Submissions on draft decision

In response to our draft decision, we received submissions from the DBCT User Group and DBCT Management.

The DBCT User Group supported the draft decision, but raised issues concerning development of a cost allocation manual and the timing of final resolution of the differential pricing issue.

DBCT Management did not support the draft decision, and raised specific concerns regarding the circumstances in which differential pricing should be applied, particularly focusing on the:

- importance of separability
- effect on competition
- impact on regulatory certainty.

QCA analysis and final decision

In this final decision, we have maintained our fundamental position proposed in our draft decision—although we consider that the issues raised in submissions warrant some relatively minor changes to the approach we proposed in our draft decision.

Circumstances for applying differential pricing

Separability

DBCT Management proposed that the separability of the infrastructure should be the primary determinative factor in any consideration of whether differential pricing should apply to an expansion of DBCT. It said the infrastructure at DBCT is typically inseparable—that is, individual segments cannot be isolated and dedicated to a particular user or group of users. It was concerned that differential pricing could result in different tariffs applying to different users in respect of coal throughput handled by the same infrastructure.

The DBCT User Group considered that separability should be just one of a number of factors considered in making differential expansion pricing decisions.

We have maintained our position from the draft decision that it is appropriate that separability—that is 'the extent to which the additional capacity provided by the expansion is an integrated development (which involves common use of many parts of the existing terminal infrastructure) or a stand-alone development (which involves common use of none or limited parts of the existing infrastructure)'—should be one of the factors that we have regard to in considering whether to adopt and apply differential pricing in respect of the costs associated with an expansion.

However, we do not consider that separability should be the primary determinative factor. We also do not consider that physical separability necessarily precludes differential pricing because new expansion costs can be clearly identified, and attributed to the users who are causing the expansion, and therefore receiving the benefits of that expansion, regardless of which capacity (old or new) is used to meet their demand.

Competition issues

DBCT Management raised three competition-related concerns with our draft decision. It said the decision could:

- provide non-expanding users with an unfair competitive advantage over new users
- negatively impact on its ability to compete with nearby ports—particularly in attracting investment for future expansions
- negatively impact on the future development of the Queensland coal industry.

Having taken each of the matters raised by DBCT Management into account, we are not persuaded that any competition-related issues raised by DBCT Management cause us to alter the general approach to differential expansion pricing we proposed in our draft decision.

In response to these submissions, we:

- accept that expansion pricing potentially gives rise to different tariffs applying to existing and expanding users. However, there is no evidence to suggest that this will necessarily—or even ordinarily—give rise to an unfair competitive advantage for non-expanding users over expanding users. The pricing principles in section 168A of the QCA Act state that we should allow for price discrimination where this aids efficiency. In this case, differences in a tariff may provide an appropriate and efficient signal of differences in the cost or risk of existing and new capacity. This is also consistent with the object of Part 5 of the QCA Act, which is to promote the economically efficient operation of, use of and investment in, infrastructure
- do not consider that DBCT Management has demonstrated that the introduction of potential differential pricing at DBCT would reduce its ability to attract future funding of efficient expansions
- consider that continued sustainable and efficient development of the Queensland coal industry is in the public interest. We maintain that the public interest in the context of DBCT Management's access undertaking will most often be best achieved by promoting efficient investment in the coal supply chain.

Regulatory certainty

DBCT Management also raised concerns that the approach outlined in the draft decision would not provide sufficient regulatory certainty for stakeholders. In particular, it said that:

- all previous expansions at DBCT had been uniformly priced, with the expectations of all stakeholders having previously been that uniform pricing would be maintained

- differential pricing would introduce a new source of risk—that is, regulatory discretion
- differential pricing would introduce unnecessary complexity—with the potential for a number of different tariffs to be introduced
- some of the factors we identified for consideration in deciding whether to move away from a general averaging down/incremental up approach were contradictory and/or not sufficiently specified (e.g. we indicated we would have regard to materiality of price increases caused by maintaining uniform pricing, but did not indicate what threshold would apply to our assessment of materiality).

We also do not consider that the regulatory certainty concerns raised by DBCT Management should cause us to significantly alter the general approach to differential expansion pricing we proposed in our draft decision.

In response to these concerns, we consider that:

- DBCT Management has not established that existing users have not previously contemplated the potential for differential expansion pricing. The evidence that is available shows that it was explicitly contemplated by users and DBCT Management at least at the time of the development of the 2010 access undertaking. The proposed amendments would not dictate differential pricing and could permit uniformly priced expansion capacity, in appropriate circumstances.
- the exercise of regulatory discretion by the QCA—that is the appropriate weighing of a set of criteria—is consistent with the regulatory tasks we undertake in all sectors that we regulate. In this decision, we have proposed the use of the binding ruling mechanism in section 150F of the QCA Act to provide a higher degree of certainty, early in a project's development, for potential proponents and funders of any expansion
- multiple tariffs are not uncommon for regulated entities (e.g. Aurizon Network) but, in any case, the number of expected future expansions at DBCT are likely to be limited. We do not think it is likely that a myriad number of new tariffs will emerge in the near future or that any multiple tariffs will create undue complexity
- DBCT Management said that one factor we identified in our draft decision may be difficult to apply in practice:

  > *The position that best reflects what would reasonably be expected to have occurred in a hypothetical negotiated contract entered prior to sunk costs being incurred.*

  We have decided to exclude this as a specific factor—noting it may still be considered in regard to a particular expansion pricing application, in the context of consideration of the criteria in the QCA Act.

Other matters

A number of other matters were also raised by stakeholders in the submissions on our draft decision.

- *DBCT Management said we had inappropriately applied the differential pricing approach developed for Aurizon Network to DBCT, and that there are significant differences between the businesses*—we do not consider that any differences in the businesses of DBCT Management and Aurizon Network mean that our approach to expansion pricing for Aurizon Network's network is necessarily irrelevant to, or should be materially different to, the approach for DBCT.
- *DBCT Management said the binding ruling process under the QCA Act will not provide stakeholders with sufficient certainty regarding pricing of proposed expansions, to make investment decisions*—we are satisfied that the processes in the QCA Act will provide sufficient certainty, noting that other Australian regulators have similar processes designed to provide regulatory certainty, which are commonly relied upon by commercial parties (including proponents and financiers).

- *The DBCT User Group said we should ensure that the access undertaking gives us the power to require DBCT Management to prepare and submit a cost allocation manual or to implement one ourselves when needed*—we are satisfied that the powers we have under section 159 of the QCA Act are sufficient for these purposes.
- *The DBCT User Group said we should seek to exercise our powers under clause 1.4(a) of the access undertaking to require DBCT Management to submit a further DAAU to implement the recommendations of the final decision*—we do not consider this to be a mechanism we can use for this purpose at this time.
- *The DBCT User Group said other consequential amendments that will be required to the access undertaking and standard access agreement (SAA) should be identified*—we maintain our view from the draft decision that further consequential amendments are likely to be needed and have provided a (non-exhaustive) summary of clauses we consider may require amendment.

In addition to the matters raised in submissions, we are also aware that DBCT Management is concerned that differential expansion pricing may be something that it would not be able to propose in a DAU or DAAU, as it may not be consistent with its obligations under its Port Services Agreement (PSA) with the State. Our view is that contractual arrangements, such as the PSA, cannot bind or constrain us in exercising our discretion to approve or refuse to approve the DAAU, in accordance with the QCA Act.

Final decision

Our final decision is to refuse to approve DBCT Management's differential pricing DAAU.

However, we accept that it would be appropriate for the 2010 access undertaking to be amended to provide for the availability of differential expansion pricing, in appropriate circumstances. We have set out those areas where we consider it appropriate that DBCT Management amend the DAAU.

Our final decision is consistent with our draft decision, with the exception of the removal of one specific factor we indicated we would have regard to in making any decision whether to adopt or apply differential pricing in respect of an expansion. The specific factor we have removed is, ' the position that best reflects what would reasonably be expected to have occurred in a hypothetical negotiated contract entered prior to sunk costs being incurred.'

THE ROLE OF THE QCA – TASK, TIMING AND CONTACTS

The Queensland Competition Authority (QCA) is an independent statutory authority whose role is to promote competition as the basis for enhancing efficiency and growth in the Queensland economy.

The QCA's primary role is to ensure that monopoly businesses operating in Queensland, particularly in the provision of key infrastructure, do not abuse their market power through unfair pricing or restrictive access arrangements.

In 2012, that role was expanded to allow the QCA to be directed to investigate, and report on, any matter relating to competition and industry; and review and report on existing legislation.

Task, timing and contacts

On 3 February 2015, DBCT Management submitted a DAAU which requires us to consider whether future capacity expansions at DBCT should be priced on a differential basis (the differential pricing DAAU).

We commenced an investigation into the DAAU in accordance with section 146 of the QCA Act.

We are required to either approve, or refuse to approve, the DAAU. We assessed the DAAU, in the context of the statutory access regime in the QCA Act and, in particular, the object of Part 5 (section 69E) and the other criteria for review of undertakings in section 138(2) of the QCA Act. This includes taking into account the pricing principles in section 168A of the QCA Act.

These criteria include promoting economically efficient operation of, use of and investment in regulated infrastructure with the effect of promoting competition in related markets. They also encompass the legitimate business interests of DBCT Management and current terminal users, the interests of access seekers and, more broadly, the public interest. The pricing principles include that the price of access to a service should allow for price discrimination when it aids efficiency. A detailed discussion of the legal framework applying to the DAAU and our approach to assessment is in Chapter 2.

In assessing the differential pricing DAAU we considered the arguments and information put forward by DBCT Management and DBCT users, and undertook our own analysis.

We commenced a public consultation process on the DAAU and have:

- published DBCT Management's differential pricing DAAU on our website
- published a set of questions prepared by QCA staff—designed to help stakeholders prepare submissions
- sought submissions from interested parties—submissions were received from the DBCT User Group and Vale Australia, and a response submission from DBCT Management
- released a draft decision, which proposed to refuse to approve DBCT Management's DAAU and suggested a number of amendments
- considered submissions on the draft decision from DBCT Management and the DBCT User Group.

Key dates

In accordance with section 147A(2) of the QCA Act, we must use our best endeavours to decide whether to approve, or refuse to approve, the DAAU within the specified time periods. We gave notice of those time periods on 4 February 2015 and invited interested parties to make submissions with a closing date of 11 March 2015 (extended from 25 February 2015).

We released a timetable for developing our final decision, as outlined in Table 1 below. The release of the final decision is the last step in our consideration of DBCT Management's differential pricing DAAU.

Table 1 Timetable

Task	*Date*
Differential pricing DAAU submission	3 February 2015
Submissions on DAAU due	11 March 2015
Release of draft decision	22 May 2015
Submissions on draft decision due	22 June 2015
Release of final decision	24 August 2015

Way forward

Our final decision on DBCT Management's differential pricing DAAU is to refuse to approve the DAAU.

However, we accept the appropriateness of including the potential for differential pricing in the tariff arrangements for DBCT and indicate the way in which we consider it would be appropriate for DBCT Management to amend the DAAU in order to incorporate this principle.

Contacts

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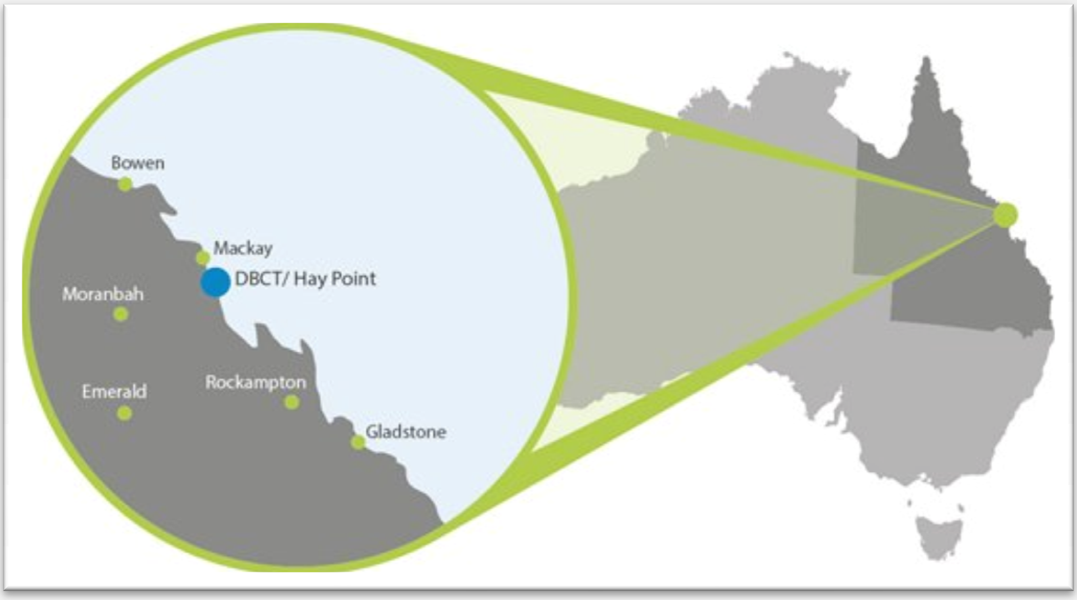
1 INTRODUCTION

1.1 Background

The Dalrymple Bay Coal Terminal (DBCT) is a coal export terminal located in central Queensland, 40 kilometres south of Mackay (**Figure 1**). It opened in 1983 as a common-user coal export facility, servicing mines in the Goonyella system of the Bowen Basin coal fields.

Figure 1 Dalrymple Bay Coal Terminal location



DBCT is owned by the Queensland Government. In September 2001, it was leased to DBCT Management for 50 years, with an option to extend the lease for a further 49 years.

