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Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
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Attention: John Hindmarsh

Dear John

DBCT Management Differential Pricing Submission Draft Amending Access Undertaking – Submission on the QCA Draft Decision.

On behalf of the DBCT User Group (Anglo American, Peabody Energy, Glencore, Rio Tinto Coal Australia, Isaac Plains Coal Management, BHP Mitsui Coal and Vale), please find enclosed our submission in response to the DBCT Management Differential Pricing Submission Draft Amending Access Undertaking (the **QCA Draft Decision**) dated May 2015.

The DBCT User Group appreciates the opportunity to respond to the DAAU and can be available to discuss this submission with the Queensland Competition Authority at a suitable time.

If you have any queries; please contact me on 3334 5628 or John Hedge of Allens-Linklaters on 3334 3171.

Regards

Mark Smith
Chair – DBCT User Group

The DBCT User Group (consisting of Anglo American, BHP Billiton Mitsui Coal, Glencore, Isaac Plains Coal Management, Peabody Energy, Rio Tinto Coal Australia and Vale) is pleased to provide the enclosed submission in relation to the DBCT Management Differential Pricing Draft Amending Access Undertaking¹ (the **QCA Draft Decision**).

The DBCT User Group thanks the Queensland Competition Authority (the **QCA**) for the opportunity to provide a submission on the QCA Draft Decision.

1 Background

As previously recognised by the QCA,² the Dalrymple Bay Coal Terminal (**DBCT**) has expanded to the point where it is now on the increasing part of its long run average cost curve. As a result it is anticipated by the current DBCT Users that, if the current approach of socialising costs of expansions continued to be adopted, future expansions are likely to result in substantially higher charges for existing DBCT Users.

Differential pricing of expansion was raised by some DBCT Users during the process for consideration of the current DBCT access undertaking (the **2010 AU**). Those submissions were withdrawn on the condition that Dalrymple Bay Coal Terminal Management Pty Ltd (**DBCTM**) would submit a draft amending access undertaking to introduce differential pricing for terminal capacity to be created by future expansions.

Since then the QCA's consideration of differential pricing in respect of DBCT has involved the following steps:

Date	Process
3 February 2015	DBCTM lodges draft amending access undertaking regarding differential pricing (the Differential Pricing DAAU)
13 February 2015	QCA publishes a series of QCA staff questions (the Staff Questions) on which it invites comments
11 March 2015	DBCT User Group and Vale provide submissions on the Differential Pricing DAAU and responses to the Staff Questions (the DBCT User Group submission being the DBCT Users' Initial Submission)
2 April 2015	DBCTM provides a supplementary submission on the Differential Pricing DAAU (DBCTM Supplementary Submission)
22 May 2015	QCA published QCA Draft Decision

2 Executive summary

The DBCT User Group is supportive of the QCA Draft Decision and continue to consider the application of differential pricing to DBCT is appropriate and overdue.

In relation to the four key issues the QCA identified in the QCA Draft Decision:

- **The circumstances in which differential pricing should apply:** The DBCT User Group supports the QCA's position of applying the incremental up/average down approach. The DBCT Users strongly agree that 'separability' should not be the sole

¹ Queensland Competition Authority, *DBCT Management Differential Pricing Draft Amending Access Undertaking*, May 2015.

² Queensland Competition Authority, *Discussion Paper Capacity Expansion and Access Pricing for Rail and Ports*, April 2013 at 20.

criteria. Rather the change in prices which would occur through socialisation is of primary importance in assessing the appropriate outcome, subject to acknowledging there may be special cases which may warrant a different approach. The DBCT User Group support the criteria the QCA is proposing in relation to assessing whether such special circumstances exist (including being willing to accept the QCA's proposed exclusion of an express reference to the object of Part 5 of the *Queensland Competition Authority Act 1997* (Qld));

- **The process for assessing a differential pricing proposal:** The DBCT User Group supports the QCA's suggested timing and process for assessing a differential pricing proposal;
- **Mechanisms for allocating other costs:** The DBCT User Group is supportive of the proposal to require a cost allocation manual to be prepared at the time differential pricing is to be applied and the general cost allocation principles proposed by the QCA; and
- **Other amendments to the undertaking that would be required:** The DBCT User Group has set out in the Schedule to this submission its suggestions regarding the amendments that are required to the DBCT Access Undertaking (including the Standard Access Agreement)..

