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21 January 2021

Professor Flavio Menezes
Chairperson
Queensland Competition Authority
Level 27, 145 Ann Street
Brisbane QLD 4001

Dear Professor Menezes

2019 Draft Access Undertaking - Dalrymple Bay Infrastructure late correspondence

I am writing to you on behalf of the DBCT User Group in relation to the letter of 23 December 2020 from Dalrymple Bay Infrastructure Limited's CEO which the Queensland Competition Authority (**QCA**) published on 5 January 2021.

While the DBCT User Group does not wish to make additional submissions outside of the requested submissions, given the nature of the letter which has been placed before the QCA and published in respect of the current QCA process, the DBCT User Group respectfully considers that it needs to provide a short response in order to ensure that the QCA is properly informed in making its final decision on the 2019 draft access undertaking (the **2019 DAU**).

The DBCT User Group strongly disagrees with the letter's characterisation of the interactions between Dalrymple Bay Infrastructure Management Pty Ltd (**DBCTM**) and members of the User Group – both individually and collectively – and its commentary on the User Group's submissions.

In particular:

- (a) The User Group rejects the unfounded allegation that it has been disingenuous. The vast majority of changes involved in the 2019 DAU were beyond the scope which DBCTM was willing to discuss, and given the nature of the user group (being made up of numerous users and access seekers) and the time periods available for submissions, there were practical limits to how much the user group could reasonably engage with (and, as a group reach agreement with) DBCTM on the limited balance of issues without hindering its ability to make submissions on what the group collectively considers to be the most important issue – obtaining an appropriate form of pricing regulation that prevents monopoly pricing;
- (b) In contrast to the claims in DBCTM's letter, no meaningfully improved engagement has occurred on a bilateral basis because, as in the regulatory process, DBCTM has been unwilling to disclose a price at which it proposes access will be provided (presumably because DBCTM is unwilling for the QCA to consider its proposed pricing in assessing the appropriateness of the 2019 DAU); and
- (c) It is not necessary for the QCA to conclude that DBCTM is 'evil' to determine that the negotiate-arbitrate model proposed is inappropriate (and that has never been the User Group's submission). Rather, the User Group's submissions are simply that it is enough for

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the 2019 DAU to be found to be inappropriate that the QCA accepts its own previous finding that DBCTM has the incentive as a profit maximising monopolist to engage in monopoly pricing and to then find that there is a risk of it being able to do so under the terms of the 2019 DAU.

DBCTM's unwarranted commentary only serves to distract from the substantive issues raised by the DBCT User Group in relation to how the 2019 DAU will lead to inefficient pricing and the unresolved questions about how a negotiate-arbitrate model for regulating pricing of a monopoly service can be found to be appropriate in the absence of any evidence being provided of likely pricing outcomes.

Given DBCTM's letter does not address the substantive merits of the 2019 DAU in any meaningful way, the DBCT User Group intends to respect the QCA's process such that the QCA can focus on those substantive issues, and does not currently intend to respond to DBCTM's letter beyond what is set out above.

Kind regards



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