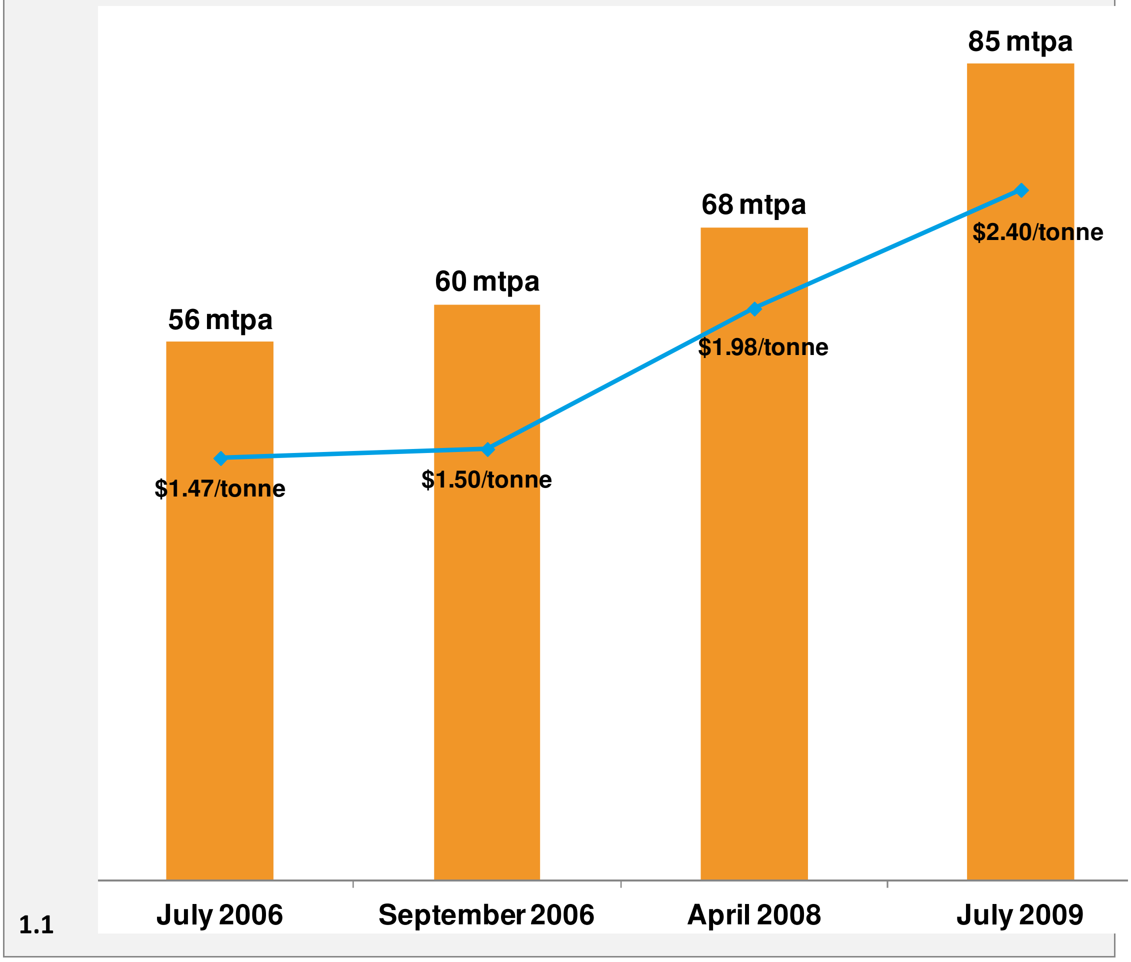
In March 2001, the service of the handling of coal at DBCT was declared for third-party access under Part 5 of the QCA Act. DBCT Management provides access to the terminal under the terms and conditions set out in its 2010 access undertaking (which replaced its first access undertaking, approved in 2006).

DBCT's capacity has been expanded from time to time to service the growth in demand for coal. Consequently, its capacity has increased to 85 million tonnes per annum (mtpa) from its initial capacity of 15 mtpa (in 1983). At the same time, terminal expansions have become progressively more costly on a per tonne basis.

For instance, the incremental expansions in DBCT's capacity from 56 mtpa to 85 mtpa increased the access charge (known as the terminal infrastructure charge, TIC) from $1.47/tonne to $2.40/tonne—an increase of 63% (**Figure 2**).

Therefore, pricing arrangements for capacity expansions at DBCT are of particular interest to both non-expanding and expanding users.

Figure 2 Capacity expansions and terminal infrastructure charge (June 2006$)



Source: QCA, June 2007; December 2009; September 2010a

1.2 Coal market environment

1.2.1 DBCT Management's view

In its submission on our draft decision, DBCT Management sought to place its views about pricing arrangements for future expansions in the context of the coal market environment.[1] It said that while the coal industry is currently in a downturn, it is important to consider the long-term market outlook as this will drive future planning and investment decisions, including the emergence of new entrants and the expansion of existing operations.

DBCT Management pointed out that, since the coal price peaks of early 2011, there has been a steady decline in metallurgical coal prices to levels not seen since before the Global Financial Crisis (GFC). DBCT Management stated that this has led to:

- some producers increasing production at mines in order to drive down marginal costs of production and attempt to maintain margins
- a small number of mine closures in Australia and the United States

[1] DBCT Management, June 2015, pp. 1-3

- a significant slowing in capital investment by Australian coal-mining firms.[2]

However, DBCT Management also said that, despite short-term uncertainty and low prices, there are long-term demand drivers that will see an increase in the output of steel as global gross domestic product (GDP) continues to grow into the future. This will cause a renewed demand for metallurgical coal, with the International Energy Agency (IEA) forecasting that the majority of this production will be sourced from Australian markets.[3]

DBCT Management said, with the long-term outlook remaining positive, demand for additional terminal capacity is expected to re-emerge, although it is not expected to see the same pressures as when demand spiked in the second half of the last decade. This means measured, incremental developments of existing port precincts are likely to be the preferred expansion options for satisfying continuing, modest demand growth.[4]

1.2.2 QCA's view

We share DBCT Management's view that, while the short-term outlook for the coal industry is challenging, with reduced margins having put significant pressure on the profitability and competitiveness of some central Queensland coal region (CQCR) mines, the long-term outlook appears to be more optimistic. This means future expansions of key infrastructure in the CQCR, including ports, are likely to occur over time—though we expect these expansions will be occasional and discrete.

As noted in our recent draft decision (policy and pricing) on Aurizon Network's 2014 DAU[5], the competitiveness of Queensland's mining sector is critical to Queensland's economy. The performance of, and investment in, significant infrastructure in the CQCR are therefore important. The access arrangements that apply to that infrastructure play an important role in ensuring the operation of, use of and investment in the infrastructure are efficient, in accordance with the object of Part 5 of the QCA Act. In this context, access holders (and seekers) operating in the CQCR need to be confident they are paying an appropriate price for the services provided—and DBCT Management needs to be confident it can generate expected revenue consistent with the pricing principle in section 168A(a) of the Act. Our views regarding the object of Part 5 of the Act are discussed further in Chapter 2 of this final decision.

1.3 QCA's previous consideration of expansion pricing arrangements

We have previously considered the issue of pricing arrangements for capacity expansions at DBCT in our reviews of the 2006 and 2010 DBCT draft access undertakings (DAUs), and more generally in our 2013 capacity expansion pricing discussion paper and our draft decision (policy and pricing) on Aurizon Network's 2014 DAU.

DBCT DAU—2006

In approving DBCT Management's 2006 access undertaking, we accepted that capacity expansion costs should be shared by all terminal users on a uniform cost basis. We considered that adopting an incremental cost approach could result in numerous tariffs involving potentially burdensome administration and transaction costs.[6] In doing so, we agreed with the

[2] DBCT Management, June 2015, p. 2
[3] DBCT Management, June 2015, p. 3
[4] DBCT Management, June 2015, p. 3
[5] QCA, January 2015, p. 2
[6] QCA, October 2004, pp. 49-50; April 2005, p. 51

DBCT User Group's position at that time, that charging a differential price for new capacity would:

> *...result in multi-tier charges and introduce a range of new and complicated issues. Marginal costing, whilst economically attractive, would be unworkable in the Terminal situation where all physical capacity facilities are undifferentiated in their utilisation for terminal services...In addition, higher cost expansions can provide a foundation for subsequent cheaper expansions, leading to the issue of equity between Users depending on the timing of their Access Agreements, if multi-tier tariffs were applied.*[7]

DBCT DAU—2010

Our 2010 final decision noted that since the approval of the 2006 undertaking, terminal expansions had become progressively more costly on a per tonne basis, leading to an increase in the reference tariff. We noted that, if the uniform pricing arrangement continued, reference tariffs were likely to increase further.[8] The decision stated:

> *The Authority is prepared to consider an alternative pricing regime at the terminal where it enables users to correctly value access. In doing so, the Authority considers that the guiding principle is that terminal users who benefit from access to DBCT should bear the cost of the service they are provided.*
>
> *...For instance, an expansion that both increased capacity for future users and improved the robustness of the existing facilities (so it routinely handled throughput at an 85 mtpa rate) would provide benefits to both existing and new users. For example, increased stockpile capacity might allow a move away from the current reliance on a cargo assembly operating mode. Under such an arrangement, it might be reasonable to expect existing users to pay some share of the new or expanded stockyard. Alternatively, if a completely new terminal was built that shared none of the facilities with, or provided benefits to, the existing terminal, then it might be reasonable to expect that the new users would pay for the full costs of the new facilities, and the price for existing users would not change.*[9]

When we approved DBCT Management's 2010 access undertaking, which retained uniform pricing for capacity expansions, we observed that although the issue of pricing arrangements for future expansions was not formally raised by stakeholders in the context of the 2010 DAU, it was a matter of significant interest to current and future users.[10]

That decision also stated our intention to commence a broad cross-sector review on the issue of pricing arrangements for capacity expansions and that we would consider any potential pricing arrangement at DBCT in the context of that review.[11]

Capacity expansion and access pricing discussion paper—2013

In April 2013, we released a discussion paper on capacity expansion and access pricing for rail and ports, in which we investigated options for pricing access to major expansions in capacity for rail and port infrastructure.[12]

This paper acknowledged that it was not possible to define a 'one-size-fits-all' set of rules that could be applied prescriptively to ensure that new capacity is priced efficiently and fairly. Rather, pricing arrangements needed to be decided on a case-by-case basis. Nevertheless, the

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[7] DBCT User Group 2003, p. 26
[8] QCA, September 2010b, p. 14
[9] QCA, September 2010b, p. 14
[10] QCA, September 2010b, pp. 13-14
[11] QCA, September 2010b, pp. 14-15
[12] QCA, April 2013

paper identified key propositions based on economic efficiency, fairness and governance principles that should apply when capacity is already committed to 'established' users through long-term, take-or-pay contracts. These propositions are:

> *(a) If average costs are decreasing substantially with capacity, adding the expansion costs to the cost base of the established capacity will usually provide an acceptably efficient and fair outcome...*
>
> *(b) If average costs are increasing substantially with capacity, a separate access price should normally be calculated and charged to those whose capacity underwrites the new tranche of capacity that reflects the average cost of that new capacity.*[13]

Together, these propositions constitute the 'averaging down/incremental up' principle.

In the context of proposition (a), the paper stated:

> *Where capacity costs are declining as capacity expands, a uniform access price based on average cost is likely to be generally acceptable to existing access capacity contractors, new access contractors, and the service provider. In particular, where the original access users have had to pay for some excess capacity or bear the risk of being a Greenfield take-or-pay contractor, it would also seem both fair and economically efficient for them to benefit from a lower average access price if lower unit cost capacity expansion occurs. Indeed, in these circumstances it may not be unreasonable for existing users to share more than proportionately the benefits from lower costs associated with capacity expansion.*[14]

In the context of proposition (b), the paper stated:

> *With long-term capacity contracting, if average costs are rising substantially with a new tranche of capacity, it will in general be neither fair nor efficient for the higher costs of the new tranche to be added to existing costs and a socialised price then charged. In this case, socialisation of costs clearly implies a subsidy to expanding users where there is no apparent economic efficiency or fairness rationale for doing so.*[15]

The paper added that even if established and new capacity is inseparable in use, the new capacity costs could still be identified and charged to the expanding users.[16]

The paper also stated that, although there appeared to be some asymmetry in the two propositions, the propositions were justified by consideration of what would reasonably be expected to occur in a hypothetical contract negotiated prior to sunk costs being incurred by either the access provider or the access seeker (i.e. the 'reference transaction'). It stated:

> *These propositions are considered to be perceived as 'fair' to access providers and access seekers and consistent with achieving overall economic efficiency. Clarification of how prices would be set in the context of capacity expansion...is also important for the transparency and credibility of the regulatory governance arrangements.*[17]

Aurizon Network 2014 DAU draft decision (policy and pricing) — 2015

We are also considering the issue of an appropriate pricing arrangement for capacity expansions in the CQCR in the context of Aurizon Network's 2014 DAU. While our January 2015 draft decision (policy and pricing) accepted the averaging down/incremental up principle embedded in Aurizon Network's proposal, which is consistent with our April 2013 discussion paper on

[13] QCA, April 2013, p. iv
[14] QCA, April 2013, p. 16
[15] QCA, April 2013, p. 16
[16] For example, if it is not practical to physically allocate all new capacity to new users for their exclusive use, and established capacity to established users for their exclusive use (QCA, April 2013, p. v).
[17] QCA, April 2013, p. v

capacity expansion pricing, we refused to approve the way in which Aurizon Network proposed to implement it.[18]

However, our preliminary view was to accept the general principles embedded in Aurizon Network's proposed expansion pricing framework, specifically that:

(a) *the user(s) requiring the expansion should generally pay an access charge that reflects at least the full incremental costs (capital and operating) of access*

(b) *existing users should not experience a material increase in tariffs due to an expansion triggered by access seekers*

(c) *if new/expanding users face a higher cost than existing users, a zero contribution to common costs from expanding users is generally acceptable*

(d) *an attribution of expansion costs to existing users may be appropriate where an expansion has clear benefits to those users.*[19]

We consider our views in the April 2013 discussion paper and in the January 2015 draft decision (policy and pricing) on Aurizon Network's 2014 DAU are relevant considerations in assessing DBCT Management's differential pricing DAAU.

1.4 Context of DBCT Management's DAAU

By way of background, DBCT Management's 2010 access undertaking provided that all approved costs of completed expansions of DBCT are shared on a uniform basis. The TIC is recalculated after each expansion and takes account of the cost of existing and expanded capacity by dividing the revenue cap by the new total reference tonnage.[20]

During DBCT Management's negotiations with users over the 2010 DAU, some users raised the issue of pricing future expansions on a differential basis.[21] They proposed that non-expanding users that do not require additional capacity should continue to pay the current price, while expanding users should pay a higher price that reflects the full costs of the additional capacity (i.e. the incremental cost of the expansion).

