

5 June 2020

Professor Flavio Menezes
Chair
Queensland Competition Authority

Collaborative Submission

Dear Professor Menezes

Collaborative submission on non-pricing provisions of the 2019 DAU

Thank you for the opportunity to provide further material on the 2019 DAU for the QCA's consideration.

DBCT is fully contracted. There is no spare capacity at DBCT available for new access seekers, and none will become available, at existing terminal capacity, until June 2028 at the earliest.

Expansion Process

With the assistance of QCA staff, DBCTM has been methodically working its way through the pre-expansion process as defined in the access undertaking. This included seeking, and receiving, QCA approval of a Standard Underwriting Agreement (SUA). As at the date of this submission, DBCTM is in receipt of 14.87Mtpa of executed SUAs. This commitment of 14.87Mtpa exceeds the ability of DBCTM to provide capacity from the next stage of development of the terminal, known as the 8X Expansion. Of the executed underwriting commitments, 12.5Mtpa is from new access seekers with no current access to capacity at DBCT. For the most part, existing users have no incentive to support further expansion of the terminal.

Regulatory task

Importantly, both the QCA and the Treasurer have this week confirmed that existing users are fully protected by the evergreen nature of their contracts and do not need any regulatory protection. Both the QCA and the Treasurer confirmed that the only competition issue to be addressed is the need to ensure new access seekers have the ability to compete with existing users for development stage tenements. 10.5Mtpa of the capacity represented by executed SUAs is held by counterparties in possession of development stage tenements who need access to DBCT to progress their tenements through to operation.

It is important that the QCA critically assesses whether the User Group's submissions on the 2019 DAU reflect those of access seekers (i.e. competitors of existing users) and the public interest, or those of its membership which consists predominantly of non-expanding existing users. The 2019 DAU needs to ensure that access seekers have a reasonable prospect of converting their tenements into operating mines.

A reference tariff is not appropriate

The use of a Reference Tariff calculated by the building blocks approach, as has been applied over the history of regulation of DBCT, is highly unlikely to provide the framework and incentives necessary for further expansion of the terminal. Unsurprisingly, existing users want a continuation of the previous heavy-handed, prescriptive regulatory approach as they have no interest in expansion and are focused solely on cost minimisation. The existing users' proposal of a 4.36% WACC for the period commencing July 2021 is clear evidence of this.

In light of the QCA's Final Declaration Recommendation that DBCT not be declared, a reference tariff model is not appropriate. A prescriptive, heavy-handed access regime based on a reference tariff is inconsistent with the QCA's Final Declaration Recommendation and the Treasurer's reasons for his decision.

As previously explained, over the period of the 2019 DAU, access seekers may only seek access to expanded capacity. It follows that any reference tariff set by the QCA in the access undertaking will provide no additional certainty to access seekers, as it will not reflect the actual prices paid by access seekers for access to expanded capacity.

On the other hand, DBCTM is confident that the negotiate/arbitrate model laid out in the 2019 DAU, with the amendments proposed by DBCTM to address the QCA and the User Group's concerns, will enable DBCTM to negotiate appropriate, mutually beneficial terms with access seekers to ensure that an expansion of DBCT and the development of relevant mining projects can proceed.

Negotiate/arbitrate regime

Under a negotiate/arbitrate regime, DBCTM will have an opportunity to work through the process of agreeing with its customers an access charge which recognises their need to keep costs at a minimum while providing the incentive necessary to support a further ~\$1.2bn expansion of DBCT. And where the parties are unable to agree, the QCA will be able to use its discretion to reconcile the competing views through compulsory arbitration.

Further to the above, while DBCTM is comfortable with the QCA publishing a guidance document which lays out the process for arbitration, a prescriptive set of guidelines which outlines the approach that the QCA will take to setting prices will risk ultimately defeating any attempt at negotiation. The QCA must trust that the existing access agreements can work as drafted and allow the parties a genuine opportunity to negotiate. Anything else would be simply a continuance of the status quo. It is difficult to see why existing users would be incentivised to negotiate with DBCTM if they know with a reasonable degree of accuracy what the price will be if they let the matter go to arbitration.

Arbitration by the QCA is the ultimate constraint on DBCTM's ability to exercise market power, regardless of the form of arbitration guidelines determined by the QCA.

Non-pricing provisions of the 2019 DAU

DBCTM has worked through all of the non-pricing issues identified by the User Group, and in this submission has addressed the vast majority of those issues, adopting almost all of the User Group's proposed changes.

DBCTM looks forward to working constructively with the QCA and other stakeholders to ensure that the 2019 DAU is fit-for-purpose, and is available to answer any queries that arise.

Yours sincerely



Anthony Timbrell
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DBCT Management

Attachment 1: DBCTM Collaborative Submission