

Appendix 2 Explanatory notes on non-price terms of access

The 2019 DAU must be evaluated against the statutory criteria for the approval of access undertakings in s138 of the QCA Act, rather than by reference to the 2017 AU. However, given the non-price terms in the 2019 DAU are similar to those in the 2017 AU, to facilitate the QCA's consideration of those terms, this table sets out a summary of DBCTM's position on the key non-price related drafting of the 2019 DAU relative to the 2017 AU.¹⁴¹

Item	Provision of AU	Comments
1.	1.6 - Amendments to current Access Undertaking during DAU process	It is DBCTM's intention that any amendments to the 2017 AU submitted for approval by way of draft amending access undertaking and approved by the QCA prior to the commencement of this new DAU will be captured in the DAU prior to its final approval by the QCA. DBCTM has made note of this intent in clause 1.6 of the 2019 DAU.
2.	3.1(f) – remove “Trading SCB”	DBCTM will de-register the Trading SCB prior to the effective date of the 2019 DAU and has removed all references to the “Trading SCB”.
3.	3.3 – OMC	Section 3.3 is removed in the 2019 DAU as it is not required in light of Section 3.2.
4.	5.3(f) - Expiry of Access Application	The 2019 DAU removes the transitional provisions around the expiration of access applications that existed at the commencement of the current Access Undertaking. The 2019 DAU provides that each Access Application will expire on the 31 st August each year, regardless of when submitted.
5.	5.3(g) - Notice of Expiry	Under the 2019 DAU, DBCTM is not required to notify Access Seekers about the need to renew their Access Application.
6.	5.3A - Renewal	The criteria for a Renewal Application under the 2019 DAU ensure that the nominated start date for access is not a date in the past, and clarify a number of points in the renewal application form in Schedule A.
7.	Short Term Available Capacity 5.4(d) – (i) – various	In order to promote the efficient allocation of short-term capacity which may become available from time to time, the 2019 DAU includes a Notifying Access Seeker process for ‘Short-Term Available Capacity’. ‘Short-Term Available Capacity’ is defined as “ <i>Available System Capacity which is available commencing within the next 12 months and that is not able to be renewed</i> ”.
8.	5.4(e)(1) - Notifying Access Seeker date for commencement of Access	To promote the efficient allocation of Available Capacity to Access Seekers in the Queue, the 2019 DAU has removed the requirement for a Notifying Access Seeker to seek Access at a date which 6 months earlier than that of the Access Seeker who is first in the Queue. A Notifying Access Seeker need only seek Access from a date that is earlier than that of the Access Seeker who is first in the Queue.
9.	5.4(e)(4) - Notifying Access Seekers and the Queue	The 2019 DAU provides that all Access Seekers in the Queue are to be notified when a Notifying Access Seeker requests Access. This will mean that all Access Seekers in the Queue (and not just those higher in the Queue) will be ‘Notified Access Seekers’.
10.	5.4(f)(3) –Start date for access in NAS process	Section 5.4(f)(3) provides that if the NAS notification period of three months spans two financial years, the earliest possible commencement date for Access for both the Notifying Access Seeker and all Notified Access Seekers will be deemed to be the first day of the new Financial Year. DBCTM considers this a reasonable outcome in circumstances where the relevant Notified or Notifying Access Seeker has not actually received access during the relevant Financial Year. Practically, because of the annual true up mechanisms for Access charges under the Standard Access

¹⁴¹ The 2019 DAU drafting in respect of expansion related processes is summarised in sections 6.7 and 6.8 of the submission, rather than this table