3 Timing for resolving and consequences of a DBCTM Refusal to Resubmit

As noted in the DBCT Users' Initial Submission:

- the DBCT User Group considers differential pricing an important issue that should be resolved now;
- the QCA has considered the issue of differential pricing on a number of occasions to date (in the 2010 AU process, in the April 2013 discussion paper about expansion pricing, in the draft decision on Aurizon's Network's UT4 access undertaking and now in the QCA Draft Decision); and
- leaving resolution until 1 July 2016 is contrary to the intent of the arrangements between DBCTM and DBCT Users regarding the submission of a draft amending access undertaking on this issue during the term of the 2010 AU.

It should also be noted that there is the potential for this to become a live issue prior to approval of the anticipated 2015 draft access undertaking (as demonstrated by the current feasibility study occurring in relation to the 'Row 8' or 'Zone 4' expansion). Consequently, putting this off to form part of the 2015 draft access undertaking has the potential to lock-in inappropriately socialised increased prices.

The DBCT User Group is concerned that DBCTM has little appetite (based on the DBCTM Supplementary Submission and other discussions with DBCTM) to implement differential pricing (at least other than on terms which vary materially from those proposed in the QCA Draft Decision).

To the extent that DBCTM fails to resubmit a revised Differential Pricing DAAU that reflects the QCA's final decision, the DBCT User Group is concerned that any expansion capacity which is agreed to between the Final Decision and 1 July 2016 will, as a result, have inappropriate pricing principles applied to it. If that was set to occur, the DBCT User Group suggests QCA should seek to exercise its powers under clause 1.4(a) of the Existing Undertaking to require

submission of a draft amending access undertaking to prevent that type of unanticipated adverse result to the existing DBCT Users.

The agreement with those users who withdrew objections in relation to the 2010 AU process was that a draft amending access undertaking would be submitted during the term of that undertaking. While that has technically occurred, the DBCT Users believe that DBCTM should not be able to socialise pricing based on simply not submitting a revised draft undertaking, effectively deferring resolution of this issue.

4 Responses to issues raised in DBCTM's Supplementary Submission

The DBCT User Group wishes to respond to issues raised in DBCTM's Supplementary Submission (which was made after the DBCT User's Initial Submission).

The principal point which appears to be being raised in the DBCTM Supplementary Submission is the assertion that the parties would have reasonably expected socialisation to apply to all future expansions.³ That assertion is sought to be justified based on the previous regulatory decisions (and therefore contracts) not expressly providing for differential pricing and there not being any certainty that average costs would decline as capacity increased.⁴

That seems to ignore a number of issues.

The DBCT User Group accepts that a degree of socialisation of expansions with relatively limited price rises would have been reasonably expected if the parties had negotiated the user agreements prior to incurring sunk costs. This is not a case of seeking to apply a incremental up/average down approach to a recently developed greenfield asset which has just reached the point at which the cost curve is increasing or to revisit the history of the expansions which have been socialised to date. Rather, the DBCT User Group is supporting application of differential pricing to a mature asset for which development is approaching the boundaries of its existing geographic footprint (and therefore maximum possible capacity) where each additional increment of capacity is now substantially more expensive than the parties would have contemplated when initially contracting capacity at the terminal. The level of reasonably anticipated increases through socialisation that was part of the implicit bargain between the users and the original owner of the terminal has already occurred. The previous submissions made by the DBCT User Group (as referred to in the DBCTM Supplementary Submission) need to be read in that context.

The fact that the past contracts and undertakings themselves have not provided for differential pricing is far from determinative of the issue. That has been the position in Queensland for all regulated rail and port assets with reference tariffs to date. The issue is instead what was the 'implicit contractual arrangements and expectations of users concerning the price they would pay for access'.⁵ The DBCT User Group consider it is clear that the implicit understanding and expectation of users (and various terminal owners) has been that at the point where any future expansion capacity will involve step changes in price for existing users, those increased costs should be recovered from the expanding users rather than the existing DBCT Users.

Similarly, it does not follow that because the cost curve for the terminal would obviously be anticipated over time to rise at some point, that it was a foregone conclusion that no matter how

³ DBCT Management, *DBCT DAU – Supporting Submission for Differential Pricing DAAU*, 31 March 2015 at 4.

