

STAKEHOLDER NOTICE

26 August 2020

DBCT Management's 2019 draft access undertaking

Draft decision

The QCA has today released its draft decision on DBCT Management's 2019 draft access undertaking (DAU). The draft decision proposes to refuse to approve the DAU and outlines the reasons for the refusal and the amendments to the DAU that we consider appropriate.

Submissions invited on the draft decision

We invite interested parties to provide submissions on our draft decision.

The due date for submissions is **Friday 23 October 2020**.

All submissions we receive by that date will be taken into account. Stakeholders are encouraged to provide focused, detailed responses. Where possible, information and evidence should be provided in support of arguments advanced in submissions and consideration should be given to the matters the QCA must have regard to (which are primarily set out in s. 138(2) of the QCA Act).

As previously advised, we intend to publish a final decision on DBCT Management's 2019 DAU in February 2021.

Guidance on how to make a submission in response to the draft decision is provided below.

Six-month statutory timeframe

On 1 July 2019, we received DBCT Management's 2019 DAU. We are well advanced in considering the 2019 DAU and have today released our draft decision on the DAU. This is consistent with our objective of having an appropriate undertaking ready to approve when DBCT Management's 2017 access undertaking notionally terminates on 1 July 2021.

In accordance with section 147A of the *Queensland Competition Authority Act 1997* (QCA Act), the QCA must use its best endeavours to decide whether to approve, or refuse to approve, a DAU within a six-month period. This period does not include:

- time waiting for a response to notices given to a person under section 185 of the QCA Act
- time for consultation
- other time DBCT Management agrees should be excluded from the statutory timeframe.

The notice of time periods (see below) shows that, after allowing for these excluded periods of time, the six-month period expired on 1 August 2020. The QCA Act requires that, if the QCA fails to decide whether or not to approve a DAU within the six-month period, we must prepare a written notice stating the reasons for the failure and details about what we will do to make a decision as soon as reasonably practicable (s. 147A(5)(a)).

Pursuant to section 147A(5)(a)(i) of the QCA Act, the reasons for our failure to publish a final decision within the statutory time period are the following:

- We issued DBCT Management with a mandatory initial undertaking notice in October 2017, requiring it to submit the DAU by 1 July 2019. We considered that this would promote the goal of having a new access undertaking ready on time, by providing a buffer to cope with unexpected matters, while affording natural justice to DBCT Management and other stakeholders.
- We identified that an important difference between DBCT Management's 2019 DAU and past access undertakings for the service at DBCT is the proposed negotiate–arbitrate pricing model (without a reference tariff) for determining access charges. We thus provided stakeholders with an additional consultation period to enable them to give us specific additional feedback on the 'threshold' issue of the appropriate pricing model for the DAU.
- Given the importance of this 'threshold' issue, on which stakeholders hold divergent views, we introduced an additional step into our proposed processes for assessment of the DAU—which was an interim draft decision on the appropriate pricing model to approve. This interim draft decision was released on 24 February 2020.
- We provided stakeholders with a consultation period to make submissions on the interim draft decision and also provided stakeholders with a subsequent further period to make collaborative submissions on the DAU.
- Given the buffer provided to cope with unexpected matters, we remain confident of releasing a final decision on DBCT Management's 2019 DAU in February 2021. This is in accordance with our publicly stated timetable for the assessment of the DAU and will allow sufficient time for a new access undertaking to be ready to approve when the 2017 undertaking notionally terminates on 1 July 2021.

Pursuant to section 147A(5)(a)(ii) of the QCA Act, we propose to take the following actions to make a decision as soon as reasonably practicable:

- We intend to complete consideration of DBCT Management's 2019 DAU, stakeholders' submissions (including those received as part of consultation on our draft decision) and other relevant matters, and have appropriate regard to the approval criteria in section 138(2) of the QCA Act.
- This is with the intention of publishing a final decision on the DAU by the end of February 2021.

Notice of time periods

Six-month statutory timeframe for assessing DBCT Management's 2019 DAU

In accordance with section 147A of the QCA Act, the six-month period for assessing DBCT Management's 2019 DAU began on 23 September 2019 and ended on 1 August 2020. The six-month period did not include the following days:

From	To	Total days	Reason
1 July 2019	23 September 2019	85	These days were given to DBCT Management and interested parties to make initial submissions on the 2019 DAU.
25 October 2019	22 November 2019	28	These days were given to DBCT Management and interested parties to make further submissions on the 2019 DAU pricing model.
24 February 2020	24 April 2020	60	These days were given to DBCT Management and interested parties to make submissions on the QCA's interim draft decision on the 2019 DAU.
29 April 2020	5 June 2020	37	These days were given to DBCT Management and interested parties to make collaborative submissions on the 2019 DAU.

Submissions

Closing date for submissions: 23 October 2020

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (QCA). Therefore, submissions are invited from interested parties concerning our assessment of DBCT Management's 2019 DAU. The QCA will take account of all submissions received within the stated timeframes.

Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority
GPO Box 2257
Brisbane Q 4001

Tel (07) 3222 0555
Fax (07) 3222 0599

www.qca.org.au/submissions

Confidentiality

In the interests of transparency and to promote informed discussion and consultation, the QCA intends to make all submissions publicly available. However, if a person making a submission believes that information in the submission is confidential, that person should claim confidentiality in respect of the document (or the relevant part of the document) at the time the submission is given to the QCA and state the basis for the confidentiality claim.

The assessment of confidentiality claims will be made by the QCA in accordance with the *Queensland Competition Authority Act 1997*, including an assessment of whether disclosure of the information would damage the person's commercial activities and considerations of the public interest.

Claims for confidentiality should be clearly noted on the front page of the submission. The relevant sections of the submission should also be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two versions of the submission (i.e. a complete version and another excising confidential information) could be provided.

A confidentiality claim template is available on request. We encourage stakeholders to use this template when making confidentiality claims. The confidentiality claim template provides guidance on the type of information that would assist our assessment of claims for confidentiality.

Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at our Brisbane office, or on our website at www.qca.org.au. If you experience any difficulty gaining access to documents, please contact us on (07) 3222 0555.