At the time of submitting its 2010 DAU, DBCT Management agreed to submit a draft amending access undertaking (DAAU) to introduce the consideration of differential pricing arrangements for future capacity expansions at DBCT.[22]

On 3 February 2015, DBCT Management submitted this differential pricing DAAU to amend its 2010 access undertaking. The DAAU requires the QCA to consider whether to differentiate tariffs for expanded capacity from the tariffs applied to existing capacity—by dividing the terminal into 'components' of expanded capacity and existing capacity.[23]

The DAAU requires the QCA to determine the reference tariff for each component of the terminal, including how the Annual Revenue Requirement (ARR), revenue cap and reference tariff will be assigned between components, if the QCA determines that a different reference tariff for a capacity expansion should apply.

[18] QCA, January 2015, pp. 367-370
[19] QCA, January 2015, p. 370
[20] DBCT Management 2010, Schedule C, Part A, section 2(b)
[21] DBCT User Group, February 2015, p. 2; Vale Australia 2015, p. 1
[22] DBCT User Group, March 2015, p. 1; Vale Australia 2015, p. 1
[23] DBCT Management, February 2015, p. 2

We published the DAAU on our website and sought submissions from stakeholders—we received submissions from the DBCT User Group and Vale Australia. Subsequently, we received a response submission from DBCT Management.

We released our draft decision on 22 May 2015. Our draft decision proposed to refuse to approve the DAAU and indicated how we consider DBCT Management would need to amend the DAAU in order to have it approved—the draft decision is discussed in more detail in Chapter 3of this final decision. In response to the draft decision, we received submissions from DBCT Management and the DBCT User Group. We have considered all submissions in making this final decision.

2 ASSESSMENT CRITERIA

This chapter outlines our application of the assessment criteria in making this final decision, as set out in Part 5 of the QCA Act.

Section 143(2) of the QCA Act provides that the QCA may approve a DAAU only if it considers it appropriate to do so having regard to each of the matters set out in section 138(2) (**Box 1**).

Box 1: Assessment criteria

Section 138(2) of the QCA Act states:

> *The Authority may approve a draft access undertaking only if it considers it appropriate to do so having regard to each of the following—*
>
> *(a) the object of this part;*
>
> *(b) the legitimate business interests of the owner or operator of the service;*
>
> *(c) if the owner and operator of the service are different entities – the legitimate business interests of the operator of the service are protected;*
>
> *(d) the public interest, including the public interest in having competition in markets (whether or not in Australia);*
>
> *(e) the interests of persons who may seek access to the service, including whether adequate provision has been made for compensation if the rights of users of the service are adversely affected;*
>
> *(f) the effect of excluding existing assets for pricing purposes;*
>
> *(g) the pricing principles mentioned in section 168A;*
>
> *(h) any other issues the authority considers relevant.*

The 'object of this part' as referred to in section 138(2)(a) is set out in section 69E:

> *The object of this part is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.*

Section 138(2)(g) refers to the pricing principles in section 168A. These principles are:

> *The pricing principles in relation to the price of access to a service are that the price should—*
>
> *(a) generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved; and*
>
> *(b) allow for multi-part pricing and price discrimination when it aids efficiency; and*
>
> *(c) not allow a related access provider to set terms and conditions that discriminate in favour of the downstream operations of the access provider or a related body corporate of the access provider, except to the extent the cost of providing access to other operators is higher; and*
>
> *(d) provide incentives to reduce costs or otherwise improve productivity.*

2.1 Section 138(2) of the QCA Act

Section 138(2) of the QCA Act describes matters we are required to 'have regard to'. However, the QCA Act does not prescribe the weightings for each matter.

We note that DBCT Management, in its submission on our draft decision, identified section 120(1) of the QCA Act as being relevant to our consideration of its proposal. Section 120(1) of the Act lists the matters we must have regard to when making an access determination in response to an access dispute. It does not address the matters we must have regard to when considering a DAAU (which are listed in section 138(2) of the QCA Act).

2.2 The object of Part 5 of the QCA Act

In their responses to the draft decision, both DBCT Management and the DBCT User Group referenced the object of Part 5 of the QCA Act. We consider it useful to clarify our interpretation of the object clause here.

The object of part 5 of the QCA Act is to:

> *promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.*

2.2.1 Economically efficient outcomes for the operation, use of and investment in DBCT

We consider that a number of issues will determine whether differential pricing will deliver economically efficient outcomes for the operation of, use of and investment in DBCT.

Economically efficient operation and use of existing DBCT infrastructure

Economically efficient operation, and use of, existing infrastructure require both allocative and productive efficiency. Specifically, allocative efficiency means scarce resources are directed towards their most highly valued uses. Productive efficiency means that resources are not wasted in producing the service.[24]

Economically efficient investment in DBCT infrastructure

Efficient investment requires dynamic efficiency, which will generally be promoted when price signals for new investment are appropriate. This means that producers have incentives to make timely investments to add capacity or to introduce new technology.

Consistent with these principles, pricing for the use of new investment at DBCT should be cost-reflective. If an expanding user's demand for a service causes the average costs of the service to increase, then the price charged to that user needs to reflect the incremental cost of providing the expanded infrastructure service.

While the object clause focuses on efficient outcomes, we note that these outcomes are dependent on a regulatory process that promotes efficient usage and investment decisions. In particular, providing an appropriate degree of regulatory certainty around tariff structure is an important aspect of promoting efficient investment:

- the access provider should have a reasonable opportunity to generate expected revenue, including an appropriate risk-adjusted return on its capital (in accordance with s. 168A(a) of the QCA Act)

[24] QCA 2013, August, pg. 7

- the access seeker requires assurances that it will receive access to the infrastructure service at a reasonable price (in accordance with s. 138(2)(e) of the QCA Act).

Consistent with the object of promoting efficient use, operation and investment in infrastructure, the QCA Act also explicitly recognises that access pricing should allow for price discrimination where this aids efficiency (s. 168A(b)). It also requires the QCA to consider whether access pricing may be used to provide an incentive to reduce costs or improve productivity.

In this case, the potential for differential pricing in appropriate circumstances may be expected to both aid efficiency (by establishing an access price that provides a more direct and cost-reflective signal of the cost of expansion) and, in doing so, is likely to encourage cost reduction. It may also be expected to provide an incentive for DBCT Management, and non-expanding and expanding users to explore alternative productivity measures at the terminal, that are less reliant upon higher-cost expansion projects for additional capacity.

Promoting effective competition in upstream and downstream markets

In assessing whether or not the differential pricing DAAU will promote competition, we must consider the relevant upstream and downstream markets affected by the provision of the declared service and the manner in which provision of the declared service will have the effect of promoting effective competition in those related markets.

In the context of 'promoting competition' in the declaration criteria in section 44H(4)(a) of the analogous national access regime in the Competition and Consumer Act 2010 (CCA), the Australian Competition Tribunal (the Tribunal) has previously provided the following guidance, which is useful in interpreting this concept in the QCA Act:

> *The Tribunal does not consider that the notion of 'promoting' competition in s 44H(4)(a) requires it to be satisfied that there would be an advance in competition in the sense that competition would be increased. Rather, the Tribunal considers that the notion of 'promoting' competition in s 44H(4)(a) involves the idea of creating the conditions or environment for improving competition from what it would be otherwise.*[25]

The Tribunal has also relevantly stated in a similar context:

> *Before turning to the specific arguments raised in this matter, we must address the question of what is meant by the term "promote competition" in s 44H(4)(a) of the Act. The Tribunal has expressed a view in the past that the promotion of competition test does not require it to be satisfied that there would necessarily or immediately be a measurable increase in competition.*
>
> *Rather, consistent with the purpose of Pt IIIA being to unlock bottlenecks in the supply chain, declaration is concerned with improving the conditions for competition, by removing or reducing a significant barrier to entry. Other barriers to entry may remain and actual entry may still be difficult and take some time to occur, but as long as the Tribunal can be satisfied that declaration would remove a significant barrier to entry into at least one dependent market and that the probability of entry is thereby increased, competition will be promoted.*[26]

To ensure that effective competition is promoted in both upstream and downstream markets, we consider that, consistent with the above discussion, the expansion pricing arrangements for DBCT should:

- enable users to confidently commit to long-term investments

[25] The Tribunal 2000, clause 106
[26] The Tribunal 2005, clause 131

- be underpinned by clear and transparent legal and regulatory frameworks, which all stakeholders can understand
- provide users with reasonable certainty about the level of infrastructure they will be expected to fund.

2.3 The object clause and the DBCT differential pricing DAAU

We consider that an efficient pricing approach, consistent with the object of Part 5 of the QCA Act, is necessary to manage expansion capacity pricing at DBCT. We must appropriately weigh the criteria in section 138(2) of the Act to balance the potentially competing interests of the public, DBCT Management, and both non-expanding and expanding users.

In doing so, we recognise the importance of establishing a long-term, predictable regulatory framework to support and promote efficient investment.

A cost-reflective approach will mitigate the risk of cross-subsidies arising in the future from non-expanding to expanding users, which may otherwise promote inefficient investment. We do not however consider that this constitutes allowing non-expanding users' interests to 'drive' regulatory decision-making—it simply represents an appropriate balancing of the interests of all stakeholders, and the overall object of promoting efficient investment signals. It is also likely to be in the public interest, as it facilitates economically efficient expansion in the CQCR.

2.4 Fundamental issues

As discussed in our draft decision, we consider that, in terms of the object of Part 5 of the QCA Act, and the other factors listed in section 138(2) of the QCA Act, the fundamental issues raised by this DAAU relate to ensuring that:

- the attribution and recovery of costs through tariffs associated with any capacity expansion promote efficient investment in, use of and operation of, DBCT
- any expansion pricing arrangement provides for the recovery of efficient expansion costs. In doing so, we note that the question of prudency of costs is not dealt with here, and is already the subject of approved processes under the 2010 access undertaking.

For this differential pricing DAAU we have considered the application of section 138(2) of the QCA Act, as set out below. Our consideration of the section 138(2) criteria is informed by our preliminary views in our January 2015 draft decision (policy and pricing) on capacity expansion pricing in Aurizon Network's 2014 DAU and our April 2013 discussion paper on capacity expansion and access pricing for rail and ports.[27]

Attribution of costs

Section 168A(b) of the QCA Act deals with cost attribution.[28] It allows for multi-part pricing and price discrimination, when it aids efficiency. In this context, a relevant principle of economic efficiency is cost-reflective pricing (also known as 'user pays' principle)—that is, if a user's demand for a service causes average costs to increase, then the price charged to that user needs to reflect the incremental cost associated with its consumption of the infrastructure

[27] QCA, January 2015, pp. 362-378; April 2013

[28] Section 168A(c) of the QCA Act also deals with cost attribution, as it relates to potential discrimination in favour of a related downstream operator, but it is not relevant here because the access provider (DBCT Management) is not vertically integrated (at this point in time).

service. This is consistent with achieving efficient investment, as discussed in Section 2.2.1 above.

If the access charge is not cost-reflective, access seekers and holders may have an incentive to over-contract or under-contract, which would not promote efficient investment in, or use of, the terminal and is not consistent with the object of Part 5 of the QCA Act (s. 138(2)(a)). It may also result in a group of users paying more than the costs associated with their use of a service and another group of users paying less, which could result in a conflict between the interests of access seekers and access holders (ss. 138(2)(e) and (h)).[29]

Therefore, we must consider whether the pricing arrangements for capacity expansions provide appropriate price signals for all stakeholders, to promote the efficient investment in, and use of, the terminal and to balance the interests of access seekers and holders as well as the legitimate business interests of the access provider.

Recovery of costs

We consider expansion costs should be attributed in such a way as to ensure DBCT Management (as the operator of the declared service[30]) has the opportunity to generate sufficient expected revenue to recover no more than, and no less than, its efficient expansion costs, including a return on investment commensurate with the commercial and regulatory risks involved. This promotes revenue adequacy for DBCT Management and provides appropriate incentives for it to undertake efficient investments (ss. 138(2)(a) and 168A(a) of the QCA Act). It also balances the legitimate business interests of DBCT Management with the interests of access seekers and access holders (ss. 138(2)(c), (d) and (h)).

Other issues

We have considered additional factors under section 138(2)(h), including:

- *interests of access holders*—we consider the rights of non-expanding access holders are relevant under section 138(2)(h), to the extent they are not already access seekers under section 138(2)(e)
- *predictability*—predictability and stability are likely to promote efficient investment decisions and improve confidence in the regulatory arrangements, which is necessary to ensure efficient funding of expansion projects. We recognise that reducing uncertainty is particularly important in the context of long-term decisions taken by both the access provider and users of the declared service. We also recognise that providing early visibility of the QCA's likely approach to pricing in relation to expansions will assist with efficient negotiation and financing of expansions (ss. 138(2)(a), (c), (d), (e) and (h) of the QCA Act)
- *transparency*—the methodology for determining prices, including cost attribution and cost allocation, should be as transparent as practicable, to ensure all parties have a clear understanding of how access charges are calculated and how costs are determined. This will provide confidence to access seekers/holders and the access provider by reducing uncertainty. In turn, greater certainty will assist in promoting the efficient use of and investment in the infrastructure, as well as the interests of access seekers/holders and the access provider (ss. 138(2)(a), (c), (e) and (h)).

[29] We consider that the rights of non-expanding access holders are relevant under section 138(2)(h) of the QCA Act, to the extent they are not already 'access seekers' under section 138(2)(e).
[30] DBCT, March 2010, clause 3

3 ASSESSMENT OF THE DAAU

DBCT Management's DAAU facilitates the consideration of differential pricing for future terminal capacity expansions by requiring the QCA to consider whether to apply differential pricing, how to determine differential prices, and how to assign contract tonnage between new and existing components of capacity.

Our position, as set out in this final decision, is to refuse to approve the DAAU. While we support amending the access undertaking to allow consideration of differential pricing for capacity expansions, our key concerns include that the DAAU proposes no guidance on the circumstances when differential pricing should apply and how non-expansion capital and operational and maintenance costs should be allocated between different components of capacity.