Item	Provision of AU	Comments
		Agreements, it is not possible for DBCTM to later enter into a contract that has a commencement date in the previous Financial Year, as this would impact the charges paid by all Access Holders.
11.	5.4(f) – grounds to cease negotiations with Notified or Notifying Access Seeker.	The 2019 DAU clarifies that DBCTM should not be obliged to enter into an Access Agreement with a Notified Access Seeker in circumstances where, had the normal Indicative Access Proposal process been followed in accordance with Sections 5.6-5.8, DBCTM would be entitled to cease negotiations under Section 5.8.
12.	5.4(g) - Issues with provision of Security	To promote the timely negotiation and conclusion of Access Agreements if an Access Seeker has an issue with the Security requested by DBCTM, the Access Seeker should raise the dispute within 14 days of receiving notice of such Security requirement.
13.	5.4(h) – time period for acceptance of offer by Notifying Access Seeker	The 2019 DAU includes a time period for a Notifying Access Seeker to accept an offer and enter into an Access Agreement for Capacity remaining at the end of the NAS process.
14.	5.4(i)(1) - Position in Queue may be lost by not executing Access Agreement	To promote the efficient operation of the Queue and the efficient allocation of capacity, the 2019 DAU provides that Notified Access Seekers: <ol style="list-style-type: none"> 1 with a commencement date that is within 2 years of the Notifying Access Seeker’s nominated start date; 2 who do not respond with a signed Access Agreement within the 3 month notification period, may be removed from the Queue. The ability to remove Access Seekers from the Queue does not apply where an Access Seeker has not accepted an offer of Short Term Available Capacity.
15.	5.4(i)(5) - Access Seeker may accept lesser tonnage if insufficient capacity for tonnage applied for	The 2019 DAU includes a time period for an Access Seeker to accept an offer and enter into an Access Agreement for capacity if the available Capacity is less than that required in the Access Seeker’s Access Application.
16.	5.4(w) - Dispute in relation to reordering of a queue	The 2019 DAU requires that any dispute in relation to the re-ordering of a queue (in respect of Socialised and Differentiated queues) be raised by an Access Seeker within 15 Business Days after receiving notice of the re-ordering. This will allow any Dispute to be raised and resolved in a timely manner which is to the benefit of all Access Seekers.
17.	5.6(a) - Response to IAP for Short-Term Available Capacity	The 2019 DAU includes a requirement for Access Seekers to notify DBCTM of any intention to progress an Access Application for Short-Term Available Capacity within 14 days after receiving the Indicative Access Proposal (IAP).
18.	5.7(a) - Parties to negotiate if Access Seeker wishes to enter Access Agreement	The 2019 DAU requires Access Seekers to commence negotiations within 14 days of indicating an intention to progress an Access Application on the basis of an Indicative Access Proposal (whether for Short Term Available Capacity or longer term tonnage).
19.	5.8 Negotiation Cessation Notice	In order to promote efficient negotiation with Access Seekers, the 2019 DAU allows for additional grounds to cease negotiation with those Access Seekers who do not have the ability to utilise the capacity sought from the nominated commencement date or who are not willing to provide the necessary Security required by DBCTM. The 2019 DAU includes the broader definition of “Related Entity”.

Item	Provision of AU	Comments
20.	5.13 – Access Transfers	The 2019 DAU's criteria in Section 5.13(a)(1) and (2) are drafted as alternatives, and not cumulative, criteria. DBCTM considers this was the intended operation of the section in the current access undertaking.
21.	8.4 - Reporting of aggregated information	In order to promote the efficient operation of the rail network and capacity at DBCT, the 2019 DAU provides DBCTM the ability to provide the rail network provider with notice when an Access Holder does not renew its Annual Contract Tonnage in whole or in part (noting that exercise of options to extend generally occur 1 year out from the expiry date).
22.	9 – Ring Fencing	DBCTM will de-register the Trading SCB prior to the effective date of the 2019 DAU and has removed all references to the Trading SCB, including the consequential amendments to Section 9.
23.	12.1(h) - Independent expert to consult	Given the make-up of the ILC, if the ILC is the independent expert in respect of a capacity estimation, DBCTM considers it reasonable to assume that the membership of the ILC will be have been consulted as necessary for any ILC determination.
24.	12.1(i) - Objection to estimation by independent expert	To promote certainty and to ensure there are no unnecessary challenges to the independent expert's decision, the 2019 DAU provides that the only grounds of objection to the capacity assessment undertaken by an independent expert should be that it is made in breach of the AU or an Access Agreement or in manifest error.
25.	Schedule A	The 2019 DAU updates the form of the Access Application and Renewal Application contained in Schedule A.

Item	Provision of Standard Access Agreement	Comment
1.	15.7 – Obligations continue	The 2019 DAU Standard Access Agreement requires both parties to continue to perform their respective obligations under an Access Agreement despite the existence of a dispute. DBCTM considers that this clause is a market standard clause for dispute frameworks and is an obligation which exists on both parties during a dispute.