⁴ DBCT Management, *DBCT DAU – Supporting Submission for Differential Pricing DAAU*, 31 March 2015 at 4.

⁵ Queensland Competition Authority, *Discussion Paper Capacity Expansion and Access Pricing for Rail and Ports*, April 2013 at 1.

steep the incremental rise in costs socialisation would occur. Again it is a matter of at what point it would be reasonably anticipated that existing DBCT Users should stop having to subsidise expanding users.

In relation to other issues raised by DBCTM, the DBCT User Group specifically notes that:

- The initial members of the DBCT User Group effectively underwrote the original development of the terminal through the initial long term take or pay contracts and the provision of past capital contributions (such as through the 'minor capital contributions' required under previous user agreements). To say that the DBCT Users did not bear greenfield development risk simply because the asset was a brownfield operation and that capital contributions may have been repaid at the time of regulation or DBCTM's acquisition fails to recognise the DBCT Users' contracting and funding prior to that point;

- DBCTM's position is inconsistent with the object of Part 5 of the QCA Act.⁶

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.

The outcome of not applying differential pricing to higher cost expansions, is to incentivise inefficient investment in additional capacity at DBCT as the resulting tariff does not reflect the true costs of the expansion. That is inappropriate cross-subsidisation that will distort efficient investment in coal terminal infrastructure. As Vale succinctly put it in its initial submission:

the use of a socialised pricing approach in this situation is unlikely to provide appropriate pricing signals to the expanding users as it does not reflect the true cost of the expansion and is likely to lead to a cross subsidisation by existing Terminal Users.⁷

- The DBCT User Group acknowledges DBCTM's point that some of the factors to be had regard to in determining whether special circumstances exist may conflict,⁸ but note that that is not unusual and simply requires the QCA to undertake a balancing exercise of the type it is used to. The DBCT User Group considers that the factors would need to overwhelmingly point toward socialisation before an expansion that would materially increase costs should be considered for socialisation.
- Differential pricing will not blunt competition between coal producers. Current coal prices have seen a reduction in proposed new coal projects and genuine demand for new terminal access. The pricing of new terminal capacity should not be adapted to subsidise inefficient new entry.

5 Circumstances in which differential pricing should apply

For all the reasons set out in the DBCT Users' Initial Submission (and the QCA's previous decisions and papers referred to in that submission), the DBCT User Group continue to support:

- The average down / incremental up approach to differential pricing being the 'default' assumption;

⁶ Section 69E *Queensland Competition Authority Act 1997* (Qld).

⁷ Vale, *DBCT DAU – Application for Differential Pricing*, 11 March 2015 at 1.

⁸ DBCT Management, *DBCT DAU – Supporting Submission for Differential Pricing DAAU*, 31 March 2015 at 3.

- 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).

In relation to the last point, the DBCT User Group acknowledges that separability may be one of those factors but definitely not a determinative factor or a factor which is given any special weight.

The DBCT User Group considers the QCA's previous discussion of this point in its April 2013 discussion paper remains particularly apt:

When access is sold to access buyer according to long-term capacity contracts and the new facilities are functionally the same as the established facilities, such that access buyers are indifferent as to which such facilities they use, the issue of physical separability has no bearing on the capacity expansion pricing issue. This is because the cost of the expansion can be recovered from new access capacity contractors, as it is clear that they have 'caused' the need for capacity expansion and the costs can be identified. Which capacity is used in practice to satisfy new access demand has no bearing on the access seller's ability to charge new access customers for the new capacity.⁹

Accordingly, whether there is an increase in costs which would be imposed on existing users should be the defining factors, except in special circumstances which justify a different result.

The QCA has specifically sought comment on whether one of the factors to be had regard to is the 'reference transaction', or what the parties would reasonably expect to have occurred in a negotiated contract prior to sunk costs being incurred by either party.¹⁰

The DBCT User Group consider that is a useful factor to include. It is also not particularly uncertain given the extent of QCA commentary about its views on what would have reasonably be expected in those circumstances in previous decisions and discussion papers.