We have proposed general principles and rules to provide guidance on these matters. Overall, we require amendments to ensure that the pricing arrangements for capacity expansions at DBCT are cost-reflective, efficient, transparent and predictable, and appropriately balance the interests of the public, DBCT Management, and non-expanding and expanding users of the terminal.

The amendments we have proposed in this final decision involve only relatively minor changes to the approach we proposed in our draft decision. In particular, we have maintained our draft position that future expansion pricing decisions at DBCT should be based on a general principle of averaging down/incremental up—with divergence from this approach able to be approved by us in appropriate circumstances.

We have identified a series of factors we would have regard to in making any decision to move away from this general principle—four of the five factors proposed in the draft decision have been retained, while one has been excluded as a specific factor for consideration.

3.1 Introduction

Our draft decision was to refuse to approve DBCT Management's differential pricing DAAU. In doing so, we indicated how we would require DBCT Management to amend the DAAU in order to have it approved, particularly in relation to:

- specified factors for consideration
- the process for assessing whether to apply differential pricing
- how to allocate other costs[31]
- how the access undertaking and Standard Access Agreement (SAA) would need to be amended.

We received two submissions in response to our draft decision.

The DBCT User Group supported the draft decision. It responded to some issues raised by DBCT Management, and raised concerns about the timing for resolution of the DAAU and the process for putting in place a cost allocation manual.

[31] 'Other' costs in this context means, for example, non-expansion capital and operations and maintenance costs.

Overall, DBCT Management did not agree with our draft decision. DBCT Management raised a number of new arguments in its submission on the draft decision. It raised specific issues in regard to the circumstances in which differential pricing should be applied, particularly focusing on the:

- importance of separability
- potential effects on competition between coal-mining companies, and between DBCT and other ports, as well as the implications for Queensland's coal industry
- impact on regulatory certainty.

The issues raised in response to our draft decision have not caused us to change our view of whether it is appropriate to introduce differential pricing at DBCT. We consider that the new issues raised by stakeholders warrant only relatively minor changes to the approach we proposed in our draft decision on DBCT Management's differential pricing DAAU.

3.2 Circumstances for applying differential pricing

Prior to the release of the draft decision, the DBCT User Group accepted the general principle of averaging down/incremental up for the pricing of expansions, but also considered that there may be special circumstances where a different approach could be justified. It proposed a list of factors to determine whether such special circumstances exist.

In its response submission, DBCT Management said the primary consideration governing when differential pricing should apply is whether the expansion is clearly separable from the existing infrastructure (i.e. new capacity could be dedicated exclusively to expanding users). DBCT Management said expansion costs should be uniformly priced if new capacity was not separable and differential pricing should apply if an expansion was separable.

In our draft decision, we said that DBCT Management's proposal should be amended to ensure that:

(a) where adding the expansion costs to the cost base of existing capacity decreases the reference tariff for non-expanding users, a uniform access price should apply to both non-expanding and expanding users (retaining a single regulatory asset base, ARR and reference tariff)

(b) where adding the expansion costs to the cost base of existing capacity increases the reference tariff for non-expanding users, a separate access price should generally apply to the expansion (through a separate regulatory asset base, ARR and reference tariff) except where the QCA considers it appropriate for non-expanding users to also share the expansion costs. In making this decision, the QCA would have regard to:

  (i) the extent to which assets or infrastructure which are being constructed to deliver the additional capacity will operate wholly, or partly, in an integrated way with existing assets and infrastructure or as a stand-alone development

  (ii) the extent to which the expansion benefits non-expanding users (such as through higher efficiency, robustness or flexibility)

  (iii) the materiality of the increase in the reference tariff for non-expanding users, resulting from adding the expansion costs to the cost base of existing capacity

  (iv) any differences in the risks of providing access to non-expanding users in respect of additional capacity created by the expansion

(v) the position that best reflects what would reasonably be expected to have occurred in a hypothetical negotiated contract entered prior to sunk costs being incurred.

These matters would be in addition to the statutory factors in Part 5 of the QCA Act which we would be required, in any event, to take into account in respect of any DAAU.

Stakeholders' position

The DBCT User Group supported the approach outlined in our draft decision and responded to a number of issues raised by DBCT Management.

However, DBCT Management did not support our draft decision and was particularly concerned with:

- the refusal by the QCA to give predominance to separability as a factor (discussed in Section 3.2.1 of this final decision)
- the likely impact of differential pricing of expansions on competition at different functional levels (Section 3.2.2)
- regulatory uncertainty (Section 3.2.3)
- applying the same principles to DBCT as we did when considering expansion pricing for Aurizon Network (Section 3.2.4).

3.2.1 Separability

In its submission on our draft decision, DBCT Management considered that the level of physical separation between new and existing infrastructure, and whether the new infrastructure would service non-expanding customers, should be the predominant factor that determines whether differential pricing is applied to a new expansion.[32]

QCA draft decision

Our draft decision took into account our assessment of differential pricing in both the 2013 capacity expansion discussion paper[33] and our draft decision (policy and pricing) on Aurizon Network's 2014 DAU.[34] We provided a list of factors for consideration (see points (b)(i) to (v) above). While we accepted the relevance of separability as a factor for consideration, we did not see this as the sole or determinative factor.

Stakeholders' position on the draft decision

Both DBCT Management and the DBCT User Group expanded on their earlier positions.

The DBCT User Group supported the approach outlined in our draft decision, but emphasised that separability should not be given any special weight. Rather, it viewed the change in reference tariffs, which would occur if uniform pricing were implemented, to be of primary importance in assessing which pricing approach to apply.[35] It said a number of factors should be applied to ascertain the benefits that new infrastructure would deliver to non-expanding users, in addition to physical separability and use.

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[32] DBCT Management, June 2015, p. 1, pp. 4-5
[33] QCA, April 2013
[34] QCA, January 2015
[35] DBCT User Group, June 2015, p. 2

DBCT Management highlighted the inseparability of DBCT infrastructure. In its view, the terminal provides a common service to all users—individual segments of terminal infrastructure cannot be isolated and dedicated to a particular user or group of users. Under the DBCT SAA, users are entitled to a price that reflects the cost of providing the service on the day of its use, not to a right over a particular asset or to a price guarantee.

DBCT Management submitted that differential pricing could result in different tariffs applying to different users for tonnages handled by the same infrastructure. For this reason, DBCT Management stated that the QCA's approach could lead to non-cost-reflective outcomes. In other words, as expansions would be utilised by all customers, differential pricing could lead to a non-expanding user being serviced by infrastructure for which it had not paid.

QCA analysis and final decision

In our 2013 capacity expansion and access pricing paper[36], we found that where access is sold under long-term capacity contracts (as is the case at DBCT) the issue of physical separability was unlikely to have a strong bearing on whether capacity expansions should be uniformly priced. This is because new expansion costs can be clearly identified, and their incremental costs then attributed to the users who have caused the new expansion, regardless of which specific infrastructure (old or new) is then ultimately used to meet their demand. This attribution is consistent with economic efficiency principles.

We consider it is unreasonable for the economic viability of already operating investments to be negatively impacted by a material expansion triggered by another user. Similar to findings in our draft decision (policy and pricing) on Aurizon Network's 2014 DAU, we consider that the risk of material increases to reference tariffs would add a level of uncertainty and inefficiency to development decisions in the CQCR that could discourage efficient development of the Queensland coal industry in the long run. We consider it is in the interests of all users and DBCT Management, and consistent with the object of Part 5 of the QCA Act, to have a predictable assessment framework for the cost of new infrastructure at DBCT that promotes cost-reflective and efficient investment decisions.[37]

For these reasons, while we do not consider that separability should be the sole or determinative factor, we accept that it should be a factor we will have regard to in determining circumstances where we would move away from a general averaging down/incremental up approach. Thus, we have maintained our position from the draft decision that separability—that is, 'the extent to which the additional capacity provided by the expansion is an integrated development (which involves common use of many parts of the existing terminal infrastructure) or a stand-alone development (which involves common use of none or limited parts of the existing infrastructure)'—will be one factor considered.

In forming this view, we recognise that an expansion may involve the introduction of new or replacement infrastructure which either has lower operating costs than existing (and older) capacity, or gives rise to benefits (including reduced costs) for existing users—such as by providing improved reliability. It may be appropriate for the cost of these benefits to be appropriately shared between expanding and non-expanding users.

[36] QCA April 2013, p. 8
[37] QCA January 2015, p. 368

3.2.2 Competition issues

Competitive advantage

In its response submission, DBCT Management considered that differential pricing was not necessary for the terminal, as DBCT was already a brownfield site. It emphasised that user agreements to date had sought to promote the entry of new business, and to encourage industry growth in the CQCR—effectively providing new entrants with a competitive advantage. It also submitted that:

> *the magnitude of the costs of the expansion (relative to existing capacity) largely becomes irrelevant, noting that market conditions will influence the ability (or willingness) of potential users to underwrite the development of the new terminal.*[38]

The DBCT User Group did not raise issues regarding competitive advantage in its initial submission. Vale Australia submitted that a uniform pricing approach to capacity expansion was unlikely to provide appropriate pricing signals to new users, as it would not reflect the true cost of the expansion and was likely to lead to cross-subsidisation by non-expanding users to expanding users.[39]

QCA draft decision

In our draft decision, we said the following principles were reflected in our proposed averaging down/incremental up approach:

- non-expanding users should not experience a material increase in tariffs due to an expansion triggered by expanding users
- the user(s) requiring the expansion should generally pay an access charge that reflects at least the full incremental costs (capital and operating) of access
- if expanding users face a higher unit cost than non-expanding users, a zero contribution to common costs from expanding users may be acceptable.[40]

These principles are consistent with economic efficiency.

Stakeholders' position on the draft decision

DBCT Management submitted that differential pricing would provide non-expanding users with an unfair competitive advantage relative to new access seekers.

In DBCT Management's view, the low operational cost-base of the terminal was funded by the State's contribution to its initial construction. The evergreen[41] nature of users' contracts means that under a differential pricing regime, existing users would be the only beneficiaries of that low cost-base. DBCT Management said that, as foundation users, the existing users had benefited from access to a brownfield site (and as a result, had not borne the risks associated with greenfield investment that they would have experienced otherwise), and were therefore not entitled to differentiated reference tariffs.

DBCT Management submitted that existing users and access seekers had conflicting interests, particularly in an environment where none of the existing users had announced an intention to

[38] DBCT Management, March 2015, p. 6

[39] Vale Australia 2015, p. 1

[40] QCA, May 2015, p. 12

[41] An 'evergreen' contract is a contract that includes provisions that allow for automatic renewal of the agreement after a predetermined period, unless notice for termination is given.

expand. They considered it was inappropriate to distinguish between expanding and non-expanding users, as the only difference between them was the timing of their capacity applications.

DBCT Management concluded that the approach outlined in our draft decision, which it said would introduce new barriers to entry, and deliver an unfair benefit to non-expanding users over expanding users at the expense of industry development, would be inconsistent with the object of Part 5 of the QCA Act and with the public interest.[42] For example, DBCT Management submitted that our approach created the perverse potential for existing users to sell their capacity rights to new or expanding users and realise an unearned windfall gain. It also said that the interests of non-expanding users should not inappropriately 'drive' regulatory decisions.

DBCT Management considered that either altering the evergreen nature of contracts, or linking access agreements to the original source mine, could address an inappropriate advantage held by existing access holders. However, it concluded that both options would be too complex to implement.

In contrast to DBCT Management's view, the DBCT User Group considered that non-expanding users had underwritten the development of the terminal, by taking-up initial long-term, take-or-pay contracts and also by making capital contributions.[43] Despite the terminal being a brownfield site and capital contributions having been repaid when regulation commenced, it considered that DBCT Management's view did not recognise that non-expanding users, through their contracting and funding, had borne those costs and risks prior to the commencement of regulation.

In the DBCT User Group's view, differential pricing would not 'blunt' competition between users, but would ensure that existing users were not subsidising the inefficient entry of expanding users. It said that DBCT Management's position was inconsistent with the object of Part 5 of the QCA Act, as it would lead to inefficient investment.[44]

QCA analysis and final decision

We consider there are two key questions raised by submissions in relation to this issue: Does differential pricing deliver a competitive advantage to non-expanding users? If so, is any such competitive advantage inconsistent with the criteria in section 138(2), including the object of Part 5 of the QCA Act?

We do not consider differential pricing creates an inappropriate competitive advantage for non-expanding users, or that it would deliver them a 'windfall gain'. However, we acknowledge that differences in the timing of investment may lead to existing users obtaining cost advantages over later entrants, which we note is appropriate and consistent with how competitive markets develop over time. We accept that non-expanding users have made significant, long-term investment in developing mines in the CQCR and that they may have benefited from early entry in a number of respects, including the acquisition of mineral rights, development of mine sites and take-up of terminal capacity. Non-expanding users at DBCT also have evergreen contracts. We agree that these are competitive advantages, but they are not caused or enhanced by differential pricing.

The principle of differential pricing is intended to provide a set of incentives for efficient investment based on the costs and risks associated with capacity at the time of an expansion

[42] DBCT Management, June 2015, p. 5
[43] DBCT User Group, June 2015, p. 4
[44] DBCT User Group, June 2015, p. 4

project. This is generally not achieved by maintaining a uniform price for capacity regardless of the incremental cost of expansion. As differential pricing attributes the costs associated with expanding the terminal over time to the users that give rise to the expansion, it ensures that, as new components of capacity are developed, users can invest in the CQCR with certainty, knowing that they are not necessarily exposed to the cost of future expansions. We consider this is particularly important, given we understand that future expansions at DBCT are likely to become increasingly expensive on a per tonne basis.

Under our proposed approach, as a general principle, uniform pricing could be maintained following future expansions if the average cost of access (reflected in the uniform tariff) would be less than non-expanding users' pre-expansion reference tariffs, or if other circumstances dictated that uniform prices were still warranted, having regard to the factors identified in this final decision—see Final Decision 3.2.

