
STAFF QUESTIONS: DECLARATION REVIEWS

Disclaimer: This material has been prepared by QCA staff and does not bind, nor does it represent, the views of the QCA. The material is to inform the QCA in its investigations and it follows that this paper should not be read as if any view has been reached by the QCA on the matters raised.

REVIEW OF THE 'DBCT SERVICE'¹

Criterion (a)

Access Framework

- (1) The Access Framework which DBCT Management says would apply in a future 'without declaration' appears to mirror in some respects the Access Undertaking, with the key exception of the pricing approach. QCA staff invite stakeholders' views on the likely impact of this proposed Access Framework on the incentives to invest and the environment for competition in related markets, in particular, the coal tenements market (exploration/development tenements market and production tenements market), compared to a future with declaration. You are invited to consider the following aspects of the Deed Poll/Access Framework:
- inclusion of a \$3 per tonne cap² (i.e. the requirement that the TIC cannot be more than \$3 per tonne higher than the TIC that would apply under a QCA administered pricing regime) in the Deed Poll and Access Framework
 - reliance in the Access Framework on estimating a floor TIC 'that would apply under a QCA administered pricing regime'.³ Does this provide clarity on the likely TIC that would apply? Is the process for establishing the floor TIC similar to the setting of access charges under existing user agreements? How will this process apply, including at both the negotiation and arbitration stages, if Part 5 of the QCA Act no longer applies in the absence of declaration?
 - the duration of the Access Framework (up to 10 years, to 2030),⁴ relative to mine life. How would terms and conditions of access be set after this time? How would prices in the 5 yearly reviews under the standard user agreement (under the proposed Access Framework) be determined after this time? To the extent that there is uncertainty over pricing terms after expiry of the Deed Poll, would this affect the environment for competition in coal tenements market during the proposed declaration period? If so, how? Please provide supporting data and evidence
 - compliance and enforcement - access seekers' visibility over DBCT Management's compliance with the Access Framework and ability to address breaches, as well as consequences of a breach. To what extent is DBCT Management's process similar or different to that which applies under Part 5 of the QCA Act? Are there any circumstances where the Access Framework could be unenforceable - for example, assignment by DBCT Management?⁵

¹ The service described in s. 250(1)(c).

² Deed Poll, cl. 6; Access Framework, Schedule C, cl. 2(b)

³ Deed Poll, cl. 6.1, Access Framework, Schedule C, cl. 2(a)

⁴ Access Framework, cl. 1.4, Schedule G

⁵ QCA staff note that s. 250(1)(c) of the QCA Act does not refer to DBCT Management, but refers to 'the handling of coal at Dalrymple Bay Coal Terminal by the terminal operator.'

Would different pricing terms or other terms have a material effect on the environment for competition?

- (2) What factors influence a decision to invest in the market for exploration/development coal tenements and for production tenements? What impact, if any, would uncertainty about terms and conditions of access over the life of a mine have on investment decisions? Please provide evidence where possible.
- (3) DBCT Management has indicated that the terminal is currently fully contracted and there is an access queue for expansion capacity beyond 102 mtpa.⁶ What are the implications of this? Can users (existing and potential) acquire coal tenements by purchasing tenement rights from access seekers in the queue? Would the pricing terms between existing users and potential users over the expected life of a mine affect their relative ability to acquire coal tenements and would that affect the environment for competition in the coal tenements market?

Criterion (b)

Is the access queue a reliable forecast of demand for terminal services at DBCT?

- (4) To what extent should an access queue at DBCT Management be viewed as a reliable forecast of demand for terminal services at DBCT? If it is not, why not?

In asking this question, staff are not focussing on whether DBCT Management's queue correctly reflects the relevant access seekers and their requests for capacity in different years. Rather, the focus of staff's question is on the rights and obligations of DBCT Management and access seekers in respect of the queue and the nature of the incentives of access seekers to participate in such a queue and to provide an accurate estimate of their demand.

REVIEW OF THE 'QUEENSLAND RAIL SERVICE'⁷

Criterion (a)

Road vs rail

- (5) Stakeholders are invited to comment on the extent to which the provision of below-rail services to freight operators by Queensland Rail is constrained by competition from road transport, as outlined by Queensland Rail in its submission. QCA staff invite views on:
 - (a) the nature of the freight task on the North Coast Line, and the extent to which it is segmented
 - (b) examples of competition between road and rail on any of the Queensland Rail systems including details, such as type of freight (e.g. bulk, containerised), industry (e.g. agriculture, coal, minerals), distance travelled, and frequency of services
 - (c) the extent to which countervailing power constrains Queensland Rail in its provision of below-rail services to freight operators.

Market power and spare capacity on the network.

- (6) Noting that Queensland Rail is not a rail freight operator and that there is excess capacity on Queensland Rail's below-rail network⁸, QCA staff invite stakeholders' views on whether Queensland Rail has an ability or incentive to exercise market power, including whether:

⁶ DBCTM submission, March 2019, p. 77.

⁷ The service described in s. 250(1)(b).

⁸ See for example, Queensland Rail's submission on the QCA's draft recommendation, March 2019, pp. 15-16.

- (a) Queensland Rail has an incentive to restrict access, given rail networks have long asset lives and over the life of the asset there may be multiple rounds of negotiations with various customers.
- (b) Queensland Rail has an incentive to exercise market power in respect of a particular service or services which may differ depending on the characteristics of the downstream market in question—(stakeholders may wish to consider differing markets, attributes of firms operating within those markets, and the existence of transport service contracts payments from the Government for some services or any other matter).
- (c) Queensland Rail’s approach to set access charges that result in revenues below the ceiling limits, and its receipt of transport service contracts payments, is an indicator that Queensland Rail lacks an ability or incentive to exercise market power.

Access Framework

- (7) QCA staff invite stakeholders' views on the likely impact of Queensland Rail’s proposed Deed Poll/Access Framework on incentives to invest and the environment for competition in dependent markets, compared to a future with declaration. You are invited to consider the following aspects of the Deed Poll/Access Framework:
 - (a) The five year duration of the Access Framework and notice of intention to renew 12 months prior to its expiry (including whether the risks associated with an investment during this period may change following the expiry of the Access Framework).
 - (b) The process outlined in the Deed Poll for Queensland Rail to amend the Access Framework, and the fact that legal proceedings are ‘the only avenue for recourse in relation to amendments’.
 - (c) Access seekers' visibility over Queensland Rail’s compliance with the Access Framework and ability to address breaches.
 - (d) The institutional and information provision arrangements available to address disputes and monitor compliance.
 - (e) The execution of the Deed Poll by Queensland Rail compared to the s. 250(1)(b) which refers to both Queensland Rail as well as ‘a successor, assign or subsidiary’.
 - (f) The extent to which Queensland Rail’s Access Framework, including the pricing terms and renewal arrangements, is sufficient to address any potential competition concerns.
- (8) As part of your response, QCA staff invite views on whether any matters raised are likely to discourage entry and investment in upstream and downstream markets. Stakeholders may wish to consider with reference to the above-rail and tenement market segments given supply chains involving Queensland Rail contain multiple participants.