

23 December 2020

Professor Flavio Menezes
Chair
Queensland Competition Authority

Dear Professor Menezes,

Re: Response to comments in DBCT User Group December 2020 Submission

While the period for submissions in response to our DAU application has now closed, we are writing to you to express our serious disappointment with certain aspects of the DBCT User Group submission that need to be addressed.

Throughout the 2019 Draft Access Undertaking (DAU) process, we have sought to engage with the User Group regarding the appropriate form of the 2021 Access Undertaking. While we have grown accustomed to a degree of hyperbole and hysteria in the User Group's submissions, the User Group's most recent submission warrants a response.

Section 4 of the User Group's December 2020 Submission accuses us of making misleading and inaccurate descriptions of our engagement with users throughout the QCA's 2019 DAU process. The User Group asserts that because DBIM has pursued the negotiate arbitrate model rather than the preferred position of the User Group, the scope for collaboration is 'meaningless'.

While it is clear that both DBIM and the User Group have a fundamental difference of opinion with respect to the appropriate pricing model to be applied beyond 2021, we have clearly indicated throughout the process that we are eager to collaborate:

- in areas where there is potential scope for agreement, such as the substantial and important body of non-price terms; and
- with respect to the design of the negotiate-arbitrate model, on the basis that any agreement would not prejudice the User Group's position in favour of a reference tariff.

The fact that we have not changed our view on the appropriate pricing model to apply from 2021 to align with what the Users prefer does not mean DBIM has plans to act as an evil monopolist to the detriment of our customers. It just means we have a different view as to what we believe is required to make the terminal viable, particularly with regard to expansion, over the longer term. A difference of opinion should not lead to personal attacks and thinly veiled insults.

My personal bonus arrangements (rather pettily mentioned in the User Group's submission) simply reflects the fact DBI sees value in a transition to light-handed regulation. It doesn't mean DBI has plans to extract monopoly rents. It means DBI sees the potential for growth in the asset base through further expansion as being significantly more likely to be achieved under a light-handed regulatory framework where it has a better chance of negotiating prices sufficient to compensate DBI for the not inconsiderable risk of investing further capital into the coal industry.

With regard to collaboration, on multiple occasions over the last 2 years we have written to the Users seeking feedback on proposed amendments to the DAU but have received little of value in return. Some recent examples include:

- On 23 September 2020 we emailed the User Group explaining *'[i]n order to address the remaining non-pricing issues identified in the 2019 DAU, please find attached a table outlining the relevant issues and our response/queries. Please let me know if you'd like any further information – or if you identify other non-pricing areas that you'd like to discuss.'* The attached letter clearly explained (and certainly did not "demand") *'In order to allow time for DBIM to take into account the User Group's responses in considering any proposed amendments to the 2019 DAU, and to allow for potential clarifying discussions, we request that you provide a response by Friday 2 October 2020.'*
- On 2 October 2020 DBIM responded to the User Group's request for an indication of its expected pricing, noting separately that *'...we welcome constructive engagement from the User Group in relation to the non-pricing issues set out in DBIM's letter of 23 September 2020, as well as the issues the QCA has raised in its draft determination in respect of remediation, review events and an appropriate depreciation methodology. To this end we hope that collaborative submissions on these issues can be prepared and filed with the QCA by 23 October 2020.'*
- And, on 13 October 2020 DBIM provided its proposed drafting for the depreciation section of its submission, commenting *'Please find attached our proposed depreciation methodology for the 2019 DAU. We would welcome any feedback the User Group has on this approach prior to the submission. Please let me know if anything isn't clear or your [sic] have any queries.'*

Almost a month after DBIM's initial request for collaboration, on 20 October 2020 the User Group replied stating only: *'Just to close this out:*

- *The DBCT User Group is not supportive of DBIM's proposed depreciation methodology – particularly because it relies on an artificially reduced useful life of the terminal (at end of initial lease term) and taking that approach will clearly prejudice other issues such as an appropriate calculation of the remediation allowance; and*
- *Given DBIM's refusal to engage in relation to pricing issues, which everyone including the QCA recognises are closely intertwined with the non-pricing issues – we unfortunately cannot see a way forward in terms of engagement on what you refer to as the 'non-price related issues'.*

The prospect that the User Group could not engage with the 'non-price related issues', which the User Group itself had raised in its September 2019 Submission (see Part D), could only be considered to be disingenuous and reflective of the User Group's general approach to engagement throughout this process.

We further dispute the User Group's accusation that DBIM did not disclose to the QCA that the User Group had rejected its position on depreciation on the basis it was prejudicial to an appropriate outcome on remediation given the 'artificially truncated' useful life. This is demonstrably false. DBCTM clearly noted the User Group was not supportive of DBCTM's proposed approach at paragraph [10.3] of DBCTM's October 2020 Submission, and pointed out that this was on the basis of DBCTM's approach to reducing the terminal's useful life.

For the sake of brevity, we have not sought to highlight each and every inconsistency with the truth in the User Group's assertions in Section 4 of their most recent submission. However, further detail can be provided if you consider it would be useful. Contrary to the accusations of the User Group, we have made sincere attempts to constructively engage with the users, and the User Group. We have also sought to address many of the User Group's public concerns with the proposed negotiate-arbitrate process in the 2019 DAU and participated in the QCA consultation process in a productive and professional manner.

While it is disappointing that we have had to correct the record in this way, we note that DBIM has had much better engagement with individual users and we expect that to continue.

On behalf of DBIM, I would also like to take this opportunity to wish yourself, your fellow Members and the QCA secretariat a safe and happy holiday period. DBIM looks forward to the QCA's final decision in the new year.

Yours faithfully,



Anthony Timbrell

Chief Executive Officer

Dalrymple Bay Infrastructure Limited