We consider this to be a fair, efficient and transparent methodology that is consistent with the object of Part 5 of the QCA Act and consistent with an appropriate weighting of the other criteria in section 138(2) of the Act. In particular, we consider that our approach to differential pricing set out in this final decision:

- appropriately balances the (potentially) competing interests of non-expanding and expanding users, having regard to past investments made in the terminal
- is in the public interest, as it will not act to incentivise inefficient future investment
- will ensure inefficient new capacity is not subsidised by non-expanding users
- continues to ensure that the legitimate business interests of the access provider are protected, by ensuring that expected revenue from expanded capacity remains sufficient to meet the efficient costs of providing access, including a risk-adjusted return on capital
- ensures that any tariff differences between expanding and non-expanding users (and associated competitive advantage) reflect differences in the cost or risk associated with the timing of investment—an outcome consistent with economic efficiency
- provides a degree of certainty for users that their access pricing is unlikely to materially increase due to capital expenditure that does not directly benefit them and is beyond their control
- does not constitute non-expanding users' interests inappropriately 'driving' the regulatory decision—rather, it represents an appropriate balancing of the interests of all stakeholders, including non-expanding and expanding users, as well as future access seekers and the service provider.

Competition between ports

In its submission on the draft decision, DBCT Management argued that differential pricing would impact on its ability to compete with nearby ports—particularly in attracting funding for new or expanded capacity. This issue was not raised by either DBCT Management or the DBCT User Group in earlier submissions.

DBCT Management submitted that the market for terminal capacity in the CQCR has changed in recent years, with increased integration between coal export supply chains. It said it may need to compete with other terminals to secure expansion tonnage. In its view, differential pricing could mean it would be at a disadvantage relative to unregulated ports that have more flexibility to negotiate the price and terms of access—DBCT is the only port in the CQCR that is subject to economic regulation under the QCA Act.[45]

DBCT Management added that our approach would increase its asset stranding risk and reduce its incentive to invest, in comparison to other ports.

QCA analysis and final decision

Having considered DBCT Management's position, we acknowledge that depending on the location of new mines, other coal terminals such as those at Abbot Point and Gladstone (the Wiggins Island Coal Export Terminal (WICET) and RG Tanna) for example, may be in a position to compete with DBCT for some new expansion tonnage.

A strict application of uniform pricing to all capacity at DBCT may require non-expanding users to subsidise new capacity in a manner that provides DBCT Management with an inappropriate (and potentially inefficient) competitive advantage over other ports—such a cross-subsidy could potentially promote over-investment and inefficient expansion at DBCT. We would not support such an outcome.

At the same time, we think it is important to recognise that applying differential pricing at DBCT would not place DBCT at a competitive disadvantage in attracting *efficient* investment for future expansions, in comparison to terminals at other ports. We understand that aside from the fully-contracted T1 at Abbot Point, these terminals do not provide for the uniform pricing of all tariffs, but apply differential pricing methodologies (in one form or another), although their prices are commercial-in-confidence.

To the extent that the incremental unit cost of new capacity at DBCT is lower than other terminals that are positioned to service the same new or expanding mine, we consider it unlikely that our proposed approach to expansion pricing would reduce the ability of DBCT to continue to attract investment. We also note that other cost relativities—for example, the relatively high terminal charges at WICET, and high cost of railing to Abbot Point via the Goonyella to Abbot Point system in comparison to the Goonyella system to DBCT—reduce the likelihood of future expansions at the other ports being preferred to expansions at DBCT.

From a regulatory perspective, while differential pricing could change the relative level of terminal infrastructure costs between DBCT and the ports listed above, the QCA's role is to determine whether differential pricing is appropriate at DBCT, according to the criteria outlined in Chapter 2 of this final decision. This may mean that a new differential tariff at DBCT is higher than access charges at other ports, but such an outcome remains efficient if the higher access price reflects efficient expansion costs.

Finally, DBCT Management has not established that differential pricing will necessarily increase DBCT Management's asset stranding risk. While we accept that differential pricing of expansion capacity may increase counterparty risk associated with expanding users, we think this is a matter for DBCT Management to consider in the context of making prudent investment decisions.

In summary, DBCT Management's arguments in relation to the relative position of DBCT and other ports do not alter our view that differential pricing would be appropriate and consistent with the criteria in section 138(2) of the QCA Act.

[45] DBCT Management, June 2015, p. 6

Competitiveness of the Queensland coal industry

As noted earlier, DBCT Management also sought to place its views about pricing arrangements for future expansions in the context of the broader coal market environment. It said that, while the coal industry is facing short-term uncertainty and low prices, the long-term outlook is more positive—with long-term demand drivers suggesting a renewed demand for metallurgical coal, and the majority of new production forecast to be sourced from Australian markets. DBCT Management suggested that differential pricing is focused on short-term objectives, rather than the long-term development of the Queensland coal industry.

DBCT Management emphasised the importance of the export coal industry to the Queensland economy. It said that requiring new users to meet the full incremental costs of an expansion could serve as a barrier to entry—thereby denying the State, and the general public, the economic benefits of the growth that could occur from new mine developments in the CQCR.

It also said that the competitive advantage that uniform pricing gives to new mine developments belongs to the State, which provided the finance and bore the risk of developing a greenfield terminal in the early 1980s. DBCT Management added that the State is free to use that competitive advantage to the benefit of the State—most notably by promoting the further development of the Bowen Basin coal fields.

As indicated above, the DBCT User Group considered that its initial members effectively underwrote the original development of the terminal through the initial long-term, take-or-pay contracts and the provision of past capital contributions.

QCA analysis and final decision

As noted earlier, we share DBCT Management's view that, while the short-term outlook for the coal industry is challenging, the long-term outlook appears to be more optimistic. We also understand the importance of the export coal industry to the Queensland economy, and consider that its continued sustainable and efficient development is in the public interest.

At the same time, we consider that our role in assessing the DAAU requires us to appropriately weigh the criteria contained in section 138(2) of the QCA Act, including the object of Part 5 of the Act (s. 138(2)(a)).

As discussed earlier, the object of Part 5 is to:

- *promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided*—we consider that efficient investment in DBCT will be best promoted if the pricing arrangements that apply to future expansions are appropriately cost-reflective (i.e. users requiring an expansion should generally pay an access charge that reflects the incremental costs of the expansion). This is consistent with the general principle of averaging down/incremental up, which we support.
- We consider this principle will promote efficient expansions at the terminal—noting that efficient investment means neither under-investment nor over-investment. Requiring expanding users to pay the incremental cost of their expansion is not necessarily a barrier to entry into the coal market. In this respect, we note that, if the next most efficient expansion occurred at an alternative Queensland port (i.e. other than DBCT), it is difficult to see how such a development would be adverse to the State or to the public interest.
- *with the effect of promoting effective competition in upstream and downstream markets*—we consider this means expansion pricing arrangements should enable users to confidently commit to long-term investments; provide a clear decision-making framework; and ensure users have reasonable certainty about the level of infrastructure they are likely to be

required to fund. This is also consistent with a general principle of averaging down/incremental up, but which could be modified in certain circumstances.

We note that DBCT Management has also said that the State effectively has the right to use uniform pricing to confer a competitive advantage to expanding users in order to promote the development of the Bowen Basin coal fields. However, the State using its historic investment in privatised infrastructure in order to confer a competitive advantage by subsidising new coal development over existing mines does not appear to be what the QCA Act is intended to promote.

We consider that the approach to implementing differential pricing set out in this final decision is one that promotes efficient investment in the coal supply chain in the CQCR. Our final decision will support efficient and sustainable development of the Queensland coal industry, which is in the public interest (s. 138(2)(d) of the QCA Act). We accept that the efficient and sustainable development of the Queensland coal industry could lead to investment occurring at facilities other than DBCT, should that outcome be more efficient.

3.2.3 Regulatory certainty

In its initial submission, the DBCT User Group supported the amendment of DBCT Management's 2010 access undertaking to provide for differential pricing in accordance with the principles we outlined in our 2013 discussion paper on capacity expansion and access pricing.

In its response submission, DBCT Management highlighted that in the past, the QCA and non-expanding users supported costs being shared among terminal users on a uniform basis.

Stakeholders' position on the draft decision

In response to the draft decision, DBCT Management submitted that regulatory certainty and predictability were the most important characteristics of a capacity expansion pricing approach:

> *Regulatory certainty is extremely important to DBCTM and all market participants. Confidence in the stability of the rules that are applied under it has a significant impact on investment incentives and the ability to raise finance. While it is necessary for the regulators to have some discretion within the regime, the existence of discretion and the way in which it is exercised is a key source of regulatory risk.*[46]

DBCT Management considered that uniform pricing provided a clear and simple framework for the attribution of capacity expansion costs, while differential pricing did not. In this context, DBCT Management considered that our proposed approach raised a number of concerns. These can be broadly grouped into two principal areas:

- initial expectations and implications of a change from uniform pricing
- specific criticisms of the proposed approach.

These comments are summarised in the subsections below.

Initial expectations and implications of change

DBCT Management again flagged that both users and the QCA supported uniform pricing in the 2006 and 2010 undertakings, and all expansions to date had been uniformly priced. It did not consider that there had been decisions or evidence to support an assumption that a uniform reference tariff would no longer apply at the terminal if the costs of future expansions

[46] DBCT Management, June 2015, p. 7

increased.[47] DBCT Management considered that non-expanding users had accepted uniform pricing and noted it forms part of the SAA. In this respect, DBCT Management submitted that the QCA's proposed approach sought to effectively rewrite the existing agreements:

> *Agreements were written in clear anticipation of the ongoing application of socialised pricing, when it was also known that future expansions would likely involve a higher cost...In essence, the Authority's proposed approach seeks to rewrite the existing agreements based on a principle that has no contractual or legislative basis, being 'price stability', thereby putting a cap on the price that existing users pay for their access.*[48]

DBCT Management's view is that there is nothing in the existing agreements that allow such rights to 'price stability' to be conferred. In other words, DBCT Management did not consider there to be a contractual or legal basis for a move to 'stable prices'.[49]

In response to DBCT Management's earlier views, the DBCT User Group noted that uniformly-priced expansions, with relatively limited price rises, could have been reasonably expected by all parties, had user agreements been negotiated prior to incurring sunk costs. Past averaging of expansion costs, in its view, did not predicate uniform reference tariffs in the future, and the expansions being contemplated:

> *were not part of a gradually increasing marginal cost curve, but reflected the expansion of a mature asset at the boundaries of its existing footprint, and that each expansion was more expensive than when users initially contracted capacity.*[50]

It said there was an implicit understanding that 'step' changes would not necessarily be uniformly priced.

The DBCT User Group concluded that the level of reasonably anticipated uniform pricing had already occurred, and that the pricing of future capacity expansions should be considered independent of previous decisions.

Specific criticisms of the proposed approach

DBCT Management also levelled several criticisms at our proposed approach, specifically relating to:

- lack of clarity
- complexity
- interpretation of criteria.

We have summarised stakeholder feedback on these issues below.

Lack of clarity of assessment criteria

DBCT Management perceived there to be a lack of clarity around the factors to be considered before capacity expansion costs could be uniformly priced. It highlighted that we had said:

> *In that context, we agree with stakeholders that certain factors should be considered when determining whether departure from the 'averaging down/incremental up' approach is warranted. These may include...*[51]

[47] DBCT Management, March 2015, p. 4
[48] DBCT Management, June 2015, p. 8
[49] DBCT Management, June 2015, p. 8
[50] DBCT User Group, June 2015, p. 3
[51] QCA, May 2015, p. v

DBCT Management considered that the word 'may' created uncertainty as to which factors we would consider for any given assessment.

Complexity

DBCT Management also said that a change to differential pricing would complicate the decision-making process, by introducing a new source of risk: regulatory discretion. DBCT Management submitted that differential pricing would introduce uncertainty and complexity by way of multiple tariffs. This would be the case in particular where different expansions, at different points in time, had different cost profiles (resulting in multiple and different tariffs). By contrast, DBCT Management submitted that its proposal to base any differential pricing decision strictly on separability would not create uncertainty.

DBCT Management also said that complexity would be further amplified by virtue of the fact that an expensive expansion (on a per tonne basis) could be followed by a relatively inexpensive expansion.

The DBCT User Group did not address the potential complexity of differential tariffs.

Interpretation of criteria

DBCT Management raised concerns about the factors we proposed to apply in determining whether to move away from the general averaging down/incremental up approach to expansion pricing. It commented that:

- a number of the factors were unclearly specified—for example, how to determine the threshold for materiality, or how to objectively assess:

  > *the position that best reflects what would reasonably be expected to have occurred in a hypothetical negotiated contract entered prior to sunk costs being incurred by DBCT Management or the existing access holders.*[52]

- some factors could directly contradict one another. DBCT Management did not consider the draft decision explained how factors would be weighed or conflict between them resolved.

The DBCT User Group acknowledged DBCT Management's concern that some of the proposed factors could contradict one another, but noted that this was not unusual, and would require the QCA to exercise its judgement, as is the case in other regulatory contexts.[53]

In addition, the DBCT User Group supported:

> - *the average down/incremental up approach to differential pricing being the 'default' assumption;*
> - *the ability for the QCA to determine there are special circumstances which justify a departure from that approach;*
> - *a need for the QCA's decision on whether such special circumstances apply to be guided by specified factors to be had regard to; and*
> - *the list of factors proposed by the DBCT Users in the DBCT Users' Initial Submission being the factors to be had regard to (other than the object of Part 5 of the QCA Act which the DBCT User Group accepts the QCA's explanation for exclusion from the list of factors).*[54]

In our draft decision, we sought comment on whether a 'reference transaction' should be a factor to which we had regard in determining whether to apply uniform pricing. The DBCT User

[52] QCA, May 2015, p. 13
[53] DBCT User Group, June 2015, p. 4
[54] DBCT User Group, June 2015, p. 5

Group considered that it was a useful factor to include, and did not consider it to be particularly uncertain. If it were removed, they suggested that the other factors would need to overwhelmingly point against the averaging down/incremental up approach for a different approach to be justified.[55]

QCA analysis and final decision

In our draft decision, we considered that providing a set of principles to determine when differential pricing was appropriate would ensure there was a cost-reflective and predictable process in place. Under this framework, expanding users would normally pay the incremental cost of new capacity, and non-expanding users would not be required to subsidise the capacity expansion. Although different to the methodology stakeholders agreed to for the 2010 and 2006 access undertakings, we consider that the approach outlined in our draft decision is consistent with the object of Part 5 of the QCA Act.