As the QCA has expressly recognised, this hypothetical reference transaction is actually the very basis for the 'averaging down/incremental up' approach.¹¹ To the extent it was removed, the DBCT User Group suggests that it would need to be made very clear that the other factors listed would need to overwhelming point against the average down/incremental up approach which would typically be supported by the reference transaction factor in order for there to be a finding that special circumstances justified a different approach.

⁹ Queensland Competition Authority, *Discussion Paper Capacity Expansion and Access Pricing for Rail and Ports*, April 2013 at 8.

¹⁰ Queensland Competition Authority, *DBCT Management Differential Pricing Draft Amending Access Undertaking*, May 2015 at 13-14.

¹¹ Queensland Competition Authority, *DBCT Management Differential Pricing Draft Amending Access Undertaking*, May 2015 at 13. Queensland Competition Authority, *Discussion Paper Capacity Expansion and Access Pricing for Rail and Ports*, April 2013 at v.

6 Timing for assessment

The DBCT User Group supports the QCA's proposal regarding the timing of the assessment of whether an expansion should be subject to differential pricing.

As discussed in the DBCT Users' Initial Submission, it is important for access seekers to gain some early appreciation of the likelihood of differential pricing being applied to an expansion they may be seeking capacity in, to avoid the situation where such access seekers make inefficient investment decisions in mining projects and/or rail contracts on the basis of an incorrect assumption that pricing will be socialised.

However, it is also important for existing DBCT Users to be protected from material changes in circumstances from those which existed at the time of any initial assessment (with possible examples including subsequent material changes in scope, design, capacity created or costs). In that regard, the DBCT User Group notes that under section 150F QCA Act a QCA ruling must state the circumstances and assumptions considered material by the QCA and under section 150K QCA Act a ruling provided by the QCA does not apply where:

- information used by the QCA to make the ruling was false or misleading in a material particular;
- the circumstances relating to the service existing when the QCA makes the determination or decision are materially different to the relevant circumstances for the ruling; or
- if there is a relevant assumption for the ruling – the event or matter to which the assumption relates has not happened as assumed.

The DBCT User Group has sought to balance these issues in the amendments proposed to the access undertaking in the Schedule to this submission.

7 Treatment of other costs

The QCA Draft Decision proposes:¹²

- the principles for cost allocation should relate to whether a cost is:
 - identifiable—i.e. a cost uniquely identified or directly incurred in relation to a particular component of capacity should be assigned to that component;
 - attributable—i.e. a cost not explicitly identified but where there is a reasonable causal relation between that cost and different components of capacity should be assigned based on a cost driver;
 - neither identifiable or attributable, it should be allocated on a fair and reasonable basis; and
- given the complexity involved in such allocations, if differential pricing for an expansion was to be considered, DBCT Management should develop a cost allocation manual at the time of its first expansion pricing proposal.

The DBCT User Group is willing to support that approach to the allocation of costs between differentially priced expansion capacity and the existing terminal capacity. It has the benefit of

¹² Queensland Competition Authority, *DBCT Management Differential Pricing Draft Amending Access Undertaking*, May 2015.

allowing the appropriate methodology for allocation of costs to be considered at the point where there is a live example of an expansion to be differentially priced.

It should be made clear that where DBCTM submits a proposal that an expansion should not be differentially priced and the QCA makes a different ruling, that DBCTM can still be required to prepare and submit a costing manual. The QCA also needs to ensure that the access undertaking gives it the power to implement a costing manual itself if DBCTM is not willing to submit a costing manual which incorporates the QCA's recommend changes.

The DBCT User Group look forward to being consulted on the first draft costing manual in due course.

8 Other required amendments to the 2010 Access Undertaking

The Schedule to this submission provides a proposed list of amendments required to the Existing Undertaking and existing Standard Access Agreement.

9 Conclusions

For the reasons set out in the DBCT Users' Initial Submission and this further submission, the DBCT User Group is supportive of the QCA Draft Decision and continue to consider the application of differential pricing to DBCT is appropriate and overdue.

The DBCT User Group consider the position proposed by the QCA appropriate and have sought to provide some more detail regarding the amendments required to the access undertaking (and standard user agreement) to implement such an approach.

If you have any queries in relation to this submission, please do not hesitate to contact Mark Smith of Peabody Energy on 3334 5628 or John Hedge of Allens on 3334 3171.

Schedule 1 – Changes to the Undertaking to implement differential pricing

The DBCT User Group have set out below the changes they consider are required to the DBCT Access Undertaking in order to implement differential pricing.

