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Charles Millsteed
Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Dear Charles

QCA Draft DBCT Arbitration Guidelines

I am writing to you on behalf of the Dalrymple Bay Coal Terminal User Group (the **DBCT User Group**) in relation to the Queensland Competition Authority's (**QCA**) proposed amendments to the DBCT arbitration guideline.

The DBCT User Group are generally supportive of the changes shown in version 3 of the guideline, that we acknowledge improve the clarity of the document.

Accordingly, we have limited our comments to the following key items.

- 1 **The DBCT User Group is supportive of the stronger focus in the guideline on seeking resolution through mediation or other forms of alternative dispute resolution.** Where resolution on the Terminal Infrastructure Charge has not been reached since the negotiate-arbitrate regime commenced on 1 July 2021, a focus on the potential for mediation is warranted in order to incentivise and facilitate a commercially negotiated resolution. The DBCT User Group understands that enhancing the prospects of a negotiated outcome would be consistent with the stated intention of the negotiate-arbitration framework.
2. **The DBCT User Group, however, has serious concerns about the proposal that mediation would run in parallel to the arbitration process.** While we appreciate the policy intention to expedite the process, the concern is that an 'in parallel' approach would be likely to have unintended consequences. In particular, the DBCT User Group is concerned that it would:
 - (a) result in all parties incurring the costs of arbitration (prematurely and unnecessarily where the dispute is ultimately resolved through the mediation). These costs will be significant, particularly for the DBCT User Group given the number of users which will be involved; and
 - (b) undermine the prospects of mediation, both because it will require parties to divert resources away from the mediation to preparing for the arbitration and because it may incentivise parties to the mediation to engage less openly, and be less likely to put forward any compromises, due to concerns about how that may impact on the arbitration.

Accordingly, the DBCT User Group submits that the process should typically occur sequentially, with arbitration only occurring where mediation fails. A sequential approach does not require any material delay as a relatively short period can be provided for mediation given the confined nature of the matters in dispute (i.e. the calculation of the Terminal Infrastructure Charge).

Our Ref DBCT USER GROUP:120717711
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3. **The DBCT User Group is concerned to ensure that the template information provision requirements do not have an unintended chilling effect on negotiations by requiring provision of without prejudice offers or correspondence between the parties.** In particular, the DBCT User Group is concerned that if parties are required to disclose without prejudice offers that may disincentivise any potential compromises being offered and thereby damage the prospects of a commercial resolution being reached in negotiations or mediation.

The DBCT User Group respectfully submits that the guideline should be amended to reflect those points, and that doing so would be improve the efficiency of the negotiate-arbitration framework, and (in our experience) would be in keeping with how dispute processes typically operate in other regulatory, judicial and commercial settings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Hedge', with a small dot at the end of the line.

John Hedge
Partner
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