This final decision would not preclude the uniform pricing of capacity following an expansion, or guarantee that non-expanding users' reference tariffs will not increase. However, it does require DBCT Management to demonstrate that there is sufficient justification for moving away from the principle of averaging down/incremental up, having regard to the factors we have identified.

Initial expectations and implications of change

We acknowledge that previous expansions at DBCT have been uniformly priced. However, we do not consider that a history of uniform pricing necessarily justifies rolling forward an approach to pricing that may no longer produce appropriate outcomes. As outlined in Section 2.3 of this final decision, we consider that capacity expansion pricing should, to the maximum extent possible, be cost-reflective and provide certainty as part of a long-term, predictable regulatory framework.

We reiterate that differential pricing does not mean that all future expansions at DBCT will automatically face different tariffs. We also do not consider that it represents such a fundamental change to the regulatory and commercial framework that it could not reasonably have been anticipated or accommodated by DBCT Management—noting that DBCT Management agreed with users in the 2010 DAU assessment process that differential pricing would be considered after approval of the 2010 access undertaking.

We do not agree with DBCT Management's view that maintaining 'stable' prices is not a relevant consideration under the QCA Act. As discussed in our draft decision on Aurizon Network's 2014 DAU[56], we consider that predictability and stability of the regulatory framework (including the pricing arrangements) is a relevant consideration that we are entitled to have regard to in accordance with section 138(2)(h) of the QCA Act.

DBCT Management raised concerns about the consistency of differential pricing and the SAA. Under the SAA, non-expanding users are entitled to a reference tariff based on the ARR and the principles set out by the QCA in its final decision on the 2010 DAU.[57] To the extent that any consequential amendments were desirable to the SAA in relation to future capacity, to more explicitly contemplate differential tariffs, this is a matter that we expect DBCT Management would consider and be able to take into account as part of any subsequent DAAU.

[55] DBCT User Group, June 2015, p. 5
[56] QCA, September 2014, p. 25
[57] DBCT 2010, p. 37

In order to provide a clear framework to determine when differential pricing should not be applied, we have provided a list of factors to be included in the 2010 access undertaking that we would assess, in addition to the criteria listed in section 138(2) of the QCA Act and the object of Part 5 of the Act (see discussion in Chapter 2 of this final decision).

It is our understanding that, should differential pricing be introduced, DBCT Management would draft amendments to both the 2010 access undertaking and the SAA, thereby making them consistent with our decision.

Specific criticisms of proposed approach

Lack of clarity

In the executive summary of the draft decision we wrote that the proposed factors 'may' be applied. The use of the word 'may' appears to have caused some confusion. Our meaning was merely that our intended approach was only a proposal at that stage, as the document was a draft decision. To be clear, our view is that we will have regard to the factors listed in Final Decision 3.2 before making any decision as to whether or not to move away from the averaging down/incremental up approach.

In the main body of the draft decision, we made it clear that all the factors are to be considered. The wording we used, 'having regard to', is similar to the QCA's decision-making scope in other regulated sectors, including electricity[58], water[59] and rail. We consider that the QCA's role as an economic regulator in all of these sectors routinely involves conducting exercises that require us to weigh various statutory and other factors. We are confident that introducing a similar task to the consideration of expansion pricing in DBCT Management's access undertaking does not give rise to any novel or significant uncertainty. To the contrary, it is very similar to a number of other discretions which we already exercise under the 2010 access undertaking.[60]

Based on the wording of the QCA Act, and the circumstances under which we undertake similar decision-making roles, we do not consider that the introduction of differential pricing, with a defined set of factors to be taken into account as part of determining expansion tariffs, gives rise to any significant or unacceptable level of uncertainty. We also note that, as indicated earlier, we consider that predictability and transparency of regulatory arrangements are important for encouraging investment in regulated infrastructure assets. We will be mindful of these matters in making any assessments of future expansion pricing proposals under DBCT Management's access undertaking.

We also consider that the binding ruling mechanism under section 150F of the QCA Act can be used to provide further clarity and certainty 'up front' for DBCT Management, expanding users and financiers. The potential use of this mechanism in relation to an expansion pricing proposal is discussed in detail in Section 3.3.1 below.

Complexity

With regard to DBCT Management's view that our approach will lead to unnecessary complexity, we note that multiple tariffs are not uncommon for regulated entities (e.g. Aurizon Network operate five different systems in the CQCR, each with its own reference tariff and variations related to individual origin/destination combinations). Over recent years, Aurizon Network has also established and/or proposed different separate tariffs for both its Wiggins Island Rail Project and Goonyella to Abbot Point Expansion projects. Moreover, under the 2010

[58] Bailey 2015, p. 3

[59] QCA Act s.170ZI (2) and (3)

[60] See, for example, clauses 1.4, 5.5, 5.10(f), 6(e), 9, 11.3, 12.5 and 12.10.

access undertaking there is already provision for a non-reference tariff to be put in place for non-reference tonnage, where agreed between DBCT Management and an access holder.[61]

In any case, as future expansions at DBCT are likely to be both occasional and discrete, we do not think it is likely that a myriad of tariffs will emerge in the foreseeable future.

We agree with DBCT Management that the costs (on a per tonne basis) of future expansions could vary, and that relatively expensive expansions could be followed by relatively less expensive ones. As with the application of differential pricing mechanisms proposed in our draft decision (policy and pricing) on Aurizon Network's 2014 DAU, we would intend to sequentially apply our approach to differential pricing to expansions at DBCT as they occur. This means that, in the event there is an existing expansion tariff (i.e. a differential price for a component of capacity) and another expansion occurs, uniform pricing of the two expansions would be appropriate if uniform pricing complies with the expansion pricing framework in the access undertaking.[62]

On this basis, we do not consider that differential pricing would be unnecessarily complex or difficult to implement.

Interpretation of criteria

DBCT Management specifically highlighted the ambiguity of proposed criterion (v):

> *the position that best reflects what would reasonably be expected to have occurred in a hypothetical negotiated contract entered prior to sunk costs being incurred.*

DBCT Management questioned how it would be possible to objectively assess such a hypothetical situation.

We note that the DBCT User Group, while supporting the criterion in principle, said that if it were to be removed, it would need to be clear that other factors must overwhelmingly point to moving away from the averaging down/incremental up approach in order for such a decision to be made.

On balance, we have decided to exclude criterion (v) from the final list of specific factors to be considered. We consider the other factors identified, together with the criteria in the QCA Act, will appropriately ensure that all relevant matters are taken into account in making any differential pricing decision. We note that an assessment of the issues raised by criterion (v) could still be relevant to consideration of a particular expansion pricing application, if the issues raised by criterion (v) could be framed in the context of the criteria in the QCA Act—for example, as relevant to the interests of access seekers/holders or the legitimate business interests of the service provider, or as another issue that the QCA should consider has relevance to assessment of a specific application.

We also note that stakeholders commented on our proposed criterion (c)—that is, the materiality of any increase in prices caused by uniform pricing. DBCT Management questioned what would be the threshold for any materiality consideration. The DBCT User Group said materiality of price increases should be the primary factor in any assessment.

Our view is that, given the varying costs and nature of any potential future expansions, we are not inclined to place a 'hard-and-fast' threshold on assessment of materiality. We also consider that, while materiality is an important consideration, as with separability, it is one of a number

[61] Clause 11.2(a).
[62] QCA, January 2015, pp. 373-374

of factors we have identified as appropriate to take into account in making differential pricing decisions.

3.2.4 Comparison of DBCT to Aurizon Network

In its submission on our draft decision, DBCT Management said the QCA had incorrectly assumed that the differential pricing approach developed for Aurizon Network was equally applicable to DBCT, despite significant differences between the businesses.

DBCT Management's characterisations of these differences are summarised in Table 2 below.[63]

Table 2 DBCT Management's comparison of Aurizon Network and DBCT

	Aurizon Network	***DBCT***
Divisibility / structure of assets	Complex network of five systems, some of which are interconnected. Not all sections of the network are used by all users.	All infrastructure is part of the same terminal and services all customers.
Market environment	Monopoly service provider, with no alternative service provider of expansion capacity.	DBCT must compete with other terminals for expansion capacity.
Standard User Funding Agreement (SUFA)	The need for a differential pricing mechanism might be diminished for large-scale infrastructure expansion due to the future implementation of SUFA.	No similar approach to SUFA being developed between DBCT Management and its stakeholders.
Tariff regime	Multi-part tariff with separate components to allow for the recovery of contributions to common costs.	Single terminal infrastructure charge. No allowance for common and incremental costs.
Pricing	Pricing process already requires the consideration of multiple factors.	Pricing system is simple, predictable and certain.

DBCT Management therefore considered that differential pricing could be more appropriate to apply to Aurizon Network, where DBCT Management considered there is a true monopoly, clear separability of infrastructure, and a tariff structure in place to support multiple tariffs.

QCA analysis and final decision

We note that we do not support the introduction of differential pricing at DBCT simply because it has been proposed in Aurizon Network's 2014 DAU in relation to future expansion of Aurizon Network's network. We have assessed the DAAU proposed by DBCT Management separately and in the context of DBCT, and subject to the statutory criteria as they apply to DBCT.

Nonetheless, to the extent that we have accepted the general fairness and efficiency of differential pricing in our draft decision in Aurizon Network's 2014 DAU process (and in our earlier position paper on expansion pricing), we consider that the same principles are likely to also apply to the current DAAU process. We do not agree with DBCT Management's assertion that Aurizon Network and DBCT differ in ways which require a significantly different approach to expansion pricing.

In relation to the specific differences identified by DBCT Management, we note the following points:

[63] Based on DBCT Management, June 2015, pp. 10-11.

- In terms of separability, we have addressed the concerns raised by DBCT Management elsewhere in this final decision (Section 3.2.1). While we accept that separability is one factor we will have regard to in deciding whether or not to move away from a general averaging down/incremental up approach to expansion pricing, it is not determinative.
- In Section 3.2.2, we looked at competition between ports, and whether it was a relevant concern under the QCA Act. We consider that DBCT Management has not established that an application of differential pricing at DBCT would place it at a disadvantage in attracting investment for future, efficient expansions—in comparison to other terminals.
- With regard to SUFA, we do not consider that its application to future expansions of rail infrastructure in the CQCR will necessarily diminish the need for an appropriate regulatory pricing mechanism to apply to these expansions (indeed, there has not been any proposal from Aurizon Network to remove the averaging down/incremental up principle from SUFA-funded expansions). This is because the expectation is that SUFA-funded rail infrastructure expansions will still be incorporated into the regulatory asset base of Aurizon Network, provided they meet the appropriate regulatory tests.
- DBCT Management appears to raise the difference between its tariff structure and Aurizon Network's to demonstrate that the DBCT tariff structure could not easily accommodate multi-part tariffs or facilitate expanding users not contributing to common costs.[64] In our draft decision, as DBCT Management supposed, we said that if differential prices were higher than those paid by non-expanding users, then a zero contribution to common costs by expanding users may well be acceptable. If this approach was adopted, then there would not necessarily be a need for multi-part tariffs. In any event, it is not apparent that there is any reason why the access undertaking and SAA would not be able to be amended to accommodate multi-part tariffs, if required.
- DBCT Management also asserted that the complexity of differential pricing, according to the decision-making framework we proposed, would lead to unpredictability and uncertainty, contrary to their proposed approach. We note that multiple tariffs are not uncommon for regulated entities, and that, in any case, future expansions at DBCT are likely to be occasional and discrete. We do not think it is likely that a myriad of different tariffs will necessarily emerge in the near future. We do not agree that our proposed approach will have these effects, and have discussed these issues in Section 3.2.3.

In summary, we agree there are differences between both the infrastructure operation and pricing structures of Aurizon Network and DBCT, but both require an efficient and predictable pricing methodology for expansion capacity. The differences identified by DBCT Management, to the extent that they exist, do not affect our view as to the appropriateness of differential pricing for DBCT, as set out earlier in this final decision.

[64] DBCT Management, June 2015, p. 10

Final Decision

3.1 After considering DBCT Management's proposed differential pricing framework, our final decision is to refuse to approve DBCT Management's proposal.

3.2 However, we accept that it is appropriate to introduce the principle of differential pricing in respect of DBCT, to apply in appropriate circumstances. The way in which we consider it appropriate that DBCT Management amend its 2010 access undertaking is to reflect the following expansion pricing approach:

(a) where adding the expansion costs to the cost base of existing capacity decreases the reference tariff for non-expanding users, a uniform access price should apply to both non-expanding and expanding users (retaining a single regulatory asset base, ARR and reference tariff)

(b) where adding the expansion costs to the cost base of existing capacity increases the reference tariff for non-expanding users, a separate access price should apply to the expansion and be charged to expanding users (through a separate regulatory asset base, ARR and reference tariff) except where the QCA considers it appropriate for non-expanding users to share the expansion costs, having regard to:

(i) the extent to which assets or infrastructure which are being constructed to deliver the additional capacity will operate wholly, or partly, in an integrated way with existing assets and infrastructure or as a stand-alone development

(ii) the extent to which the expansion benefits non-expanding users (such as through higher efficiency, robustness or flexibility)

(iii) the materiality of the increase in the reference tariff for non-expanding users which would be caused by adding the expansion costs to the cost base of existing capacity

(iv) any differences in the risks of providing access to non-expanding users in respect of additional capacity created by the expansion.

3.3 In making a decision in respect of differential pricing for an expansion, the QCA would also have regard to the statutory factors applicable to any DAAU under section 138(2) of the QCA Act.

3.4 We consider it appropriate to make these final decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.

3.3 Other matters

3.3.1 Assessment process

The DAAU requires the QCA to make a determination on differential pricing following handover of an expansion to the terminal operator (DBCT Pty Ltd).[65,66]

[65] DBCT Pty Ltd, a company owned by a subset of mining companies using the terminal, operates and maintains the terminal on a day-to-day basis under an operations and maintenance contract with DBCT Management.
[66] DBCT Management, February 2015, p. 2

Prior to the draft decision, the DBCT User Group was concerned that the proposed timing for assessing whether differential pricing should apply occurred too late in the investment process. It said:

> *If differential pricing is likely, new access seekers need to be advised of that early so that inefficient investment decisions are not made (in terms of development and/or expansion decisions of a mine and related rail access and haulage contracting).*[67]

Accordingly, it proposed that:

- DBCT Management should make initial assessments at different stages of the expansion process, based on the criteria the QCA approves in the undertaking, and submit a pricing proposal after handing over the new capacity to the terminal operator
- the QCA should make a final decision on whether to apply differential pricing having regard to the same criteria in the undertaking.

