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1 February 2024

Charles Millstead  
Chief Executive Officer  
Queensland Competition Authority  
Level 27  
245 Ann Street  
Brisbane City QLD 4000

***By lodgement through the QCA's online submissions portal***

Dear Charles

**DBIM Extension DAAU**

I refer to the draft amending access undertaking submitted by Dalrymple Bay Infrastructure Management Pty Ltd (**DBIM**) on 13 October 2023 (the **Extension DAAU**), and the Queensland Competition Authority's (**QCA**) request for submissions.

The submissions below are made on behalf of each of the existing users of the Dalrymple Bay Terminal (the **DBT User Group**).

The DBT User Group:

- (a) agrees with DBIM's assessment that the amendments proposed have the effect of extending the Terminating Date to 1 July 2031 and do not contain charges unrelated to the extension of the Terminating Date; and
- (b) is supportive of the Extension DAAU being approved in the form submitted.

That support is given solely because DBIM and the DBT Users reached agreements on terminal charges for a 10 year period to 30 June 2031 sought to be covered by the Extension DAAU.<sup>1</sup> As acknowledged by DBIM, those agreements were based on the regulatory settings in place in the 2021 access undertaking, such that a continuation of those regulatory settings reflects the position anticipated at the time of that negotiation.

However, for the avoidance of any doubt, the DBT User Group re-affirms its position that the negotiate-arbitrate regime imposed by the current access undertaking is highly inappropriate and has resulted in clear monopoly pricing by DBIM. It is not supportive of that form of regulation continuing post 1 July 2031.

The fact that agreements were reached was not because the parties were able to agree an efficient and appropriate tariff through a balanced negotiation as the QCA's decision on the 2021 access undertaking optimistically assumed. Rather those negotiations bore out each of the concerns the DBT User Group had previously raised. The agreements were the product of over 15 months of inefficient and costly negotiations,

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<sup>1</sup> Dalrymple Bay Infrastructure, ASX Announcement: DBI Announces 10 Year Pricing Agreements and Significant Increase in Distribution Guidance

**Our Ref** DBIM EXTENSION DAU

with an outcome representing a 23% increase in the first year TIC from the previous QCA approved TIC in the prior year with greater escalation across the 10 year period. The agreements reflected:

- (a) an understanding by the DBT Users that the only alternative was an arbitrated access determination by the QCA;
- (b) an extremely high degree of uncertainty as to what the outcomes of that access determination would be, with DBIM and the DBT Users having significantly different views of the likely outcomes; and
- (c) one of the few certainties, being that the QCA would accept some degree of monopoly pricing, noting the QCA had indicated in both its arbitration guideline<sup>2</sup> and final decision<sup>3</sup> on the 2021 access undertaking that it was willing to accept a price above efficient cost.

However, in circumstances where that form of regulation has already imposed an inappropriate outcome that will not be unwound by a change to the form of regulation over the period sought to be covered by the Extension DAAU, the DBT User Group is willing to support the Extension DAAU being approved.

As always, please do not hesitate to contact me if you have any queries in relation to this submissions.

Yours sincerely



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<sup>2</sup> QCA, *Guideline: Arbitration of disputes in relation to the DBCT service*, version 3, December 2021, 38.

<sup>3</sup> QCA, *Final Decision: DBCT 2019 draft access undertaking*, March 2021, 104.