It is also clear that the Standard Access Agreement (which forms part of the undertaking under clause 1.4(e)) will also need to change in order for differential pricing to operate as intended, as the Negotiation Provisions in Part 5 and provisions like clause 13.1(c) (which allows access seekers to require access agreements to be consistent with the standard access agreement in all material respects) will not work properly unless the Standard Access Agreement is amended to address the potential for differential pricing to apply to future access seekers of expansion capacity.

Given the limited time available to provide comments on drafting, the DBCT User Group considers it would be appropriate for the QCA to publish its proposed drafting amendments for stakeholders to review prior to a final decision on the differential pricing draft amending access undertaking being reached.

With a view to assisting the QCA in that task, the DBCT User Group has set out below its views on required amendments.

The DBCT User Group considers at least the following changes would be required to the 2010 AU:

2010 AU Clause	Change required
5.2(b)-(c)	<p>DBCTM should at this stage be required to provide an assessment of:</p> <ul style="list-style-type: none"> • whether differential pricing would be applied on an pure average down/incremental up approach; and • whether DBCTM considers there are special circumstances which justify a different approach (having regard to the same criteria as the QCA will ultimately apply in the final assessment), and where DBCT considers there are such special circumstances the basis for that view. <p>Given the issues (such as studies and potential expansion obligations) that can be triggered by entities joining the queue, it is important for a price signal to be given as early as possible in the process.</p>
5.5(e)	<p>DBCTM should, in providing the initial estimate of the Access Charge in an Indicative Access Proposal include an assessment of:</p> <ul style="list-style-type: none"> • whether differential pricing would be applied on an pure average down/incremental up approach; and • whether DBCTM considers there are special circumstances which justify a different approach (having regard to the same criteria as the QCA will ultimately apply in the final assessment), and where DBCT considers there are such special circumstances: <ul style="list-style-type: none"> ○ the basis for that view; and ○ the impact on the estimated Access Charge if the QCA determined that differential pricing should be applied. <p>Again, given the issues (such as studies and potential expansion obligations) that can be triggered by entities joining the queue, it is important for a price signal to be given as early as possible in the process.</p>

2010 AU Clause	Change required
5.10(g)	<p>Either here or as part of clause 12.5, the requirement to apply to the QCA for a binding ruling on differential pricing following completion of the FEL 3 study should be included (as per the QCA's Draft Decision). See also the comments on clause 12.5(a) below.</p> <p>The application should be required to include at least the following information:</p> <ul style="list-style-type: none"> • information about the forecast expansion costs and volumes; • assessment of the pricing arrangements considered for the expansion, including treatment under a pure approach to the 'averaging down/incremental up' method and (if DBCTM considers that special circumstances justify a different approach, the factors which the QCA is required to have regarding to that DBCTM considers justify socialisation); and • information regarding the cost allocation methodology proposed and the allocation of costs between existing and expanding users as well as indicative reference tariffs for existing and expanding users. <p>The QCA should be required to launch an investigation into such a ruling application as permitted under the QCA Act such that existing users and potential expansion users can provide information on the appropriateness of the proposed pricing treatment of the expansion prior to the QCA making such a ruling.</p> <p>It should be made clear in any new provision regarding the QCA's ruling on expansions being binding that that is subject to the circumstances set out in section 150K QCA Act.</p>
5.10(j)	<p>The reference to including sums in the regulated asset base needs to contemplate the potential for multiple regulatory asset bases (i.e. a regulatory asset base for the existing terminal and a regulatory asset base in respect of any differentially priced expansion).</p> <p>If an expansion to be differentially priced does proceed study costs should go into the regulatory asset base for that expansion component rather than the existing terminal component.</p> <p>Where an expansion does not proceed, it would need to be resolved how FEL 1 and 2 study costs (which DBCTM applies to have included in the regulatory asset base) should be applied. The DBCT User Group considers that if a study is occurring in respect of a differentially pricing expansion the study costs should be funded by the expansion users and/or DBCTM – not imposed on existing DBCT Users through forming part of the existing terminal's regulatory asset base.</p> <p>This amendment could occur by direct amendment of clause 5.10(j) or an interpretative provision which indicates that references to regulatory asset base in the existing undertaking should be interpreted as references to the appropriate regulatory asset base where separate regulatory asset bases exist in connection with differential pricing.</p>
10.1	<p>The reporting of information regarding the regulatory asset base needs to contemplate the potential for multiple regulatory asset bases (i.e. a regulatory asset base for the existing terminal and a regulatory asset base in respect of any differentially priced expansion).</p> <p>Similarly indexation, depreciation, new assets, disposals, operating and maintenance costs and variances need to be reported separately for any such</p>