In its response submission, DBCT Management acknowledged that the timing proposed in its DAAU exposed parties to regulatory risk, which could also affect their ability to raise finance. DBCT Management considered that the QCA's approval of an expansion pricing arrangement should be obtained during the development phase, to provide certainty about the pricing treatment before parties committed to proceeding with the expansion.[68] DBCT Management also requested that we consider placing timeframes around our assessment of a proposal, provided we have been given sufficient information by DBCT Management to make an assessment.[69]

QCA draft decision

In our draft decision, we proposed to refuse to approve DBCT's Management's proposal to only make a decision on whether to apply differential pricing after a project was completed and handed over to the operator.

We agreed with the DBCT User Group and DBCT Management's supplementary views, that users should have reasonable certainty earlier in the expansion process about the pricing arrangements that would apply to a proposed expansion.

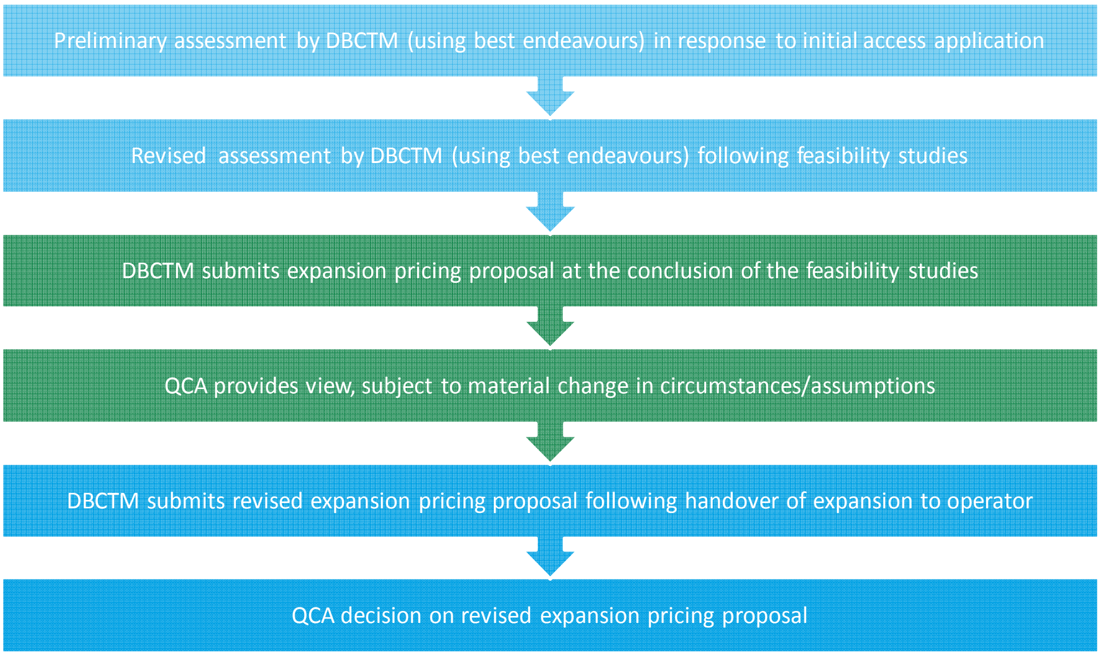
To help reduce the potential for disputes and to provide greater certainty before completion of an expansion, we proposed that DBCT Management should submit a pricing proposal to us at the conclusion of the feasibility studies (i.e. after a front-end loading 3 (FEL3) feasibility study), when there is likely to be a higher level of certainty about expected costs and volumes.

We said our view on an expansion pricing proposal could take the form of a binding ruling under section 150F of the QCA Act, which would provide certainty about the likely pricing outcome. This would need to be in response to an application made by DBCT Management under section 150D of the QCA Act. However, we would finalise our view after DBCT Management submitted a pricing proposal following completion and handover of an expansion, based on actual information. Under section 150K of the QCA Act, we would only be able to change the ruling made under section 150F if relevant assumptions had changed or if there had been a material change in relevant circumstances.

[67] DBCT User Group, March 2015, p. 3
[68] DBCT Management, March 2015, p. 6
[69] DBCT Management, March 2015, p. 7

We considered our approach (summarised in Figure 3) appropriately balanced DBCT Management's legitimate business interests with the interests of expanding and non-expanding users and those of other relevant parties and made the process predictable and transparent.

Figure 3 QCA's proposed assessment process



Stakeholders' position on the draft decision

The DBCT User Group supported the proposed approach outlined in our draft decision.

DBCT Management expressed concern about the timing of approval of expansion pricing proposals, implied by the approach outlined in our draft decision. It considered that our approach would not provide 'complete' certainty, and that the risk of changes could make finance more difficult and expensive to procure. DBCT Management submitted that all sources of uncertainty needed to be removed prior to substantial funds being committed to, or take-or-pay agreements being executed in support of, a new development.

QCA analysis and final decision

We consider that the certainty provided under section 150F of the QCA Act is sufficient for the purposes described above. The intent of that section is to give the QCA the power to rule on issues that will affect future access-related decisions. Rulings under section 150F provide a high degree of certainty in relation to the QCA's proposed approach prior to regulated infrastructure investments being made, and can be used to facilitate the financing of increased capacity. Binding rulings can only be revoked where key information used by the QCA to make the ruling was false or misleading or the circumstances or assumptions the ruling is based on, as stated up-front by the QCA, have changed markedly.[70]

We note there are a number of similar mechanisms used (or available to be used) in other Australian regulatory frameworks. For example, the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) have the ability to make fixed principle provisions which apply to, respectively, telecommunications access determinations[71]

[70] Queensland Parliament 2008, pp. 5 and 13

[71] CCA section 152BCD(1)

and gas access arrangement determinations.[72] The purpose of fixed principles is to provide regulatory certainty about the treatment of a matter that is the subject of regulation.

Other, similar examples of rulings powers possessed by statutory authorities that are designed to provide sufficient certainty for investment and commercial decisions to be made, but which still include scope for amendment if key circumstances or assumptions prove to be invalid, include:

- public and private binding rulings by the Australian Taxation Office
- endorsement of prudency of project costs by the ACCC under the Australian Rail Track Corporation's Hunter Valley access undertaking
- authorisations of conduct by the ACCC under Part VII of the CCA and other similar processes (such as its informal merger clearance process).

We do not consider that DBCT Management has demonstrated that the use of the ruling mechanism would be unworkable or unreasonable. There is also no evidence to suggest that a decision under section 150F would not provide sufficient certainty for investment to proceed and, to the contrary, similar commercial and investment decisions proceed today on the basis of a range of regulatory rulings and determinations.

We have, therefore, maintained the position proposed in the draft decision, with regard to the process for assessment of expansion pricing proposals.

[72] Australian Energy Market Commission 2015, rule 99

Final Decision

3.5 After considering DBCT Management's proposed assessment process, our final decision is to refuse to approve DBCT Management's proposal.

3.6 The way in which we consider it appropriate that DBCT Management amend its 2010 access undertaking is to make the following adjustments, for:

(a) DBCT Management (using its best endeavours) to make initial assessments at different stages of the expansion process (i.e. in response to an initial access application and following different stages of feasibility studies) about the potential expansion pricing arrangement, having regard to the pricing approach in Final Decision 3.2

(b) DBCT Management to submit to the QCA an expansion pricing proposal at the conclusion of the FEL 3 feasibility study, which would take the form of an application, under section 150D of the QCA Act, for a ruling from the QCA

(c) the expansion pricing proposal to contain an assessment of the pricing arrangements considered for the expansion based on forecast costs and forecast volumes as set out in the feasibility study, having regard to the pricing approach in Final Decision 3.2, and to contain information regarding the attribution of forecast expansion costs between non-expanding and expanding users, as well as indicative reference tariffs

(d) the QCA to provide a ruling on the expansion pricing proposal in accordance with section 150F of the QCA Act, having regard to the pricing approach in Final Decision 3.2

(e) DBCT Management to submit a final expansion pricing proposal following handover of the expansion to the operator, based on actual costs and contract volumes, and having regard to the QCA's ruling

(f) the QCA to make a final decision on the revised expansion pricing proposal, having regard to its earlier ruling and section 150K of the QCA Act.

3.7 We consider it appropriate to make these final decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.

3.3.2 Allocating other costs

The DAAU proposes that the QCA will apply differential pricing by determining separate tariff components, including separate ARRs, revenue caps and reference tariffs, for expanded and existing components of capacity.[73] The DAAU did not specifically address the issue of how other future costs, such as non-expansion capital expenditure (NECAP) and operating and maintenance (O&M) costs, should be allocated among terminal components.

In our draft decision, we proposed to refuse to approve DBCT Management's proposal. We agreed with the submission from the DBCT User Group, that other costs should be uniformly priced where the expansion is highly integrated with the existing terminal infrastructure. Otherwise, other costs should be allocated separately based on the extent to which they relate to different components of capacity.

[73] DBCT Management, February and March 2015

We have previously established general cost allocation principles in the context of the rail and water sectors[74] and consider them also to be relevant for assigning costs between different capacity components at DBCT, where an expansion has not been uniformly priced. We proposed that the DAAU be amended to reflect the following cost allocation principles:

- if an expansion has been uniformly priced, the other, non-expansion terminal costs should also be uniformly priced
- if an expansion has not been uniformly priced and a separate access price applies to the expansion, the other non-expansion terminal costs should be assigned based on the following principles:
  - if a terminal cost is uniquely identified or directly incurred in relation to a particular asset or infrastructure, it should be assigned to that component ('identifiable' cost)
  - if a terminal cost is not explicitly identified but there is a reasonable causal relation between that cost and a particular asset or infrastructure, it should be assigned based on an appropriate allocation factor reflecting the underlying drivers of that cost ('attributable' cost)
  - if a terminal cost is neither identifiable nor attributable to a particular asset or infrastructure, it should be allocated on a reasonable basis among terminal users
- if an expansion has not been uniformly priced and a separate access price applies to the expansion, DBCT Management will develop and submit a cost allocation manual for the QCA's approval within a reasonable time, in order to provide a transparent basis for assigning costs to separate capacity components under different circumstances, having regard to the principles in Final Decisions 3.9(a) and 3.9(b). The manual should provide guidelines for allocating costs, with the final decision to be made by the QCA.

Stakeholders' position on the draft decision

The DBCT User Group supported the approach set out in our draft decision, but noted that it should be clear that when DBCT Management submits an application suggesting that an expansion should not be differentially priced and the QCA makes a different ruling, DBCT Management can still be required to prepare and submit a cost allocation manual.

The DBCT User Group considered that if DBCT Management is not willing to submit a cost allocation manual which incorporates the QCA’s recommended changes, the QCA needs to ensure the access undertaking gives it the power to implement a cost allocation manual itself.

DBCT Management did not comment directly on our proposed cost allocation approach.

QCA analysis and final decision

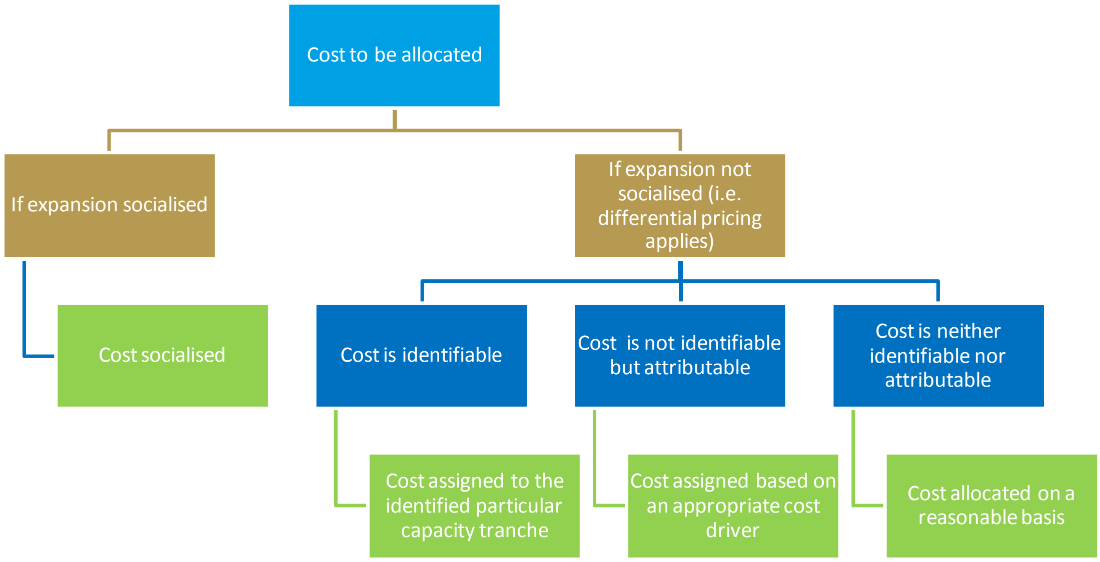
Given no stakeholders made detailed comments on our draft methodology for allocating non-expansion costs, we consider the proposed approach in our draft decision remains valid.

Our final decision is to refuse to approve DBCT Management's proposed approach to requiring the QCA to determine tariff components for separate components of capacity, including allocating costs among those components.

[74] See, for example, QCA, November 2005, p. 13; Queensland Rail 2013, pp. 6-7

We consider the principles summarised in **Figure 4** can be applied to provide a fair and transparent allocation of costs, although we acknowledge that complexity could arise when shared costs are to be allocated among a number of separate capacity components.

Figure 4 Cost allocation principles



If we approve differential pricing for an expansion, we would require DBCT Management to develop a cost allocation manual to provide a framework for assigning costs to separate capacity components based on the principles identified. This manual would serve as the basis upon which DBCT Management proposes to allocate costs, with a final assessment to be made by us. Specific decisions that we make on cost allocation could then be used to revise and update the cost allocation manual over time.