2010 AU Clause	Change required
	<p>separate regulatory asset base.</p> <p>For operating and maintenance costs, the reporting should confirm how allocation of material costs between the existing terminal and a differentially priced expansion is consistent with the QCA approved costing manual.</p>
11.1-11.9	<p>Clause 11 will need to be adjusted throughout to contemplate:</p> <ul style="list-style-type: none"> • A separate ARR, Revenue Cap, Reference Tariff and TIC for expansions which are differentially priced (separate from those for the existing terminal and any socialised expansions) • An Operation and Maintenance Charge which is allocated between the existing terminal and any differentially priced expansion in accordance with the QCA approved costing manual. <p>Clause 6.4.3 of the draft undertaking provisions as set out in the QCA's Draft Decision on the Aurizon Network 2014 access undertaking provides a useful reference point. In particular that sort of drafting is necessary in order to deal with multiple differentially priced expansions and to include a process for consideration of whether they should be combined or they should each be priced separately.</p>
11.10	<p>The limits on price differentiation will need to expressly recognise any principles in the undertaking regarding differential pricing for expansions as a permitted price differentiation.</p> <p>The difference of course does arise from a difference in incremental cost, but it should be put beyond any doubt that that is a type of differentiation permitted under the access undertaking.</p>
12.1(p)(1)	<p>It should be clarified that, where the Terminal Capacity Expansion being handed over is a differentially priced expansion, the independent expert's costs should be incorporated into the regulatory asset base for the differentially priced expansion rather than the existing terminal.</p>
12.5(a)	<p>DBCTM should be required as part of a Terminal Capacity Expansion application (if it has not already done so in conjunction with earlier FEL studies):</p> <ul style="list-style-type: none"> • Seek a binding QCA ruling on whether the pricing in respect of the Terminal Capacity Expansion will be socialised or subject to differential pricing; • Provide the estimated cost information for the Terminal Capacity Expansion, and resulting application of a pure average down/incremental up approach to pricing; and • Where DBCTM is claiming special circumstances justifying a different approach to that which would apply using a pure average down/incremental up approach, the special circumstances which DBCTM considers justifies that approach.
12.5(c)	<p>The information to be provided to an Access Seeker or Access Holder under this provision should constitute:</p> <ul style="list-style-type: none"> • Where a binding ruling has been provided by the QCA on the approach to pricing on that expansion, the content of the QCA's ruling and any material changes which may cause a change in that ruling;

2010 AU Clause	Change required
	<ul style="list-style-type: none"> • Where a binding ruling has not yet been provided by the QCA on the approach to pricing on that expansion: <ul style="list-style-type: none"> ○ whether differential pricing would be applied on an pure average down/incremental up approach (based on DBCTM's estimate of costs); and ○ whether DBCTM considers there are special circumstances which justify a different approach (having regard to the same criteria as the QCA will ultimately apply in the final assessment), and where DBCT considers there are such special circumstances: <ul style="list-style-type: none"> ▪ the basis for that view; and ▪ the impact on the estimated Access Charge if the QCA determined that differential pricing should be applied.
12.5(h)(2)	The information to be provided to existing DBCT Users should reflect that proposed in relation to clause 12.5(c) above.
12.5(o)-(p)	<p>Where DBCTM submits a draft access undertaking of this nature it should set the interim tariff on a basis consistent with 1) if a QCA ruling has been made at that point on differential pricing, the QCA's ruling; or 2) where a QCA ruling has not been made at that stage, DBCTM's assessment at that stage as to whether differential pricing would be applied under the criteria for differential pricing that will be set out in the 2010 AU.</p> <p>Acceptance of prudent capital expenditure into the regulated asset base (clause 12.5(o)(8)) needs to contemplate the expansion capital expenditure being, for differentially priced expansions, accepted into the expansion regulatory asset base.</p>
12.6	<p>The reference to regulatory asset base needs to contemplate the potential for multiple regulatory asset bases – and the expansion capital for a differentially price expansion to be allocated to the regulatory asset base for that expansion.</p> <p>This amendment could occur by direct amendment of clause 12.6 or an interpretative provision which provides for that result.</p>
12.10(b)-(c)	The provisions regarding inclusion of Non-expansion capital expenditure (NECAP) will need to ensure NECAP is allocated between the existing terminal and differentially priced expansion components in accordance with the QCA's approved costing manual for the terminal.
Schedule C	<p>All of the TIC (and related Revenue Cap, ARR and Reference Tariff sections) are based on the existing socialisation approach and would need to be amended to contemplate a separate TIC, Revenue Cap, ARR and Reference Tariff applying for any differentially priced expansion.</p> <p>There should be an express requirement for DBCT to apply the pricing approach to existing User Agreements and interpret references to TIC, Revenue Cap, ARR and Reference Tariff in those agreements as the TIC, Revenue Cap, ARR and Reference Tariff applicable to the existing terminal (without any differentially priced expansion)..</p>

2010 AU Clause	Change required
	It would need to be considered how the Rebate Pool and Increment would be measured. The DBCT User Group considers they should be terminal-wide calculations. To achieve that position, Schedule C would need to be amended so the relevant calculations are repeated and aggregated for each separate TIC, Reference Tonnage and Revenue Cap arising from any differentially priced expansion.
Schedule H	Definitions of Annual Revenue Requirement, Reference Tariff and Revenue Cap need to contemplate there being a separate Annual Revenue Requirement, Reference Tariff and Revenue Cap for the existing terminal and each differentially priced expansion.

The DBCT User Group considers the following changes are required to the Standard Access Agreement:

User Agreement Clause	Change required
4.2	Needs to reflect the changes referred to in relation to Schedule 9 below (either directly in this clause or through changes to the relevant definitions).
6.2-6.3	The Handling Charges – Fixed and Handling Charges – Variable need to be calculated based on the cost allocations (of the relevant operating costs and minor Capital Expenditure) occurring in accordance with the QCA approved costing manual.
7.2	The definition of Agreement Revision Date should be amended so that the development of an expansion which will be subject to differential pricing triggers a revision of this type.
10.1(a)	The information to be provided to the User under this provision should constitute: <ul style="list-style-type: none"> • Where a binding ruling has been provided by the QCA on the approach to pricing on that expansion, the content of the QCA's ruling and any material changes which may cause a change in that ruling; • Where a binding ruling has not yet been provided by the QCA on the approach to pricing on that expansion: <ul style="list-style-type: none"> ○ whether differential pricing would be applied on an pure average down/incremental up approach (based on DBCTM's estimate of costs); and ○ whether DBCTM considers there are special circumstances which justify a different approach (having regard to the same criteria as the QCA will ultimately apply in the final assessment), and where DBCT considers there are such special circumstances: <ul style="list-style-type: none"> ▪ the basis for that view; and ▪ the impact on the estimated Access Charge if the QCA determined that differential pricing should be applied.
Schedule	Changes to mirror those described in respect of Schedule C of the 2010 AU

User Agreement Clause	Change required
2	above.
Schedule 9	<p>Definitions of:</p> <ul style="list-style-type: none"> • Annual Revenue Requirement • Reference Tariff • Revenue Cap • TIC <p>need to contemplate there being a separate Annual Revenue Requirement, Reference Tariff and Revenue Cap and TIC for the existing terminal and each differentially priced expansion.</p> <p>Definition of Agreement Revision Date should be amended to include development of an expansion which will be subject to differential pricing.</p>

To avoid any uncertainty about how the changes will be applied to existing User Agreements, the DBCT User Group consider the simplest change would be to include in the undertaking a requirement for DBCTM to offer to amend the definition of Agreement Revision Date in each existing User Agreement so that it includes development of an expansion which will be subject to differential pricing. That will then allow clause 7.2 to trigger the necessary reviews of the charging regime provided for in the existing User Agreements to reflect the approach to differential pricing to be adopted in the undertaking (subject to the timeframe in clause 7.2(c) also being shortened so that the amendments are negotiated during the term of the current access undertaking).