We acknowledge the DBCT User Group's concern that DBCT Management might not have appropriate incentives to develop and submit a cost allocation manual under certain circumstances. However, we do not think it is necessary to include in the access undertaking specific clauses:

- requiring DBCT Management to prepare and submit a cost allocation manual, if it submits an application suggesting that an expansion should not be differentially priced and we make a different ruling
- ensuring we have the power to implement a cost allocation manual if DBCT Management is not willing to submit one which incorporates our recommended changes.

We are satisfied that the powers we have under section 159 of the QCA Act are sufficient to deal effectively with either of these scenarios.

Final Decision

3.8 After considering DBCT Management's proposed cost allocation approach, our final decision is to refuse to approve DBCT Management's proposal.

3.9 The way in which we consider it appropriate that DBCT Management amend its 2010 access undertaking is to reflect the following cost allocation principles:

(a) if an expansion has been uniformly priced, the other non-expansion terminal costs should also be uniformly priced

(b) if an expansion has not been uniformly priced and a separate access price applies to some or all of the expansion, the other non-expansion terminal costs should be allocated based on the following principles:

(i) if a terminal cost is uniquely identifiable or directly incurred in relation to a particular asset or infrastructure, it should be assigned to that component ('identifiable' cost)

(ii) if a terminal cost is not explicitly identifiable, but there is a reasonable causal relation between that cost and a particular asset or infrastructure, it should be assigned based on an appropriate allocation factor reflecting the underlying drivers of that cost ('attributable' cost)

(iii) if a terminal cost is neither identifiable nor attributable to a particular asset or infrastructure, it should be allocated on a reasonable basis among terminal users

(c) if an expansion has not been uniformly priced and a separate access price applies to the expansion, DBCT Management will develop and submit a cost allocation manual for the QCA's approval within a reasonable time, in order to provide a transparent basis for assigning costs to separate capacity components under different circumstances, having regard to the principles in Final Decisions 3.9(a) and 3.9(b). The manual should provide DBCT Management's proposed guidelines for cost allocation, with the final decision to be made by the QCA.

3.10 We consider it appropriate to make these final decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.

3.4 Timing of DBCT Management's differential pricing DAAU

In response to the draft decision, the DBCT User Group highlighted that there is the potential for expansion pricing to be 'tested' prior to approval of the next access undertaking. A feasibility study of the proposed Row 8/Zone 4 expansion is currently underway, and a decision on whether it proceeds could potentially lock in uniform prices before a position on future expansion pricing arrangements is finalised.

As a consequence, the DBCT User Group proposed that the QCA should 'seek to exercise its powers under clause 1.4(a) of the 2010 access undertaking' to require DBCT Management to submit a further DAAU to implement the recommendations of this final decision.[75]

[75] DBCT User Group, June 2015, pp. 2-3

3.4.1 QCA analysis and final decision

We acknowledge the concerns of the DBCT User Group about the timing of the differential pricing DAAU submitted by DBCT Management, and the associated assessment and decision-making process.

However, clause 1.4(a) of the 2010 access undertaking only allows for us to require DBCT Management to submit a DAAU to us to address an issue or issues following reviews of the undertaking approximately one and three years after the undertaking's commencement date (i.e. 1 January 2011). We do not consider this to be a mechanism we can use to require DBCT Management to submit a further DAAU on the differential pricing issue at this time—given we are now more than four-and-a-half years beyond the commencement date of the access undertaking and given the imminent submission by DBCT Management of a proposed replacement access undertaking.

We note that we have recently issued DBCT Management with a notice under section 133 of the QCA Act, requiring it to submit a new DAU to us by 21 September 2015. This was undertaken with a view to maximising the prospect of a new access undertaking being approved prior to 30 June 2016. Given this timing, we anticipate that differential pricing will be an issue that is most likely to be reconsidered and finalised as part of consideration of the DAU.

At the same time, we also note that section 139 of the QCA Act provides us with the ability to issue a notice (an initial amendment notice) to a service provider for a declared service requiring the service provider to give us a DAAU within 30 days of receiving the notice—if we consider it is necessary to amend an approved access undertaking to make the undertaking consistent with the Act.

3.5 Amendments required

DBCT Management's differential pricing DAAU seeks to amend its 2010 access undertaking to facilitate consideration of differential pricing by proposing new clauses in:

- Part A of Schedule C (rules for calculating reference tariff) to allow consideration of differential pricing for an expansion and, if differential pricing is considered appropriate, determination of a separate ARR, revenue cap and reference tariff for different components of the terminal
- Clause 5 (negotiation arrangements) to deal with the assignment of capacity (i.e. annual contract tonnage) between different components of the terminal
- Clause 12 (terminal capacity expansion) to deal with the issues of whether to divide the terminal into components and, where it has been divided into components, to allow DBCT Management to make other necessary amendments to the undertaking—subject to the QCA's approval—to give effect to differential pricing.[76]

DBCT Management proposed that these amendments will also be reflected in amendments to the SAA; however it proposed not to change the pricing structure in the SAA and existing user agreements.[77]

The DBCT User Group and Vale Australia considered other amendments, in addition to DBCT Management's proposed amendments, were required to the 2010 undertaking for the

[76] DBCT Management, February 2015, p. 2
[77] DBCT Management, February 2015, p. 2

consideration of differential pricing for future expansions, in order to reflect greater transparency and to remove uncertainty.[78]

In that context, the DBCT User Group noted that amendments required to the SAA should form part of the DAAU—so as to remove the potential for future disputes about how such changes would be implemented.[79]

3.5.1 QCA draft decision

Our draft decision was to refuse to approve DBCT Management's proposal. While we supported amending the undertaking to include consideration of differential pricing for capacity expansions, we considered that further amendments were required to provide a predictable and transparent expansion pricing framework.

We also considered DBCT Management should undertake a thorough review of the 2010 undertaking to identify all amendments required to allow for appropriate pricing arrangements for future expansions.

3.5.2 Stakeholders' position on draft decision

The DBCT User Group identified and discussed those sections of the access undertaking and SAA that it considered would require amendment to facilitate differential pricing. We have taken account of this submission in developing our summary of clauses presented in Table 3 below.

The DBCT User Group also said the QCA should release draft amendments before the release of the final decision on the DAAU.

3.5.3 QCA analysis and final decision

Table 3 provides a summary of the clauses of the access undertaking and the SAA that we consider will require amendment, in order to introduce differential pricing. We acknowledge that the list below is not exhaustive.

Due to timing constraints, we have not attempted to draft the text of required amendments, at this stage.

While we understand the rationale for the DBCT User Group's suggestion that we release draft amendments before the release of this final decision, we consider that the timing of the assessment of the DAAU has precluded that step. We note this in light of us having recently issued DBCT Management with a notice under section 133 of the QCA Act, requiring it to submit a new DAU to us by 21 September 2015.

Table 3 Clauses to be amended to facilitate differential pricing in DBCT Management's 2010 access undertaking

Clause	*Subject*	*QCA comment*
5.2	Information requirements regarding access applications	The information provided by DBCT Management to an access seeker may need to include information related to the determination of a new reference tariff, if it involves an expansion.
5.4	Queuing process and principles	This process may need to be amended (particularly the 'overriding principles' in clause (i)) to contemplate a principle of differential

[78] DBCT User Group, March 2015, pp. 8-9; Vale Australia 2015, pp. 2-3
[79] DBCT User Group, March 2015, p. 8

		pricing for expansion capacity.
5.5	Indicative access proposal (IAP)	If there are different tariffs for different capacity components, an IAP may need to identify which capacity and tariff apply in relation to a particular access application.
5.10	Funding of feasibility studies	The access undertaking may need to deal with how these costs are treated in circumstances where differential pricing applies.
10.1	Regulatory accounts	Consideration should be given to whether regulatory reports should separately identify any part of the asset base (and depreciation) recovered through differential tariffs.
11.1	Pricing objectives	The principle of 'equity' needs to be explained or expanded to make clear that it would not prevent differential treatment of non-expanding and expanding users in appropriate circumstances.
11.2-11.8	Access charges	These clauses need to contemplate differential pricing.
11.3	Operation and maintenance charge	Consideration should be given to whether there is a likelihood of the operation and maintenance charges being different for different components of capacity—in which case, this may need to be made clear (and the methodology set out in access agreements).
11.10	Limits on price differentiation	Arguably, this clause is already sufficient to cater for differential pricing (given the difference in costs that would be associated with the expansion capacity)—however , it may be appropriate to amend the clause to make clear that the reference to costs includes higher incremental costs associated with new capacity.
12	Expansion process	As well as specifying expansion capacity, DBCT Management will need to identify expansion costs and a proposed tariff structure, as part of this process. Specific elements of the expansion framework that may need to be further considered include: • clause 12.1(b)—the independent expert process and recovery of these costs • clause 12.2—the annual consultation process may need to include information about expansion tariffs associated with the next terminal capacity expansion • clause 12.5—the terminal capacity expansion application lodged with the QCA will need to include details of the proposed tariff structure and the allocation principles that have been applied, and the access undertaking will need to include any factors that need to be taken into account by the QCA when considering a differential pricing proposal • clause 12.5—the differential pricing proposal will also need to take the form of an application for a ruling under section 150D of the QCA Act • clause 12.5(h)—non-expanding users (whether as part of the 60/60 process or otherwise) need to have an opportunity to propose differential pricing for an expansion, where DBCT Management does not do so.
13	Access Agreements	This provision should contemplate differential pricing for expansion capacity (as it already does for 'different terms').
Schedule B	Standard Access Agreement (SAA)	The SAA needs to be amended to reflect the potential for different tariffs for different components of capacity—e.g. whether the issue of the differential pricing of capacity or cost allocation is a matter which can be the subject of a review or dispute under clause 7. If an Access Agreement provides for applications for additional capacity, this process may need to also contemplate differential

		pricing (see clause 5.11 of the 2010 access undertaking).
Schedule C	Revenue cap/price structure	The tariff structure and ARR provisions will need to be amended to provide for differential charges for different capacity components.

Final Decision

3.11 After considering DBCT Management's proposed amendments to the 2010 access undertaking, our final decision is to refuse to approve DBCT Management's proposal.

3.12 The way in which we consider it appropriate that DBCT Management amend its 2010 access undertaking is to fully review the 2010 undertaking to identify all amendments required to allow for appropriate pricing arrangements for future expansions, consistent with Final Decisions 3.1 to 3.13.

3.13 We consider it appropriate to make these final decisions having regard to each of the matters set out in section 138(2) of the QCA Act for the reasons set out in our analysis above.

3.6 Port Services Agreement

One additional issue that was not raised in public submissions on the DAAU, but which we have subsequently become aware of, relates to the potential interaction between our response to DBCT Management's differential pricing DAAU and the Port Services Agreement (PSA).

The PSA is an agreement between DBCT Management, as the lessee of DBCT, and the ultimate owner of DBCT (the Government-owned entity DBCT Holdings Pty Ltd), that was entered into at the time of privatisation. We understand that the PSA places certain obligations on DBCT Management in providing services at DBCT.

DBCT Management has indicated to the QCA that it is concerned that it may not be able to propose differential pricing in a DAU or DAAU, as it may not be consistent with its obligations under the PSA.

Our view is that contractual arrangements, such as the PSA, do not bind or constrain us in exercising our discretion to approve or refuse to approve the DAAU. We have a statutory function under the QCA Act to approve or refuse to approve the DAAU—we may only approve the DAAU if we consider it appropriate to do so, having regard to the criteria in section 138(2) of the QCA Act. If we refuse to approve the DAAU, as we have done in this final decision, we are required by section 142(3)(b) of the QCA Act to state the way in which we consider the DAAU should be amended, which we have also done in this decision.

We have not been provided with any formal submissions in relation to this issue. Other stakeholders have also not been given an opportunity to understand and respond to the issue. On that basis, we are very limited in our ability to consider the issue. To the extent that DBCT Management can demonstrate the relevance of this issue, it may be a matter that we have regard to as one of DBCT Management's legitimate business interests (in accordance with section 138(2)(c) of the QCA Act).

However, in the absence of any ability for the QCA or other stakeholders to consider or test the issue, we have given it relatively low weight in our assessment of the DAAU and the issue has not caused us to alter our final decision.

GLOSSARY

A	
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
ARR	Annual Revenue Requirement
C	
CCA	*Competition and Consumer Act 2010*
CQCR	Central Queensland Coal Region
D	
DAU	Draft Access Undertaking
DAAU	Draft Amending Access Undertaking
DBCT	Dalrymple Bay Coal Terminal
DBCT Management	Terminal lessee
DBCT Owner	State-owned entity DBCT Holdings Pty Ltd
DBCT Pty Ltd	Terminal operator
DBCT User Group	Anglo American, BHP Mitsui, Glencore, Isaac Plains Coal Management, Peabody Energy, Rio Tinto Coal Australia and Vale Australia
E	
Evergreen contract	A contract provision that automatically renews the length of the agreement after a predetermined period, unless notice for termination is given.
F	
FEL	Front-end loading
G	
GDP	Gross Domestic Product
GFC	Global Financial Crisis
I	
IAP	Indicative Access Proposal
IEA	International Energy Agency
M	
mtpa	Million tonnes per annum
N	
NECAP	Non-expansion capital expenditure
O	
O&M	Operating and maintenance
OMC	Operations and Maintenance Contract
P	
PSA	Port Services Agreement
Q	
QCA	Queensland Competition Authority

QCA Act	Queensland Competition Authority Act 1997
S	
SAA	Standard access agreement
SUFA	Standard User Funding Agreement
T	
TIC	Terminal Infrastructure Charge
Tribunal	Australian Competition Tribunal
W	
WICET	Wiggins Island Coal Export Terminal

APPENDIX A: STAKEHOLDER SUBMISSIONS

Table 4 Submissions received on DBCT Management's differential pricing DAAU

Organisation/Individual	***Month submitted***
DBCT Management	
– Differential pricing DAAU	February 2015
– Supplementary submission	March 2015
– Submission in response to the QCA's draft decision	June 2015
DBCT User Group*	
– Submission in response to DAAU	March 2015
– Submission in response to the QCA's draft decision	June 2015
Vale Australia – Submission in response to DAAU	March 2015

** Consisting of Anglo American, BHP Mitsui, Glencore, Isaac Plains Coal Management, Peabody Energy, Rio Tinto Coal Australia and Vale Australia*

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